

Unbilled Reimbursable Retroactive Wages

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Memo

Date May 13, 2009
To Donald J. Stadtler, Jr.
William L. Crosbie
From Gary E. Glowacki, Deputy IG – Audits
Department Office of Inspector General
Subject Unbilled Reimbursable Retroactive Wage
Calculation
cc Fred E. Weiderhold, Jr.
Distribution

Message

The Office of Inspector General has completed a review of Reimbursable Retroactive Wages and the associated control environment. Our primary objective was to identify the customers Amtrak could potentially invoice for retroactive wage increase expenses; and, to calculate and summarize by customer the amount Amtrak may be entitled to invoice each customer.

The results of our audit were discussed with representatives from the Finance department. Since management comments are incorporated into the enclosed report, a formal response to this report is not required. However, if you have additional comments or questions, please let us know.

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Unbilled Reimbursable Retroactive Wages

Report Addressed To:

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And

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This report is prepared for the addressee(s) and includes privileged and confidential information. As such, this report may not be released to any organization outside Amtrak or to any internal department without the approval of the Office of Inspector General.

This Report becomes available to the public on June 10, 2009.

Report Issued By:

**NATIONAL RAILROAD PASSENGER CORPORATION
OFFICE OF INSPECTOR GENERAL - AUDITS
10 G STREET, N.E.
WASHINGTON, DC 20002**

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Executive Summary

On January 8, 2008, the President's Emergency Board ("PEB") ruled that Amtrak should pay its employees from 13 unions (23 agreements) pay increases retroactive from July, 2002 through June, 2008. Using terms consistent with the PEB rulings, Amtrak signed labor agreements with 13 unions. Settlement costs were estimated to be sizeable; therefore, Amtrak planned to pay the employees with two lump-sum payments; forty percent at settlement, and sixty percent in May 2009.

On January 30, 2008, the OIG formally notified Management that significant portions of the retroactive labor wages were incurred in performing reimbursable contracts. A number of these contracts contain specific provisions that allow Amtrak to invoice its customers for retroactive pay adjustments. Other contracts are based in whole or in part on reimbursable costs, which could include retroactive wage adjustments. In early 2008, the OIG noted that there was varying degrees of concern regarding how to invoice, or collect any of the reimbursable retroactive wage amounts.

[REDACTED BY AMTRAK MANAGEMENT]

Subsequently, however, Management began to identify and quantify potential billings for retroactive wages for reimbursable contracts. In September 2008, Management identified the universe of contracts and other reimbursable agreements potentially affected by the retroactive wages. In June 2008, Accounts Receivable began charging the new higher labor rates for the FY 2008 period to accommodate current increased labor costs. Reportedly, during the second half of 2008 and in early 2009, several meetings were held with members of the Executive Management Committee where the retroactive wage billing values were presented and alternatives for billing customers was discussed.

[REDACTED BY AMTRAK MANAGEMENT]

In February 2008, the OIG formally began its own independent review of the impact of retroactive wage costs, and potential for reimbursement from the entities that benefited from the work Amtrak performed. The OIG's objective for this limited scope review was to determine how much of the PEB settlement costs were incurred by Amtrak on behalf of reimbursable customers. To determine the Gross Wage Increase ("GWI") or retroactive wage increases attributable to reimbursable projects or services, we used data mining approaches that included using accounting codes such as functions and work elements for reimbursable force account projects; rescenters and functions for commuter services; and train numbers for state supported trains. We considered this data mining method the most reliable approach because it captured the exact service where employees coded their time and were paid.

Our audit documented approximately \$102.6 million in billable retroactive labor costs that were incurred for Amtrak labor performing reimbursable services for commuters, state supported trains (403b) and various other force account projects. Of the total reimbursable labor costs, \$49,362,032 was incurred for force account projects; \$36,407,325 was incurred for commuter services; and, \$16,833,509 was incurred for state supported trains. **Appendix A** summarizes the amounts due Amtrak, and **Appendix B** is a breakdown of reimbursable labor costs by customer.

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Amtrak's Finance Department used a methodology that relied on the retroactive wage database utilized by Amtrak to pay its union employees their back pay. They utilized accounting codes, such as functions, work elements, res centers, and train numbers, which are applicable to the contract and were utilized to generate the billings in the past. Finance then aggregated the data by business line, which is a high level accounting code that relates to all costs. The variance between Finance's retroactive wage figure and OIG's calculated figure was 2.82% which we believe was the result of using alternative data mining methods (see **Appendix D**).

The OIG is well aware of the many complex issues and economic environment in which Amtrak is currently operating. However, we also recognize that Amtrak has contractual rights concerning labor expenses which should be pursued and enforced. Moreover, Amtrak is prohibited by law from subsidizing "operating losses of commuter rail passengers or rail freight transportation" under 49 USC Section 24104 and Authorization of Appropriations statutes. Therefore, the OIG recommended that it would not be unreasonable for Amtrak to at least invoice retroactive wage increases for work performed for those types of customers, even on a fixed price basis. In fact, we believe Amtrak is obligated by federal statute to invoice its customers under these circumstances.

We recommend that Management carefully review the OIG findings regarding potential reimbursement of retroactive wages, and use its best efforts to request and collect all identified amounts.

Unbilled Reimbursable Retroactive Wages

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I. BACKGROUND

During the period July 2002 through December 2007, many Amtrak unions worked without signed labor agreements. In December 2007, the President of the United States appointed the President's Emergency Board (PEB) to review the matter and avert a labor dispute. The PEB was appointed to arbitrate the outstanding issues, and one of the major issues to be determined was eligibility for retroactive pay increases. On January 8, 2008, the PEB recommended that Amtrak offer most of its labor unions pay increases retroactive to July 2002.

In response to the PEB ruling, Amtrak settled with its unions as recommended. The wage increases were to be applied annually by percentage increments from July 2002 through June 2008, and given to all employees under a signed agreement. Since the total retroactive wage payments were sizable, exceeding Amtrak's available cash reserves, it necessitated Amtrak to fund the wage adjustments by making two payments. A lump sum payment of 40% of the retroactive payment was paid immediately after signing the agreements, and the remaining 60% is to be paid in May 2009 (100% payment was made to some unions).

Currently, as well as during the retroactive period, a large segment of Amtrak forces work under reimbursable maintenance of way, mechanical, transportation, commuter, real estate development, and state-supported train contracts that benefit other entities such as states, local governments, railroads and other customers. Many of the agreements governing this work activity have a compensation provision that allows Amtrak to invoice all expenses incurred while providing these services to the outside entities. A number of the agreements contain specific language concerning retroactive pay raises, while other agreements provide for reimbursement of all allowable costs incurred to perform the work or provide the services. Some agreements are based on a fixed price or fee for a certain scope of work, but include provisions for reimbursement of costs incurred for work exceeding the fixed scope. In addition, many of the fixed amounts were based on the costs of labor prior to the PEB ruling. In light of the statutory prohibition on subsidizing commuter or freight rail, Amtrak should be able to invoice for retroactive wages even for the fixed price portions of its agreements with those entities.

On January 30, 2008, following a review of a RIDOT agreement in which there are specific provisions for retroactive wage recovery, the OIG Audits group formally notified Management that a significant portion of the labor was incurred executing reimbursable contracts. At that time, OIG recommended that Amtrak calculate the amounts of retroactive wage costs associated with each customer, and send an invoice to each customer to request reimbursement.

[REDACTED BY AMTRAK MANAGEMENT]

After several months, Management agreed that the Finance Department would undertake a more critical review of potential billings for retroactive wages.

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[REDACTED BY AMTRAK MANAGEMENT]

[REDACTED BY AMTRAK MANAGEMENT]

In early 2008, subsequent to the OIG's notification to the company of the retroactive billing issues, the OIG began an independent review of the potential for reimbursement of retroactive wages. We determined the Gross Wage Increase (GWI) or retroactive wage increases attributable to reimbursable projects or services; using the appropriate accounting codes such as functions and work elements for reimbursable force account projects; rescenters and functions for commuter services; and train numbers for state supported trains. This method was used to capture the exact service where employees coded their time and were paid. We believe that drilling down to this level of records produced the most reliable figures compared with any alternative data mining method.

II. OBJECTIVE

The objectives of our review were to:

- Identify the customers Amtrak could potentially invoice for retroactive wage increase expenses; and,
- Calculate and summarize by customer, the amount Amtrak may be entitled to invoice to each customer.

III. SCOPE

The scope of our review included all cost accounting and financial information related to the reimbursable retroactive wage payments. Because of time restraints, this was deemed to be a limited scope review. Our limited scope review was performed in accordance with Department standards for limited scope audits as well as applicable Generally Accepted Government Auditing Standards (GAGAS). The audit covered the retroactive period from July 2002 through June 2008.

IV. SPECIAL CIRCUMSTANCES AFFECTING THIS EVALUATION

Our calculations included the entire period covered under the ruling and we applied all contractual overheads; but we were limited to the accuracy of existing labor detail records. Our normal audit practice would have been to verify the accuracy of the amounts already summarized by Finance.

In addition, we detected instances of wage payment irregularities in the labor wage payment database that were outside the scope of this audit. We plan to commence a subsequent audit at a later date to determine whether the irregular wage payments are questionable and should be recovered.

V. METHODOLOGY

The methodology used to identify reimbursable customers and summarize the retroactive

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wage expenses by customer included the following:

- Obtaining and reviewing reimbursable force account agreements between Amtrak and its customers;
- Meeting with Amtrak Management;
- Retrieving project work elements, responsibility centers, train number, and functions from management;
- Using project work elements, responsibility centers, and functions to extract labor from LAI databases;
- Obtaining customer additives from Accounts Receivable staff;
- Developing composite additive rates by customer;
- Loading the force account labor databases and composite additives into OIG – Audits ACL Software;
- Verifying retroactive wage data base;
- Retrieving labor detail from Amtrak’s Work element Explorer and Brio software systems and using for retroactive wage computations;
- Download retroactive wage data base into ACL software;
- Applying reimbursable accounting codes to retroactive wage database in ACL software;
- Computing reimbursable wage increases and additive expenses by customer; and,
- Comparing our reimbursable wage summaries with Finance summaries.

VI. EVALUATION OF INTERNAL CONTROLS

Since the amounts Amtrak should bill to its customers for the retroactive wage award had not yet been invoiced to its customers and collected, we could not evaluate the control environment over the recording, invoicing and collection of the retroactive reimbursable wage account receivables.

VII. PRIOR AUDIT COVERAGE

There was no prior audit coverage for reimbursable retroactive wage.

VIII. FINDING AND RECOMENDATION

Amtrak should invoice the full amount of potential retroactive wages, which is over \$102.6 million, for billable work completed for Commuter Service, State Supported Trains and various Force Account Project customers.

The PEB ruling required that Amtrak pay its employees from 13 unions (23 agreements) wage increases retroactively from July, 2002 through June, 2008. Amtrak has agreements with several commuter agencies, 13 states to operate train service (state supported trains) and numerous public and private customers covering various

reimbursable force account projects, some of which included specific language that allowed reimbursement of retroactive wages paid on behalf of Amtrak customers. OIG formally notified Management on January 30, 2008 that a significant portion of the PEB back pay award was related to labor costs incurred in performing services that benefited other entities, and that many of the contracts contained provisions that either specifically allowed Amtrak to invoice its customers for retroactive pay adjustments, or provided for reimbursement of all allowable incurred costs.

[REDACTED BY AMTRAK MANAGEMENT]

Attempts were also made to begin charging the new higher labor rates for the FY 2008 period to accommodate current increased labor costs. Amtrak will reduce amounts owed by approximately 25% based upon the \$75 million appropriation provided to Amtrak for the last retroactive wage payment.

[REDACTED BY AMTRAK MANAGEMENT]

We do not consider either option (reduced or partial billing) to be the best business approach.

Amtrak is prohibited from subsidizing “operating losses of commuter rail passengers or rail freight transportation” under 49 USC Section 24104 and Authorization of Appropriations statutes.

We calculated the amount owed to Amtrak to be over \$102.6 million. To determine Gross Wage Increase (GWI) or retroactive wage increases attributable to reimbursable projects or services, we drilled down to the accounting codes such as functions and work elements for reimbursable force account projects; rescenters and functions for commuter services; and train numbers for state supported trains. We considered this data mining method the most reliable because it captured the exact service where employees coded their time and were paid. When we compared our figure to Finance’s calculation of \$57,596,721 for retroactive reimbursable wages paid by Amtrak and our calculation of \$59,269,286 it produced a variance of 2.82% We attribute the main reason for the variance to the use of different data mining methods (**Appendix D**).

After applying the contractual overheads and additives, our results show that \$102,602,866 of retroactive wage payment was incurred for Amtrak labor in performing services for commuter services, state supported trains and various other force account

projects. Of the total labor costs, \$49,362,032 was incurred for force account projects; \$36,407,325 was incurred for commuter agencies; and, \$16,833,509 was incurred for state supported trains. See **Appendix A** for a summary of the total amounts by type of service and **Appendix B** for a breakdown of labor costs by customer.

Recommendation

We recommend that Management invoice the entire \$102.6 million retroactive wage amounts for labor costs incurred by Amtrak on behalf of its customers. After obtaining an initial response from each customer, we recommend that Amtrak separately evaluate, negotiate and pursue collection of amounts due, depending on specific contract language and other factors affecting business relationships between the parties, thoroughly documenting all Management decisions with regard to each customer.

Management Comments

Senior Management advised the Board of Directors of its criteria associated with invoicing retroactive wages to various Amtrak customers at the April 23rd meeting.

Invoices will be generated to eligible customers based on the following guidelines:

[REDACTED BY AMTRAK MANAGEMENT]

- Retroactive wages for eligible contracts for the period from Fiscal Year 2005 to Mid-Fiscal Year 2008 will be invoiced;
- Customers with individual retroactive wage obligations of less than \$10,000 will not be invoiced;
- A reduction of approximately 25% of the retroactive wage obligation will be made in consideration of the special appropriation of \$75 million provided to Amtrak associated with the final retroactive wage payment scheduled for May 2009
- “Incremental” overheads, that is overheads associated only with the retroactive wage pool plus contractual overheads for FY 2008 retroactive wages will be included in invoices to Amtrak’s customers.

The Board requested, and Management agreed, that Amtrak will formally notify all customers of their total potential retroactive wage liability, prior to the reductions cited above.

A team of individuals from the Finance, Policy & Development, Law and Operating Departments will develop and send letters to Amtrak’s customers. Invoices will be prepared based on the direction received from Senior Management. The database developed by the Finance and Information Technology staffs will be used to prepare the letters and develop the invoices to customers.

Audit Response

Amtrak Management should maximize its credibility and responsibilities to taxpayers by invoicing the full allocable amounts to its reimbursable customers without any discount or subsidy. The \$75 million Amtrak appropriation request and grant was never intended or granted to be used by Amtrak to subsidize customers retroactive wage obligation by 25%. As previously stated, Amtrak is prohibited from subsidizing “operating losses of commuter rail passengers or rail freight transportation” customers.

Regardless of the Management reduction of customer liability, we recommend that, the entire earned accounts receivable should be properly recorded, and any of the “reductions cited” not billed or collected should be properly written off.