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STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

August 13, 1996

Mr. John E. Sweeney
Commissioner
Department of Labor
State Campus Building #12
Albany, New York 12240

Re: Report 96-F-15

Dear Mr. Sweeney:

Pursuant to the State Comptroller's authority as set forth in Section 1, Article V of the State Constitution and Section 8, Article 2 of the State Finance Law, we have reviewed the actions taken by officials of the New York State Department of Labor (Department) as of May 31, 1996, to implement the recommendations included in our prior audit report 94-S-56. Our prior report, issued November 1, 1994, examined the Department's recovery of unpaid wages on behalf of claimants.

Background

The Department's Division of Labor Standards (Division) and Bureau of Public Work (Bureau) are both responsible for ensuring that employees in the State receive proper pay for their hours of work. The Division and the Bureau perform similar functions for different groups of workers. They operate independent of each other and have different policies and procedures. Both the Division and the Bureau investigate wage complaints, assess employers for unpaid/underpaid wages, and collect the associated amounts due employees. The Division investigates all minimum wage, unpaid wage, and unpaid wage supplement cases. The Bureau administers the State Labor Law provisions relating to prevailing wage and settlement rates for construction workers on public projects.

Summary Conclusion

Our prior audit found that the procedures and practices followed by the Bureau were adequate while those of the Division could be improved. In our follow-up review, we found that Division officials have made significant progress in implementing the recommendations contained in our prior audit report.

Summary of Status of Prior Audit Recommendations

Of the five prior audit recommendations, the Division has fully implemented 3 recommendations and partially implemented 2 recommendations.

Follow-up Observations

Recommendation 1

Study the feasibility of the Division assessing interest on the unpaid back wages prior to initiating legal proceedings.

Status - Fully Implemented

Agency Action - A pilot project was instituted on January 1, 1995 and is still in progress. Consultations were conducted with Counsel's Office as to the legality of procedures that were to be instituted for the project. It was decided that the agreements reached for payment and interest prior to the issuance of an Order to Comply by the employer and the Division would be legal. The Division developed a stipulation form, computer program to compute interest at the prime rate, and guidelines for the project. Failure to come to an agreement by stipulation would result in the issuance of an Order to Comply with interest and penalty as determined by law. Use of the stipulation is currently being piloted in the Apparel Industry, the NYC Compliance Conference, and the Albany District. Labor officials plan to implement the pilot statewide within the next year.

Recommendation 2

Consider expanding the use of civil penalties by the Division to serve as a deterrent to future Labor Law violations.

Status - Fully Implemented

Agency Action - The stipulation pilot project includes penalty assessments. Division officials have also expanded civil penalties to non-monetary cases (i.e. sweat shops) and are going after egregious violators.

Recommendation 3

Develop for the Division clear criteria to determine when a claim becomes a violation.

Status - Partially Implemented

Agency Action - Department officials state that a claim becomes a violation when a Notice of Labor Law Violation is issued (in a non-monetary case) and when a Commissioner's Order to Comply is issued (in a monetary case) against an employer. Although Department officials could not provide us with a written guideline or policy stating this definition they did change the initial letter sent to the employer so that it no longer states that a violation has occurred.

Auditors' Comments - The Department should develop a written guideline or procedure that clearly defines when a claim becomes a violation.

Recommendation 4

Improve Division procedures for identifying repeat violators.

Status - Fully Implemented

Agency Action - Identification of repeat violators is done by the district offices by reviewing various data bases. The Division has an Established Information System which, by entering either an establishment name or Federal Employer Identification Number, will give a complete listing of employer activity from all the Division's data bases thereby reflecting an establishment's past history of non-compliance with the Labor Law. This includes open and closed monetary cases; order to comply cases and/or prosecution cases and their status; non-monetary complaints by section of the law, other than wage/wage supplement complaints and their final disposition; apparel and farm labor registration activity; and record of fees paid. Districts are now in a position to obtain statewide employer history. Staff were notified by various memoranda of their access to these systems.

The Department is going beyond just checking for previous Labor Law violations. They are now working with the Department of Taxation and Finance in an effort to determine if employers are hiring workers but not putting them on the books. The two agencies are also working toward joint investigations.

Recommendation 5

Require the Division to impose appropriate sanctions on those employers who repeatedly violate the Labor Law.

Status - Partially Implemented

Agency Action - New programs were initiated in 1995 and 1996 which resulted in a new Order to Comply process. The Division's emphasis is focused on achieving employer compliance. Although improvements have been made to identify repeat violators, there are no guidelines or procedures to explain how investigators should handle a repeat violator case. Situations are still handled on a case by case basis, and each district may use a different approach.

Auditors' Comments - The Division should develop specific guidelines or procedures to assist investigators in handling repeat violators.

Major contributors to this report include Jerry Barber, Frank Houston, Kevin McClune, Steve Sossei, Marty Chauvin, Todd Seeberger, and Melissa Little.

We would appreciate your written response to this report within 30 days, indicating any additional action you have planned or have taken to address the unresolved matters discussed in this report.

We wish to thank the management and staff of the Department for the courtesies and cooperation extended to our auditors during this review.

Very truly yours,

Robert H. Attmore
Deputy Comptroller

cc: Patricia A. Woodworth