



DAVID A. PATERSON
GOVERNOR

STATE OF NEW YORK
EXECUTIVE DEPARTMENT
OFFICE OF GENERAL SERVICES
MAYOR ERASTUS CORNING 2ND TOWER
THE GOVERNOR NELSON A. ROCKEFELLER EMPIRE STATE PLAZA
ALBANY, NEW YORK 12242

JOHN C. EGAN
COMMISSIONER

HOWARD L. ZWICKEL
DEPUTY COMMISSIONER AND COUNSEL

November 20, 2009

Nelson Sheingold, Esq.
General Counsel
Office of the State Inspector General
Agency Bldg. 2,
16th Floor
Albany, NY 12223

Dear Mr. Sheingold:

Re: NYS Inspector General Investigation of Night Shift Cleaning Crew

I am writing, on behalf of Commissioner Egan and the Office of General Services (“OGS”), in response to the Final Report of the Inspector General, concerning serious misconduct by two employees of the OGS night cleaning crew, and certain supervisors, at the Empire State Plaza. Every day of the year, over fifteen hundred OGS employees, including employees in OGS Real Property Management, perform their jobs on behalf of the people of the State of New York in a professional manner and with integrity and dedication to the highest principles. We are therefore appalled at the egregious and, in some cases, criminal conduct engaged in by Gary Pivoda and his immediate supervisor, Louis Marciano. Their misconduct should not, however, be viewed as representative of the hard-working and honest men and women of this agency who tirelessly perform their public service each and every day of the year.

The Office of General Services does not tolerate, under any circumstances, the use or sale of illegal drugs, theft of state service, or discriminatory behavior that the Inspector General discussed in the report. Commissioner Egan has made it clear to all employees that this agency has a zero tolerance policy for such misconduct. OGS promptly referred this matter to the Inspector General for investigation when executive staff were advised of potential criminal conduct among Plaza employees. While your investigation was pending, OGS refrained from pursuing any disciplinary action so as not to interfere with the investigation. OGS assisted the Inspector General and the New York State Police and immediately took steps to suspend Pivoda and Marciano when the surveillance efforts concluded. While OGS had been vigorously pursuing these employees’ termination, we note that they have resigned from state employment in connection with their plea agreement.

OGS is especially concerned with the claims of abusive and discriminatory behavior on the part of Marciano, who was Pivoda’s immediate supervisor. As noted in your report, in January 2007, OGS

counseled Marciano when management first became aware of his inappropriate remarks and actions, in accordance with the principles of progressive discipline under the collective bargaining agreements. Commissioner Egan has been a leader during his career in state service in promoting diversity in the state workforce and in instilling a culture that fosters respect and tolerance for every individual employee and every point of view. This commitment to a diverse and inclusive workforce is embodied in the appointment of executive staff accessible to employees who had concerns about abusive behavior. OGS is dismayed by a culture of intolerance displayed by certain employees and the fact that lower level supervisors of the cleaning crew impeded efforts of upper management to take corrective action to remedy the disparity in work assignments.

This agency is especially disturbed by the failure of certain supervisory officials to address the misconduct engaged in by Pivoda and Marciano, either through intentional omission or by actively supporting Marciano. While OGS is carefully reviewing the Inspector General's findings, counseling sessions were held with two of the higher level managers for their failure to identify the failings related to the middle level managers directly under their supervision. OGS looks forward to receiving additional details and evidence from your office so that OGS may vigorously and promptly take administrative action against any employees engaged in drug use, drug dealing or other misconduct. OGS will also take action against any supervisor in the chain of command who was derelict in his or her duties and/or contributed to the misconduct described in the report.

Your report makes recommendations with respect to the Incentive Award program based upon your findings concerning Mr. Pivoda. Prior to the report's issuance, in light of severe budgetary constraints, OGS exercised its authority to suspend the Incentive Award Program. In the event the program is reinstated in the future, OGS will ensure that the Labor-Management Committee referenced in the report is fully functional and engaged, and that the program's objectives of improving productivity, efficiency and overall service delivery are met.

The report further recommends that OGS conduct supplemental training for its supervisory staff at the Plaza. OGS agrees with this recommendation. The agency is currently revising its training programs, including a Leadership Development Program that will be mandatory for all supervisors. The courses comprising this program, such as Conflict Resolution and Practical Skills for Supervisors, will expand upon the Diversity and Ethics training courses that are already mandatory for all employees. OGS will ensure that the courses are available to employees working the night shift and will prioritize the successful completion of these courses by supervisors in this business unit.

Your report also recommends that OGS provide additional training to supervisors to ensure proper monitoring of the time and attendance or "LATS" system. OGS has already taken steps to address the concerns raised in your report. In this case, in May 2009, OGS Human Resources was advised by employees in Plaza Operations that supervisors were misusing the LATS system, and contacted those supervisors in an effort to correct the behavior. Shortly thereafter, OGS proactively engaged in preventive education when it posted a "tip of the day" on the LATS front page advising that every employee is responsible for submitting his or her own time record, and that supervisors should not submit a subordinate's timecard. This alert was visible to all employees and remained active for at least one month. The same information was also contained in an article entitled, "Timely Submission of Timesheets," in the June 2009 issue of "People Department News," a monthly OGS Human Resources publication e-mailed to all employees and provided in hard copy form to employees without access to e-

mail. As recommended in your report, OGS is working with the LATS system vendor to implement an automatic alert when an employee fails to submit a time record or submits a record on behalf of a subordinate. While OGS does not believe that manager misuse of LATS is widespread, the agency agrees that an automatic alert would assist in identifying and, if warranted, taking administrative action if the LATS system is misused.

Your report alerted OGS to the fact that although the agency Fleet Policy, and the related Vehicle Use Policy, both require supervisors to review their subordinates' vehicle mileage and attest to its appropriateness, some business units in OGS have been utilizing vehicle mileage documentation that lacks a field indicating that the required supervisory review was conducted. OGS is in the process of updating the form and its procedures to ensure that OGS Fleet Management will only accept documentation after review by supervisors, as the agency agrees with your findings that supervisors must perform this necessary oversight with regard to vehicle use.

Your report makes certain recommendations concerning key control. OGS has already begun a security assessment of locks throughout the Empire State Plaza, including commercial sites located on its concourse and perimeter building entrances. OGS is unaware of any additional distribution of unauthorized keys, other than those found in the makeshift break room. However, to ensure the ongoing security of its tenants, OGS is in the process of replacing, where appropriate, locks on doors which can be opened with keys issued prior to 2004. Additionally, the agency is in the process of amending its Employee Exit Checklist to require Business Unit directors to return keys issued to separating employees to the OGS Facility Manager or Key Master as deemed appropriate. The agency is also modifying its Facility Manager's Manual to require improved recordkeeping and tracking of key distribution and collection.

OGS wishes to thank the Inspector General and the New York State Police for the professional manner in which this investigation was pursued. OGS will continue to cooperate with your office and other law enforcement agencies as we pursue appropriate administrative action against supervisory employees who were derelict in their job performance, and as the agency takes steps to implement the other recommendations set forth in the report.

Sincerely,



Howard L. Zwickel