



Town of Vestal

Former Police Chief's Separation Agreement

2023M-58 | November 2023

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Report Highlights

Town of Vestal

Audit Objective

Determine whether the Town of Vestal (Town) former police chief's (former chief) separation agreement and related "severance" payments were supported and accurately paid.

Key Findings

We determined that Town officials accurately paid severance payments totaling \$229,251 to the former chief pursuant to a separation agreement the Town entered with the former chief. Town officials told us the Town entered into the separation agreement, which included severance payments, due to concerns of potential litigation against the Town.

The severance payments included \$215,868 more than the amount the former chief was owed for unused leave accruals upon separating from service absent a separation agreement. However, neither the Town Board (Board) nor other Town officials were able to provide any written details, such as written evidence of concerns of potential litigation or a cost-benefit analysis, surrounding the decision to provide a separation agreement which included a severance payment.

Key Recommendations

To the extent possible, maintain documentation to help support and justify the decision to include a severance payment within a separation agreement, which in turn helps promote transparency.

Town officials agreed with our findings and indicated they would initiate corrective action.

Background

The Town, located in Broome County, is governed by the elected five-member Board, composed of the Town Supervisor (Supervisor) and four Board members. The Supervisor is the Town's chief fiscal officer and is responsible for the Town's day-to-day operations. The Board appointed a Town Comptroller (Comptroller) responsible for auditing and approving claims for payment. The Comptroller also processes payroll payments, including payments based on the separation agreement. In July 2022, the Comptroller in office at the beginning of our audit period retired.

Quick Facts

2022 General Fund Appropriations	\$14.4 million
Separation Agreement	
Amount Paid	\$229,251
Authorized by Employee Handbook or CBA	\$13,383

Audit Period

January 1, 2021 – September 30, 2022

Former Chief's Separation Agreement

The Board hired the former chief with an effective start date of March 13, 2006. The Board approved the former chief's salary at the annual organizational meetings as part of the Town's salary schedules. As an employee of the Town, the former chief was also subject to the Town's employee handbook. The Supervisor and former Comptroller also told us that the former chief's salary and fringe benefits followed the terms outlined in the Vestal Police Supervisors' Association (VPSA) collective bargaining agreement (CBA), as it related to base salary increases and other benefits. However, other than a handwritten note, documentation that Town officials provided to us did not support this statement.

Instead, Town officials provided us with two Board resolutions. One resolution, from December 2011, indicated the Town would continue to compensate the former chief in accordance with New York State General Municipal Law Section 207-m.¹ The second resolution, from March 2018, addressed certain inequities developed since the 2011 resolution, including allowing the former chief to be eligible for a sick leave incentive benefit, as set forth in the VPSA CBA.

The Board, in December 2021, entered into an employment separation agreement with the former chief. According to the separation agreement, the former chief's last day of employment would be December 31, 2021. In exchange for separating from service on this date, the Board agreed to pay the former chief all payments due through December 31, 2021, as well as receive severance payments, totaling \$229,251.

According to the separation agreement, the Town and former chief agreed to indemnify and release each other from any and all actions during employment, as well as any and claims or causes of action the former chief may have or claim to have against the Town. The separation agreement also states that the former chief was to agree that the severance payments were more than what the Town was required to pay under its standard policies and procedures.

How Should Town Officials Calculate Separation Payments?

In addition to established wages and salaries, towns generally have the authority to make cash payments of the monetary value for all, or a portion, of an officer or employee's earned but unused leave accruals when they separate from service. Authority to make such payments may be pursuant to a CBA, individual employment agreement or local enactment such as a town's employment policies and procedures (e.g., employee handbook).

Because separation payments can represent a significant expenditure, town boards should verify the terms and amounts to be paid through a CBA, individual

...[T]he Board agreed to pay the former chief all payments due through December 31, 2021, as well as receive severance payments, totaling \$229,251.

¹ General Municipal Law Section 207-m addressed salary increases for heads of police departments of municipalities. This provision of law was repealed by chapter 97 of the Laws of 2011.

employment agreement or other local enactment. As such, town officials should establish procedures to help ensure officers or employees receiving such payments are paid the amounts to which they are entitled, and that each payment is accurate, adequately supported and authorized pursuant to a town board-approved CBA or employment agreement.

The Board Paid the Former Chief for Unused Leave Accruals in Accordance With the Town’s Employee Handbook

Unused Sick Leave – As of the former chief’s effective date of separation on December 31, 2021, the former chief had a balance of 664 hours of unused sick leave accruals. According to the Town’s employee handbook, upon leaving Town service, a full-time employee is entitled to receive payment for unused sick leave accruals in excess of 192 hours, up to a maximum amount of 140 hours. Similar language for payment of unused sick leave accruals was found in the VPSA CBA, effective at the time of the former chief’s separation from service. Based on the former chief’s hourly rate as of December 31, 2021, his unused sick leave accruals equated to a value of \$8,007.

Unused Vacation Leave – As of December 31, 2021, the former chief had a balance of 94 hours of unused vacation leave accruals. According to the Town’s employee handbook, an employee who resigns from the Town may receive cash payment for unused vacation leave at the employee’s current rate of pay. The VPSA CBA, on the other hand, is silent with respect to whether a payout for unused vacation leave accruals is permitted. Therefore, based on the former chief’s hourly rate of pay at the time of his separation, the former chief would have been entitled to a total payment of \$5,376 for his unused vacation leave accruals pursuant to the Town’s employee handbook.

As discussed in more detail below, the payment for unused sick leave and unused vacation leave, totaling \$13,383, was included in the Town’s severance payment calculation below.

When Can a Board Authorize a Severance Payment?

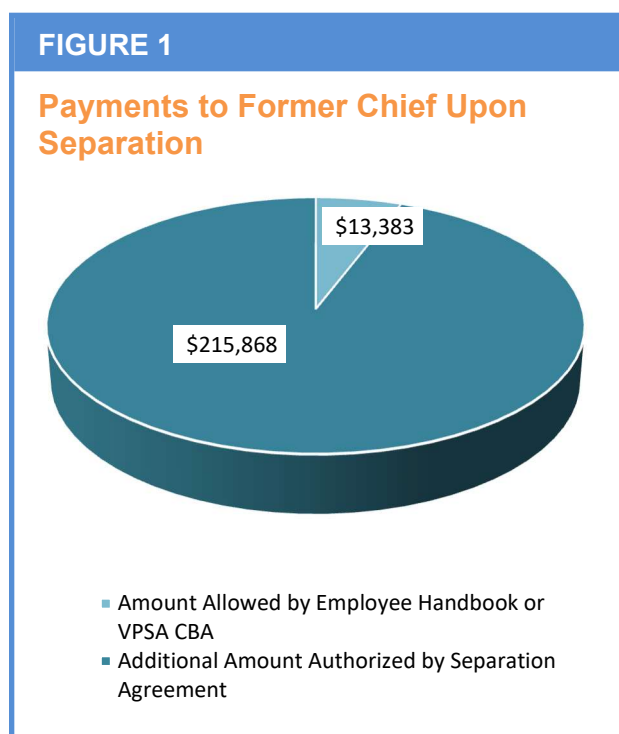
Courts in New York State have generally concluded that a local government can pay a sum of money in settlement of a contested claim, such as a lawsuit brought by a municipal officer or employee against the municipality, in consideration of a resignation and a release from the claim (often referred to as a severance payment or agreement). A severance payment or agreement may involve:

- Negotiations between a local government and an officer or employee who has a contractual right to employment over a period of years and is asked to leave before their contract term expires in exchange for a cash payment,

- A local government settling a claim or potential claim against an employee, such as for misconduct, and the employee waiving a right to a New York State Civil Service Law Section 75 hearing and agreeing to resign in exchange for a cash payment, or
- Certain other scenarios, such as settling a claim or potential claim by an officer or employee against the local government, which could include a cash payment by the local government and a resignation as part of the settlement.

The Board Approved a Severance Payment to the Former Chief

With respect to the severance payment, the former Comptroller told us that, upon the Supervisor’s request, she calculated four potential severance payment amounts based on different scenarios. The former Comptroller provided these potential payment calculations to us, which ranged from \$137,592 to \$229,251. Two Board members and the Town attorney told us that the Supervisor subsequently negotiated the terms of the separation agreement, which included a severance payment, with the former chief. This resulted in a total severance payment of \$229,251, which was \$215,868 more than the amount the former chief was owed for unused leave accruals upon separating from service (Figure 1).



Specifically, in addition to the value of the former chief’s unused sick and vacation leave accruals upon separating from service, the severance payments to the former chief included the following:

- Sick leave, based on the VPSA CBA that became effective January 1, 2022, which authorized payout of unused accumulated sick leave up to 1,200 hours at two-thirds of the hourly rate of pay in effect at that time. As a result, an additional \$18,172 was included in the severance payment based on the former chief’s additional unused sick leave.

-
- Holiday leave and vacation leave that the former chief would have earned had he been employed, effective January 1, 2022. As a result, an additional \$9,290 was included in the severance payment based on the additional holiday and vacation leave.
 - \$188,406 for an additional year of base salary (which incorporated longevity pay and an educational “benefit”), at a rate of 1.5 times his 2022 salary rate.

During the course of our audit, we discussed with Town officials whether the Town had any support for entering into a separation agreement that included a severance payment to the former chief, such as an employment contract or settlement agreement.

Based on these conversations, Town officials told us the former chief did not have an employment contract with the Town and provided no other support that the former chief had a contractual right to employment over a period of years. In addition, the Supervisor, former Comptroller and both current Board members who were on the Board when the separation agreement was approved initially told us there was no claim, or potential claim, against the former chief or against the Town in relation to the former chief. Moreover, Town officials provided no documentation or other written evidence to suggest there was an actual claim or potential claim against the Town or former chief.

Board meeting minutes authorizing the separation agreement, which included severance payments to the former chief, also did not include any discussion as to why the Board made its decision to include the severance payments. The Director of Human Resources told us that personnel matters are confidential in nature and are discussed in executive sessions separate from public meetings. Nonetheless, neither the Board nor other Town officials were able to provide any written details, such as a cost-benefit analysis, surrounding the decision to provide a separation agreement which included a severance payment. Under these circumstances, we initially questioned whether the Town had authority to approve a separation agreement that included a severance payment.

However, upon reviewing the draft report in which we questioned the authority to make the severance payment, the Supervisor and Town attorney told us the Town entered into a separation agreement, which included severance payments, with the former chief because there were concerns of potential litigation against the Town. Although officials were unable to provide us with any written documentation to support this assertion, if this was indeed the case, the Town could have legal authority to enter into a severance payment with the former chief.

...[N]either the Board nor other Town officials were able to provide any written details, such as a cost-benefit analysis, surrounding the decision to provide a separation agreement which included a severance payment.

What Do We Recommend?

The Board should:

1. To the extent possible, maintain documentation to help support and justify the decision to include a severance payment within a separation agreement, which in turn helps promote transparency.

Appendix A: Response From Town Officials



TOWN OF VESTAL
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November 3, 2023

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RE: OSC Audit – Town of Vestal – Updated Draft Audit Report 2023M-58

Dear Ms. Singer:

We are in receipt of the Updated Draft Audit Report received by email on October 6, 2023.

Per the draft report the objective of the audit was to *“determine whether the Town of Vestal (Town) former police chief’s (former chief) separation agreement and related “severance” payments were supported and accurately paid”*. (Report of Examination – 2023M-58 – Audit Objectives – page 3) The auditor’s recommendations are that the Town should *“To the extent possible, maintain documentation to help support and justify the decision to include a severance payment within a separation agreement, which in turn helps promote transparency.”* (Report of Examination – 2023M-58 – Key Recommendations – page 3)

Having reviewed the report and following discussion among the members of the Town Board, **the Board agrees the “Town officials accurately paid severance payments ... to the former chief pursuant to a separation agreement the Town entered with the former chief.”** (Report of Examination – 2023M-58 – Key Findings – page 3) Personnel matters are extremely sensitive and require a high level of confidentiality. However, **the Town Board will discuss the matter further and develop the required corrective action plan in a timely manner so as to follow the recommendation of the auditor.**

Sincerely,

W. John Schaffer
Town Supervisor
Town of Vestal

Appendix B: Audit Methodology and Standards

We conducted this audit pursuant to Article V, Section 1 of the State Constitution and the State Comptroller's authority as set forth in Article 3 of the New York State General Municipal Law. To achieve the audit objective and obtain valid audit evidence, our audit procedures included the following:

- We interviewed Town officials to gain an understanding of the internal controls and procedures for calculating the payments for the former chief's separation agreement.
- We reviewed Board meeting minutes to determine the benefits allowed to be earned by the former chief and determine whether the Board was transparent with its reason for authorizing severance payments.
- We reviewed the Town's employee handbook and VPSA CBAs to determine allowable payments and benefits upon separation from Town service.
- We recalculated the severance payments based upon the 2021 VPSA CBA and salary to determine the amount allowed and compared that to the Board-approved separation agreement.
- We compared the severance payments made to the Board-approved separation agreement to determine whether the payments were accurately paid.

We conducted this performance audit in accordance with generally accepted government auditing standards (GAGAS). Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

The Town has the responsibility to initiate corrective action. A written corrective action plan (CAP) that addresses the findings and recommendations in this report should be prepared and provided to our office within 90 days, pursuant to Section 35 of General Municipal Law. For more information on preparing and filing your CAP, please refer to our brochure, *Responding to an OSC Audit Report*, which you received with the draft audit report. We encourage the Board to make the CAP available for public review in the Town Clerk's office.

Appendix C: Resources and Services

Regional Office Directory

www.osc.state.ny.us/files/local-government/pdf/regional-directory.pdf

Cost-Saving Ideas – Resources, advice and assistance on cost-saving ideas

www.osc.state.ny.us/local-government/publications

Fiscal Stress Monitoring – Resources for local government officials experiencing fiscal problems

www.osc.state.ny.us/local-government/fiscal-monitoring

Local Government Management Guides – Series of publications that include technical information and suggested practices for local government management

www.osc.state.ny.us/local-government/publications

Planning and Budgeting Guides – Resources for developing multiyear financial, capital, strategic and other plans

www.osc.state.ny.us/local-government/resources/planning-resources

Protecting Sensitive Data and Other Local Government Assets – A non-technical cybersecurity guide for local government leaders

www.osc.state.ny.us/files/local-government/publications/pdf/cyber-security-guide.pdf

Required Reporting – Information and resources for reports and forms that are filed with the Office of the State Comptroller

www.osc.state.ny.us/local-government/required-reporting

Research Reports/Publications – Reports on major policy issues facing local governments and State policy-makers

www.osc.state.ny.us/local-government/publications

Training – Resources for local government officials on in-person and online training opportunities on a wide range of topics

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