

COMMONWEALTH OF PENNSYLVANIA

PENNSYLVANIA INDUSTRIES FOR THE : BEFORE THE BOARD OF CLAIMS
BLIND AND HANDICAPPED :
 :
 :
VS. :
 :
 :
COMMONWEALTH OF PENNSYLVANIA, :
DEPARTMENT OF TRANSPORTATION : DOCKET NO. 2879

FINDINGS OF FACT

The Board adopts the Joint Stipulation of Facts, in its entirety, from Nos. 1 through 73 as follows:

1. Plaintiff Pennsylvania Industries for the Blind and Handicapped (“PIBH”) is a non-profit organization registered to do business in the Commonwealth of Pennsylvania. (Joint Stipulation).
2. Defendant is the Commonwealth of Pennsylvania acting through the Department of Transportation (“PennDot” or “Department”). (Joint Stipulation).
3. Beginning in 1984, PIBH entered into agreements with PennDot to provide management services for PennDot’s Photo Licensing Centers (“Centers”). (Joint Stipulation).
4. The agreement underlying the dispute between the parties is Agreement No. 720999 and Agreement No. 720999 is authentic and admissible and is identified by the parties as Joint Exhibit A. (Joint Stipulation).
5. Under agreements executed prior to Agreement No. 720999 as well as Agreement No. 720999, PIBH provides non-managerial labor - technicians - as well as management level employees for the Centers. (Joint Stipulation).
6. Prior to Agreement No. 720999, PIBH was compensated on a per-license basis receiving a set amount for each license issued by the Centers. (Joint Stipulation).
7. Prior to Agreement No. 720999, benefits PIBH provided for managerial employees included, among other benefits, free health insurance coverage, pension plan, life/disability insurance, performance bonuses and vacation days. See the Declaration(s) of Perry Snyder,

which is identified by the parties as Joint Exhibit B and is authentic and admissible. (Joint Stipulation).

8. Prior to Agreement No. 720999, PIBH's bonuses were tied directly to employee performance. (Joint Stipulation and Joint Exhibit B).

9. Prior to Agreement No. 720999, PIBH's policy was to pay terminated employees for their accrued but unused vacation days. (Joint Stipulation and Joint Exhibit B).

10. Prior to Agreement No. 720999, PennDot did not direct, in any fashion, nor was PennDot informed of PIBH's policies and procedures for compensation and/or benefits. (Joint Stipulation).

11. Prior to Agreement No. 720999, the "severance" payments PIBH provided to departing employees were payment of accrued but unused vacation and personal time to departing employees. (Joint Stipulation; Joint Exhibit B).

12. In 1997, PennDot requested that the parties' contractual payment structure be revised for the next 5 year agreement, Agreement No. 720999. (Joint Stipulation).

13. Instead of a flat-fee, per-license payment, PennDot proposed, and PIBH agreed to, a "Cost-Plus" method where PennDot would reimburse PIBH for its costs of operating the Centers with an additional 15% payment for administration of the contract. (Joint Stipulation; Joint Exhibit A).

14. Agreement No. 720999 is the cost-plus agreement with the 15% administrative fee. (Joint Stipulation and Joint Exhibit A).

15. Agreement No. 720999 incorporated a budget prepared by PIBH ("Budget") and the Budget is authentic and admissible. The Budget is identified by the parties as Joint Exhibit C and is authentic and admissible. (Joint Stipulation).

16. Agreement No. 720999 referenced and incorporated a set of specifications for PIBH's performance under the contract and the specifications are authentic and admissible. The specifications section is identified by the parties as Joint Exhibit D and is authentic and admissible. (Joint Stipulation).

17. Under Agreement No. 720999, PIBH submitted invoices to PennDot substantiating costs for which it was seeking reimbursement. (Joint Stipulation).

18. Under Agreement No. 720999, on 2/25/98, PIBH submitted Invoice No. 10007696 which included a severance payment of \$2,053.23; however, the Invoice did not note or identify the payment as a "severance" payment. (Joint Stipulation).

19. PennDot paid Invoice No. 10007696. (Joint Stipulation).
20. Under Agreement No. 720999, on 6/18/98, PIBH submitted Invoice No. 10010503 which included a severance payment of \$3,574.65; however, the Invoice did not note or identify the payment as a “severance” payment. (Joint Stipulation).
21. PennDot paid Invoice No. 10010503. (Joint Stipulation).
22. Under Agreement No. 720999, on 12/15/97, PIBH submitted Invoice No. 10006416 which included a bonus payment of \$325 for each employee; however, the Invoice did not note or identify the payment as a “bonus” payment. (Joint Stipulation).
23. PennDot paid Invoice No. 10006416. (Joint Stipulation).
24. Under Agreement No. 720999, on 12/21/00, PIBH submitted Invoice No. 10031716 which included a bonus payment of \$500 for each employee; however the Invoice did not note or identify the payment as a “bonus” payment. (Joint Stipulation).
25. PennDot paid Invoice No. 10031716. (Joint Stipulation; Board Finding).
26. Under Agreement No. 720999, PIBH submitted Invoice No. 10011872, dated 8/21/98. A copy of Invoice No. 10011872 is identified by the parties as Joint Exhibit E and the parties agree that it is authentic and admissible. (Joint Stipulation).
27. Invoice No. 10011872 reflects \$77,294.61 billed by PIBH as indirect labor. (Joint Stipulation).
28. PennDot prepared a “PIBH discrepancy report” for Invoice No. 10011872 which is identified by the parties as Joint Exhibit F and the parties agree that it is authentic and admissible. (Joint Stipulation).
29. PennDot did not reimburse PIBH for \$5,253.17 ($\$4,567.96 + 15\%$) of the \$77,294.61 billed on Invoice No. 10011872 as Indirect Labor costs, once those costs were identified by PIBH as “severance payments.” (Joint Stipulation).
30. Under Agreement No. 720999, PIBH submitted Invoice No. 10014358 dated 12/16/98. A copy of the 12/16/98 Invoice is identified by the parties as Joint Exhibit G and the parties agree that it is authentic and admissible. (Joint Stipulation).
31. Invoice No. 10014358 reflects \$69,027.01 billed by PIBH as indirect labor. (Joint Stipulation).

32. PennDot prepared a "PIBH discrepancy report" for Invoice No. 10014358 which is identified by the parties as Joint Exhibit H and the parties agree that it is authentic and admissible. (Joint Stipulation).
33. PennDot did not reimburse PIBH for \$14,295.00 (\$12,430.43 + 15%) of the \$69,027.01 billed as indirect labor once they were identified as "bonuses." (Joint Stipulation).
34. Under Agreement No. 720999, PIBH submitted Invoice No. 10016337 dated 3/18/99 which is identified by the parties as Joint Exhibit I and the parties agree that Invoice No. 10016337 is authentic and admissible. (Joint Stipulation).
35. PennDot prepared a "PIBH discrepancy report" for Invoice No. 10016337 which is identified by the parties as Joint Exhibit J and which is authentic and admissible. (Joint Stipulation).
36. PennDot did not reimburse PIBH for \$45,387.66 (\$39,467.53 + 15%) of the \$96,826.30 billed as indirect labor once they were identified as "bonuses." (Joint Stipulation; Exhibit J).
37. Under Agreement No. 720999, PIBH submitted Invoice No. 10019464-A dated 7/27/99 which is identified by the parties as Joint Exhibit K and the parties agree that Invoice No. 10019464 is authentic and admissible. (Joint Stipulation; Exhibit K).
38. PennDot prepared a "PIBH discrepancy report" for Invoice No. 10019464-A which is identified by the parties as Joint Exhibit L and which is authentic and admissible. (Joint Stipulation).
39. PennDot did not reimburse PIBH for \$650.94 (\$566.03 + 15%) billed as indirect labor once they were identified as "Severance." (Joint Stipulation).
40. Under Agreement No. 720999, PIBH submitted Invoice No. 10022900-A dated 12/22/99 which is identified by the parties as Joint Exhibit M and the parties agree that Invoice No. 10022900-A is authentic and admissible. (Joint Stipulation; Exhibit M).
41. PennDot prepared a "PIBH discrepancy report" for Invoice No. 10022900-A which is identified by the parties as Joint Exhibit N and which is authentic and admissible. (Joint Stipulation).
42. PennDot did not reimburse PIBH for \$28,301.84 (\$24,610.30 + 15%) billed as indirect labor once they were identified as "Bonuses." (Joint Stipulation).

43. Under Agreement No. 720999, PIBH submitted Invoice No. 10023520 dated 1/21/00 which is identified by the parties as Joint Exhibit O and the parties agree that Invoice No. 10023520 is authentic and admissible. (Joint Stipulation; Exhibit O).
44. PennDot prepared a “PIBH discrepancy report” for Invoice No. 10023520 which is identified by the parties as Joint Exhibit P and which is authentic and admissible. (Joint Stipulation).
45. PennDot did not reimburse PIBH for \$3,784.77 (\$3,291.00 + 15%) billed as indirect labor once they were identified as “Severance.” (Joint Stipulation).
46. Under Agreement No. 720999, PIBH submitted Invoice No. 10024487 dated 2/28/00 which is identified by the parties as Joint Exhibit Q and the parties agree that Invoice No. 10024487 is authentic and admissible. (Joint Stipulation; Exhibit Q).
47. PennDot prepared a “PIBH discrepancy report” for Invoice No. 10024487 which is identified by the parties as Joint Exhibit R and which is authentic and admissible. (Joint Stipulation).
48. PennDot did not reimburse PIBH for \$53,668.24 (\$46,668.03 + 15%) billed as indirect labor once they were identified as “Bonuses.” (Joint Stipulation).
49. Under Agreement No. 720999, PIBH submitted Invoice No. 10032946 dated 2/15/01 which is identified by the parties as Joint Exhibit S and the parties agree that Invoice No. 10032946 is authentic and admissible. (Joint Stipulation; Exhibit S).
50. PennDot prepared a “PIBH discrepancy report” for Invoice No. 10032946 which is identified by the parties as Joint Exhibit T and which is authentic and admissible. (Joint Stipulation).
51. PennDot did not reimburse PIBH for \$44,275.00 (\$38,500.00 + 15%) billed as indirect labor once they were identified as “Bonuses.” (Joint Stipulation).
52. Under Agreement No. 720999, PIBH submitted Invoice No. 10036201 dated 5/01 which is identified by the parties as Joint Exhibit U and the parties agree that Invoice No. 10036201 is authentic and admissible. (Joint Stipulation).
53. PennDot prepared a “PIBH discrepancy report” for Invoice No. 10036201 which is identified by the parties as Joint Exhibit V and which is authentic and admissible. (Joint Stipulation).
54. PennDot did not reimburse PIBH for \$34,876.65 (\$30,327.52 + 15%) billed as indirect labor once they were identified as “Bonuses.” (Joint Stipulation).

55. Under Agreement No. 720999, PIBH submitted Invoice No. 10037528 dated 8/23/01 which is identified by the parties as Joint Exhibit W and the parties agree that Invoice No. 10037528 is authentic and admissible. (Joint Stipulation; Exhibit W).
56. PennDot prepared a “PIBH discrepancy report” for Invoice No. 10037528 which is identified by the parties as Joint Exhibit X and which is authentic and admissible. (Joint Stipulation).
57. PennDot did not reimburse PIBH for \$8,837.88 ($\$7,685.11 + 15\%$) billed as indirect labor once they were identified as “Severance.” (Joint Stipulation).
58. Under Agreement No. 720999, PIBH submitted Invoice No. 10040164 dated 12/14/01 which is identified by the parties as Joint Exhibit Y and the parties agree that Invoice No. 10040164 is authentic and admissible. (Joint Stipulation Exhibit &).
59. PennDot prepared a “PIBH discrepancy report” for Invoice No. 10040164 (listed on report as No.10039258) which is identified by the parties as Joint Exhibit Z and which is authentic and admissible. (Joint Stipulation).
60. PennDot did not reimburse PIBH for \$10,810.00 ($\$9,400.00 + 15\%$) billed as indirect labor once they were identified as “Bonuses.” (Joint Stipulation).
61. Under Agreement No. 720999, PIBH submitted Invoice No. 10041748 dated 2/27/02 which is identified by the parties as Joint Exhibit AA and the parties agree that Invoice No. 10041748 is authentic and admissible. (Joint Stipulation; Exhibit AA).
62. PennDot prepared a “PIBH discrepancy report” for Invoice No. 10041748 which is identified by the parties as Joint Exhibit BB and which is authentic and admissible. (Joint Stipulation).
63. PennDot did not reimburse PIBH for \$60,950.00 ($\$53,000.00 + 15\%$) billed as indirect labor once they were identified as “Bonuses.” (Joint Stipulation).
64. Under Agreement No. 720999, PIBH submitted Invoice No. 10041964 dated 3/07/02 which is identified by the parties as Joint Exhibit CC and the parties agree that Invoice No. 10041964 is authentic and admissible. (Joint Stipulation; Exhibit CC).
65. PennDot prepared a “PIBH discrepancy report” for Invoice No. 10041964 which is identified by the parties as Joint Exhibit DD and which is authentic and admissible. (Joint Stipulation).
66. PennDot did not reimburse PIBH for \$5,750.00 ($\$5,000.00 + 15\%$) billed as indirect labor once they were identified as “Severance.” (Joint Stipulation).

67. Under Agreement No. 720999, PIBH submitted Invoice No. 10044642 dated 6/8/02 which is identified by the parties as Joint Exhibit EE, and the parties agree that Invoice No. 10044642 is authentic and admissible. (Joint Stipulation; Exhibit EE).
68. PennDot prepared a “PIBH discrepancy report” for Invoice No. 10044642 which is identified by the parties as Joint Exhibit FF and which is authentic and admissible. (Joint Stipulation).
69. PennDot did not reimburse PIBH for \$2,175.19 (\$1,891.47 + 15%) billed as indirect labor once they were identified as “Severance.” (Joint Stipulation).
70. PIBH forwarded correspondence to PennDot dated January 11, 1999, which the parties agree is authentic and admissible and will be identified as Joint Exhibit GG. (Joint Stipulation).
71. PennDot sent a letter to PIBH dated February 3, 1999, which the parties agree is authentic and admissible and will be identified as Joint Exhibit HH. (Joint Stipulation).
72. The costs for which PIBH receives reimbursement under Agreement No. 720999 include labor costs for technicians (direct labor) and for the management level employees (indirect labor). (Joint Stipulation).
73. For purposes of the claim at Docket No. 2879, PennDot designated Joy Gross, its former manager of the Driver License Division of the Bureau of Driver Licensing, as its representative to testify about the dispute between PennDot and PIBH regarding the payment of indirect labor costs. A complete transcript of Ms. Gross’ testimony regarding the claim is identified as Joint Exhibit II. The parties agree that Joint Exhibit II is authentic and admissible. (Joint Stipulation).
74. PennDot made no specific inquiry about PIBH's employee compensation practices at any time during the thirteen (13) years of its contracting relationship with PIBH prior to, or at the time of, negotiating the subject Agreement. (Joint Stipulation; Board Finding).
75. The Agreement is silent regarding the payment of bonuses and severance pay, which is payment for earned, but unused, vacation and personal time. (Joint Exhibit II, Tr. 19, 20).
76. Agreement No. 720999 does not prohibit reimbursement for bonuses and severance pay. (Joint Exhibit A; Board Finding).
77. The Agreement included a maximum reimbursement for the duration of the contract in the amount of \$55,000,000 and an annual maximum reimbursement of \$10,806,058. (Joint Exhibit A, paragraph 4).

78. The Budget submitted by PIBH and incorporated into the Agreement specified annual amounts for direct labor of \$4,213,684 and for indirect labor of \$831,673 and a total proposed cost of \$10,806,058. (Joint Exhibit C).
79. PIBH never exceeded the caps for reimbursement as provided by the Agreement and the budget for either direct or indirect labor or for total expenditures. (Joint Exhibit II, Tr. 19).
80. Employees of PIBH had the expectation of being paid bonuses. (Joint Exhibit II, Tr. 32).
81. The *comprehensive* employee recognition plan required by the Agreement did not exclude indirect labor personnel. (Joint Exhibit II, Tr. 12, 13; Board Finding).
82. Commonwealth Management Directive 505.23 was not included in the provisions of Specifications included in the Agreement. (Joint Exhibit A; Board Finding).
83. The bonuses and payments for earned but unused vacation and personal leave pay to departing employees are actual costs incurred by PIBH in performing under the subject Agreement. (Board Finding).
84. The pre-judgment interest due the Plaintiff is calculated in accordance with the following tables:

INVOICE SCHEDULE

<u>ITEM</u>	<u>INVOICE NO.</u>	<u>PAYMENT WITHHELD</u>	<u>DATE</u>	<u>LENGTH OF PAYMENT DELAY (YEARS)*</u>
1.	10011872	\$ 5,253.17	08/21/98	2334/365 = 6.39
2.	10014358	\$14,295.00	12/16/98	2217/365 = 6.07
3.	10016337	\$45,387.66	03/18/99	2125/365 = 5.82
4.	10019464-A	\$ 650.94	07/27/99	1994/365 = 5.46
5.	10022900-A	\$28,301.84	12/22/99	1846/365 = 5.06
6.	10023520	\$ 3,784.77	01/21/00	1815/365 = 4.97
7.	10024487	\$53,668.24	02/28/00	1780/365 = 4.88
8.	10032946	\$44,275.00	02/15/01	1402/365 = 3.84
9.	10036201	\$34,876.65	06/29/01	1266/365 = 3.47
10.	10037528	\$ 8,837.88	08/23/01	1210/365 = 3.32
11.	10040164	\$10,810.00	12/14/01	1097/365 = 3.01
12.	10041748	\$60,950.00	02/27/02	1025/365 = 2.81
13.	10041964	\$ 5,750.00	03/07/02	1014/365 = 2.78
14.	10044642	\$ 2,175.19	06/08/02	922/365 = 2.53

*Length of payment delay calculated by covering the period of time commencing at 30 days beyond date of invoice and extending to Board of Claims date of Order (4/15/05).

INTEREST ASSESSED ON WITHHELD PAYMENTS

INVOICE NO.

10011872	\$ 5,253.17 x 0.06 x 6.39 =	\$ 2,014.07
10014358	\$14,295.00 x 0.06 x 6.07 =	\$ 5,206.24
10016337	\$45,387.66 x 0.06 x 5.82 =	\$15,849.37
10019464-A	\$ 650.94 x 0.06 x 5.46 =	\$ 213.25
10022900-A	\$28,301.84 x 0.06 x 5.06 =	\$ 8,592.44
10023520	\$ 3,784.77 x 0.06 x 4.97 =	\$ 1,128.62
10024487	\$53,668.24 x 0.06 x 4.88 =	\$15,714.06
10032946	\$44,275.00 x 0.06 x 3.84 =	\$10,200.96
10036201	\$34,876.65 x 0.06 x 3.47 =	\$ 7,261.32
10037528	\$ 8,837.88 x 0.06 x 3.32 =	\$ 1,760.51
10040164	\$10,810.00 x 0.06 x 3.01 =	\$ 1,952.29
10041748	\$60,950.00 x 0.06 x 2.81 =	\$10,276.17
10041964	\$ 5,750.00 x 0.06 x 2.78 =	\$ 959.10
10044642	\$ 2,175.19 x 0.06 x 2.53 =	<u>\$ 330.19</u>

TOTAL INTEREST \$81,458.59

(Board Finding)

CONCLUSIONS OF LAW

1. The Board of Claims has jurisdiction over this claim pursuant to 72.P.S. § 4651-1, et seq.
2. The Board of Claims has jurisdiction over the parties, as well as subject matter jurisdiction asserted by the Plaintiff. (72.P.S. § 4651-1, et seq.).
3. The general terms of direct and indirect labor specified in Agreement No. 720999 include payment of bonuses and payment of earned, but unused, vacation and personal leave made to departing employees (severance pay).

4. The Doctrine of Necessary Implication of Terms does not apply to the subject Agreement because the two prong test was not met. The missing terms are not necessary for the parties to carry out the purpose of the Agreement and it is not abundantly clear that they intended to include the terms.
5. The Agreement requires Defendant to reimburse PIBH for actual costs incurred in the performance of this Agreement and contains no specific prohibition against the reimbursement of the subject bonus and severance payments.
6. The subject bonus and severance payments are actual costs to be reimbursed under the Agreement.
7. PIBH is entitled to reimbursement for payment of bonuses and earned, but unused, vacation and personal leave pay to departing employees, as per its submitted invoices.
8. The additional amounts claimed in Plaintiff's Amended Complaint were timely filed because they consist of ongoing damages from the cause of action in the original Complaint which was timely filed.
9. PIBH is entitled to damages in the amount of Three Hundred Nineteen Thousand Sixteen Dollars and Thirty-Four Cents (\$319,016.34), for reimbursement for severance pay and bonuses paid to its employees, as invoiced.
10. Each unpaid invoice was submitted on a 30 day net payment term.
11. Pre-judgment interest on the damages is to be awarded at the statutory rate of six percent (6%) on each unpaid invoice commencing 30 days from the date of said invoice in the amount of \$81,458.59 as per the calculations in paragraph 84.

OPINION

The primary issue in this matter arises from the refusal of the Defendant, PennDot, to reimburse the Plaintiff, PIBH, for bonus payments and "severance payments" made to employees which PIBH provides for PennDot photo licensing centers ("Centers") pursuant to a contract between the parties. The second issue is whether the additional amounts claimed in Plaintiff's Amended Complaint should be dismissed as untimely.

Since 1984, the Plaintiff has provided the above services to PennDot. There were four (4) separate contracts preceding the one at issue. In the former contracts, PennDot compensated PIBH with a fee for each photo license issued. (Joint Stipulation 6) The subject service contract, Agreement No. 720999 (“Agreement”) was effective from December 31, 1996, through December 31, 2001. (Joint Exhibit A). This Agreement changed the method of payment from a “per card reimbursement” to a “cost plus system,” which reimbursed PIBH for its costs of operating the centers with an additional fifteen (15%) percent payment for the administration of the contract. (Joint Stipulation 13) Prior to the subject Agreement, PennDot did not direct, in any fashion, nor was PennDot informed of, PIBH’s policies and procedures for compensation and/or benefits. (Joint Stipulation 10)

The Agreement incorporates a budget proposed by PIBH (“Budget”) and another document of specifications required by the Commonwealth (“Specifications”). (Joint Exhibits C, D). However, the Agreement is silent about the specific payments to PIBH’s employees. It states that PIBH will employ photo license technicians (direct labor) and managers (indirect labor) in order to provide photographic driver license services. Agreement No. 720999 provides, in pertinent part, the following

PIBH agrees to provide . . . operations of all locations as shown in the specifications provided by the COMMONWEALTH, and in accordance with all of the conditions set forth in the specifications which are attached as Exhibit “A” and made part of this Agreement

. . . PIBH will present its cost data to the COMMONWEALTH

* * * *

The COMMONWEALTH will pay PIBH during the existence of this Agreement, the actual costs for work completed in accordance with the terms and conditions of the Agreement at the rates set forth in the budget proposal accepted by the COMMONWEALTH and attached as Exhibit "B"

PIBH will submit monthly to the COMMONWEALTH a certified detailed statement of actual expenditures, including but not limited to allowable overhead and indirect charges.

(Joint Exhibit A, pages 2-3).

The Department specifications included in Agreement No. 720999 provide

0.4 INVOICING AND PAYMENTS:

The Commonwealth will pay the service vendor during the existence of this contract, the actual costs for work completed in accordance with the terms and conditions of the contract, at the rates set forth in the Proposal as accepted by the Department. It is specifically understood that line item totals within the program budget may be changed by mutual agreement of the parties so long as the overall maximum reimbursement figure is not exceeded.

The service vendor shall submit monthly to the Department a certified detailed statement of actual expenditures, including but not limited to overhead and indirect charges. The service vendor will maintain detailed invoices of any subcontractors to support their expenses

(Joint Exhibit D).

In its Budget Proposal, PIBH stated as follows:

A. Direct Labor \$4,213,684

There are approximately 350 Photo License Technicians employed through PIBH and its member agencies. These technicians issue the State's 2,200,000 Driver Licenses at 93 locations across the Commonwealth. They are supervised by PIBH's Regional and District Managers.

B/[sic] Indirect Labor \$ 831,673

PIBH manages the 93 Driver License Centers with a total staff of 18[.]A State Manager, a Facilities Manager, three Regional Managers, 9 District Managers, a Personnel Coordinator, an Invoice Administrator, and two Communications/Clerk personnel.

* * * *

Burden

Burden of 15% is included in each category. This rate is consistent with that currently approved by the Department Burden includes normal operating costs: loan/financing expenses, personnel administration, payroll, central computer operations, clerical support, accounts payable and receivable, insurance, professional services, rent, phones, electric, heat, water, sewage, trash removal, maintenance, taxes and other occupancy costs.

Total Proposed cost \$10,806,058.

(Joint Exhibit C).

The Defendant acknowledges that no other provisions of the Agreement or its attachments address the salaries or benefits provided to management employees, i.e. the indirect labor. (Trial Brief, p. 4).

After the cost plus Agreement went into effect, PIBH continued to compensate its employees, as it had in the past, including bonuses and severance pay that included paying departing employees for earned, but unused, vacation and personal time. Per the Agreement, PIBH submitted invoices to PennDot substantiating costs for which it was seeking reimbursement. (Joint Stipulation No. 17). Although bonus and severance payments were included in the invoices under categories of “direct labor” and “indirect labor” they were not

specifically itemized. The Department reviewed the invoices and the detailed statements and would, when necessary, prepare discrepancy reports when costs submitted for reimbursement were denied or questioned by the Department. (Joint Exhibits E-Z, AA-FF)

On or about August 21, 1998, PIBH submitted Invoice No. 10011872 for services provided by PIBH in July 1998. (Joint Exhibit E). Invoice No. 10011872 listed \$77,294.61 plus 15% to be paid for indirect labor. (Joint Exhibit E). Of the \$77,294.61 billed by PIBH for indirect labor, the Department approved only \$72,726.65. (Joint Exhibit E). On the discrepancy report prepared by the Department and provided to PIBH, the Department noted that it “[d]educted \$4,567.96 (plus 15%) from ‘severance’ pay. Please provide additional documentation with a breakdown as to each individual item paid for. (Clerk).” (Joint Exhibit F).

On or about December 16, 1998, PIBH submitted Invoice No. 10014358 for services provided by PIBH in November 1998. (Joint Exhibit G) Of the \$69,027.01 (plus 15%), the Department only approved \$56,596.58 (plus 15%), with a notation “not in contract.” (Joint Exhibit H) The Department’s discrepancy report identified the reason for the denial as “no provision in the contract for employee-bonus payments.” (Joint Exhibit H).

It was not until January 1999 that PIBH addressed the payments denied by the Department. See (Joint Exhibit GG). In this letter addressed to the then-Department Photo ID Section Manager, Perry Snyder, Controller for PIBH, wrote the following:

ISSUE 1: Severance Pay to Paul Kimmey

\$5,253.16 was deducted from our July 1998 invoice #10011872. This amount reflects our payment of earned severance benefits to Paul Kimmey upon termination for his many years of service to PIBH in the Photo ID Program. The Employee Handbook states, ‘upon termination of employment,

an employee will be paid accrued vacation and personal leave.’ As I am sure you are aware, state employees enjoy a similar benefit . . . [T]hese benefits are the result of employment in the Photo ID program, which makes PennDot responsible for the reimbursement of these costs

Historically, PIBH has been reimbursed for this cost. For example, we billed you for severance pay for Evelyn Gurnsey in January 1998, which was paid in April. In May 1998 when James Grivner was terminated, we billed you for this cost which was paid in July. I believe the precedent has been established for reimbursement of these costs through the Photo ID contract.

ISSUE 2. Bonus Compensation

\$14,295.00 was deducted from our November Invoice #10014358. This amount reflects our cost to pay annual bonuses to our Photo ID staff. This amount includes a Christmas bonus to each employee and a bonus to the State Manager as scheduled per the employment contract.

Paragraph 3.0 Service Personnel and Staffing Requirements of the contract indicated that upon approval of an organization chart by PennDot, PIBH is to hire a staff to perform this contract. Although this sections (sic) goes into great detail about what is required from the Service Vendor in relation to employees, it does not mention what is approved or not approved on the subject of remuneration. Since compensation or employees is not specifically mentioned, I would therefore assume the Service Vendor can do whatever is usual and customary in this regard and expect to be reimbursed per the contract terms.

Bonuses are customary compensation in private industry where employees are paid in a variety of ways for their services. For example, wages, salaries, tips, performance bonuses, Christmas bonuses, commissions or a combination of these all constitute common forms of compensation.

PIBH has traditionally used a combination of salary and bonuses to compensate employees, and paying bonuses has been a part of our salary administration plan for over twelve years. The acceptance of this in the Photo ID contract was established over the years by the reimbursement of annual

Christmas bonuses, as well as, the reimbursement of bonuses to other staff in the program.

My records and estimate for this budget category indicate that we will be well under the budgeted amount for indirect labor for calendar year 1998. Since precedence is the deciding factor in determining the reimbursement of undocumented agreed upon costs, I therefore request that you reconsider your position on these two matters and reimburse PIBH the sum of \$19,548.16 for these costs.

(Joint Exhibit GG).

By letter dated February 3, 1999, Linda K. Young, Manager, Photo License Section for the Department, replied in part:

[P]ayment made to the Pennsylvania Industries for the Blind and Handicapped is for work that is actually performed. Severance pay and bonuses are not included. Additionally, there was no request in the line items of the budget proposal for such payments.

We have researched the information provided on the severance pay for the three individuals mentioned in your letter. The three invoices for which the individuals were paid severance pay by PIBH have been reviewed and the following has been found.

Evelyn Gurnsey (January 1998) - the only notation made on this invoice was that this was a three-payroll month.

James Grivner (May 1998) - There was no notation made on this invoice, however, I had verbally been told by PIBH that this was severance pay. At the time, however, I was not aware that this contract did not include payment of severance pay.

Paul Kimmey (July 1998) - there was no notation on this invoice, however, I had learned that this individual had left employment with PIBH. Since the amount of severance pay was not shown individually, the amount deducted was not exact. A notation was placed on the discrepancy sheet indicated that additional documentation was needed showing the breakdown of the clerk receiving the severance pay

As a result of reviewing this with the attorney, I am requesting that a breakdown be provided for each of these individuals so that we can properly adjust the records since the Department should not have paid the severance pay for the first two individuals and we will make the proper adjustments.

Additionally, if there were bonuses issued in 1997, we will need a copy of each individual's statement which reflect these payments. Adjustments will be made to recover those overpayments. Please note that there were no notations made on the billing invoices for bonuses in 1997. . . .

(Joint Exhibit HH).

This matter ran its course through discovery, and a hearing was to begin on September 22, 2004. At the pre-trial conference on July 29, 2004, the parties indicated their agreement to submit the case on a Stipulation of Facts and Briefs. On August 6, 2004, PIBH filed a Petition to Amend the Complaint seeking to add additional items of alleged damages which PIBH suffered because the Department denied reimbursement under twelve (12) additional invoices after PIBH had filed its original Complaint. PennDot filed a Brief in Opposition, to which PIBH filed a Reply Brief. On September 30, 2004, the Board granted PIBH's Petition to Amend Complaint. Then on November 18, 2004, PennDot filed an Answer and New Matter, and PIBH filed an Answer to New Matter on December 14, 2004.

Both parties filed their trial briefs, and on January 28, 2005, the Defendant filed PennDot's Reply to Trial Brief. Since the Board's Scheduling Order of October 15, 2004, did not provide for reply briefs, the Board did not consider this document in its deliberations.

PIBH argues that if the contract is silent on an issue that does not mean it is necessarily prohibited. Thus, since the Agreement does not specifically address payroll issues, bonuses and severance pay are not prohibited, and PennDot should reimburse these costs. (PIBH's Trial Brief). PennDot's position is that costs are reimbursable only if they are normal payroll expenses, and that bonuses and severance pay do not fall into that category. (PennDot's Trial Brief).

During PennDot's long contracting history (in excess of thirteen (13) years at the time of entering into the subject Agreement); PennDot did not inquire into PIBH's payment practices. (Joint Stipulations 3, 10). Furthermore, for the subject Agreement, it did not require any more specificity regarding the budget than that proposed by PIBH. (Joint Exhibit C).

Plaintiff contends that if the Department had wanted to require other restrictions, it knew how to do so and would have specifically mentioned those terms as it did with restrictions on travel reimbursement. (Joint Exhibit A, para. 6). PennDot is a sophisticated agency that can and does craft specific requirements in its agreements, as it did in the Specifications. (Joint Stipulation 16; Joint Exhibit D) The Specifications provide in-depth descriptions and requirements for PIBH's performance, including the establishment of an employee recognition plan by PIBH. (Joint Exhibit D)

For purposes of this Claim, PennDot designated Joy Gross, its former manager of the driver's license division of the Bureau of Driver Licensing, as its representative to testify about the dispute between PennDot and PIBH regarding the payment of indirect labor costs. (Joint Stipulation 73). Ms. Gross acknowledged in her testimony that the Agreement controls the reimbursement of indirect costs by PennDot and that it sets maximum yearly and total

reimbursements. (Joint Exhibit II, Tr. 6). She further testified that the Agreement specifically required PennDot's pre-approval for reimbursement for employee travel expenses. (Joint Exhibit II, Tr. 7). She said that the stated maximum reimbursements and the limitations on travel expenses were the only restrictions specified in the agreement for indirect labor costs. (Joint Exhibit II, Tr. 7). Furthermore, both the Agreement and included Budget set forth caps for total reimbursement; and the Budget sets forth individual caps on items of reimbursements, including indirect labor. (Joint Exhibits A, D). In her testimony, Ms. Gross also said that the budget contained only overall maximum levels but no other restrictions or definitions for allowable wages or benefits. (Joint Exhibit II, Tr. 9). Additionally, Ms. Gross confirmed that PIBH did not exceed the yearly maximum for indirect labor costs. (Joint Exhibit II, Tr. 19).

As mentioned above, the Defendant argues that if bonus and severance payments are not specifically included in the contract, the Department can not pay them. This argument carries little weight and is actually contradicted by the Department's other actions under this same provision of the Agreement wherein the Department does pay for other employee benefits which are not specified. (Joint Stipulation 7). At her deposition, Ms. Gross attempted to explain why some unspecified costs are "ok" and some are "not ok." Ms. Gross acknowledged that some unspecified employee benefits were reimbursed such as FICA, unemployment and workmen's compensation insurance, which are required by law, and other benefits, which were not required by law, such as pension, medical insurance, life and disability insurance, were also reimbursed. (Joint Exhibit II, Tr. 29-31). When asked why these are acceptable expenses for reimbursement while bonuses are not, she replied:

Bonuses are above and beyond salary expectations in my view.
Bonuses are not something that you expect to get routinely.
These expenditures, I believe, are things that you would expect
to get routinely if that's what is in your contract, you individually.
Bonuses are above and beyond that.

(Joint Exhibit II, Tr. 31).

She explained that PennDot's position was that employee costs and payments not specified in the contract were only reimbursable if they are "normal payroll expenses." She then went on to define "normal payroll expenses" as benefits and costs that an employee would expect as a normal part of their salary and benefits, but she admitted that "this definition was not written out in any fashion and was never conveyed to PIBH." (Joint Exhibit II, Tr. 31-32).

PennDot's performance and its response to terms lacking in the contract are not consistent. In its Trial Brief, Defendant's counsel argues that Pennsylvania law is well settled in that a tribunal may imply missing terms in a contract only when it is necessary to prevent injustice and it is abundantly clear that the parties intended to be bound by such terms. (PennDot's Trial Brief, pg. 11). This "Doctrine of Necessary Implication" is discussed in Kaplan v. Cablevision of Pennsylvania, Inc., 671 A.2d 716 (Pa.Super.1996).

The Board agrees with the Defendant that this Doctrine is not applicable here because both required prongs to invoke it are missing. The first requirement is that the missing terms be necessary for the parties to carry out the purpose of the agreement. That is not the case here where the parties are able to carry out the purpose, which is to provide employees for photo

licensing services regardless of whether severance pay and bonuses are paid. The services continued to be provided. Furthermore, the lack of specific terms does not prevent PennDot from reimbursing employee expenses which it unilaterally decides to include, such as retirement and health insurance benefits, as indicated by Ms. Gross in her testimony cited above. (Joint Exhibit II, Tr. 29-30).

The second prong requires that it be abundantly clear that the parties intended to include the missing terms in their contract. Here, to the contrary, the only thing that is “abundantly clear” is that Plaintiff subjectively “intended” it be reimbursed for these costs and Defendant, subjectively, did not. Accordingly, the Doctrine of Necessary Implication does not apply to the instant matter.

What is abundantly clear, however, is that, objectively speaking, Defendant agreed by the plain terms of the contract to, “pay the service vendor [PIBH] during the existence of this contract, the actual costs for work completed in accordance with the terms and conditions of the contract” [Emphasis added]. Defendant has presented no serious contention or evidence that the bonuses and severance pay here at issue were not paid by PIBH or incurred as an actual cost by PIBH. Accordingly, absent some particular provision in the contract that would clearly serve to exclude bonus and severance pay from actual costs, the Board believes these items to be included in the amount for which PIBH is to be reimbursed.

The Defendant argues at length about whether a bonus is typically included in the computation of compensation. PennDot asks the Board not to apply the Doctrine of Necessary Implication to read into the contract missing terms, but then it asks the Board to determine whether a bonus is typically included in the computation of “compensation,” which leads to the

discussion of the term “wages.” (PennDot's Trial Brief). None of those terms are discussed, or even mentioned in the Agreement and its attachments.

Even so, PennDot goes on to mistakenly rely on Beardsley, et al. v. State Employees' Retirement Board, 691 A.2d 1016 (Pa.Cmwlth. 1997), for the above purpose. Commonwealth Court addressed several issues related to the definition of bonuses and compensation as *defined by statute*, here the Pennsylvania Employees' Retirement Code, 71 Pa.C.S. § 5101, *et seq.* The Petitioners in that case also point out that the Legislature and Court have expressly included bonuses within the definition of compensation, specifically in tax reform codes and workmen's compensation law. *Id.* at 1019. The Beardsley Court also overturned the Retirement Board's determination that the subject Executive Marketing Incentive Program (EMIP) payments were bonafide incentive payments, not bonuses; and therefore, should have been included in compensation for retirement purposes for the former Commonwealth employee.

The Court acknowledged that the definition of a bonus for worker's compensation purposes does not control the definition for retirement purposes. Nevertheless, the Court then goes on to examine the common usage of the term “bonus” as set out in Orlando v. Schiavo Brothers, Inc., 309 A.2d 84 (Pa.Cmwlth. 1973), which was in fact an appeal from the Workmen's Compensation Appeal Board. The issue there was whether a one time bonus would be considered compensation, again under a statute.

PennDot's application and analysis of the five prong test of Orlando to the facts of the instant matter is incorrect. First of all, the Court in Beardsley states that in Orlando it was determined that a *one time* payment was a bonus and should not be included in compensation

under a statute under that five prong test. Furthermore, there is not present in this case, sufficient evidence to analyze the application of all the prongs, for example (1) there is no evidence regarding whether the employer had contracts with its employees or (2) how the employer determined the bonuses or (3) whether the employer had unfettered discretion in deciding whether the bonus should be paid or (4) whether there was an objective method of calculating how large the bonuses would be. The defendant offers evidence only for prong (5) which states that a bonus must represent a relatively small fraction of the claimant's total income from his employment. However, the fifth prong applies to the income of an individual, not to the amount billed by an employer under a contract, as mistakenly interpreted by the Defendant:

The compensation billed to the Department represents only a small portion of the total charges for direct and indirect labor. The total amount budgeted for direct and indirect labor was in excess of Five Million Dollars \$5,000,000. (Joint Exhibit C) Bonus payments at issue total less than \$250,000.00. (Joint Stipulation) The bonus payments represent a relatively small fraction of PIBH's labor costs.

(PennDot's Trial Brief 14-15).

The Orlando Court mentions a few other cases cited for related holdings that are not contradictory to its holding and which illustrate the court's interpretation of employee compensation terms. The Pennsylvania Supreme Court in Tucker v. Tucker, 87 A.2d 650 (1952), held that a bonus was a necessary and justified business expense deductible in computing net profits. The affected employee had received a yearly bonus per an oral agreement which was 8% of the annual profits, in addition to his salary. The Court stated, "[W]hile technically a bonus is a sum voluntarily paid to an employee over and above his wages, it is in reality, merely an additional arrangement for compensation for his services." *Id.* at 655.

Here, in the instant matter, there has been no allegation that there are any applicable statutory definitions. Furthermore, from the above discussion, the Board recognizes that the practice of paying bonuses is certainly related to the categories of direct and indirect salaries and bonuses can be included therein.

Another argument made by PIBH for the inclusion of the bonus payments is that the Agreement required it to establish an employee recognition plan. (Joint Exhibit A). Ms. Gross acknowledged this and admitted that if PIBH's normal employee policies included a bonus plan, then PIBH's employees "perhaps" would expect a bonus under "some conditions." (Joint Exhibit II, Tr. 32). The fact that PIBH had been paying bonuses for the prior thirteen (13) years gives employees an expectation of receiving bonuses. (Finding of Fact 80).

Ms. Gross also stated that even though this section of the Agreement applied to both direct and indirect labor, PennDot did not have the expectation that the recognition plan would be applied to indirect labor personnel. However, she did agree that no distinction was made in the language in the Agreement which directed PIBH to develop a *comprehensive* employee recognition plan. (Joint Exhibit II, Tr. 12, 13). Thus, the *comprehensive* employee recognition plan required by the Agreement did not exclude indirect labor personnel. (Finding of Fact 81).

PennDot's counsel argues that if PennDot had known that PIBH was going to include the incentive of bonus payments, it would have incorporated Commonwealth Management Directive 505.23 which expressly prohibits such payments as an element of a Commonwealth recognition program. (PennDot's Trial Brief 16, 17). However, no evidence was offered in support of this claim. Specifications Section 0.1 states that the vendor shall agree as a condition of this contract to comply with all Commonwealth requirements regarding nondiscrimination,

contractor integrity, and contractor responsibility. PennDot had very specific requirements which are listed in this separate attachment to the Agreement called Specifications. (Joint Exhibit A). However, Commonwealth Management Directive 505.23 was not included in the provisions of Specifications included in the Agreement. (Finding of Fact 80). Thus there was no specific prohibition against bonus incentive payments.

Additionally, the Defendant implies that there was no meeting of the minds on this issue of incentives and including management employees in an employee recognition program and that evidence of PIBH's unexpressed intention is not relevant in considering the meaning of the contract. Spatz, et al. v. Mascone, 424 A.2d 929 (Pa.Super. 1981). The Superior Court of Pennsylvania in Spatz discusses rules in contract interpretation, citing the Restatement (2nd) of Contracts (Tent. Draft 10 1975):

Section 228. Rules in Aid of Interpretation:

- (1) Words and other conduct are interpretive in the light of all the circumstances, and if the principal purpose of the parties is ascertainable, it is given great weight.
- (2) A writing is interpreted as a whole, and all writings that are part of the same transaction are interpreted together.
- (3) Unless a different intention is manifested,
 - (a) where language has a generally prevailing meaning, it is interpreted in accordance with that meaning;
 - (b) technical terms and words of art are given their technical meaning when used in a transaction within their technical field.

- (4) Where an agreement involves repeated occasions for performance by either party with knowledge of the nature of the performance and opportunity for objecting to it by the other, any course of performance accepted or acquiesced in without objection is given great weight in the interpretation of the agreement.
- (5) Whenever reasonable, the manifestations of intention of the parties to a promise or agreement are interpreted as consistent with each other and with any relevant course of performance, course of dealing or usage of trade.

Section 229. Standards of Preference in Interpretation

- (1) In the interpretation of a promise or agreement or a term thereof, the following standards of preference are generally applicable:
 - (a) an interpretation which gives a reasonable, lawful, and effective meaning to all the terms is preferred to an interpretation which leaves a part unreasonable, unlawful, or of no effect;
 - (b) express terms are given greater weight than course of performance, course of dealing and usage of trade, course of performance is given greater weight than course of dealing or usage of trade, and course of dealing is given greater weight than usage of trade;
 - (c) specific terms and exact terms are given greater weight than general language;
 - (d) separately negotiated or added terms are given greater weight than standardized terms or other terms not separately negotiated.

Id. 937-38.

After applying these sections of The Restatement of Contracts, the Board is persuaded that PIBH's submission for bonuses and severance pay for reimbursement is allowed under the

Agreement. The express terms of the contract, "actual cost", "direct salary" and "indirect salary" are the only express words in the contract related to employee compensation, general though they may be. This language in the Agreement does have a generally prevailing meaning and the terms "bonuses" and "severance pay" generally fall under categories of direct and indirect salaries for purposes of reimbursement in a contract for the provision of services by a party's employees. Moreover, no one can argue that these items constituted "actual costs" to PIBH.

The Plaintiff argues, tangentially, that it is disingenuous for the Department to refuse reimbursement for the payment of accrued, but unused, vacation pay to departing employees where the Agreement is again silent on that issue especially when PennDot's own employees received that benefit. PennDot's counsel states that this is not relevant, and that PennDot does not argue that the payment for unused vacation pay to departing employees is unusual, but only that there is no provision for it in Agreement No. 720999. (PennDot's Trial Brief 19) In its Brief, PennDot cites a collective bargaining agreement that provides for the payment of unused vacation time to departing employees, and it reports that there is an express term of a negotiated contract that was extended per direction of the Commonwealth's Executive Board to management employees. PennDot's counsel goes further and states, "In stark contrast, PIBH cannot show that its payments are made pursuant to terms specifically negotiated and incorporated into the agreement." (PennDot's Trial Brief 19)

The Commonwealth may have specific labor requirements for its employees, but they were not raised at any time during the performance of the earlier contract with PIBH for these same services or during the negotiation of the subject Agreement. The Board agrees here with

PennDot that where its employee practices have not been specifically included in a contract, the Commonwealth's practices with its own employees are not relevant to its performance under that same contract.

As stated above, PennDot is a sophisticated party to many Commonwealth contracts and knows how to include specific requirements, and there is no need to imply or infer meaning where language has a generally prevailing meaning. PennDot was satisfied with the performance of PIBH and similar contracts for over thirteen (13) years before entering into the subject contract. It never had a specific discussion with PIBH about its specific compensation process throughout that time or at the time of negotiating this subject Agreement. However, it did require PIBH to propose a Budget, which included costs for direct and indirect labor. PennDot approved this Budget and incorporated it into the Agreement. Thus, there was a meeting of the minds.

Prior to, and after, the "cost plus" agreement, normal PIBH policy was to award bonuses and severance pay to its employees. It follows then that PIBH and its employees would consider bonuses and severance as a "normal part of their salary and benefits." Therefore, using PennDot's own definition as stated by Ms. Gross, the Board concludes that bonuses and severance are "normal compensation" and clearly within "actual costs" incurred by PIBH in the performance of this contract. Thus, the Board finds that payments of bonuses and earned, but unused, vacation and personal leave were properly submitted for reimbursement under the categories of direct labor and indirect labor and PennDot must issue payment on the invoices submitted in the amount requested for reimbursement plus fifteen percent (15%) for administration, as specified in the Agreement.

The second issue to be addressed is whether the additional amounts claimed in Plaintiff's Amended Complaint should be dismissed as untimely. After PIBH amended its original Claim to assert the additional claims, PennDot filed an Answer to the Amended Claim and New Matter. In that pleading, the Department asserts that the additional claims each represent a separate and distinct cause of action and should be dismissed as untimely.

On this issue, the Board stands by its reasoning, as stated in its Opinion and Order dated September 30, 2004, granting PIBH's Petition to Amend Complaint. Citing Sanchez v. City of Philadelphia, 448 A.2d 588, 589 (1982); the Board stated in part, "It is clear that the general rule is that an amendment to a complaint will not be admitted after the running of the statute of limitations if it introduces a new course of action. However, if the amendment would only amplify or enlarge the existing course of action, it will be permitted."

The Board went on to emphasize that in the current matter before it, the parties are the same, the legal theory is the same, the relationship is the same, the actions complained of are the same, and the contract sued upon is the same. The Board stated, "It is clear to the Board that PIBH in its Petition to Amend its Complaint is seeking to amplify or enlarge the existing course of action by amending its complaint amending to conform to the evidence and its accumulating damages. (Board of Claims Opinion and Order of September 30, 2004) The Board goes on to point out that paragraph 11 of the original Complaint even references the ongoing accumulation of damages that it believed and therefore averred that PennDot would continue to refuse to pay such invoices.

The inclusion of additional unpaid invoices in the Amended Complaint does not violate the statute of limitations. The original Complaint was timely filed and the unpaid invoices represent ongoing damages in that matter, not separate and distinct causes of action.

The parties agree to the dollar amounts submitted by PIBH for bonuses and severance pay reimbursement, which PennDot has not paid. (Joint Stipulations 18-69) Therefore the total amount to be paid by PennDot to PIBH is Three Hundred Nineteen Thousand Sixteen Dollars and Thirty-Four Cents (\$319,016.34), plus pre-judgment interest in the amount of Eighty-One Thousand Four Hundred Fifty-Eight Dollars and Fifty-Nine Cents (\$81,458.59).

ORDER

AND NOW, this 15th day of April, 2005, the Board of Claims hereby finds in favor of the Plaintiff, Pennsylvania Industries for the Blind and Handicapped, and against the Defendant, Commonwealth of Pennsylvania, Department of Transportation, Bureau of Licensing, in the amount of Three Hundred Nineteen Thousand Sixteen Dollars and Thirty-Four Cents (\$319,016.34) for reimbursement for severance pay and bonus payments plus pre-judgment interest of Eighty-One Thousand Four Hundred Fifty-Eight Dollars and Fifty-Nine Cents (\$81,458.59) calculated as set forth in this opinion for a total award of Four Hundred Thousand Four Hundred Seventy-Four Dollars and Ninety-Three Cents (\$400,474.93). In addition, Plaintiff shall be entitled to post-judgment interest on this total award at the statutory rate of six percent (6%) per annum until paid in full.

Each party shall bear its own costs and attorneys' fees.

BOARD OF CLAIMS

Jeffrey F. Smith
Chief Administrative Judge

Ronald L. Soder, P.E.
Engineer Member

John R. McCarty
Citizen Member