



# **INVESTIGATIVE REPORT OF THE ATTORNEY GENERAL**

**INVESTIGATION CONCERNING THE LEASE OF  
THE FACILITY LOCATED AT 184 WINDSOR  
AVENUE, WINDSOR, CONNECTICUT, FOR THE  
BOARD OF EDUCATION AND SERVICES FOR  
THE BLIND**

**JUNE 17, 2002**

**RICHARD BLUMENTHAL  
ATTORNEY GENERAL**

## INTRODUCTION

This report summarizes the findings and recommendations of our whistle blower investigation into the facts and circumstances surrounding the Department of Public Works' (DPW) lease for the Board of Education and Services for the Blind (BESB) facility located at 184 Windsor Avenue in Windsor, Connecticut. Our investigation focused primarily on the following general issues: (1) whether proper procedures were followed in the advertising and selection of the landlord, Mark Wertheim, for the subject lease, (2) whether proper procedures were followed in the negotiation and execution of the lease, and (3) whether the landlord, Wertheim, received preferential treatment and unfair advantages during the leasing process. Regarding the third issue, we focused on allegations concerning (a) an alleged inappropriate change to the date of the tax escalation clause in the lease, (b) alleged excessive electrical renovations to the facility that were not negotiated in the lease and were not installed pursuant to proper plans and specifications, (c) whether the authorization and approval of these electrical renovations, as well as a subsequent request by DPW for approval to reimburse the landlord for the costs of these electrical renovations, was appropriate, and (d) whether there was any justification for DPW to require BESB to pay additional rent for heating and air conditioning costs on weekends and after normal business hours during the week.

During the course of this investigation, and the related investigation into the layoff of Carole Donagher,<sup>1</sup> the Director of Finance and Business Operations at BESB, we issued subpoenas for all relevant documents in the possession of the state agencies and private entities

---

<sup>1</sup>On November 28, 2001, this office issued an interim report concerning the layoff of Donagher by the Executive Director of BESB, Dr. Donna Balaski. We concluded that Donagher's layoff on October 4, 2001, was unjustified and unlawful, and that there was circumstantial evidence

involved, and their employees. We obtained and reviewed thousands of documents. We also interviewed 30 witnesses under oath, taking sworn testimony pursuant to subpoena. The list of sworn witnesses included 26 employees of various state agencies -- including, DPW, BESB, Department of Administrative Services, Office of Policy and Management, Department of Labor, the Office of the Attorney General and the State Properties Review Board -- and four other individuals employed elsewhere. Among the current and former state officials and employees we interviewed under oath were Theodore Anson, Patrick Delahunty, Joseph Nesteriak, Manuel Beccerra, Georgianne Killeen, Susan Amenta Hooper, Kenneth Sherbacow, Gary Gallucci, Kenneth Tripp, Michael Arcari, Stanley Babiarz, Frank LiPuma and Edward Ingalls.

## **EXECUTIVE SUMMARY**

We conclude that Patrick Delahunty, DPW Chief Deputy Commissioner, Joseph Nesteriak, a DPW Deputy Commissioner, Gary Gallucci, a retired DPW Administrator of Facilities Management and former Leasing Manager, and two members of Delahunty's Leasing Division staff, Susan Amenta Hooper, Leasing Supervisor, and Georgianne Killeen, Leasing Property Agent, violated state leasing laws and procedures and provided unfair advantages and preferential treatment for Mark and Alicia Wertheim, and their company, 184 Windsor Avenue, Limited Partnership.<sup>2</sup> We find that DPW officials undermined the statutory leasing process by improperly selecting the Wertheims as the lessors (landlords) of two state leases for the BESB

---

that the layoff was in retaliation for Donagher's cooperation in this investigation. On January 14, 2002, Donagher was reinstated to her position.

<sup>2</sup>Alicia Wertheim signed the lease and related documents in her capacity as the General Partner of 184 Windsor Avenue, Limited Partnership, but is not actively involved in the administration of the lease. Mark Wertheim negotiated the lease and serves as the landlord, directly supervising the ongoing operation and management of the lease.

facility at 184 Windsor Avenue, Windsor, Connecticut<sup>3</sup>, before proper advertisement and before Wertheim had even submitted a bid proposal or listed the property in the state inventory. This preferential treatment -- in effect a "sweetheart deal" -- resulted in a lease package for Wertheim exceeding \$838,000 annually over the course of the initial five-year term of the leases and, potentially, the five-year renewal term as well.

As set forth more fully below, we find that:

1. The selection of Wertheim as the landlord for this lease was improper and in violation of statutory leasing procedures;

2. The advertising for this lease was inadequate and in violation of statutory leasing procedures. In addition, DPW staff made a pretense of following a standard lease advertising and selection process in an apparent effort to disguise the fact that this lease deal was rigged in favor of Wertheim;

3. DPW officials engaged in premature dealings and made unauthorized disclosures to Wertheim during lease negotiations, in violation of statutory leasing procedures;

4. DPW officials failed to properly supervise electrical renovations as required by statutory leasing procedures, and subsequently took unauthorized and improper actions to reimburse Wertheim for the costs of these excessive renovations;

5. DPW ordered BESB to pay additional rent to Wertheim in violation of the terms and conditions of the lease and without any legal basis;

---

<sup>3</sup>The lease package actually included two separate leases for different parts of the same building. The Suite A lease pertained to BESB's Administrative Division, and the Suite B lease covered BESB's Industries Division.

6. The change to the tax escalation clause was improper and unauthorized, and was made primarily as the result of intentional misrepresentations by Georgianne Killeen, DPW Leasing Property Agent;

7. DPW's internal investigation and written response to the Governor of January 24, 2001, regarding the circumstances surrounding the unauthorized change to the tax escalation clause, were incomplete and misleading;

8. Gary Gallucci apparently violated state ethics laws and regulations by personally and substantially participating in the negotiation and administration of the BESB lease as a state employee and then subsequently representing Wertheim, after Gallucci's retirement from state service, in connection with the same lease;

9. DPW officials took extraordinary and unauthorized steps to circumvent the authority of the State Properties Review Board (SPRB) in an effort to unjustifiably create windfalls potentially worth hundreds of thousands of dollars of state taxpayer money for the Wertheims and their electrical contractor, Edward Ingalls, President of Newington Electric Company. Ingalls was hired by Wertheim to do the electrical renovations on BESB's production floor upon the recommendation of Ingalls' longtime friend, Gallucci.

## FINDINGS

### **I. The advertising for this lease and the selection of Wertheim as the landlord were improper and in violation of statutory leasing procedures.**

Wertheim was personally selected as landlord for this lease package by Patrick Delahunty and Gary Gallucci during a meeting with Wertheim in Delahunty's office at DPW. We obtained by subpoena a copy of a June 4, 1997 letter from Wertheim to Gallucci, copied to Delahunty, referencing a meeting involving Wertheim, Gallucci, and Delahunty.<sup>4</sup> The letter specifically refers to the ". . . BESB space requirements that you [Gallucci] described."<sup>5</sup> Gallucci was still the Administrator of Facilities Management at DPW at this time, and was serving as interim Leasing Manager. In this letter, Wertheim briefly describes key characteristics of his facility at 184 Windsor Avenue and concludes the letter by stating "It would [be] ideal for light industrial/office use space." The date and the content of this letter is significant because it was not until three months later, on September 21, 1997, that a public advertisement was posted by DPW in the *Hartford Courant* seeking bids from prospective lessors for the BESB administrative office space. There had been two earlier advertisements in the *Hartford Courant*, on May 28, 1996, and January 30, 1997, but they had expired by their terms months before June, 1997, and no proposals were selected. Additionally, the previous advertisements were only for the industrial space; they did not include any information about or seek any bids for the

---

<sup>4</sup>Delahunty and Gallucci could not recall whether this meeting actually occurred on June 4, 1997, or shortly before that day.

<sup>5</sup>Conn. Gen. Stat. §4b-27 (formerly §4-26i) makes it a Class A misdemeanor for a state employee, or anyone who gains knowledge of state real estate needs while serving as a state employee, to disclose any information regarding state real estate needs to anyone before that information is made public by the DPW Commissioner, unless specifically authorized by the Commissioner to do so. We found no evidence that the Commissioner had provided any specific authorization regarding this matter.

administrative office space for BESB.<sup>6</sup> The advertisement on September 21, 1997, was the first advertisement for the administrative office space. This advertisement did not include any information about the industrial space; it only sought bids for the administrative office space.

Both Susan Amenta Hooper and Georgianne Killeen testified that they were unaware of the meeting mentioned in Wertheim's June 4 letter, among Wertheim, Delahunty, and Gallucci, and that this meeting would have been highly unusual and improper if specific BESB space requirements were discussed with a prospective landlord without a property agent present and with no advertisement pending. Additionally, Amenta Hooper and Killeen knew of no authorization by the DPW Commissioner for this meeting and they were unaware of any other similar meetings with any other prospective landlords ever having occurred. At the time of the meeting, Wertheim's company had not even responded to a required public advertisement seeking bids from prospective landlords, and Wertheim's property had not yet been added to the state inventory list. In fact, the two advertisements soliciting proposals for BESB had long since closed, and had only sought bids for properties in Hartford, West Hartford, Newington and Wethersfield. No notice prior to the September 21, 1997 advertisement, which went out months after the Wertheim/Delahunty meeting, opened up the bidding to include the town of Windsor, where Wertheim's facility is located. Moreover, these previous advertisements only sought proposals to lease approximately 26,000 square feet of space for the Industries Division of BESB. Wertheim's facility was selected to house both the Industries and Administrative Divisions. Yet, as of June, 1997, no advertisement had ever been published by DPW soliciting bids for the approximately 29,000 square feet required for the administrative offices.

---

<sup>6</sup>Prior to this lease, BESB's Administrative Division was located on Ridge Road in Wethersfield, and the Industries Division was located on Shield Street in West Hartford.

During its review, the SPRB staff noted that the three DPW advertisements listed space requirements in terms of square footage that were far less than the 80,000+ square feet of Wertheim's facility, and suggested that advertisements for space should reasonably reflect the amount of space an agency desires to lease. Even Joseph Nesteriak, who took over the supervision of the DPW Leasing Division shortly after the September 21, 1997 advertisement, testified that the advertisements clearly should have indicated that BESB was looking to co-locate the two divisions, and he was "quite surprised" when he learned that there was never an advertisement for a "joint-use facility" because, as Nesteriak put it, "From the day I took over leasing that is the only way we would have done it." Gallucci testified that, "If I were preparing the advertisement and the interest was in co-locating both industries and office, I would hope my advertisement would indicate that." When asked why, Gallucci added, "Obviously to give prospective owners the most information you can. What are we really after, are we after 30,000 square feet or a hundred thousand square feet, and I think it would provide that information more accurately . . . if I have an 80,000 square foot building - using a number - and an advertisement comes out for 30,000 square feet, and my building doesn't subdivide readily, obviously I wouldn't respond to an ad."

Based on these facts, we conclude that DPW failed to properly advertise BESB's space needs and failed to give prospective landlords public notice of those needs in violation of Conn. Gen. Stat. §4b-34<sup>7</sup> and DPW's Leasing and Property Transfer Division, Leasing Policies and Procedures manual.<sup>8</sup>

---

<sup>7</sup>Conn. Gen. Stat. § 4b-34 required the DPW Commissioner to "give public notice" of BESB's "space needs and specifications" by proper newspaper advertisement.

<sup>8</sup>See Section C, Part 1, page 28 ("The Division is required by statute to advertise unless an opportunity exists to sublease space from another state entity. Agency space requests should be evaluated carefully by the leasing agent to make sure that the Agency's needs are fully and clearly expressed prior to ad preparation.")

**II. DPW officials engaged in premature dealings and made unauthorized disclosures to Wertheim during lease negotiations in violation of statutory leasing procedures.**

DPW's final advertisement for BESB on September 21, 1997, was a sham. This advertisement was published for the sole purpose of providing Wertheim the opportunity to formally respond -- in a transparent effort by Delahunty and his Leasing Division staff to conceal the fact that Wertheim had already been selected. In fact, not only had Wertheim been selected, but copies of written correspondence dated August 16, 1997, and September 2, 1997, that this office obtained by subpoena, clearly show that DPW Leasing Division staff and BESB officials were already engaging in discussions and conducting detailed negotiations with Wertheim and Frank LiPuma, Wertheim's business manager, regarding the terms of the lease. These documents reveal that the parties were already discussing such topics as the annual occupancy costs, rental rates per square foot, and the amortization of total improvement costs over the course of the initial five-year lease term. These premature dealings are precisely the sort of favoritism that Conn. Gen. Stat. § 4b-27 is designed to prevent. In fact, a 1986 formal opinion issued by this office states that the intent of the law "Is . . . to discourage premature dealings in and disclosure of state leasing needs in order for the taxpayers of Connecticut to get the best conceivable value for their tax dollars."<sup>9</sup> In addition, DPW's Leasing and Property Transfer Division, Leasing Policies and Procedures manual clearly sets forth that negotiations may only begin after all

---

<sup>9</sup>Opinion No. 86-90, The Honorable Elisha C. Freedman, November 17, 1986.

responses to advertisements have been received and reviewed and initial site inspections have been conducted.<sup>10</sup>

During the meeting on or shortly before June 4, 1997, Delahunty and Gallucci made unauthorized disclosures and provided Wertheim with "insider information" which no other prospective landlord was ever given. At the time Delahunty and Gallucci selected Wertheim to be the landlord of the BESB lease at the early June 1997 meeting, DPW had not properly or publicly advertised that BESB was seeking sufficient square footage to co-locate its Industries and Administrative Divisions under one roof. In fact, DPW never advertised or formally made this information publicly known in any way. Yet, during this early June meeting with Wertheim, Delahunty and Gallucci personally revealed to Wertheim that BESB wished to co-locate the Administrative and Industries Divisions into one facility large enough to house its entire operation. Delahunty testified that, on the day of the meeting, he clearly understood that BESB required enough space to co-locate its Administrative and Industries Divisions. When asked whether Gallucci described BESB's space requirements to Wertheim during the meeting, Delahunty said, "I would assume so." Delahunty was then asked, "Would you assume that you also would have described for him (Wertheim) the space requirements as you understood them?" Delahunty responded, "I probably would have, yes."

State statutes and DPW policies provide safeguards to ensure that agencies needing space make the best possible use of taxpayers funds, and that competition, not personal or political favoritism determines the outcome. Those safeguards include requirements that the state's leasing needs be disseminated through an open process, and that the state advertise its needs

---

<sup>10</sup>See Section D, Part 1, page 66 ("Once all responses to ads are reviewed initial site inspections are conducted. The Short List is then prepared and the field narrowed to acceptable sites. Negotiations can then begin with owners or authorized agents of sites found acceptable.")

accurately that landlords with appropriate space to lease can be given fair consideration, and that the State Properties Review Board fully review all aspects of state leases.<sup>11</sup>

In this case, we found no credible evidence to indicate that any prospective landlords, other than Wertheim, were ever provided accurate information about BESB's leasing requirements. Nor did we find any evidence that the disclosures of BESB's needs by Delahunty and Gallucci to Wertheim were authorized by the DPW Commissioner or by any other state official in any way. This conduct by DPW Leasing officials undermined the leasing process as contemplated by statute and by DPW's own internal Leasing Policies and Procedures. As a result, taxpayers were deprived of the benefits of an open and competitive process designed to obtain the best property at the best price.<sup>12</sup>

**III. DPW officials failed to properly supervise electrical renovations as required by statutory leasing procedures, and subsequently took unauthorized and improper actions to reimburse Wertheim for the costs of these excessive renovations.**

DPW leasing officials violated state leasing laws and procedures in agreeing to increase the lease amount without proper authorization or approval. In the process, Delahunty and Nesteriak failed their responsibility to obtain approval from the SPRB before assuring Wertheim

---

<sup>11</sup>DPW's own Leasing and Property Transfer Division, Leasing Policies and Procedures manual (hereinafter "DPW Manual"), identifies among its "Program Goals and Objectives," p. 8, "To advertise for space needed of 2500 sq. feet or more in accordance with state statutes, and "To conduct extensive site searches for suitable space," and "To conduct skillful negotiations to obtain the best transaction possible for the state." The DPW manual devotes approximately sixty-four pages to the mechanics of how those goals are to be met.

For example, § 4b-34 of the Conn. Gen. Stats. requires that the DPW commissioner "...shall give public notice of such space needs and specifications by advertising at least once, in a newspaper having a substantial circulation in the area in which such space is sought, no less than fifteen days prior to the date of final selection." (Emphasis supplied.)

<sup>12</sup>See DPW Manual, Section C, Part 2, page 42 ("It is extremely important that leasing agents use as many resources as possible when searching for space so that *all available sites are considered*, market conditions are clearly identified for negotiation purposes, and the best possible site is selected.")(Emphasis supplied).

that his company would be reimbursed for electrical renovations exceeding \$100,000 in cost -- renovations in fact that were unnecessary, excessive, and not contemplated in the lease.

Delahunty and Nesteriak authorized Wertheim and Edward Ingalls to install electrical construction and renovations to 184 Windsor Avenue that were not negotiated as part of the lease package, and that both Delahunty and Nesteriak admitted under oath were unnecessary and excessive for the BESB Industries Division production floor operation.<sup>13</sup> The justification offered by Delahunty and Nesteriak in their testimony was that the Executive Director of BESB at the time, Kenneth Tripp, demanded the electrical infrastructure and insisted that it was required to increase the production floor's flexibility and capability to respond if BESB were to obtain additional government contracts. Therefore, according to Delahunty, DPW could do nothing to prohibit the installation of obviously excessive and unreasonable electrical renovations, potentially at the state's expense. Delahunty testified that, "I'm not going to tell our client agency. I can advise them. But if they insist, I cannot prohibit them from doing what they want." In fact, Tripp denies this account, attributing to Tripp a demand for such renovations.<sup>14</sup> Even if the account is accurate, it was DPW's duty -- as SPRB concluded -- to properly supervise these renovations to ensure that they were reasonably required and were conducted pursuant to professionally prepared plans and specifications.<sup>15</sup>

---

<sup>13</sup> The BESB Industries operation includes a number of industrial sewing machines that are used to manufacture items pursuant to government contracts, such as military-issue sweat pants and T-shirts, life preserver vests, field pack covers, and kit bags.

<sup>14</sup> When Tripp was asked whether he was personally involved in the design or installation of the electrical renovations, he said, "I had assumed that Public Works, with their licensed building officials and electricians, would have been responsible for that."

<sup>15</sup> The DPW, Leasing and Property Transfer Division, Leasing Policies and Procedures manual, Section D, Part 4, page 88, states, in part, "Whenever renovations to a leased facility are contemplated, it is the responsibility of the leasing agent to obtain plans that detail the necessary renovations. These plans must be signed by the agency as confirmation that the renovations outlined in the plan encompass all the necessary renovations for the agency to function effectively at a given location. The plans must also be signed by the lessor, to indicate that

In reference to the electrical infrastructure that Ingalls was installing in Wertheim's building, Gallucci described it as " [well] beyond anything I've seen in my career. It would power up any machine shop. As I said, you could build helicopters in that place with the amount of [electrical] service they were adding. And I felt at the time, although I didn't voice an opinion, the state might get on the hook for this." Delahunty himself testified that if one were to go inspect the electrical work that was installed at 184 Windsor Avenue, "[you] would say, 'what looney ever built this building? What looney ever did this?' "

Subsequently, as they admitted, Delahunty and Nesteriak assured Wertheim, both verbally and in writing,<sup>16</sup> that the state would pay for the electrical work by way of an amendment to the terms of the lease that would increase the rent to be paid to Wertheim, without getting approval from or even notifying the SPRB, as required by state leasing laws and regulations.<sup>17</sup> Delahunty acknowledged to our office that, at the time these unauthorized assurances were made to Wertheim, he knew that the SPRB must approve any changes to the lease proposal outline or the terms of the lease. In fact, Delahunty admitted that the reason for SPRB's existence is to act as a "watchdog agency" and that the SPRB's function is "to approve a lease or a sale or an architectural contractor."

---

he/she agrees to provide these renovations as part of the rental agreement." Here, DPW failed to enforce any of these requirements.

<sup>16</sup> In a December 14, 1998 memorandum, Delahunty informed Wertheim that, "As discussed, the lease discrepancy on the electrical plan will be addressed in the application for lease modification." Similarly, in a January 26, 1999 memorandum to Wertheim, Nesteriak wrote, "An amendment to lease will be executed to reimburse the lessor [Wertheim] for the additional [electrical] improvement."

<sup>17</sup> Conn. Gen. Stat. §4b-3(f) provides, in part, that the SPRB "shall review real estate acquisitions proposed by the Commissioner of Public Works . . . Such review shall consider all aspects of the proposed actions, including feasibility and method of acquisition and the prudence of the business method proposed."

Regulations of Connecticut State Agencies §4b-1-14 states, in part, "All leases of space and property acquisitions made by the Commissioner are subject to applicable provisions of the General Statutes, and to review and approval by the State Properties Review Board."

It was not until July, 1999, however, over 6 months after the additional electrical work was completed, that DPW submitted a formal proposal to the SPRB to amend the lease by increasing the rental rates of the initial five-year term and the five-year renewal term, purportedly to pay for the additional electrical costs. According to an analysis by SPRB staff, if this proposal from DPW had been approved by the SPRB, the increase in rental payments by the state over the course of the initial five-year term and the five-year renewal term, if exercised, would have been \$495,489.60. The total increase in compensation to Wertheim's company would have been \$369,533.<sup>18</sup>

To put this situation in perspective, the "estimate" submitted by Ingalls for the electrical work that Wertheim asserts was required as part of the lease, as originally negotiated, was approximately \$39,000. This "estimate" was submitted by Ingalls, at the request of Wertheim, to support Wertheim's claim for reimbursement for the difference between the \$39,000 figure and the total payments Wertheim claims he made to Ingalls for electrical services performed related to the BESB lease, totaling approximately \$162,000. Ingalls admittedly prepared this \$39,000 "estimate" after all of the electrical work was complete, and it was not based upon proper plans and specifications. Stanley Babiarz, an SPRB Planning Specialist assigned to review the BESB lease, demanded a justification -- which was never provided -- as to why DPW submitted a formal proposal to amend the renewal terms of the leases by increasing the rental rates charged by Wertheim, purportedly to pay for the additional electrical costs.

Killeen, the DPW Leasing Property Agent assigned to the BESB lease, stated that she was aware of but had no involvement whatsoever with the submission of the amended lease

---

<sup>18</sup> This figure represents the total rent payments less the expenses Wertheim claims he incurred for the additional electrical work, totaling \$125, 957.

proposal to the SPRB seeking an increase of the rental rates. In fact, Killeen testified, and other witnesses confirmed, that she was out of the office during July, 1999, when the proposal was submitted and recommended for approval by her supervisor, Amenta Hooper. She also stated that she never would have submitted such a proposal because it was improper and unjustified in her view. Killeen testified that she had serious concerns regarding the actions of Delahunty and Nesteriak in verbally approving the additional electrical work and assuring Wertheim the costs would be addressed in a change to the lease without going back through the approval process with the SPRB. On the other hand, Amenta Hooper, Killeen's immediate supervisor who approved the proposal, testified that she relied primarily on Killeen's efforts in her submission of the request for the amendment to the lease and relied substantially on Killeen's judgment that it was proper, without conducting her own detailed review of the documents submitted or determining for herself whether the requests were actually justified. Similarly, Nesteriak testified that he authorized and approved the request but was unaware that it included an increased rental rate in the renewal term from \$10.30 per square foot to \$12 per square foot -- potentially resulting in hundreds of thousands of dollars in excess compensation to the Wertheims at the expense of the State for no valid reason.

**IV. DPW ordered BESB to pay additional rent to Wertheim in violation of the terms and conditions of the lease and without any legal basis.**

Delahunty and his DPW Facilities Management staff ordered BESB to pay Wertheim's company additional rent to cover heating and air conditioning costs after normal business hours and on the weekends, despite BESB's objections, without even consulting the SPRB, and without any legal basis. In an August 10, 2000 memorandum, Pam Mandirola, a former employee in DPW Facilities Management, stated to Lawrence Alibozek, a former Executive Director of BESB, that "I have had many conversations with Leasing, Deputy Commissioner and other State

agencies. The lease interpretation, as explained to you in a memo from leasing dated February 7, 2000, means during standard business hours, Monday through Friday. Any overage for heat due to overtime hours and/or Saturday work days are to be reimbursed to the Lessor by your agency."<sup>19</sup> A copy of this memorandum was sent to Delahunty. Delahunty and Nesteriak testified that, although their recollections were vague on this issue, DPW's order requiring BESB to reimburse Wertheim was based on a "state policy" that all state leases are interpreted to only pertain to normal business hours. Despite our requests to Delahunty and Nesteriak, they provided us no further information to support the existence of this policy; nor did they provide a copy of any such policy. Delahunty himself testified that, "I can go either way on this. I mean, if it doesn't say it in the lease, it shouldn't be paid." When asked why BESB should pay these charges when the payment is not expressly required in the lease, Nesteriak testified that Wertheim indicated "he wouldn't turn the heat on" if BESB did not pay. Nesteriak told our office, however, that if Wertheim refused to turn on the heat, he would have been violating the express terms of the lease, requiring the landlord to pay for and furnish the heat. This situation is most problematic because both leases specifically state that "The LESSEE shall not be responsible for any payments or reimbursements under this lease *except those expressly provided herein.*" (Emphasis supplied). Nowhere in either lease is there any mention of additional payments for weekend or after hours heating or air conditioning. In fact, there is no mention of normal business hours whatsoever. The leases simply provide that the landlord is responsible to furnish and pay for, among other things, gas hot air heat and air conditioning. Our investigation determined that, since October 1999, BESB has made over \$26,000 of rental payments to

---

<sup>19</sup>The February 7, 2000, memorandum was from Amenta Hooper, DPW Leasing Supervisor, to Alibozek and it essentially said the same thing. A copy of this memorandum was sent to Delahunty and Nesteriak. At the time, Delahunty was a DPW Deputy Commissioner in charge of Facilities Management and Nesteriak was the DPW Leasing Manager.

Wertheim above and beyond the amounts required by the terms of the leases in order to pay for these unjustified additional heating and air conditioning charges.

**V. The change to the tax escalation clause was inappropriate and unauthorized, and was made primarily as the result of intentional misrepresentations by Georgianne Killeen, DPW Leasing Property Agent.**

During May 1998, the effective date of the tax escalation clause was changed by Assistant Attorney General Michael Arcari after the date had been previously reviewed and approved by the SPRB for inclusion in the lease. The tax escalation clause establishes the base date after which the state will become responsible to pay, as additional rent, any increase in real property taxes. Normally, the established date is some time after the state agency occupies the building and after all negotiated renovations have been completed by the landlord. In this case, on April 6, 1998, the SPRB approved the lease proposal outline submitted by DPW for the BESB lease. It established the base date as "after completion of construction and reassessment by the Town of Windsor."<sup>20</sup> The projected construction completion date at the time was late September 1998, and according to the approved lease proposal outlines, the estimated date that the facility would be available for occupancy by BESB to move in was "one hundred twenty (120) days after the commencement of the executed lease and approval of permits, including certificate of occupancy." The lease was signed by all parties as of May 29, 1998. The Town of Windsor did its first reassessment on October 1, 1998. The certificate of occupancy for BESB's Administrative Division was issued on October 14, 1998, and the certificate of occupancy for BESB's Industries Division was issued on December 23, 1998, after the renovations and

---

<sup>20</sup> Since this lease was executed, DPW has changed its procedures so that the SPRB approves only the final lease agreement rather than the Lease Proposal Outline. This is a positive step to streamline the process and reduce the risk of discrepancies between documents. Of course, as this investigation showed, proper procedures are only of value when they are followed.

construction were complete. This is consistent with the SPRB's approval of a projected tax escalation clause base year of 1998, at the earliest.

There is no dispute that Arcari changed the tax clause from 1998 to 1996. Arcari states that the change was made based solely upon representations made by Killeen in a handwritten note she made on a copy of a letter from Wertheim's lawyer to Killeen dated May 7, 1998.<sup>21</sup> This letter was seeking a change to the tax clause allegedly to pay for the cost of improvements made to the facility. Killeen's signed, handwritten note informed Arcari that the backdating of the tax clause had been approved by the SPRB, as reported by Babiarz. In fact, the SPRB never gave that approval, nor did Babiarz ever report that such approval had been given.

In effect, this change potentially made the state responsible to pay Wertheim for real property taxes on the increase in the value of the facility dating back to 1996,<sup>22</sup> two years before BESB even moved into the building. As a result, the Wertheims stood to gain a minimum of approximately \$35,000 annually in increased rent over the course of the initial five-year lease term and the subsequent five-year lease renewal period, for a total gain of approximately \$350,000 without any justification whatsoever.

At one point, Killeen testified that the change to the tax clause was actually made as the result of a phone conversation between Arcari and Babiarz when she was present. Killeen testified that she personally placed this phone call to Babiarz' office phone from Arcari's office phone on May 11, 1998 at approximately 3:15 p.m. Killeen stated that Babiarz answered the

---

<sup>21</sup> The handwritten note reads as follows: "Phone conversation w/ Stan Babiarz 5/11/98. This provision is OK." Killeen then signed her name immediately after the note. The "provision" of the letter to which Killeen refers in her handwritten note states, in pertinent part, "Tenant should be responsible for tax increases above the Grand List of October 1, 1997, not October 1998."

<sup>22</sup> Attorney Arcari testified that in order to ensure BESB was responsible to pay for "tax increases above the Grand List of October 1, 1997," as requested by Wertheim's attorney, based upon his discussions with Killeen and her handwritten note, he believed the effective date of the

call, she spoke to Babiarz briefly, and then she handed the phone to Arcari and listened to the discussion between Babiarz and Arcari regarding the change to the tax clause.

In fact, phone records from May 11, 1998, obtained during the course of our investigation, clearly and unequivocally establish that this alleged phone conversation never took place. Moreover, both Arcari and Babiarz deny that such a phone call occurred.

When questioned initially by Babiarz and George Edwards, Executive Director of the SPRB, in September of 1999, and when questioned by the Auditors in February and March of 2000, Killeen said she could not recall any specifics, but admitted the note appeared to be in her handwriting. Then, after a *Hartford Courant* article on the issue and after she attended a meeting including Theodore Anson, the DPW Commissioner, and Ann Nichols, Commissioner Anson's Executive Assistant, Killeen's story changed. She then claimed that Arcari directed her to write the handwritten note on the letter from Wertheim's attorney after she had listened to a phone conversation between Arcari and Babiarz during which the tax clause change was discussed and approved by both men. Killeen's story changed yet again in May, 2001, when her attorney wrote a letter to our office and when she was questioned under oath by this office during our investigation in July and August of 2001. Killeen then claimed that she wrote the handwritten note on the letter voluntarily only as a "follow up" with Babiarz, and claimed that Arcari directed her to write a similar note on a blank piece of paper for his file while they were in Arcari's office after the alleged phone call. This claim makes no sense, and there is no evidence to corroborate this version of events. Killeen could not produce a copy of this note on a blank piece of paper, and Arcari adamantly denies directing her to do anything. Additionally, Babiarz said he never

---

tax clause needed to be changed to 1996.

received a copy of the letter with the handwritten note - or any other note - from Killeen regarding the change to the tax clause.

In fact, Babiarz testified that the first time he learned about the change to the tax escalation clause was when he received a copy of the May 7, 1998, letter from Kenneth Sherbacow, a former DPW Leasing Property Agent, which was exactly what Sherbacow stated to our office under oath. Sherbacow testified that he went through Killeen's BESB file while she was out of work because of an injury, found the May 7, 1998 letter with Killeen's handwritten notes, and then delivered a copy to Babiarz.

Finally, during questioning by our office in August, 2001, Killeen revealed, for the first time, that Nesteriak directly instructed her to change the tax clause after the May 7, 1998, letter arrived from Wertheim's attorney. Nesteriak denies this claim.

**VI. DPW's internal investigation and written response to the Governor of January 24, 2001 regarding the circumstances surrounding the unauthorized change to the tax escalation clause were incomplete and misleading.**

A January 24, 2001, letter from Commissioner Anson to Governor Rowland concerning, among other things, the unauthorized backdating of the tax escalation clause, contains significant inaccuracies. In this letter, Commissioner Anson reports that upon receipt of a January 18, 2001, letter from the Auditors of Public Accounts concerning unauthorized changes to Lease Proposal Outlines without SPRB approval in this lease deal and another unrelated lease, he ordered an internal investigation to reconstruct and summarize the events. Commissioner Anson attached to this letter a "BESB Timeline" and a "TRA Summary."<sup>23</sup> He reported to the Governor that the changes to the tax clause requested by Wertheim's attorney were verbally approved by Babiarz, were "discussed with SPRB," and on May 11, 1998, were approved by the SPRB "based on a

three-way phone call with Arcari and Babiarz." This information is false. Commissioner Anson was reporting Killeen's untruthful version of events to the Governor. In fact, no one from DPW even contacted Arcari for his input before Commissioner Anson's letter was sent to the Governor.

In addition, Manuel Becerra, the newly-appointed DPW Director of Facilities Management, telephoned Babiarz on January 23, 2001, at the request of Commissioner Anson. During this phone conversation, Babiarz adamantly denied the allegations by Killeen that Babiarz was aware of and had actually approved the change to the tax clause, and Babiarz made it clear that he had no authority to approve such a change on his own. These statements by Babiarz, directly contradicting Killeen's statements, were apparently ignored by DPW and were not presented to the Governor. Becerra testified that he could not recollect speaking with Commissioner Anson after this conversation with Babiarz, although Becerra believes it was Commissioner Anson who requested that he call Babiarz. Furthermore, Becerra testified that he placed his personal, handwritten notes from this conversation with Babiarz in a personal file and forgot about them until some time later when Amenta Hooper began collecting documents in response to a subpoena from this office. At that time, he gave his file containing these notes to Amenta Hooper and never saw them again until he was presented with a copy in preparation for his interview with our office on March 25, 2002. The notes confirm Babiarz' clear denial of Killeen's claims. The notes say, "Tel. conversation w/Stan Babiarz (SPRB). Never gave GK [Georgianne Killeen] verbal OK - Don't have authority to do that - would have to get board OK."

---

<sup>23</sup> The "TRA" refers to Theodore R. Anson.

Commissioner Anson testified that he was unaware of Babiarz' denial at the time he signed the letter to the Governor on January 24, 2001. Commissioner Anson testified, however, that even if he was aware of Babiarz' denial, he would have ignored that information and presented the January 24, 2001 letter as written. When asked about this omission, Commissioner Anson replied that it was a "he said, she said" situation. When asked why his letter did not report the "he said" part, Anson said, "... it [would have] served no purpose."

**VII. Gary Gallucci apparently violated state ethics laws and regulations by personally and substantially participating in the processing of the BESB lease as a state employee and subsequently representing Wertheim, after Gallucci's retirement from state service, in connection with the same lease.**

The record reflects that Gallucci apparently violated state ethics laws and regulations when, on January 14, 1998, approximately one month after he left DPW as the Administrator of Facilities Management and interim Leasing Manager, and barely five months after his effective retirement date in August 1997,<sup>24</sup> he personally met with David Friar, President of Friar Associates, Inc., a Farmington, Connecticut architectural firm, and Frank LiPuma, Wertheim's business manager. As documented in a letter from Friar to Wertheim and LiPuma dated April 6, 1998, and as confirmed by LiPuma, the purpose of Gallucci's presence at this meeting was to discuss, *on behalf of Mark Wertheim*, the specifics of architectural and interior design services, including drawings, to be performed by Friar Associates for Wertheim at the BESB facility. State ethics laws and regulations prohibit former state employees from representing anyone other than the state in a matter in which (1) the former employee has personally and substantially participated while in state service, and (2) the state has a substantial interest.<sup>25</sup>

---

<sup>24</sup> Gallucci retired in August, 1997, but voluntarily remained at DPW on an interim basis until December, 1997, in order to transition his duties.

<sup>25</sup> See Conn. Gen. Stat. § 1-84b(a) and Regulations of Connecticut State Agencies, § 1-81-32, *et seq.* (Connecticut State Ethics Commission, Code of Ethics for Public Officials).

There can be no doubt that the state has a substantial interest in this multi-million dollar lease deal, and that Gallucci, while still serving as Administrator of Facilities and interim Leasing Manager from late 1996 through August 1997, substantially participated in the negotiation and administration of this lease. At a minimum, Gallucci personally assisted BESB officials in their search for a new facility to lease, personally accompanied BESB officials on inspections of potential sites, personally met with Wertheim and Delahunty and described the specifics of BESB's space requirements for the lease and participated in the selection of Wertheim as the landlord during the early June, 1997, meeting. In addition, Gallucci was specifically listed by Wertheim on a contact affidavit, a form required to be completed by applicants for state leases, as one of the state employees who contacted Wertheim regarding the terms and conditions of the proposed leases, along with Killeen, the DPW Leasing Property Agent assigned to the BESB lease.

Gallucci clearly "represented" Wertheim in this lease deal, despite Gallucci's sworn testimony to the contrary. We determined that Gallucci represented 184 Windsor Avenue in the ongoing negotiations with DPW and BESB regarding the extensive electrical renovations that had not been negotiated in the original lease. In fact, Thomas Pethigal, the owner of Ace Electric, who installed electrical work for Wertheim primarily in BESB's administrative offices, testified that, during October, 1998, Gallucci fired him. Pethigal stated that Gallucci approached him at the BESB facility and, ". . . he said he [Gallucci] was going to get another electrical firm to do the other section of the building, and if I didn't like it, I could sue him." Subsequently, Edward Ingalls, whom Gallucci described as a "friend of mine for many years," was brought on the job to do the extensive electrical work on the production floor costing over \$100,000. Despite the fact that Gallucci had personally participated in the selection of Wertheim as the landlord for this lease deal, and despite the fact that Gallucci was well aware of state ethics

statutes and regulations and had previously requested opinions from the Ethics Commission to protect his own interests, Gallucci knowingly took substantial actions on Wertheim's behalf.

This conduct is precisely the sort of conflict of interest in the midst of ongoing state matters that the state ethics laws and regulations prohibit. The prohibition against Gallucci's activities applies regardless of whether he was compensated by Wertheim, and the ban on such activities is a lifetime ban. In addition, Gallucci admitted under oath that he hoped to profit by his activities, in that his goal was to ultimately secure Wertheim's business for Partitions, Inc., a private company which employed Gallucci at the time on a part-time basis. As Gallucci stated, "I wanted to get some work for Partitions, and I was a commissioned person for Partitions."

## CONCLUSION

In sum, we find that DPW leasing officials failed in their duties and responsibilities to conduct effective, proper and fair lease negotiations, and to properly supervise professional electrical renovations and construction work associated with the BESB lease. DPW's litany of failures exposed the state and its taxpayers to losing hundreds of thousands of dollars -- to the benefit of the Wertheims. In fact, for example, the Wertheims continue to press a claim against the state for more than \$100,00 concerning the improper change in the tax escalation clause. Without the exemplary efforts of the SPRB and its staff, the results could have been much worse. As Kenneth Sherbacow testified, "They kept trying every which way to get more money out of the State of Connecticut for this lease. . . . It was like pigs at the trough."

The DPW Leasing Division appeared to follow an "ends justify the means" approach -- a view that laws, policies, and procedures governing their conduct need not be followed when it seemed inconvenient or impeded their ability to broker a deal. This attitude, combined with

outdated, vague, and poorly crafted statutes, policies and procedures, provided fertile ground for wrongful and unauthorized conduct.

One particular example speaks volumes. On September 17, 1999, Killeen approached Babiarz and George Edwards, SPRB Executive Director, and personally presented a "quid pro quo" proposal, at Nesteriak's request. When this proposal was made, the SPRB had already rejected DPW's unjustified request to increase the rental rates paid to Wertheim in order to reimburse him for the costs of electrical renovations above and beyond the terms of the lease package, and the SPRB had discovered the unauthorized backdating of the tax escalation clause potentially resulting in hundreds of thousands of dollars in excess compensation to Wertheim. According to Babiarz, Killeen asked Babiarz and Edwards whether the SPRB would be receptive to reconsidering Wertheim's request to increase the rental rates to pay for the increased electrical costs if DPW, as consideration, could renegotiate the tax escalation clause back to 1998 as it was originally approved by the SPRB. In fact, Nesteriak testified that he sent Killeen to meet with Babiarz when the landlord (Wertheim) approached DPW with a deal. As Nesteriak stated, "The landlord came to us with the - - we will sign off on the tax year if you sign off on the electrical and pay us the \$100,000 plus that you owe us." Babiarz and Edwards rejected this effort by Killeen and Nesteriak to cut yet another back door deal on behalf of Wertheim, and informed Killeen that any such proposal must be formally submitted to the SPRB in writing and must be properly supported with appropriate justification and documentation.

Time and time again, DPW Leasing officials either ignored or manipulated leasing laws, policies and procedures specifically designed to ensure that the SPRB reviews and approves all matters affecting the terms and conditions of a state lease, and to ensure that all prospective landlords of state leases are treated equally and fairly.

We found no legitimate explanation for the premature dealings, preferential treatment, and unfair advantages afforded to Wertheim and his company in selecting him as the landlord and then unjustifiably increasing his compensation.<sup>26</sup> There have been published reports, confirmed and expanded by testimony in our investigation, about personal and political ties among those primarily involved -- Wertheim, Delahunty, Gallucci, and Nesteriak. Delahunty testified that he considers Wertheim “a friend,” and that he was first introduced to Wertheim by Wertheim’s sister-in-law sometime during the 1980’s. Testimony from him and others established that the Wertheims hosted a fundraiser honoring the Governor at their home in West Hartford on March 5, 1998, and that Wertheim celebrated his 50th birthday at the Governor’s mansion. Delahunty attended both of these events. Nesteriak has known Delahunty since 1994, and in fact, Nesteriak testified that it was Delahunty who offered him his job at DPW. Gallucci co-sponsored the Wertheims’ March 5, 1998 fundraiser and, along with his wife, Patty Gallucci, hosted a separate fundraiser for the Governor during 1998 that was also attended by Delahunty. Gallucci stated that he is “well acquainted” with Wertheim, with whom he has “played golf several times at my [Gallucci’s] club and other places.”

Our investigation has so far produced no evidence of bribery, or other direct monetary rewards or benefits to public officials. Nor is there any indication of involvement or knowledge on the part of the Governor or his staff. Delahunty, Nesteriak, and Gallucci all state that they

---

<sup>26</sup>Unfortunately, our efforts between January and the end of May 2002 to locate Wertheim and serve him with a subpoena to compel his sworn testimony were unsuccessful. Apparently, according to Wertheim's attorney, Wertheim was traveling abroad on business and is unwilling or unable to return to Connecticut for an interview. Our offers to travel to a mutually convenient location at our expense to interview him voluntarily at a time convenient to Wertheim were rejected. In addition, we offered to take his testimony under oath via telephone but that offer was rejected as well.

never discussed the matter with the Governor. Indeed, there is evidence that the Governor was misled and misinformed about certain points.

Regardless of their motivation, DPW officials unlawfully circumvented state laws and procedures to pick a landlord for BESB without any meaningful attempt to achieve the best deal for taxpayers. Those same officials then repeatedly attempted to compel the state to make additional unjustified payments to the landlord they had improperly selected.

Even without evidence so far of direct monetary or personal benefit to public officials involved, favoritism at state expense is exactly the evil made illegal by the statutes. Whatever the motive, such misconduct is reprehensible and unacceptable. Favoritism deprives citizens of the full value of their tax dollars, contrary to the goal of open and fair competitive bidding.

## RECOMMENDATIONS

1. The Governor should promptly take appropriate steps to ensure that the five-year renewal option on this lease is not exercised, and that DPW immediately ceases all rental payments being made by BESB to the landlord, Wertheim, that are expressly prohibited by the terms of the lease and recover the amounts improperly paid.
2. The Governor should consider appropriate disciplinary action against state officials responsible for violations of law or regulations.
3. The Governor should consider directing that the overpayments made for heating and air conditioning costs be recouped directly from the next rental payment.
4. The State Properties Review Board should review this lease in light of the facts revealed by this investigation to determine whether the lease provided the best available price for BESB's space needs at the time, and to recommend possible recourse if it did not.

5. The Governor should consider appropriate actions to ensure that a thorough review be conducted of the statutes, regulations, policies and procedures governing state leasing.

6. The Governor should consider appropriate actions to remind DPW of the importance of ethical and fair treatment of all prospective landlords regardless of personal or political associations, and to remind all DPW employees of their obligation to abide by the statutes, regulations, policies and procedures that govern the conduct of their official duties and responsibilities.

7. We are forwarding this report to the State Ethics Commission for its consideration regarding the actions of Gary Gallucci.

8. We are forwarding this report to the Office of the Chief State's Attorney for review to determine whether the facts and circumstances warrant an investigation into potential criminal wrongdoing.

We stand ready to assist the Governor, DPW, or others in considering and implementing these recommendations.