



THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

September 9, 2011

The Honorable Carolyn Lerner
United States Special Counsel
U.S. Office of Special Counsel
1730 M Street, NW, Suite 218
Washington, DC 20036

Re: OSC File No. DI-11-1353

Dear Ms. Lerner:

By letter dated March 7, 2011, Mr. William E. Reukauf, Associate Special Counsel, referred for investigation disclosures from Mr. Evan Seeley, a Federal Aviation Administration (FAA) Air Traffic Control Specialist (ATCS) at the Fort Worth Air Route Traffic Control Center (ZFW-ARTCC). Mr. Seeley's disclosure pertains to the period of time that he was assigned as a Front Line Manager (FLM) to the New York Air Route Traffic Control Center (ZNY-ARTCC) from February 2010 to January 2011. Mr. Seeley made numerous allegations concerning the management and operation of ZNY.

Specifically, Mr. Seeley alleged that controllers routinely engage in conduct that violates FAA orders and policies. He asserts that ZNY management is aware of these violations and performance deficiencies, but has failed to address, and often condones, the controllers' conduct. He contends that the controllers' actions and management's indifference to, and tolerance of, these actions have compromised air traffic safety. I delegated investigation responsibility to FAA's Office of Audit and Evaluation. Enclosed is the Report of Investigation (ROI), including corrective actions.

In summary, a majority of Mr. Seeley's allegations were substantiated or partially substantiated. Allegations concerning the use of non-standard phraseology, deviations from required coordination procedures, failure to issue areas of weather depicted on controller's displays to aircraft, and the administration of on-the-job training were substantiated. Allegations concerning controllers leaving the facility prior to the end of their shift, routinely engaging in conduct that violates FAA orders and policies, sleeping on the midnight shift, and the use of electronic devices in the control room were partially substantiated. Allegations of improper slowdowns, stoppages of air traffic, job actions such as refusal to provide on-the-job training instruction, and the misapplication of functional training were also partially substantiated. Allegations of wireless routers installed by the National Air Traffic Controllers Association (NATCA) throughout the operations area, widespread time and attendance fraud, and violations of the 8-hour rest period were not substantiated.

The investigative teams found a widespread facility practice of avoiding and minimizing the required documentation in most areas of facility administration, such as performance

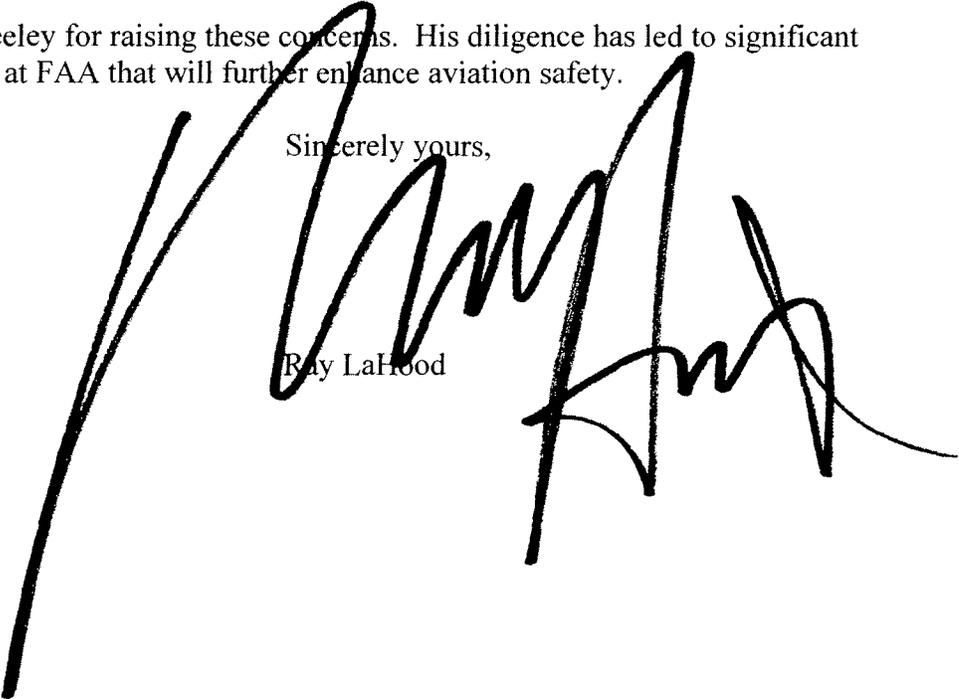
management, conduct and discipline, training, management guidance, meeting minutes, etc. Most of the problems found at ZNY were the result of poor management or management inaction. There was a general sense that ZNY management had ceded a substantial amount of control to the air traffic controllers' collective bargaining unit representatives at ZNY.

Significant corrective actions are underway to address these deficiencies. On September 6, 2011, the FAA Air Traffic Organization (ATO) placed an entirely new management team at ZNY. The ATO has also developed a comprehensive plan for corrective actions to bring ZNY back into compliance with FAA rules, procedures, and standards. Those responsible will be disciplined, and all areas of non-compliance will be addressed. The corrective action plan is discussed in detail in the attached ROI.

I am grateful to Mr. Seeley for raising these concerns. His diligence has led to significant process improvements at FAA that will further enhance aviation safety.

Sincerely yours,

Ray LaHood



Enclosures

**Federal Aviation Administration
Report of Investigation
To the Secretary of Transportation**

In response to:

United States Office of Special Counsel (OSC)

File DI-11-1353

**Office of Audit and Evaluation (AAE-1)
Federal Aviation Administration
Washington, D.C.**

September 1, 2011

Executive Summary

In March 2011, the Federal Aviation Administration (FAA), Office of Audit and Evaluation (AAE) was directed by the Secretary of Transportation to investigate the Office of Special Counsel (OSC) whistleblower disclosure, OSC File No. DI-11-1353, dated March 7, 2011. AAE is an independent FAA organization with authority to conduct oversight of all FAA organizations and programs. This disclosure was submitted by Mr. Evan Seeley, who consented to the release of his name, and who is now an FAA Air Traffic Control Specialist (ATCS) at the Fort Worth Air Route Traffic Control Center (ZFW-ARTCC). Mr. Seeley's disclosure pertains to the period of time that he was assigned as a Front Line Manager (FLM) to the New York Air Route Traffic Control Center (ZNY-ARTCC) from February 2010 to January 2011.¹ Mr. Seeley was relieved of his ZNY FLM duties in January 2011, prior to the completion of his one-year, supervisory probationary period, and he was offered, and accepted, a non-supervisory position ATCS position at ZFW.

Mr. Seeley made numerous allegations concerning the management and operation of ZNY. Specifically, Mr. Seeley alleged that controllers routinely engage in conduct that violates FAA orders and policies. He asserted that ZNY management was aware of these violations and performance deficiencies, but has failed to address, and often condones, the controllers' conduct. He contends that the controllers' actions and management's indifference to, and tolerance of, these actions have compromised air traffic safety.

Upon receiving the OSC referral from the Secretary of Transportation, AAE assembled a team from FAA Security and Hazardous Materials Safety (ASH), which conducted interviews with Mr. Seeley in March and April 2011, as well as with 12 other managers, including the ZNY facility manager during the same time period. The ASH interviews suggested that a number of Mr. Seeley's allegations were credible and might be substantiated, but those preliminary findings required corroboration, extensive technical evaluation, and surveillance from air traffic safety experts and oversight investigators.

As a result, AAE assembled a more specialized investigative team composed of safety, quality assurance, and oversight specialists from the Air Traffic Organization (ATO), and the Air Traffic Safety Oversight Service (AOV) to conduct more in-depth analyses of the allegations, as well as extensive surveillance of performance in the facility, building upon the preliminary ASH findings. This team interviewed the complainant on June 8 and June 17, 2011. The teams conducted a detailed investigation at ZNY on May 25-27, 2011, June 13-

¹ Prior to receiving OSC referral DI-11-1353, it should be noted that Mr. Seeley's allegations were widely reported in New York-area and national news media in early February 2011. In response, the FAA Air Traffic Organization (ATO) assembled a team which began an investigation at ZNY of Mr. Seeley's allegations. Mr. Seeley also disclosed his allegations directly to AAE and to the Department of Transportation, Office of Inspector General (DOT-OIG) Hotline at about the same time as the media stories appeared. When the OSC referral was received on March 7, 2011, AAE suspended the ATO investigation, which was incomplete, and initiated a new investigation conducted by a team including investigators from both inside and outside of the ATO under the supervision of AAE. All materials from the earlier and incomplete ATO investigation were retained by AAE.

17, 2011, June 21-23, 2011, and June 28-30, 2011. During the investigation, the safety of flight team monitored ZNY operations for 32 hours. The investigative teams also reviewed facility documentation and conducted 44 interviews, which included managers, FLMs, controllers, union officials and a labor-relations specialist from the FAA Eastern Regional Headquarters office. Below is a summary of the findings of this investigation:

- The allegations concerning the use of non-standard phraseology, deviations from required coordination procedures, failure to issue areas of weather depicted on controller's displays to aircraft, and the administration of on-the-job training were substantiated.
- The allegations concerning controllers leaving the facility prior to the end of their shift, routinely engaging in conduct that violates FAA orders and policies, sleeping on the midnight shift, and using electronic devices in the control room were partially substantiated.
- Allegations of improper slowdowns, stoppages of air traffic, job actions such as refusal to provide OJTI, and the misapplication of functional training were partially substantiated.
- Allegations of wireless routers installed by NATCA throughout the operations area, widespread time and attendance fraud, and violations of the eight-hour rest period were not substantiated.²
- The investigative teams found a widespread facility practice of avoiding and minimizing required documentation in most areas of facility administration, such as performance management, conduct and discipline, training, management guidance, meeting minutes, etc.
- Most of the problems found at ZNY were the result of poor management or management inaction. There was a general sense that management had ceded a substantial amount of control to the air traffic controllers' collective bargaining unit representatives at ZNY. Significant corrective actions are underway to address these deficiencies.

² However, as presented in this report, these areas have been heavily scrutinized at facilities across the U.S. since early February through April 2011, involving incidents (widely reported in national news media) of controllers sleeping on the job and the unauthorized use of portable electronic devices. Thus, the lack of current substantiation may be more a reflection of the amount of management attention directed toward correcting such incidents of non-compliance with rules and policy, which may have been common-place during the period of time Mr. Seeley was assigned to ZNY.

Methodology of Investigation

AAE assembled an investigative team composed of members from the FAA Air Traffic Organization (ATO), the Air Traffic Safety Oversight Service (AOV), and Security and Hazardous Materials Safety (ASH). AAE conducted routine oversight during the process of collecting evidence during this investigation and received regular updates during the period of this investigation, which took place between March and July 2011.

The field investigators³ were:

Tim Arel, Event Investigations Manager, ATO Safety, FAA HQ.

Martin Adams, Manager, Airspace and Strategic Operations, En-route and Oceanic Services, FAA HQ

David Ayars, Air Traffic Safety Inspector, Air Traffic Safety Oversight Service, FAA HQ

Brad Cunnington, Audit and Compliance Branch, Air Traffic Safety Oversight Service, FAA HQ

Jim D'Ambrosio, Manager, Air Route Traffic Control Center, En-route and Oceanic Services, Houston, TX

Nora Bialek, Staff Manager, TRACON, Terminal Services, Dallas-Fort Worth, TX

Lyndon Dyer, Manager, Administrative Services, Central Service Center, Fort Worth, TX

Victoria Fuentes, Special Agent, Security and Hazardous Materials Safety, FAA HQ

Angela Hawkins, Quality Assurance Specialist, ATO Safety, FAA HQ

Gus Nezer, Director, Central Service Center, ATO Mission Support Services, Fort Worth, TX

Lisa Simonds, Manager, DFW Office, Air Traffic Safety Oversight Service, Fort Worth, TX

Elaine Stone-Arthur, Supervisor, Emergency Operations, Communications and Investigations, Security and Hazardous Materials Safety, FAA HQ

Robert Tobin, Group Manager, Customer Service Delivery, ATO Information Technology Office, FAA HQ

Michael Wagner, Quality Control Group, Eastern Service Area, Atlanta, GA

³ The AAE investigation of this matter included many other FAA personnel. Only field interviewers and those conducting surveillance are listed.

The investigative teams conducted 56⁴ face-to-face interviews between March and June 2011. The complainant was interviewed four times, in March, April (by ASH), and twice in June 2011 by the full investigative team (ATO, and AOV). Others interviewed included Mr. Seeley's former operations manager (OM) in Area B,⁵ Lori Weber, the ZNY overall facility manager (air traffic manager, ATM), David LeCates, as well as three other OMs from among the other six ZNY areas. Additionally, interviews included two support managers (SM), one traffic management officer, 11 FLMs, four certified professional controllers (CPC), one developmental controller, two ZNY National Air Traffic Control Association (NATCA)⁶ facility representatives, the staff manager, the air traffic manager, and the Technical Operations system operations control manager. A single telephone interview was conducted with the Eastern Region labor-relations specialist for ZNY (see Appendix A for the interview list).⁷

The complainant did not provide information concerning any additional disclosures beyond those described in the complaint, but he suggested that due to the pervasive culture at the facility, random, indirect monitoring would suffice to substantiate his allegations. Audio and radar data for the time period covering when the safety violations allegedly occurred were no longer available, with the exception of archived operational errors (OE) and operational deviations (OD).⁸

The investigators monitored a total of 32 hours of live air traffic operations, both directly and indirectly. The team performed direct monitoring in each of the six areas at ZNY by plugging in with controllers working the sectors and also observing FLM-controller interaction in each area. The team also performed indirect monitoring of air traffic operations by monitoring random air traffic sectors from the Operations Manager-in-Charge (OMIC) position at the watch desk and by reviewing 12 systematic air traffic operational research initiative (SATORI) playbacks of randomly selected sectors, including some that occurred when investigators were not present in the facility (Appendix B).

All reported OEs and ODs that occurred at ZNY in the time period from October 2010 to May 2011 were reviewed, including documentation and analyses of causal factors (Appendix J). These data were compared with reported air traffic incidents at Washington and

⁴ The ZNY ATM, OMs, and FLMs were, in most cases, interviewed multiple times between March and June 2011.

⁵ ARTCC facilities are divided into areas (Area A, B, C, D, and so on), each of which is managed by an OM, and each area has multiple FLMs to cover each shift.

⁶ NATCA is the authorized collective bargaining unit representing air traffic controllers.

⁷ With the exception of ZNY ATM David LeCates and the complainant, all personnel interviewed in the course of this investigation requested and received a promise of anonymity, with the exception of those named by the complainant in allegations. Universally, ZNY personnel cited fear of, and concerns about, retaliation from their peers, and the majority of them stated at the outset of the interview that they would only share detailed accounts if their identities were protected. Their requests were granted in exchange for full and accurate testimony, which we deemed necessary for a comprehensive investigation of the allegations. For this reason, most of the interviews were conducted at an off-site location away from ZNY. The majority of collective bargaining unit-covered employees (NATCA) insisted upon NATCA representatives being present for their interviews.

⁸ Tapes are routinely kept for 45 days at terminal facilities and 15 days at en-route facilities (unless otherwise preserved as part of an incident or accident investigation) as required in FAA JO 7210.3W.

Cleveland Air Route Traffic Control Centers (ARTCC), which are similar in terms of airspace complexity and overall volume of air traffic operations.

Random and specific facility documentation regarding technical performance was reviewed, and included technical training discussion (TTD) forms (Appendix C), on-the-job training (OJT) evaluation forms (Appendices G and H) and OJT instructor (OJTI) evaluation forms (Appendix I). Ten (10) randomly-selected FLM TTD forms, 50 randomly-selected CPC TTD forms, 100 randomly-selected OJT evaluation forms, and six randomly-selected OJTI evaluation forms (Appendix G) were reviewed and analyzed.

Other documentation reviewed included: severe weather training briefings (Appendix K), classroom training student critiques (Appendix F), functional training and basic watch schedule memoranda of understanding (MOU) (Appendix E), facility staffing information, time and attendance records and guidance (Appendices M and N), travel vouchers (Appendix O), notice of unsatisfactory performance (NUPS), opportunity to demonstrate performance (ODP), disciplinary actions, new FLM/Supervisor training courses (Appendices D and Q), and facility incident reports (Appendix J), and FAA policy reference documentation (Appendix L).

Allegations and Findings⁹

Allegation #1: Controllers at New York ARTCC [ZNY] routinely engage in conduct that violates FAA orders and policies. New York ARTCC management is aware of these violations and performance deficiencies, but has failed to address, and often condones, the controllers conduct. The controller's actions, and management's indifference to and/or tolerance of these actions, have compromised air traffic safety.

Complainant Interview: The complainant stated that no one felt comfortable addressing performance deficiencies, quoting other FLMs as saying, "I don't know if we can talk to them [controllers] because they may have filed an ATSAP" (Air Traffic Safety Action Program report).¹⁰ When asked who tolerated performance deficiencies and condoned the lack of correction by FLMs, the complainant stated that it was universally tolerated. Additionally, he stated that there was very little enforcement as a rule or policy, and the OMs would overrule attempts to formally document performance deficiencies.

Findings: The investigation included monitoring 32 hours of ZNY operations and reviewing 56 air traffic incidents including 28 OEs and 28 ODs that occurred since October 2010. Instances of non-standard phraseology were observed in 48% of the monitored sessions, and instances of non-compliance with required procedures were observed in 40% of the monitored sessions. These observations, as well as the documented OEs and ODs, indicated that the performance of nearly 50% of the controllers evaluated were not in compliance with required FAA standards.

The investigation team reviewed a random sample of 73 controller and FLM TTDs; seven noted individual performance deficiencies. The remaining 66 TTDs identified no technical training issues and listed positive or generic facility comments.

Interviews with seven FLMs and three OMs currently assigned to ZNY indicated a reluctance to officially document any negative performance issues. Some of the FLMs interviewed indicated that they do issue on-the-spot, verbal corrections to controllers when they observe non-standard phraseology or non-compliance with procedures. However, these FLMs also indicated a reluctance to document anything other than positive observations.

When asked about the lack of documentation and controller performance deficiencies, in general, some OMs and FLMs indicated that they are unsure if they can document or say

⁹ In this section, findings are presented along with the specific violations of rules, policies, or procedures documented by the investigation. For a more detailed reference of the FAA rules and policy guidance pertaining to this investigation, see Appendix L.

¹⁰ ATSAP is a safety reporting program that was implemented by the FAA on August 5, 2008 and is intended to motivate controllers to report safety incidents in exchange for immunity from disciplinary action. It is modeled upon a similar successful program in the air transport industry, Aviation Safety Action Programs (ASAP), which are widely regarded as making significant contributions to flight safety. The immunity provision in ATSAP has greatly increased the number of safety reports filed, which is tangible evidence that many reports were not filed in the past due to fears of disciplinary action. Some managers feel ATSAP has hampered their ability to enforce FAA policy, and they claim ATSAP can be used as a "get out of jail free card."

anything to controllers about their performance since the implementation of ATSAP. FLMs indicated that if they managed ZNY controllers as managers routinely do in other FAA facilities, such as compiling written documentation of performance or employee conduct problems, they would “stick out” and face retaliation from the union (NATCA), and they would suffer from a lack of support from facility management. When asked to expand upon the fears of reprisal and/or retribution, a few FLMs indicated that ZNY is “a hostile environment” for FLMs.

These instances include:

- Some controllers may have tried to “set up” FLMs for an OD by allowing an aircraft to enter another sector’s airspace, without a handoff, while the controller involved claimed they were looking at something else and didn’t see the hand-off.
- FLMs had difficulty obtaining on-the-job training instructor (OJTI) volunteers from an entire team whenever the FLMs attempted to address performance or conduct problems with an individual controller.
- An FLM indicated that a NATCA official commented to him about what union officials might have said to previous investigative teams (intended as a threat).

The lack of support from senior facility management was expressed by a few FLMs using language or terms similar to what Mr. Seeley described during his interviews. Terms such as “on an island,” “out on a limb” and “making waves with the union” were used repeatedly to describe instances in which these FLMs were discouraged from documenting performance or conduct issues by facility management. A specific instance was cited in which an FLM observed and discussed non-compliance with a facility policy with two controllers and then documented the issue in a letter of conversation. The FLM stated that his supervisor subsequently tore up the letter.

Considering the number of performance deficiencies pertaining to phraseology, procedures and severe weather information witnessed by the AAE investigative team, the pervasive lack of documentation is consistent with the allegation that ZNY management has been clearly aware of performance deficiencies at ZNY, has failed to address them, and often condones non-compliant controller performance. The lack of documentation is problematic, making it difficult to document that performance deficiencies are being identified, discussed, and corrected. The pervasive lack of documentation is consistent with the statements made by the complainant and other FLMs interviewed, which confirms that management actively discouraged the documentation of controller performance. Thus, this allegation was substantiated.

FAA Rule or Policy Non-Compliance References: FAA Joint Order¹¹ (JO) 7210.56C, Air Traffic Quality Assurance, Chapter 3, *Technical Training Discussions* (TTD), indicates TTDs provide for the continuous enhancement of technical proficiency and correction of any

¹¹ “JO” refers to the FAA formal organization routing code (AJO) of the ATO. Thus, JOs are policies and orders issued by ATO (aka AJO). Other citations in this report refer to FAA Orders (FAAO), which are FAA-wide policy guidelines.

performance deficiencies in the air traffic workforce. The policy also stipulates that TTDs are intended to provide formal feedback from first-level supervisors regarding an employee's proficiency and a method to enhance the individual's development. TTDs are not intended to be a snapshot observation but rather a summary of observations by the employee's first-level supervisor, the employee, or other supervisors, and staff specialists within the work unit. In preparation for a TTD, supervisors should document their own observations, along with those forwarded by others, as well as formal documentation such as Quality Assurance Reviews (QARs), or operational errors.

Allegation #2: [controllers at New York ARTCC] ...maintain a careless and casual attitude toward radio and interphone communication, which often results in miscommunication and confusion. [Further,] ...in many instances, controllers fail to reference sector numbers, call signs and operating initials as required by FAA JO 7110.65. [And] ...controllers who might otherwise use proper phraseology are pressured to use non-standard forms [of communications] that do not comply with Order 7110.65.

Complainant Interview: When asked to describe the instances of non-standard phraseology and improper landline communication, the complainant stated that interphone communication was "conversational." When asked for specific instances, he referred to widespread, non-standard use of conversational speech patterns in the control room, and reported that some controllers were harassed by other controllers if they attempted to conform to FAA requirements. Additionally, he stated that management has a low standard for procedural compliance and tolerates bad phraseology.

Findings and FAA Rule or Policy Non-Compliance References: Investigators observed several instances of non-compliance with radio and interphone communication requirements as required by FAA JO 7110.65, *Air Traffic Control*. Listed below are examples of the non-standard phraseology witnessed by the investigators along with the applicable reference paragraphs in FAA JO 7110.65:

- Incorrect altitude and frequency phraseology, generally using numbers in group format, i.e., "thirteen thousand" instead of "one three thousand." (FAA Order (FAAO) 7110.65, para. 2-4-17)
- Usage of group format for speed assignments instead of single-digit format (i.e., maintain "three hundred knots" instead of "three zero zero knots"). (FAAO 7110.65, para. 2-4-17)
- Incorrect methodology for speed assignment. For example, "BTA2825, what's your speed going to be in the climb?" instead of "BTA2825, say airspeed" and, "BTA2825, increase your rate-of-climb through uh twenty-three please." (FAAO 7110.65, para. 5-7-2)
- Stating "Direct LANNA now" instead of "Cleared direct LANNA." (FAAO 7110.65, para. 4-2-5)

- Omitting operating initials and position identification during interphone intra/interfacility communications. (FAAO 7110.65, para. 2-4-12)
- Incorrect phraseology during the acceptance of point outs; “DAL2134, uh, yeah that’s good” instead of “DAL2134, point-out approved.” (FAAO 7110.65, para. 5-4-3)
- Dropping of complete call-signs in many instances either the lack of use of “November” or aircraft type prior to registration number, or other approved nomenclature. (FAAO 7110.65, para. 2-3-4)¹²
- Omitting “Center” on initial radio contact with aircraft and when transferring communication of aircraft to another frequency (i.e., “N1234 New York” instead of “N1234, New York Center” or “Contact New York on...” instead of Contact New York Center”). (FAAO 7110.65, para. 2-4-19)

Instances of non-standard phraseology were observed in 48% of the monitored sessions, and this allegation was substantiated.

Allegation #3: [controllers at New York ARTCC] ...fail to adhere to proper procedures set forth in FAA JO 7110.65 for airspace coordination with other controllers and facilities. [Complainant] ...frequently observed controllers turn aircraft without coordination while the aircraft is still within the confines of other controllers’ airspace. [Complainant claims] ...during his own training at the New York ARTCC he was discouraged from coordinating with other controllers prior to turning aircraft and notes that this practice is considered acceptable throughout the facility.

Complainant Interview: During the interview with the complainant, he stated that he could not provide specific dates or times when controllers deviated from required procedures, other than those OEs and ODs that had been previously reported and investigated.

Findings and FAA Rule or Policy Non-Compliance References: The investigation focused on a review of the reported OEs and ODs and monitoring of current ZNY operations to determine the validity of the allegation.

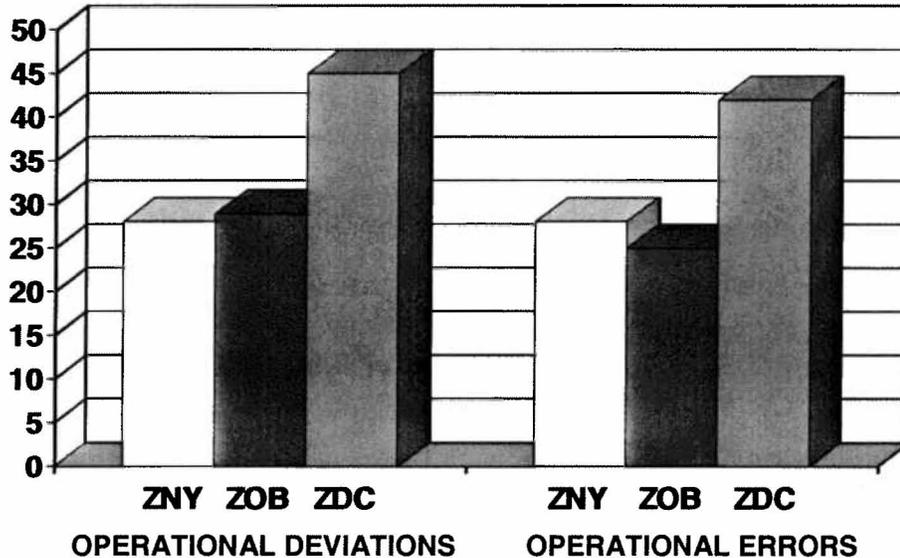
ZNY has had 28 OEs and 28 ODs for a total of 56 events for the period October 2010 to May 2011. In comparison with similar ATC level-12¹³(en-route facilities such as Cleveland

¹² All U.S.-registered aircraft are assigned a registration number beginning with the letter N (“November” in the International Civil Aviation Organization (ICAO) phonetic alphabet) followed by a combination of numbers or letters. For example, an aircraft registered as N-400TZ, would be addressed November Four Zero Zero Tango Zulu. Scheduled airlines and military aircraft are assigned specific call-signs followed by a flight number and are referred to by call sign in lieu of aircraft registration number.

¹³ ATC facilities are rated by complexity from levels 1-12, where the higher the number, the more complex the facility--taking into account a combination of factors including complexity, operations, runway configurations,

ARTCC (ZOB) and Washington ARTCC (ZDC), ZNY has an average number of OEs and ODs for the nine months (Oct. 2010 – May 2011) and fiscal year 2011. The chart below displays a comparison of the three facilities.

**Operational Deviations
and
Operational Errors
October 2010 to May 2011**



Listed below are examples of the procedural non-compliance issues observed by investigators along with the applicable reference paragraphs in FAA JO 7110.65:

- An aircraft had already been handed-off and transferred to the next sector before the controller advised that sector of speed control restrictions that had been issued to meet mile-in-trail (MIT) restrictions. (FAAO 7110.65, para. 5-4-5)
- An aircraft was handed off climbing to Flight Level 280. The controller amended the aircraft's assigned altitude due to an overtake situation. The data block was not updated with the revised assigned altitude and no coordination was effected with the next sector. (FAAO 7110.65, para. 5-4-5)
- Communication was transferred by one controller while an aircraft was in conflict with another aircraft encroaching from another sector. At the same time, the controller working the encroaching aircraft did not point out or coordinate the aircraft under their control. (FAAO 7110.65, para. 5-4-5 and 5-4-6)

proximity to other airports and the traffic levels at those airports, etc. Thus level 12 facilities such as ZNY are the most complex.

- Climb clearances were issued prior to an aircraft entering the receiving sector's airspace with no point-out given. Descent clearances were also issued prior to entering the receiving sector's airspace without proper coordination. (FAAO 7110.65, para. 5-4-7)
- Speed assignments were issued to aircraft while they were in a prior sector's airspace without coordination and in other instances speed assignments were not coordinated with the next sector. (FAAO 7110.65, para. 5-4-6)
- Aircraft were issued course deviations for weather while they were in a prior sector's airspace without coordination. (FAAO 7110.65, para. 5-4-5)
- Data blocks were not updated to reflect the assigned, interim, or reported altitude of aircraft. (FAAO 7110.65, para. 5-3-8)
- Data blocks were dropped from the controller's display prior to exiting their sector and before all potential conflicts had been resolved. (FAAO 7110.65, para. 5-3-8)
- Controllers failed to issue safety alerts to aircraft involved in two recent near, mid-air collisions (NMAC). The NMACs occurred on January 20, 2011, with American Airlines flight 951 and two US Air Force C-17s and again on June 3, 2011, with Continental Airlines flight 1729 and Lab Quest flight 900. (FAAO 7110.65, para. 2-1-6)

The documented air traffic incidents that occurred at ZNY, as well as the observed instances listed above, substantiate the allegation that ZNY controllers frequently deviate from required FAA ATO procedures.

Allegation #4: ...other than disseminating occasional Significant Meteorological Information (SIGMET) and Airmen's Meteorological Information (AIRMET) advisories, controllers rarely issue weather (WX) advisories to aircraft as required by FAA JO 7110.65 , paragraph 2-6-4. [Complainant asserts that] ...Aircraft routinely fly through moderate, heavy, and extreme precipitation without being advised of these conditions. [Further] ...when asked to issue WX advisories, controllers often demand additional spacing between aircraft, referred to as miles-in-trail, in order to issue the advisories. [And] ...when their requests are denied, the controllers do not issue the WX advisories.

Complainant Interview: During one of Mr. Seeley's interviews, he was asked to specify when and where aircraft were routinely allowed to fly through known areas of moderate to heavy weather. He stated that it occurred anytime they had areas of precipitation, especially in Sector 55. He explained that controllers assumed that certain aircraft had highly-sophisticated weather radar,¹⁴ and controllers would say they were too busy to issue weather advisories. If told to issue the weather, controllers would request additional aircraft spacing

¹⁴ Virtually all air carrier and military aircraft, as well corporate jet aircraft have highly sophisticated weather radar on-board.

in response to the perceived increased workload. The complainant stated that generally, “nobody at ZNY issues weather information to aircraft.”

Findings: Investigators observed several instances in which weather/areas of precipitation that were depicted on the controller’s display were not issued to aircraft flying through the depicted weather. Additionally, interviews with seven FLMs and the Support Manager for Quality Control indicated that controllers do not always issue this weather information for the following reasons:

- Airspace complexity and air traffic volume resulting in heavy controller workload.
- The stratification of the weather display versus the altitudes of the aircraft transiting the area. For example, the depicted areas of weather may be known to be below 17,000 feet and traffic flying over that area may be above 20,000 feet and therefore, there is no reason to issue the advisory.
- Commercial aircraft and the more complex general aviation aircraft that transit their airspace are equipped with better weather radar than on the controller’s displays. Therefore, the aircraft do not need the weather information relayed to them.

The investigative team was onsite during several severe weather days at ZNY and observed the distribution and issuance of all Significant Meteorological Information (SIGMET) reports.

Investigators did observe instances in which controllers received a pilot weather report (PIREP) regarding turbulence and did not advise subsequent aircraft transiting the route of the relevant weather information.

The observed instances listed above do substantiate this allegation, although the evidence of this non-compliance being pervasive at ZNY was inconclusive.

FAA Rule or Policy Non-Compliance References: FAA JO 7110.65, paragraph 2-6-4(a) states “Issue pertinent information on observed/reported weather and chaff areas.” Paragraph 2-6-4(d) states “Use the term “precipitation when describing radar derived weather.” The policy does stipulate no exceptions to these requirements regardless of whether or not the aircraft are radar equipped, and controllers should not assume they know how a given aircraft is equipped.

FAA JO 7110.65, paragraph 2-6-3(d) states “Relay pertinent PIREP information to concerned aircraft in a timely manner.”

Allegation #5: Functional Training. [Complainant states that] ...the training provided to new controllers, known as developmentals, is grossly inadequate. Generally, [complainant contends] the cavalier attitude of the controllers concerning FAA rules and policies is instilled in the developmentals through the training process. [For instance, the complainant states that] ...unlike other air traffic facilities, managers and controllers at the New York ARTCC do not acknowledge the

importance of the radar associate (RA) position and thus do not emphasize and encourage training on this position. Rather than ensuring that developmentals spend critical training hours learning the airspace and practicing proper phraseology, positive separation, and efficient coordination for the RA position, training time is largely spent on the radar position. Because the managers and controllers do not stress the importance of proper coordination, the developmentals come to view the RA position as unnecessary. The end result, [complainant contention] is that controllers lack fundamental skills and cannot function effectively when working on a radar team.

Complainant Interview: During the interview with the complainant, investigators found that Mr. Seeley believed that functional training was unique to ZNY. With regard to the allegation that the training of developmental controllers is grossly inadequate, the complainant stated that to his knowledge there were no issues with the training provided at the FAA Academy or with ZNY classroom and simulation laboratory training. He clarified his comments were related to the OJTI portion of the training process and the daily management of OJT at ZNY.

Findings: Functional training was an agency initiative from 2005 to 2010, which was tested at five facilities (Houston, Chicago, Miami, Albuquerque, and New York ARTCCs). The intent of functional training was for developmental controllers to be exposed to both the radar associate and radar positions simultaneously in order to better understand the radar team concept. Facilities previously participating in the functional training program are transitioning out in accordance with an MOU executed between the FAA and NATCA dated February 2, 2011.¹⁵

The team conducted interviews with four CPCs and one developmental controller identified by the complainant. Each controller interviewed disagreed with the allegation that OJTIs discourage developmental controllers from using standard phraseology or complying with required procedures.

The investigators reviewed a random sample of one hundred OJT Instruction/Evaluation Reports (FAA Form 3120-25) for developmental controllers at ZNY. Sixty-eight percent of the training reports reviewed were properly completed by the instructor. Thirty-two percent of the reports were not in compliance with agency regulations in that they lacked specific identification of performance deficiencies. During two training sessions observed by

¹⁵ Functional training was tested at Houston, Chicago, and New York Centers. Additionally, two hybrids were approved at Miami and Albuquerque Centers. Functional training had new controllers training on both the non-radar and radar positions prior to going into the operation in a live environment. Under the traditional training program, new controllers completed training on the non-radar positions, they were then placed into a live environment to certify on the non-radar positions, and then they were transitioned back to the training department to undergo training for the radar positions. Functional training allowed the FAA to combine the non-radar and radar training to new controllers before being placed in a live operation, in order to streamline the training program. NATCA opposed functional training and filed a national grievance based on the union's position that functional training was an undesirable change in the way the FAA trained new controllers. The grievance was upheld, and all facilities conducting functional training were required to transition back to the traditional training methodology.

investigators, developmental controllers exhibited various performance deficiencies, which were not subsequently documented on the training forms.

The investigative team found that ZNY FLMs usually found it challenging to manage the daily OJT portion of training. If the developmental's primary or secondary OJTI was not available, the FLM was required to ask each OJTI if they were willing to train. If no one volunteered, FLMs could assign training to an OJTI, which often resulted in an OJTI request for union representation in a meeting with the appropriate OM. FLMs explained this often resulted in the OM authorizing additional overtime or directing that training not be accomplished that day. Additionally, the complainant and one other FLM identified an issue when no bargaining unit OJTIs would volunteer to train them, and subsequently facility management chose not to assign a NATCA-represented instructor.

The allegation concerning functional training was not substantiated. However, the expanded allegation regarding the management of OJT was substantiated.

FAA Rule or Policy Non-Compliance References: Waiver ATO-A-05-03, Federal Aviation Administration (FAA) Order 3120.4L, *Air Traffic Technical Training*, Appendix 4, En-route Instructional Program Guide, Section 5, Stage IV: Radar Controller Training, Course 55055 and 55057.

FAA JO 3120.4M, *Air Traffic Technical Training*, Appendix B. Instructions for Completing ATCT/ARTCC OJT Instruction/Evaluation Report FAA Form 3120-25, outlines the responsibilities of OJTIs to record their observations of the performance and progress of developmentals and CPCs In-Training (CPC-IT). Block 12 of this form titled "Comments," is to be used by the OJTI to document when a mark is made in the "Comment" column on the front of the form. The comments: (1) may be specific or general, (2) may include exemplary, noteworthy, or unusual events, and (3) must describe any observed performance deficiencies.

Allegation #6: Improper Work Slow Downs/Stoppages. [Complainant reports that] ...controllers regularly engage in improper work slowdowns or stoppages, known as job actions. [Complainant asserts that] ...these actions force the supervisor to close positions or call in overtime personnel are carried out for the purpose of ensuring longer breaks and increased overtime. [Complainant further contends that] ...they can potentially create dangerous air traffic situations where one controller must work too many aircraft due to position closures. [Complainant alleges that] ...facility records for 2010 reflect that most controllers were working approximately three hours out of an eight hour shift. [Complainant described one incident] ...on December 3, 2010, where Jody Cook, a controller under his supervision, refused to train a developmental because he (Cook) wanted controllers to have a longer lunch break. Complainant objected to Mr. Cook's actions and attempted to require him to train, to no avail. During a meeting with management [OM Wolfgang Lerch] that afternoon, Mr. Cook admitted to the job action and stated the purpose was to facilitate longer breaks. OM Lerch advised [complainant] that he needed to adjust to the New York ARTCC culture. [Complainant further alleges that] ...OM Weber also dismissed the matter.

Complainant Interview: The complainant elaborated in his interviews that the work “slow-down” portion of his allegation pertained to the fact that certain controllers would ask for unnecessary (additional) miles-in-trail (MIT) spacing when he directed them to issue weather depicted on their displays to aircraft transiting the area as required by ATO procedures. There were no specific dates or times provided along with this allegation either in the OSC referral or during his interviews. The complainant did further clarify that the requested MIT restriction was denied and never implemented, and thus he could not say that any aircraft were improperly slowed down.

The complainant also explained that his reference to work stoppages involved an instance in which an OJTI had stopped training a developmental. He further clarified it never involved the stopping of any aircraft.

Findings: The investigators interviewed the traffic management officer, three OMs, seven FLMs and five controllers regarding controller-initiated requests for MIT restrictions, and all verified the documented and systematic processing of such requests. The approved process is as follows:

- Controller makes a request to the FLM, who is responsible for evaluating the situation and determining whether or not to forward that request to the facility’s Traffic Management Unit (TMU).
- If the FLM concurs and forwards the request to the TMU, it evaluates the request to determine its validity, as well as the impact on overall traffic flows, and approves or denies it in consultation with the National Air Traffic Control System Command Center, which serves as the final approving authority.
- This process is documented daily in the National Traffic Management Log (NTML).
- If there is a disagreement between the FLM and the TMU on MIT restrictions, the OM is consulted for further consideration and guidance.

As a result of interviews and monitoring of ZNY operations during periods of moderate and severe convective weather and numerous traffic management initiatives, the investigative team found no evidence of any improper slow-downs of air traffic or stoppages of air traffic. Therefore, this aspect of the allegation could not be substantiated. However, the allegation of refusal to provide OJTI, which constitutes a work stoppage, was substantiated. This is further discussed in connection with Allegation #7 below.

FAA Rule or Policy Non-Compliance Reference: FAA JO 7110.65, *Air Traffic Control*, Chapter 11, Traffic Management Procedures

Allegation #7. Controllers at New York ARTCC routinely engage in conduct that violates FAA orders and policies. New York ARTCC management is aware of these violations and performance deficiencies, but has failed to address, and often condones, the controllers conduct. The controller’s actions, and management’s

indifference to and/or tolerance of these actions, have compromised air traffic safety.¹⁶

Complainant Interview: The complainant stated that his “Facebook” pictures were posted in Area B at ZNY prior to his arrival at the facility. He also related an incident in which controllers took a picture of an airplane, decorated it with red flames, and posted it above the sector with a threatening message.

The ZNY Staff Manager told him the controllers were only giving him a hard time. The complainant stated that the Area B OM warned him that if the complainant went out socially with others from ZNY, that they might assault him. Additionally, the complainant said the Area B OM told him she had heard Mr. Seeley was “sleeping with his facility manager at Fort Worth ARTCC (ZFW) to get the ZNY FLM job,” and that he “didn’t need the job because he had a trust fund or had won the lottery.”

The complainant stated that controllers curse at FLMs, and that there were other incidents of insubordination and inappropriate language directed at FLMs by controllers. He reported that when FLMs tried to initiate appropriate disciplinary action in response to those incidents, they were not supported by upper management. The complainant reported that he spoke to the Area B OM about behavior of that type, but she did nothing in response to the inappropriate behavior. He also stated that in conversations with other FLMs, they advised him to develop a “thick skin.”

The complainant also reported that his car was “keyed” three times, which allegedly occurred in March, June and October, 2010. He provided what appeared to be legitimate photo evidence of the damage to his personal vehicle, but he stated in his February 8, 2011 disclosure to AAE that there were no security cameras in the employee parking lot, and he felt it would do no good to file a report.

The complainant reported that after he was removed from his FLM position, he was relocated to the ZNY facility annex and isolated from other developmental controllers, even though he was then in training to become a controller in Area C. The complainant stated that an Area D FLM told him she had overheard trainers in Area C state they were going to “wash him out” of the training program.

The complainant also related an incident that occurred in January 2011 after he had been removed from his FLM position. An FLM called to check on him while he was in a training room. He stepped out of the room to use his cell phone. When he returned, someone had poured cough syrup on his books and had written a threatening message on the white board.¹⁷ The complainant asked for law enforcement to be called, but the ZNY Staff

¹⁶ This is a repeat of Allegation #1 in the OSC referral, and in this section, the findings of the “conduct and discipline” aspects of the allegations are presented. The safety aspects are presented under Allegation #1 above.

¹⁷ Complainant supplied a photo to AAE showing a picture of a message on a ZNY training room white board saying, “Rat fink, watch ur [sic] back,” with an arrow pointing to the chair in which he was sitting along with his training materials soaked in cough syrup.

Manager refused. Mr. Seeley stated that he called the police, who arrived and took a report, but there was no follow up by FAA Security.¹⁸

The complainant sent a letter to the ATM requesting an investigation and administrative leave, stating he felt genuinely threatened. The complainant said the ATM denied his request, and no investigation was conducted by FAA Security.

Findings: Based upon the results of our interviews, the investigation documented that ZNY personnel engaged in the following behaviors:

- An operations manager (OM) tore up a letter of reprimand on the control room floor in the presence of two FLMs he previously directed to write the letter.
- Numerous incidents of employee cars being keyed in the parking lot were reported by interviewees in this investigation.
- A controller intentionally created a situation which led an FLM to be involved in an operational deviation.
- Controllers regularly refused the assignment of OJTI by the FLMs, and OM's failed to exert managerial authority over controllers refusing mandatory OJTI assignments.
- The routine use of inappropriate language was documented and generally ignored by ZNY senior management, with little or no corrective action taken.
- Multiple occurrences of inappropriate language by a NATCA official (not on official time) was documented, including shouting "fuck you" to an FLM in the operational quarters during the conduct of the FLM's duties.
- Occurrences were documented of inappropriate and/or threatening language by second-level managers or above directed at FLMs under their supervision.
- Complainant was targeted with threatening messages, and his car was vandalized in the employee parking lot.

It appeared clear to the investigative team that the major causal factor contributing to the widespread conduct issues at ZNY was management's reluctance and/or failure to address misconduct through the use of approved disciplinary procedures under FAA personnel rules. Facility management did not call the police or FAA Security when the threatening incidents occurred, and they did not request an investigation by FAA Security. Moreover, there seemed to be a widespread belief held by many ZNY FLMs that upper-level management support for the initiation of formal disciplinary actions beyond on-the-spot,

¹⁸ Management denied that the police ever came to the facility in response to incidents involving the complainant. However, Mr. Seeley provided a copy of a field report form from the Suffolk County, NY Police Department to AAE on February 8, 2011, with an officer's name, case number, phone and badge numbers, but the blocks on the police report for date and time were blank.

verbal corrections was essentially non-existent. This finding is supported by current ZNY management's position that even "records of conversation" constitute serious disciplinary actions, so much so that ZNY NATCA representatives routinely seek to have them removed from an employee's personnel folder within thirty days.

This state-of-affairs has been further exacerbated by facility management's avoidance of any systematic documentation of employee performance over a long period of time. There is a surprising lack of documentation that performance and employee conduct issues are identified, discussed, and handled in accordance with FAA policy guidelines. The overwhelming lack of performance documentation at ZNY lends credibility to the allegations made by the complainant. In addition, his allegations were supported by many other ZNY managers who clearly suggested that senior ZNY management actually discourages this type of documentation.

This investigation identified clear, tangible evidence that disrespectful or inappropriate conduct, conduct unbecoming, insolence and/or use of language or remarks that are insulting, abusive and/or obscene have occurred at ZNY, in clear violation of FAA orders and policies. Thus, this allegation was substantiated.

FAA Rule or Policy Non-Compliance References: Employee Standards of Conduct FAA Human Resources Policy Manual (HRPM) Volume 4 Employee Relations ER.-4.1 Section 2 Employee Responsibilities Paragraph d, Exercise courtesy and tact at all times in dealing with fellow workers, managers, contract personnel and the public. Employees must treat everyone with dignity and respect and support and assist in creating a productive and hospitable work environment. Employees are obligated to avoid disrespectful, abusive or other inappropriate behavior toward other personnel, management officials and customers.

Employee Standards of Conduct HRPM Volume 4 Employee Relations ER.-4.1 Section 2 Employee Responsibilities Paragraph k, Observe and abide by prohibitions against any violent, threatening, harassing and/or confrontational behaviors towards others, as well as prohibitions on discrimination and misconduct of a sexual nature.

Employee Standards of Conduct HRPM Volume 4 Employee Relations ER.-4.1 Section 13 Workplace Violence: Violent, threatening, harassing and/or confrontational behaviors in any form are unacceptable and will not be tolerated. Threatening behavior may include harassment in the form of intimidation, or any oral and/ or written remarks or gestures that communicate a direct or indirect threat of physical harm, or otherwise frightens, or causes an individual concern for their personal safety. Such inappropriate behavior may include pushing, poking, physically crowding, stalking, fist shaking, throwing objects regardless of the target of the object being thrown, name calling, obscene language or gestures, or any other intimidating or abusive action which creates a fearful environment and apprehension of harm. Employees and managers are responsible for enforcing the highest standards of personal safety and welfare at the workplace. Consequently, employees must immediately report threats of violence, violent incidents, dangerous horseplay, irrational or other inappropriate behavior to their managers.

Allegation #8. Controllers openly use electronic devices such as cell phones and personal laptop computers to view pictures, text friends, play video games and watch movies, while on position.

Complainant Interview: The complainant stated that there was a “rampant use of iPads, laptops used for watching movies and online gambling, and cell phones by controllers working controller positions on the midnight shift.” He also stated there were controllers using cell phones for surfing the internet and texting (but not talking) at all times of the day in the operational quarters. He stated that he raised this issue both to upper level management and his peers, but was told, “Do not look to cause too many waves. If you try to bring any outside perspective to this stuff you will be the only one.”

The complainant also stated that if he were to start writing records of conversation (ROCs) for minor things, he would not be supported. He reported that he did not observe other FLMs initiating any corrective actions. He testified that his view was that management had acquiesced all of their authority to union officials (NATCA). After the complainant reported that he observed an employee watching a DVD on his laptop on position on the midnight shift, he was told by ATM LeCates, that he would support some type of disciplinary action. However, the complainant believed that six months later, no action had been taken. He also stated when the disciplinary action for the individual was proposed, he was told by a union official that “you did not want to do this--this is not going to go well [for you].” The complainant stated that the day after this event, his car was keyed and a tire was slashed.

Findings: The investigators found no current evidence to substantiate the allegation of the use of electronic devices by controllers while on position. This included unannounced visits by investigators during the midnight shift operation. However, it is important to note that a majority of ZNY employees interviewed during this investigation did state the allegation could have been substantiated (particularly on the midnight shift) approximately six months prior to the date this report was prepared, which was about the time Mr. Seeley’s allegations were disclosed to the media.

Moreover, the investigation revealed no evidence to suggest that ZNY personnel were unaware of FAA policy on the prohibition of personal electronic devices on the control room floor. Overwhelmingly, the findings of this investigation confirmed that it was common knowledge that ZNY was not in compliance until approximately six months ago.¹⁹ Except for one case of proposed disciplinary action initiated against one controller for using a laptop on position on a midnight shift, we found no evidence that ZNY management took corrective action to return ZNY to compliance prior to the public disclosures in February 2011. Thus, this allegation was substantiated, given the preponderance of the evidence that such non-compliance was common during the period of time that the complainant was assigned to ZNY.

¹⁹ It should be noted that as of the date this ROI is written, it has been approximately 6 months, since the complainant’s allegations of widespread use of personal electronic devices on the control room floor were widely reported in New York and national media. As a result, FAA officials have stepped up surveillance of all facilities, and it appears, this practice has largely ceased nation-wide.

FAA Rule or Policy Non-Compliance References: ATO Memorandum, Dec. 16, 2006, Richard L. Day.²⁰ Cellular telephones can cause audio rectification interference to air traffic controller headsets. This harmful interference has the possibility of seriously degrading, obstructing, or interrupting with radio frequency transmissions. Due to safety implications related to this issue, effective immediately, cellular phones shall be powered off in all operational areas, at any facility where ground-to-ground or ground-to-air communication is conducted. Union negotiations are not required. Other FAA guidance on this matter is contained in Appendix P.

FAA/NATCA Contract Article 4, Section 9 Radios, television sets, appropriate magazines/publications, pagers/cell phones, and electronic devices will be permitted in designated non-work areas at all facilities for use at non-work times. Pagers/cell phones will be permitted in operational areas but shall be set in the “off” position due to possible interference with National Airspace System (NAS) communications equipment. The operation of weather radios shall be permitted in operational areas.

Allegation #9. Wireless internet routers were placed throughout the operations area to accommodate the use of laptops.

Complainant Interview: The complainant stated that he never physically saw routers in the operations area, but he stated that his iPhone detected wireless networks labeled “NATCA 1” and “NATCA 2.” He told investigators that he believed the routers were in the control room due to the strong signal strength depicted on his cell phone. However, the complainant stated that he never made upper management aware of the issue.

Findings: Interviews with local Technical Operations management officials confirmed that the FAA has not installed any wireless routers at ZNY. However, during the investigation, three different wireless network signals were detected at ZNY on the operations floor.

During an interview with NATCA officials, it was disclosed that two of the three wireless routers detected in the facility belonged to, and were installed by NATCA, and they were housed in the NATCA office. An unannounced, electronic sweep on the operations room floor of ZNY by ASH investigators in May 2011 detected the two wireless network signals from NATCA, as well as one originating from a local diner.

Under an agreement that was negotiated with NATCA approximately 18 months ago, FAA authorized NATCA wireless routers installed outside the operations area to remain in all NATCA offices at all terminal and en-route facilities. Moreover, it is not uncommon for wireless signals to be detectable within FAA facilities from outside sources such as local hotels or other businesses in the vicinity of FAA ATO facilities across the country. The existence of a wireless signal emanating from outside the operations area, and not connected to the FAA network, poses no known threat to the national airspace system.

Investigators found no evidence that any wireless routers were installed in the operations area. Thus, this allegation was not substantiated as a safety issue since the ban on personal electronic devices used in the control room is now strictly enforced.

²⁰ Mr. Day was Senior Vice President of Operations of the ATO when the subject policy memo was written.

As noted in connection with Allegation #8 above, the use of portable electronic devices are prohibited on the control room floor. FAA management enforcement (with NATCA support) of the prohibition on portable electronic devices on the control room has significantly increased nationwide in recent months.²¹

FAA Rule or Policy Non-Compliance References: FAAO 1370.83 Internet Access Points. All currently recognized IAP's shall be certified and authorized by September 30, 2001, or cease to operate. b. For any other existing IAP's, a justification paper shall be submitted to AIO and the relevant DAA within 45 days of the approval date of this order. Paragraph 7.b. contains additional guidance on the justification process. (1) If the IAP justification paper is approved by the DAA and AIO-1, the IAP shall be certified and authorized by September 30, 2001, or cease to operate. (2) If the justification paper is disapproved by the DAA and AIO-1, the IAP shall cease to exist.

FAAO 1370.94A Wireless Technology Security Policy. The FAA LOB/SO Authorizing Official (ATO-IT) must approve all implementations of wireless devices before connecting to any FAA information systems or communications infrastructure. This Order excludes personally-owned wireless devices not connected to, or interoperating with, the FAA-owned or controlled information systems and communications infrastructure.

Allegation #10. Controllers regularly arrive for the day shift at 7:00 a.m. and report for the midnight shift that same day at 10:30 p.m. This results in a violation of the eight (8) hour rest time requirement between shifts.

Complainant Interview: The complainant stated that “quick turns” were occurring without the required amount of rest time between the day and midnight shifts. He stated that this was originally brought to his attention by another FLM. He reported that controllers were not required to sign in, resulting in controllers who could have been reporting to work later than what they were reporting to their FLM, who was signing them into CRU-ART (Appendix N)²². The complainant did not have specific examples, but he believed controllers were scheduled for eight-hour rest periods between shifts.

Findings: Based upon the results of our interviews and a random review of time and attendance records at ZNY, investigators found no evidence of any violations of the eight-hour rest time requirement. Therefore, this allegation is not substantiated.

FAA Rule or Policy Non-Compliance Reference: FAAO 7210.3 Paragraph 2-6-7 Basic Watch Schedules Paragraph b. 4. Have at least an 8-hour break from the time work ends to the start of any subsequent shift.

Allegation #11. Controllers frequently claim they arrive at 6:30 a.m. for the morning shift but forget to sign in or that CRU-ART the electronic time and attendance system is inaccurate. Further, despite a requirement directing controllers to sign in to CRU-ART if they are flexing into their shifts, they frequently do not comply.

²¹ See footnote 19.

²² Cru-Art is an electronic time and attendance record keeping system.

Complainant Interview: The complainant stated that he had concerns about controllers not signing in at the appropriate time, or not signing in at all. He stated controllers would leave at the end of their day shift stating they arrived at 6:30 a.m. However, because they did not sign in at the start of their shift, the FLM would have no idea how long the controllers had worked that day. The complainant only reported this activity in Area B. The complainant also advised that FLMs were concerned about fraud regarding signing employees in and out without first-hand knowledge of their arrival and departure times. The complainant said he brought this concern to the attention of his Area B OM, who told him she was “sorry the FLMs felt that way”, as she expected the FLMs to sign the controllers in and out.

Findings: Based upon the results of interviews and random reviews of time and attendance records at ZNY, investigators found no evidence that controllers made false claims to have arrived before their sign-in times. Additionally, investigators found no evidence that controllers were not in compliance with the CRU-X/ART MOU, which requires them to make the appropriate sign-in entries only if they flexed into their shift. Therefore, this allegation was not substantiated.

FAA Rule or Policy Non-Compliance Reference: On March 25, 2010, the Agency and NATCA were able to comply with an arbitrators’ award by completing their contractual obligation to bargain over CRU-ART. Some of the provisions of the MOU are listed below:

- Employees will not be required to “drag and drop”²³ from position to position. This function will be performed by management or a CIC.
- Controllers who report to work at their scheduled time will not be required to sign in. However, employees who report to work at other than their scheduled time (i.e., flex in or take approved leave at the start of their shift) will make the appropriate entries into the system.
- Controllers will not be required to sign out at the end of their shift unless they are assigned these duties as CIC or they take leave at the end of their shift.

Allegation #12. Controllers were leaving the facility prior to the end of their shifts, in some cases an hour or more early.

Complainant Interview: The complainant stated that it was common practice for employees at ZNY to leave the facility prior to the end of their shift. He also stated that this issue was brought up in March and then in October 2010 by the ATM. The complainant stated that the ATM said people were going home earlier than the 15-minute “early shove.” According to the complainant, he suggested sitting at the guard shack, but the ATM said, “we can’t do that, it is too aggressive.” The complainant testified that controllers who worked the midnight shift on Saturday nights report to work at midnight, and their shift

²³ The drag and drop is a mouse click function in the CRU-ART software that allows a controller to move a his/her operating initials into different areas on a display from break onto a particular position or from position into a training class. This is the visual representation of ATO Labor Distribution Reporting (LDR) data.

ends at 8:00 a.m. When the 5:30 a.m. shift relieved the midnight workers on Sunday mornings, they would go to the diner, eat breakfast and not return to the facility.

Findings: There were some managers who believed that controllers were leaving more than 15 minutes early during certain shifts including the 5:00 p.m. to 1:00 a.m. shift; and the midnight to 8:00 a.m. shift on Sunday.

Based on the results of interviews, investigators concluded it is commonplace for controllers to leave the facility 15 minutes prior to the end of their shift. Findings also suggest ZNY management is aware of this longstanding practice. Therefore, this allegation is substantiated.

FAA Rule or Policy Non-Compliance Reference: Employee Standards of Conduct HRPM Volume 4 Employee Relations ER.-4.1 Section 2 Employee Responsibilities Paragraph *a* Maintain regular attendance, report for work on time and in a condition that will permit performance of assigned duties, i.e., in appropriate clothing and/or outfitted with required tools or equipment; free from any effects of alcohol and/or drugs that impair job performance or conduct; physically fit as needed by job requirements; and in a mentally alert condition to perform the duties of his/her position. Paragraph 8c, employees will be charged AWOL for unauthorized early departures from the workplace.

Allegation #13. Sleeping on the mid shift is so common that controllers keep inflatable mattresses at the facility. Controllers were observed sleeping on mattresses under desks during the mid shift, while on break.

Complainant Interview: The complainant stated that controllers were using inflatable mattresses in the control room to sleep on the midnight shift. He also stated that controllers were sleeping under the FLM desks and “prayer mats” were used as cushions for bedding. The complainant stated the Area B OM approached him, and said she was concerned that the mats were not being put away after the midnight shifts. After he told the Area B NATCA representative to put away the mats, the Area B representative demanded overtime or threatened to take someone off a detail. The complainant stated that the ATM had walked through the facility, saw the mats, and wanted them moved out of sight during day shifts. According to the complainant, the mats would be removed and then returned later. The complainant stated there was never any mention of this in the ZNY “all-managers meetings.”

Findings: This investigation produced no evidence, during the team’s surveillance activities, of controllers currently sleeping in the control room on midnight shifts or on any other shift, and it found no evidence of controllers currently sleeping while occupying an operational position. However, interview evidence documented that the majority of the management personnel interviewed reported some knowledge of controllers sleeping in the control room on the midnight shift at some point in the recent past (prior to February 2011). It also appears, based upon interview evidence, that senior ZNY management was aware of, and had done little to stop the practice of controllers sleeping in the control room or the storage of inflatable mattresses/mats in the facility.

The evidence suggests that approximately six months ago this practice was abruptly terminated.²⁴ However, there was no evidence that ZNY management took any action to return to ZNY to compliance with agency policy, nor was there evidence that facility management addressed the issue during the period of time Mr. Seeley was an FLM at ZNY. Rather, it appears that the publicity surrounding the complainant's allegations, coupled with documented incidents of sleeping controllers in other FAA facilities, induced the widespread change in controller behavior and current level of compliance.

Investigators also concluded that controllers were bringing inflatable mattresses/mats into the facility. Thus, this allegation was substantiated.

FAA Rule or Policy Non-Compliance Reference: FAAO 7210.3 Paragraph 2-5-4 Relief Periods Paragraph d. Supervisors shall not condone or permit individuals to sleep while on duty. Any such instance shall be handled in accordance with Human Resource Policy Manual (HRPM), Standards of Conduct.

Allegation #14. Controllers engage in improper practices involving annual and sick leave in an effort to increase overtime. Some controllers will call in sick or take annual leave for a particular day. Then after overtime personnel have been called in for the shift, the controllers cancel their leave and report for work at the last minute.

Complainant Interview: The complainant reported that before the staffing agreement in Area B, FLMs were required to go to the Operations Manager in Charge (OMIC) to receive approval to call in overtime. According to the complainant and contrary to facility policy, FLMs in Area B were directed by the Area B OM to call in overtime after staffing dropped without OMIC approval, and without conducting any analysis to support the need for overtime. The complainant stated that a NATCA official said if management did not backfill to those numbers, they would recall people from detail(s).²⁵

The complainant also stated that there were two occurrences involving a particular controller, who had a habit of taking sick leave and then showing up for duty. He reported the issue to the Area B OM, who instructed the complainant to bring it back to her when he had more examples.

According to the complainant, the ATM stated at a managers meeting that ZNY had the lowest time on position and the highest use of overtime. The complainant stated that there were never any sick leave letters of investigation issued to controllers, nor did management ever pursue disciplinary actions for sick leave abuse. He reported that grievances were "few

²⁴ See footnote 19. Additionally, in early April 2011, a number of incidents involving controllers sleeping while on-duty in various ATC facilities occurred. These incidents were widely reported in the national media. The Secretary of Transportation and the FAA Administrator ordered a nationwide program of surveillance and fatigue awareness. New fatigue countermeasures programs were developed, new policies and procedures were developed, and NATCA participated with management in new agreements to more effectively manage fatigue in air traffic operational settings. See pp. 32-33.

²⁵ ZNY is one of a number of FAA facilities involved in the testing of a new automation system designed to support FAA's Next Generation Air Traffic Control System. Thus, ZNY has a large number of controllers often detailed to support the test and evaluation of the new En-route Automation Modernization (ERAM) system.

and far between.” He also stated that the only time he observed overtime cancelled pertained to a medically disqualified individual. Mr. Seeley said that the controllers would cancel their leave a couple of days prior to the previously scheduled shift, but the backfill overtime, which was then no longer needed, was never cancelled by management. The complainant mentioned this to the Area B NATCA representative who responded, “all boats ride with the tide,” and “it is not your money, so don’t worry about it.”

Findings: Despite its use in the majority of similar ATO facilities, ZNY was not using the “Web Scheduler” electronic program, which provides for the reconstruction of leave use or cancellation of leave. Instead, ZNY used a daily schedule worksheet to track leave requests, which was not retained.

Based upon the complainant’s interview, this allegation was expanded to a new allegation that Area B had a negotiated staffing number, which is contrary to statements made by other ZNY management officials and is not consistent with normal agency practice.

Each ZNY OM and several FLMs stated during interviews that there were no negotiated staffing numbers. Investigators found OMs set staffing target numbers based upon historical volumes of traffic, needed sectors, and training. The area scheduler would publish schedules to meet these target numbers. Subsequent reductions in staffing due to details to support the En-route Automation Modernization (ERAM) program and/or sick leave would warrant review by the FLMs. The OMs indicated that the FLM would review the staffing numbers for a shift, the expected weather in the area, the anticipated traffic volume and training needs. If the FLM concluded that calling in additional staffing on overtime was warranted, they would make the request of the OMIC, who would approve or disapprove the overtime.

The OM for Area B explained in her interview that a large number of NATCA officials are in her area including: the principal facility representative (who is also the NATCA National ERAM representative); the alternate facility representative; the secretary; the treasurer; the facility ERAM representative; and a NATCA area representative. She stated that she had an “understanding” with NATCA which provided for automatic overtime when these officials were off of the schedule on an ERAM detail.

ZNY Area B FLMs further clarified that even if the schedule is posted at the agreed upon numbers and someone subsequently calls in sick on the day of the shift, the agreement is to automatically call in overtime regardless of the shift the person on ERAM detail was assigned to, or what shift the controller on sick leave was assigned. In these instances, no consideration is given to the expected weather, traffic volume or training demand. In fact, the complainant and other FLMs identified these situations as being problematic when controllers would refuse to train until overtime was called in to staff Area B at the “agreed upon” numbers and allow for normal breaks.

On a related note, the investigative team determined that the average break time for a controller at ZNY is sixty minutes regardless of staffing and whether or not there is overtime. No differentiation is made between regular breaks and meal breaks. FLMs do not manage controller breaks or provide “be back times,” instead they allow controllers to manage themselves with a “break board.” Some of the controllers interviewed indicated

great resistance to any attempt by management to manage break times, or to make any assignment of work which eroded their hour-long break average.

During interviews with Area B FLMs, the investigators were told that the pressure to call in overtime in these situations, whether it was needed or not, came from outside of the building and implied that it was from FAA Headquarters, which the investigation could not confirm. They alleged that NATCA leveraged their participation in the ERAM installation process against their staffing numbers, and if overtime was not provided to backfill each of them, they (NATCA) would not participate in further ERAM negotiations or work groups. This investigation did not produce any documentation to substantiate this aspect of the allegation.

However, during the conduct of the investigation, it became clear that Area B's practice of automatic ERAM overtime call in, without OMIC approval, was not common knowledge among the OMs, and it was not consistent with facility staffing guidelines. ATM LeCates and the staff manager informed the investigators that they had just learned of this practice, and both stated ATM LeCates had moved to address the issue with the Area B OM while the investigative team was on-site.

Based upon interview results, the expanded allegation that Area B had negotiated staffing numbers not consistent with normal agency guidelines was substantiated.

FAA Rule or Policy Non-Compliance References: NATCA/FAA Article 38 Section 8. Overtime shall not normally be canceled without seven days notice.

NATCA/FAA Article 38 Section 10. If an employee is scheduled/called in to perform overtime work on his/her regular day off, he/she will be provided the opportunity to work eight hours.

NATCA/FAA Article 24 Section 10. Requests to cancel annual leave with twenty-four (24) hours notice to the Agency shall be granted. Unless staffing and workload do not permit, requests to cancel annual leave with less than twenty-four (24) hours notice to the Agency shall be granted. An employee who cancels scheduled annual leave and returns to duty shall be assigned to work the shift which he/she would have worked, if the annual leave had not been scheduled, unless staffing and workload dictate or allow assignment to a different shift.

Allegation #15. During November/December 2010 FLM Paul Thumser was abusing sick leave in violation of time and attendance regulations and FAA policy; working only Sundays, holidays and overtime shifts. This resulted in unnecessary scheduling changes and overtime assignments for the remaining FLMs.

Complainant Interview: The complainant reported that FLM Paul Thumser took excessive amounts of sick leave and only worked the shifts that paid premiums, such as Sundays, holidays and overtime. He also stated that because Mr. Thumser was gone a lot of the time, the Area B FLM shifts were adjusted to cover for his absence. The complainant stated that he researched Mr. Thumser's time and attendance records, and was informed by the Area B OM it was not appropriate to ask for Mr. Thumser's records. Furthermore, the

complainant stated that the Area B OM said “don’t push the issue any further,” and “this is New York and you can do it when you retire.”

The complainant reported that Mr. Thumser was scheduled for more overtime than all other Area B FLMs, and it was an inequitable distribution. Additionally, the complainant reported to the Area B OM that Mr. Thumser was manipulating the schedule to benefit himself. According to the complainant, Mr. Thumser would be sick for the entire week, and that the complainant would be moved to the evening shift on Sunday to cover the shift. He said when this occurred; Mr. Thumser would routinely show up for duty on Sunday morning and then not return to his regularly scheduled shift in the evening. The complainant reported this happened four or five times.

Findings: Based on the results of interviews and a review of time and attendance records, investigators concluded that Mr. Thumser worked primarily Sundays, holidays and overtime shifts during November/December 2010. FAA standards of conduct require employees to conserve, protect and ensure appropriate use of Federal funds, time, property, equipment, materials, information and personnel. The findings of the investigation established that Mr. Thumser used his position as the Area B scheduler to create a schedule more personally and financially favorable to himself, and it is clear that Mr. Thumser was “gaming the system” for personal gain, which is inconsistent with FAA standards of conduct.

Most significantly, Mr. Thumser’s Area B OM was aware of and approved his schedule, all hours worked, his use of overtime, and sick leave. In short, Mr. Thumser received all the required management approvals under time and attendance policy, but it is clear that these approvals were inappropriate. Mr. Thumser’s Area B OM erred by not following sound management practices as evidenced by the approval of his schedules. Thus, this aspect of the allegation is partially substantiated.²⁶

On the issue of unnecessary scheduling changes and overtime assignments for the remaining FLMs, we found no evidence to support this assertion. Therefore, this portion of the allegation was not substantiated.

FAA Rule or Policy Non-Compliance References: Employee Standards of Conduct HRPM Volume 4 Employee Relations ER.-4.1 Section 8 Absence and Leave: Paragraph *b* Sick leave cannot be granted for rest, minor inconvenience or in place of annual leave. Employees must provide sufficient information why sick leave is needed so the manager can determine whether the requested leave can be granted. Failure to provide adequate information will result in denial of the leave. Evidence of frequent unscheduled and/ or questionable use of sick leave without medical documentation may result in the employee being placed under the terms of a leave restriction and/or charges of absence without leave (AWOL) and/or failure to follow leave requesting procedures in accordance with the guidelines.

²⁶ Mr. Thumser retired from the FAA on December 31, 2010, and thus, is not subject to FAA disciplinary action. The approving Area B OM is currently subject to disciplinary action as a result of this and other management failures documented in this investigation. These actions will be discussed in detail in the corrective actions section of this report beginning on p.28.

Employee Standards of Conduct HRPM Volume 4 Employee Relations ER.-4.1 Section 2
Employee Responsibilities: Paragraph g Conserve, protect and assure appropriate use of
Federal funds, time, property, equipment, materials, information and personnel (both
Federal and contract).

Corrective Actions

It is clear, given the number of Mr. Seeley's allegations that were substantiated in this investigation, that significant corrective actions are required at ZNY. The underlying causes of the widespread procedural, rule, and policy non-compliance, which are documented in this investigation, are complex and multi-faceted. Substandard ZNY management is a leading causal factor, but the "culture" of ZNY which evolved over many years is also a major factor.

In the more recent past, FAA's relationship with NATCA has been very adversarial,²⁷ but at the outset of the Obama Administration, with accompanying new leadership at the Department of Transportation and the FAA, a new NATCA contract was negotiated and ratified by union membership with 98% of the votes cast in favor. Since that time, relationships between management and labor have steadily improved. Nonetheless, lingering tensions are still very much present to some extent in FAA ATC facilities across the U.S.

ZNY SPECIFIC CORRECTIVE ACTIONS

Corrective Management Actions (Immediate):

An entirely new ZNY interim senior leadership team (ILT) will be put in place beginning on September 6, 2011. The following management replacements will be made immediately:

- Two current, highly-experienced air traffic managers (Randy Park, Oakland ARTCC and Terry Biggio, Atlanta ARTCC) will be assigned to ZNY on 6-8 month temporary details and assume duties as leaders of the ILT, both as temporary replacements for the current ZNY ATM.²⁸
- Current FLM (Johnnie Edwards) will be reassigned as an OM.
- Technical Operations Manager (Jodi McCarthy) will be detailed in a support role.

A group of highly experienced, second-level managers (OMs) and FLMs from around the country will be assembled and brought in on detail to serve as mentors and coaches, as deemed appropriate, by the ILT, throughout the next six month period.

Some of the ILT candidates were singled out during the course of the investigation by many of the personnel interviewed (management and labor) at the facility as models of leadership, professionalism, and integrity. The leaders of the ILT (interim "Co-ATMs") were identified by senior FAA ATO management as model managers of ATO facilities.

²⁷ In October 2006, after a prolonged and acrimonious period of negotiations on a new contract with NATCA, the talks reached a stalemate, and were discontinued. The FAA exercised its statutory right to impose a new contract, which was significantly more restrictive with regard to work rules, and generally held compensation to the same levels of the expired contract. What followed was a period of increasingly acrimonious relationships between NATCA and FAA management, until a new contract was ratified and went into effect on October 1, 2009.

²⁸ Each manager brings a unique set of skills to this team, and they are expected to co-manage. Both ILT leaders have knowledge of the ZNY corrective action plan and have tentatively agreed to serve as heads of the new leadership team.

The new ILT will begin the process of addressing the substantiated discrepancies, stabilize the organization of the facility, and work to enact the leadership changes vital to resolving identified issues, and they will continually assess the effectiveness of the management reforms implemented on a routine basis.

Potential Disciplinary Actions:

ATO Acting Vice President for En Route & Oceanic, Christopher Metts, is determining which employees are culpable of misconduct warranting disciplinary action. In making his determination Mr. Metts is consulting with specialists from FAA Headquarters Office of Human Resource Management and Office of the Chief Counsel. We will keep your office informed of Mr. Metts' determinations, consistent with statutory requirements.

NATCA Coordination:

The ATO Chief Operating Officer (COO), Deputy COO/Senior Vice President of Operations, and the ZNY ILT have all initiated discussions regarding the findings of this investigation with both NATCA national leadership and ZNY NATCA representatives. The coordination with NATCA of the ZNY transition and corrective action plan has begun. NATCA has been asked to play a key role in addressing the issues related to operational safety. Through the ATO's Professional Standards initiatives in response to the current Collective Bargaining Agreement (CBA), NATCA will also be asked to assume part of the responsibility for addressing and resolving many of the identified safety and professional standards concerns and to work collaboratively with the ILT. NATCA leadership has agreed to this commitment.

Management Changes (Permanent):

- Recruit, solicit, select and incentivize a new, highly experienced, permanent ATM. It is expected that ATO will evaluate the desirability of converting ATM assignments to a rotational positions, with 3-4 year tours-of-duty.²⁹
- Recruit, solicit and select new Staff and Support Managers.
- Recruit, solicit and select up to two (2) new Operations Managers.

Facility Level Emphasis Areas:

Professionalism and Accountability: The Interim Leadership Team (ILT) will establish clear policy direction, which clearly defines the proper procedures for investigating,

²⁹ Current ZNY ATM LeCates was in that position for 12 years. The FAA is in the process of reevaluating ATM assignments, and is considering the establishment of "term-limits" for ATM assignments to an ARTCC.

documenting, and implementing appropriate corrective action for all substantiated performance and conduct allegations.

The ILT will immediately begin the process of establishing an environment free of disrespectful, inappropriate, or intimidating conduct. The new ILT has a clear mandate from senior ATO management that deviations from appropriate conduct will no longer be tolerated at ZNY. This process will include the education of all ZNY employees on what the expectations are and taking all actions necessary at ZNY to return the facility to compliance with the FAA Standards of Conduct.

The ILT will develop and implement a plan to return the facility to compliance with all applicable rules, regulations, orders and policies. This will include proper compliance with the collective bargaining agreement (CBA) and applicable memoranda.

The ILT will develop and implement institutional controls establishing a required policy of proper documentation and record retention. It will work to change the existing cultural environment into one where proper documentation in the areas of conduct, performance management, training and time and attendance are required and become the norm. In order to accomplish this, the ILT will work collaboratively with NATCA leadership and all employees to improve areas related to professionalism and personal accountability.

Operations and Safety: The ILT will address all substantiated non-compliance and deleterious behavior impacting the safety and performance of the operation. All of the performance deficiencies identified in the course of this investigation will be addressed. The ILT will work with ATO national safety teams and AOV oversight teams to identify additional safety priorities at ZNY. The ILT will ensure that employees maintain high levels of procedural compliance.

The ILT will implement best practices and agency policy in the areas of break management, leave administration, overtime administration and scheduling, including methodologies to: (a) ensure the accuracy and integrity of the time and attendance system; and (b) to maximize the work hours produced per worked hour paid.

FLM/OM Training:

The ILT will develop materials to document performance expectations for FLMs and OMs. The ILT will work closely with the National Supervisor's Committee³⁰ (SUPCOM) locally and nationally to provide appropriate training opportunities for current and future FLM personnel. The ILT will ensure that the FLMs/OMs are aware of the applicable agency rules, regulations, policies and orders and will provide them with the tools and required support to properly manage the controller workforce. The ILT will ensure that the FLMs/OMs are fully trained and qualified to perform their duties, with the knowledge that they are to be supported by senior facility management.

The ILT will address issues related to establishing routine and productive management meetings and establish meeting protocols for the ATM and Staff Manager that focuses on

³⁰ SUPCOM is a support resource designed to facilitate the development of the ATO FLM community.

leadership through presence, involvement, and support in dealing with operational issues and processes.

The ILT will develop and implement a plan to develop and mentor the management team. The plan will emphasize, but not be limited to, leadership best practices and skill enhancement. Specific areas of concern for skill enhancement are program administration to include documentation requirements. Specific areas of emphasis for this training will include topics, such as the Accountability Board, ATSAP, Labor Relations (including contract administration), and Performance Management.

The ILT will put in a place a system of oversight and review of the FLMs'/OMs' administration of management processes and programs. This system will ensure proper and consistent administration, the application of rules and processes, as well as the thorough documentation of performance in the facility. The ILT will provide a formal process for FLMs/OMs to voice their concerns and issues in a respectful and supportive environment.

Certified Professional Controller (CPC) Training:

The ILT will lead efforts to develop specific training opportunities based on identified operational issues. The ILT will engage the Eastern Service Center Operations Support Group to assist in the development of training and the Quality Control Group to provide additional oversight of developmental controller performance. The ILT will also lead efforts to conduct a review and audit of the facility Refresher Training Program.

Morale/Culture:

The ILT will address issues associated with the ZNY "culture." While the culture of a facility is a difficult thing to quantify, one recurring theme over many years at the FAA is that when it comes to ATO facilities, "New York is different." The ILT will seek to instill an "FAA culture" and implement what is regarded as the agency's best practices. The ILT will work to instill the expectation that all employees will be treated with dignity and respect, not only by managers, but also by their peers.

NATIONAL CORRECTIVE ACTIONS

Safety and Professionalism:

In April 2011, the FAA initiated a multi-faceted "Call to Action" on air traffic control safety and professionalism. FAA Administrator, Randy Babbitt, NATCA President Paul Rinaldi and members of their leadership teams conducted joint visits to ATO facilities and personnel across the country to reinforce the need for all ATO personnel to adhere to the highest professional standards. To date, visits have been conducted to Atlanta, Boston, Chicago, Cleveland, Columbus, Dallas-Ft. Worth, Denver, Kansas City, Knoxville, Lincoln, Louisville, Miami, Minneapolis, New York, Oklahoma City, Oakland, Omaha, Reno, Sacramento, and Salt Lake City.

Controller Training:

As part of the Call to Action, an independent panel was formed to conduct a review of the air traffic controller training curriculum, qualifications, and placement processes to ensure that new controllers have mastered the necessary skills and disciplines prior to arriving at their first facility. This panel includes senior representatives from FAA, NATCA, aviation industry and academia. The panel is scheduled to submit its report to FAA Administrator Babbitt in fall 2011.

Management:

The FAA also made key management changes at the national level, including a new COO of the ATO in April 2011, and the assignment of highly-experienced managers to oversee air traffic operations across the country. An assessment of mid-level management is currently ongoing to ensure both technical and leadership expectations are being met.

Controller Fatigue:

While the issue of fatigue was already being addressed by the FAA and NATCA in accordance with requirements in the 2009 CBA, this effort was accelerated in 2011 after several well-publicized reports of air traffic controllers sleeping on duty. Following an incident in which an air traffic supervisor fell asleep while on duty alone at Ronald Reagan Washington National Airport (DCA), forcing two commercial passenger flights to land without being able to contact the DCA Tower, the FAA immediately mandated that a minimum of two air traffic controllers will be staffed in every control tower in the country on midnight shifts at control towers around the country.

The Fatigue Risk Management Workgroup was established in 2010 and included representatives from the FAA (e.g., Aerospace Medicine, Human Factors Research, Safety, and Flight Standards), NATCA, NASA, and aviation industry. The Fatigue Workgroup developed scientifically-based fatigue mitigation recommendations for executive review and decision-making. FAA has implemented several of the recommendations, including watch schedule modifications designed to mitigate the effects of shift-work and to allow for more time for rest between shifts.

In July 2011, the FAA and NATCA entered into a Memorandum of Understanding (MOU)³¹ that details additional joint actions to be taken to address controller fatigue. The MOU directs the Fatigue Risk Management Program Office (FRMPO) to implement a formal Fatigue Risk Mitigation System not later than January 2012. In addition the FRMPO will oversee the development and implementation of comprehensive fatigue awareness training. The MOU also addresses personal fatigue management, shift scheduling, relief periods policy, and the use of appropriate reading materials in operational areas.

Unauthorized Use of Personal Electronic Devices in Control Room:

Partially in response to reports of the inappropriate use of electronic devices in several ATC facilities, FAA officials recently reinforced guidance that was originally provided in a 2006

³¹ Appendix R

memorandum that required cellular phones be powered off in all operational areas.³² In addition, strict enforcement on the use of portable electronic devices in operational areas of ATC facilities was implemented.

Labor/Management Relations:

FAA and NATCA have also focused their efforts to improve a labor relationship that in the recent past has been badly strained. NATCA has affirmatively accepted its role in reinforcing a culture of professionalism and accountability, including expansion of its own Professional Standards program nationwide, which reemphasizes for controllers how to maintain the highest degree of professional conduct.

Finally, in early 2011, all air traffic facility managers and facility NATCA representatives received joint training on partnership and collaboration. This nationwide effort emphasized open communication and encourages problem solving at the local level. Special emphasis was placed on facilities that have a history of contentious labor relations.

³² See pp.18-20 of this report.

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