

rolling allegation, he denied its existence stating, “there is not ghost pay rolling, ghost pay rolling to me is if someone is [] being paid for something they’re not really doing.”

Despite Mr. Orseno’s protestations, the investigation revealed that Metra regularly paid numerous employees even though they *did not work*, and failed to pay numerous employees even though Metra knew they *did work*. Perhaps even more disturbing, was the fact that although Metra managers, employees, and Mr. Orseno were fully aware of the requirement that employees accurately log their hours of service, Metra allowed its employees to engage in a “change of assignment” practice that resulted in numerous Metra employees inaccurately documenting their hours or, worse, clearly falsifying their Federal Railroad Administration hours of service logs. The change in assignment practice also circumvented Metra/employee collective bargaining agreement terms relating to pay, and use of the “extra board” process, among other things.

Investigators discovered that the change in assignment practice, to which many employees assigned the misnomer “swapping,” did not mean that employees who “swapped” assignments always worked for one another; rather, it meant that employee A agreed to work the assignment of employee B on a particular day, with no obligation on employee B’s part to work an assignment for employee A on another day. In other words, a swap was not always a swap. The majority of the “swaps” occurred on Saturdays thus allowing employees assigned *to work to not work* but still *get paid*. The change in assignment practice was so ingrained that, even though no written policy existed, Metra created a form requiring management approval and thus making it easier for employees to “swap.” According to Mr. Orseno, swapping was a practice that existed for as long as he had been with Metra, or over 28 years.

The OEIG agrees with Metra’s Senior Labor Relations Manager who when interviewed about the circumstances relating to the change in assignment practice, said he saw all kinds of problems including: tax consequences, regulation violations, drug testing issues, documentation of hours served on reports, and ensuring adequate rest periods for employees. Moreover, although Mr. Orseno, as well as Metra employees, believed that the change in assignment system provided beneficial flexibility to Metra and its employees, the OEIG finds that this widespread practice created conditions whereby federally required logs were false, incorrect, and thus wholly unreliable, thus subjecting Metra to potential monetary fines.

Despite all of the above, after former Executive Director Alex Clifford received an anonymous complaint very similar to the one the OEIG received, and after he asked Metra senior managers to look into the allegations, he was told the change in assignment practice was altered in October 2011 to limit its use to “emergencies,” a term Metra had not defined. Yet, an OEIG review of four *emergency changes in assignment* that occurred between October 1, 2011 and November 22, 2011, revealed that Metra employees who changed assignments *after October 1, 2011*, continued to appear to have inaccurately documented their hours of service.

In February 2014, the OEIG embarked on efforts to discover the extent of Metra’s *current* change in assignment practice, even in emergency situations. The OEIG sought to re-interview Executive Director Don Orseno and Electric District Line Operations Manager Janet Carbonelli in order to ask them about the *current* change in assignment practice, even in emergencies, and to determine what steps, if any, they had taken to review documentation of

hours of service for covered employees who changed assignments because of an “emergency.” Investigators also sought to interview Metra Comptroller Arun Saxena to ask him what, if any, tax implications may have existed in light of the practice.

After interviews for Ms. Carbonelli and Mr. Saxena were scheduled, Metra’s legal department requested from the OEIG, “copies of the transcripts or summary reports” for Ms. Carbonelli’s prior interview and also asked to be allowed to make its own audio recording of OEIG interviews of both persons. In light of statutorily mandated confidentiality provisions, the OEIG was unable to agree to these conditions and on February 27, 2014, informed Metra that the attendance of Mr. Orseno, Ms. Carbonelli, or Mr. Saxena for interviews was no longer required. On February 28, 2014, Metra’s General Counsel wrote the OEIG the following:

I am writing in response to your recent correspondence, withdrawing your requests for the interviews of Donald Orseno, Janet Carbonelli, and Arun Saxena in the above matter. We appreciate your re-consideration of these interviews, particularly in light of the time constraints of each. We have been informed that your office was concerned with whether the *employment practice* relative to the above-referenced OEIG case *is still occurring*. Management’s position is that *it only exists with supervisor’s approval and only for emergencies*. This position was also confirmed by various union representatives as late as yesterday. (emphasis added).

The OEIG is now closing this investigation. After conducting its investigation, the OEIG finds that for numerous years and until at least October 1, 2011, Metra’s decision to allow its employees to engage in the change in assignment practice directly resulted in:

- the falsification of numerous Metra employee hours of service logs;
- employees *receiving pay for not working* and *not receiving pay*, though they worked; and
- the circumvention of collective bargaining terms relating to extra board employees.

The OEIG recommends, among other things, that Metra end the change in assignment practice, even in emergency circumstances, and take steps to ensure that employees accurately document their hours of service on federal forms. The OEIG also recommends that Metra discipline various employees as set forth in this report.

Glossary of Key Terms

Assignment (“Work Assignment,” “Combination,” or “Run”) An assignment refers a train line trip from one location to another. For example, one assignment might be working on the train leaving at 9:15 a.m. and arriving at 10:15 a.m. Assignments are generally identified by a set of numbers *e.g.*, 23/123, with weekday assignments generally having two numbers whereas weekend assignments generally have three numbers. Thus, assignment 23/123 means that from Monday through Friday, the employee assigned would work assignment #23, whereas on the weekend the same assignment would be #123. A number of assignments in one day is referred to as a “combination.”

Crew Call sheet: A Metra computer-generated printout that identifies, among other things, each work assignment Metra employees from a particular District have been assigned on a particular day, as well as the assignment number for that day. The Crew Call sheet is transmitted to Metra’s Payroll department and forms the basis upon which an employee is paid.

Change in Assignment Practice (“Swap,” “Swapping,” “Trade,” or “Trading”): The “change in assignment” practice is when a Metra employee agrees to work an assignment for another employee. The Metra employee assigned to work the combination or assignment, per the Crew Call sheet, is the employee Metra pays for working that day, even if the employee does not work the assignment. The employees who “swap” or “trade” assignments may or may not actually trade assignments, rather, oftentimes one employee works for another, without any reciprocal obligation with regard to any future assignments (swaps or trades).

Change in Assignment form: The Metra created form used on the Metra Electric District Line by which employees documented a change, swap, or traded assignment. The form identifies, among other things, the name of the Metra employee who will work the assignment of another employee (whose name is also on the form), as well as the assignment number and the date of the swap or trade. The form also includes a space for supervisor approval. It was not submitted to Metra’s Payroll department but Metra did retain the form.

“Federal Railroad Administration Hours of Service Report for Trainmen, Yardmen, Engineers and Other Covered Transportation Department Employees” (“FRA log” or hours of service log): A Metra form provided to all Metra covered employees. Federal law requires covered employees to accurately log their work time and this form requires covered employees to record by month and year the following information:

- their assignment number;
- the length of time off duty prior to the trip (assignment);
- the time when the employee first went on and off duty;
- the total time on duty; and
- whether they were released for four hours or more.

Metra Payroll records: Metra Payroll department records that reflect the amount of pay a Metra employee received on a particular day and the assignment for which he was paid. Payroll records are automatically generated using information transmitted from the Crew Calling System. For the purposes of this report, the term “Payroll record(s)” refers to the computer printout titled “Employee Daily Earnings Statement.”

I. ALLEGATIONS

The Office of Executive Inspector General received an anonymous complaint alleging that Metra employees were engaging in various types of misconduct and further alleged that the misconduct was “common knowledge between the employees and [Metra] management.”¹

¹ See Appendix to Report, Exhibit 1.

Specifically, the complainant alleged that Metra employees and Metra management were engaging in:

- “ghost pay rolling” on the Metra Electric District Line; and
- “tax evasion practices” on the Metra Electric District Line.

According to the anonymous complainant, transportation employees, engineers and conductors were trading job assignments with each other and paying each other cash to work for each other, while Metra was still paying them when they were not at work. The OEIG finds that Metra did pay a substantial number of employees even though they did not work and also finds that Metra allowed employees to engage in a so-called “change in assignment” practice that resulted in inaccurate or falsified Federal Railroad Administration hours of service logs, which covered employees are required to maintain in order to assure public safety.

In addition, the OEIG finds that numerous Metra managers, including current Executive Director Don Orseno, not only knew the practice existed for at least 28 years, but also knowingly allowed the practice to continue for years and until at least October 1, 2011 and even after October 1, 2011, albeit only in “emergencies.” The OEIG further finds that the emergency change in assignment practice resulted in employees’ creation of incorrect or false hours of service logs. The OEIG’s numerous Findings and Recommendations are set forth at the end of this report beginning at page 108.

II. BACKGROUND

A. Metra’s Electric District Line Train Operations Management

Metra provides commuter rail service in the Chicago area and also owns and operates several commuter lines, including the Metra Electric District Line, which generally runs between

University Park and Chicago. At the relevant time period of this investigation, the Metra Electric District Line was managed by numerous individuals, as set forth below:

Janet Carbonelli: Director of Operations
Charles R. Earley: Assistant Superintendent²
Cedric L. Smith: Senior Trainmaster
Christopher Dorsey: Trainmaster³
Darrin Austin: Road Foreman of Engines

In addition to the above, about 70 engineers and 150 trainmen and conductors work on the Metra Electric District Line, who generally hold the following titles and duties:

Engineers: Who operate the trains
Conductors: Who collect fares, punch tickets, and open train car doors
Trainmen: Who act as assistant conductors
Extra Collectors: Who assist with the collection of fares

The Metra Electric District Line operates Monday through Friday and on weekends.

B. Federal Law and Railroad Administration Regulations

Metra is required to comply with federal railroad laws, including the Hours of Service Act, 49 U.S.C.A. § 21101 (2012), *et seq.*, and with Federal Railroad Administration regulations.⁴ The purpose of the Hours of Service Act, is “to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees....”⁵

Information on the Federal Railroad Administration’s website states that the Federal Railroad Administration’s expressed goal is to reduce human factor caused accidents.⁶ The

² Mr. Earley subsequently left Metra.

³ In addition, [REDACTED] is also a Metra Electric District Line Trainmaster.

⁴ Prior to October 15, 2011, the provisions of the Hours of Service Act contained the relevant limitations covering “commuter rail passenger” railroad service. As of October 15, 2011, and continuing thereafter, Federal Railroad Administration regulations set forth the applicable limitations on hours of service for commuter rail employees. 49 U.S.C.A §21102(c) (2008); 49 C.F.R. §§228.401, 228.413(b) (2011).

⁵ 49 C.F.R. § 228 Appendix A (2012).

⁶ See www.fra.dot.gov/elib/details/L04936.

Federal Railroad Administration also states that it is a data-driven agency and that “Every regulation and enforcement action we issue is based on facts and sound research...”⁷

1. Overview of Federal Railroad Administration Regulations

The Hours of Service Act and its implementing regulations limit how long so-called “covered” transportation employees, including Metra trainmen, engineers, and conductors, may work and how long they must rest between job assignments. The Hours of Service Act and relevant regulations establish limitations on covered employees, including the following:

First, no employee engaged in commuter train or engine service may be required or permitted to work in excess of twelve consecutive hours.⁸ Second, no employee engaged in train or engine service may be required or permitted to continue on duty or go on duty unless he has had at least ten consecutive hours off duty within the preceding twenty-four hours.⁹

In addition, prior to October 15, 2011, federal law provided that employees could not be required or allowed to work more than six consecutive days without twenty-four consecutive hours off duty, and also provided that employees could not be required or allowed to work more than 276 hours per month.¹⁰ Although these specific limitations are no longer in effect, they were replaced by regulations which prohibit employees from being required or allowed to work for various consecutive-day periods, subject to a number of stipulations.¹¹

In order to comply with the above-referenced federally mandated limitations, covered employees, including Metra employees, are required to maintain records documenting, on an

⁷ See www.fra.dot.gov/elib/details/L04936.

⁸ 49 U.S.C.A. § 21103(a)(2) (2008). As of October 15, 2011, federal regulations now stipulate that an employee cannot work more than twelve hours, “until that employee has had at least 10 consecutive hours off duty.” 49 C.F.R. § 228.405(a)(2) (2011).

⁹ 49 U.S.C.A. § 21103(a)(3) (2008). As of October 15, 2011, federal regulations lowered the required time off duty from ten to eight hours. 49 C.F.R. § 228.405(a)(1) (2011).

¹⁰ 49 U.S.C.A. § 21103(a)(1), (4) (2008).

¹¹ 49 C.F.R. § 228.405(a)(3) (2011). In addition, the collective bargaining agreements covering Metra’s conductors, trainmen, and engineers provide that employees who have reached their federal limits of hours worked under the Hours of Service Act be “transported to their designated on and off duty point.” Brotherhood of Locomotive Engineers and Trainmen Agreement, Rule 26; United Transportation Union Representing Suburban Service Conductors, Assistant Conductors, and Collectors Agreement, Rule 24.

individual basis, the hours of service each covered employee works.¹² For each covered employee, the documentation includes, among other things, the amount of time on and off duty; train assignments and locations; dates; and beginning and end times of first and last assignments of a day.¹³ The records must be signed by the employee whose time on duty is being recorded, and must be retained for two years by the employee's railroad to be made available, upon request, for inspection by the Federal Railroad Administration.¹⁴

Importantly, and in addition to the above, the federal regulations require Metra to self-report violations of the Hours of Service Act and regulations by submitting monthly reports of "excess service" to the Federal Railroad Administration.¹⁵ Excess service includes instances when an employee was on duty in excess of the number of hours permitted under the Hours of Service Act and implementing regulations.¹⁶

C. Federal and State Employment Laws and Relevant Collective Bargaining Agreements

Federal and Illinois state laws generally require that employees be compensated (paid) for the work that they perform.¹⁷ Moreover, Metra has entered into collective bargaining agreements which provide that employees covered by those agreements be paid for work they perform and receive certain benefit time allotments. Specifically, Metra's agreement with the Brotherhood of Locomotive Engineers and Trainmen includes terms relating to rates of pay,¹⁸

¹² See 49 C.F.R. § 228.7 (2011).

¹³ See 49 C.F.R. § 228.11 (2009).

¹⁴ See 49 C.F.R. § 228.9 (2009).

¹⁵ The excess service reports must be submitted not less than 30 days following the end of the month in which the excess service occurred. See 49 C.F.R. § 228.19 (2009).

¹⁶ *Id.*

¹⁷ See, e.g. 29 U.S.C.A. § 206 (2007); see also 820 ILCS 115/3, 4 (1995).

¹⁸ RULE 1. RATES OF PAY – SUBURBAN SERVICE. (Effective July 1, 2008)

(a) COMMUTER PASSENGER SERVICE ENGINEERS.- Electric District

- Per Day: \$192.89
- Daily Guarantee: \$194.84

... continued

overtime pay,¹⁹ personal leave,²⁰ and vacation leave.²¹ Similarly, Metra's collective bargaining agreement with the United Transportation Union Representing Suburban Service Conductors,

-
- Mileage Rates For Miles of 100 or less: \$1.9289
 - Mileage Rates For Miles in excess of 100: \$1.2032
 - Overtime Per Hour: \$25.65
 - GEB, Per Day: \$199.34

RULE 2. BASIC DAY – SUBURBAN SERVICE.

(a) For Northern District, Electric District, and Heritage Corridor commuter passenger service Engineers, one hundred (100) miles or less, eight (8) hours or less, shall constitute a day's work; miles in excess of one hundred (100) will be paid for at the mileage rate provided.

RULE 47. RATE PROGRESSION-NEW HIRES.

In any class of service or job classification, rates of pay, additives, and other applicable elements of compensation... will be eighty percent (80%) of the applicable rates of pay and will increase in increments of five (5) percentage points for each year of active service until the new employee's rate is one hundred percent (100%) of the applicable rates....

RULE 59. SICKNESS OR INJURY – COMPENSATION.

An employee taken sick or injured while on duty will receive not less than a minimum day's pay. An employee relieved for personal reasons will receive pay for the actual time worked.

¹⁹ **RULE 5. COMMUTER PASSENGER SERVICE-OVERTIME.**

(a) Engineers and Firemen in commuter passenger service shall be paid overtime for all time actually on duty, or held for duty in excess of eight (8) hours (computed on each run from the time required to report for duty to the end of that run) within nine (9) consecutive hours; and also for all time in excess of nine (9) consecutive hours computed continuously from the time first required to report to the final release at the end of the last run. Time shall be counted as continuous service in all cases where the interval of release from duty at any point does not exceed one hour. This rule applies regardless of mileage made. For calculating overtime under this rule, the Carrier may designate the initial trip.

²⁰ **RULE 48. PERSONAL LEAVE DAYS.**

(a) Engineers and Firemen in covered service as of December 31 in any particular year will be allowed twelve (12) personal leave days in the following calendar year... (b) Personal leave days as provided above may be taken upon advance notice from the employee to the proper Carrier officer, provided, however, such days may be taken only when consistent with the requirements of the Carrier's service. (c) An employee utilizing a personal leave day as provided herein will be allowed the same compensation he would have earned had he remained on his regular assignment... (d) Engineers and Firemen will not be permitted to take a personal leave day on a layover or off day of their assignment... (f) At the end of each calendar year, the unused portion of an employee's twelve (12) day personal leave allowance will be transferred to the employee's Personal Leave Day Reserve Account and may accumulate up to a maximum of one hundred and fifty (150) days. (g) When an employee has exhausted his allowance of twelve (12) personal leave days in any calendar year, the employee may then request to utilize days accumulated in his Personal Leave Day Reserve Account in accordance with the provisions of paragraphs (b) and (c), above. (h) Upon retirement under the provisions of the Railroad Retirement Act, the employee [or the employee's beneficiary in the event the employee dies] will receive payment equal to thirty percent (30%) of the days remaining in his Personal Leave Day Reserve Account... Paragraph ©[sic], above, shall be used as the basis for calculating the amount due under this paragraph. (i) No later than March 1 of each year, or as soon as possible thereafter, each employee covered by this agreement will be notified of the number of days in his Personal Leave Reserve Account.

²¹ **RULE 49. VACATION. APPENDIX E**

Section 1. Each employee... will be qualified for [an amount of vacation days based on seniority and other factors].... Section 7. (a) Vacations shall not be accumulated or carried over from one vacation year to another. However, to avoid loss of time by the employee at end of his vacation period, the number of vacation days at the request of the employee may be reduced in one year and adjusted in the next year.... Section 8. The vacation provided for in this agreement shall be considered to have been earned when the employee has qualified under

... continued

Assistant Conductors, and Collectors also includes provisions relating to rates of pay,²² overtime pay,²³ personal leave,²⁴ and vacation leave.²⁵ Both of these collective bargaining agreements have terms regarding the so-called “extra board.”²⁶

Section 1 hereof. If an employee’s employment status is terminated for any reason whatsoever, including but not limited to retirement, resignation, discharge, noncompliance with a union shop agreement, or failure to return after furlough, he [or his beneficiary in the event that he dies] shall, at the time of such termination, be granted full vacation pay earned up to the time he leaves service, including pay for vacation earned in the preceding year or years and not yet granted, and the vacation for the succeeding year if the employee has qualified thereof under Section 1.

²² RULE 1. RATES OF PAY – SUBURBAN SERVICE (in effect as of July 1, 2001)

- (a) Commuter Passenger Service Conductors
 - Per Day: \$159.23
 - Daily Guarantee Rule 6(d): \$160.67
 - Mileage Rates For Miles of 150 or less: \$1.0616
 - [Mileage Rates For Miles] In excess of 150: \$0.6576
- (b) Commuter Passenger Service Assistant Conductors and Collectors
 - Per Day: \$149.29
 - Daily Guarantee Rule 6(d): \$150.78
 - Mileage Rates For Miles of 150 or less: \$0.9953
 - [Mileage Rates For Miles] In excess of 150: \$0.6215...

RULE 2. BASIC DAY – SUBURBAN SERVICE

- (a) For commuter passenger service Conductors, Assistant Conductors, and Collectors, one hundred fifty (150) miles or less, eight hours- or less shall constitute a day’s works; miles in excess of one hundred fifty (150) will be paid for at the mileage rate provided.

RULE 41. RATE PROGRESSION-NEW HIRES.

- (a) In any class of service or job classification, rates of pay, additives, and other applicable elements of compensation... will be 80% of the applicable rates of pay and will increase in increments of five (5) percentage points for each year of active service under this Agreement until the new employee’s rate is 100% of the applicable rates....

RULE 51. SICKNESS OR INJURY – COMPENSATION

An employee injured while on duty will receive not less than a minimum day’s pay. An employee taken sick while on duty, or relieved for personal reasons, will receive pay for the actual time worked.

²³ RULE 4. OVERTIME – COMMUTER PASSENGER SERVICE.

(a) Conductors, Assistant Conductors, and Collectors in commuter passenger service shall be paid overtime for all time actually on duty, or held for duty, in excess of eight (8) hours (computed on each run from the time required to report for duty to the end of that run) within nine (9) consecutive hours; and also for all time in excess of nine (9) consecutive hours computed continuously from the time first required to report to the final release at the end of the last run. Time shall be counted as continuous service in all cases where the interval of release from duty at any point does not exceed one hour. This rule applies regardless of mileage made. For calculating overtime under this rule, the Carrier may designate the initial trip.

²⁴ RULE 69. PERSONAL LEAVE. APPENDIX L

Section 1. Employees retaining seniority on January 1st of each year will be granted (10) personal leave days during the calendar year. Section 2. Personal leave days provided in Section 1 may be taken upon advance notice from the employee to the proper Carrier officer provided, however, such days may be taken only when consistent with the requirements of the Carrier’s service. Personal leave days will be scheduled from 12:01 a.m. to 11:59 p.m. on the day requested. This does not change the application of Rule 18 (m) [regarding the “extra board.”] Section 3. Personal leave days taken will be paid for at the basic straight time daily rate (eight hours x straight time hourly rate) of the employee’s position or his protected straight time daily rate (eight hours x protected hourly rate), whichever is

... continued

As explained in more detail below and pursuant to collective bargaining agreements, Metra Electric District Line conductors and engineers are generally paid based upon their assigned job or assignment. Conductors and engineers also receive compensation for any action that deviates from their normal schedule, such as, for example, when an employee works overtime, or is deadheading (riding a train while on duty, but not as a member of the train crew). In addition, Metra Electric District Line engineer, conductor, and trainman pay is generally based on seniority (referred to generally in rules as “Rate Progression--New Hires”). In other words, based on the specific terms of the various collective bargaining agreements between Metra and unions, not all engineers, conductors, and trainmen are paid the same rate.

III. INVESTIGATION

A. Federal Railroad Administration Laws

1. Metra Hours of Service Reports

greater. Section 4. At the end of each calendar year, the unused portion of an employee’s ten (10) day personal leave allowance will be transferred to his “Personal Leave Day Account” and may accumulate up to a maximum of one hundred and twenty (120) days. (Employees retaining seniority on January 1, 1993 received an initial bank of 18 days.).... Section 6. At the time the employee retires from the service of the Carrier under the provisions of the Railroad Retirement Act, the employee will be given a cash payment equal to thirty percent (30%) of the personal leave days in his “Account.” Section 7. The straight time daily rate (eight hours x straight time hourly rate) of the regularly assigned position held at the time of illness or retirement will be used in calculating the amount due under Sections 5 and 6.

²⁵ RULE 61. VACATION. APPENDIX E

Section 1. Each employee... will be qualified for [an amount of vacation days based on seniority and other factors].... Section 7. (a) Vacations shall not be accumulated or carried over from one vacation year to another. However, to avoid loss of time by the employee at end of his vacation period, the number of vacation days at the request of the employee may be reduced in one year and adjusted in the next year.... Section 8. The vacation provided for in this agreement shall be considered to have been earned when the employee has qualified under Section 1 hereof. If an employee’s employment status is terminated for any reason whatsoever, including but not limited to retirement, resignation, discharge, noncompliance with a union shop agreement, or failure to return after furlough, he [or his beneficiary in the event that he dies] shall, at the time of such termination, be granted full vacation pay earned up to the time he leaves service, including pay for vacation earned in the preceding year or years and not yet granted, and the vacation for the succeeding year if the employee has qualified thereof under Section 1.

²⁶ See Appendix to the Report, Exhibit 3 and 4 for a copy of collective bargaining agreement excerpts that contain language relating to the use of the extra board.

Metra requires employees to be familiar with Federal Railroad Administration laws and Metra policies. In order to comply with the above referenced Hours of Service Act, Metra requires covered employees to keep track of their hours of service on a Metra “Federal Railroad Administration Hours of Service Report for Trainmen, Yardmen, Engineers and Other Covered Transportation Department Employees” or “FRA log.”²⁷

Instructions for completing the FRA logs are on the inside cover of the log.²⁸ Moreover, Metra Electric Bulletin Notice No. 1, issued January 1, 2011 states, among other things, that:

EACH COVERED EMPLOYEE MUST MAINTAIN THEIR OWN INDIVIDUAL HOURS OF SERVICE REPORT FORM. Information on any covered service must be recorded daily, as performed, in chronological order, in accordance with instructions contained in the example shown on the inside cover of the booklet... (emphasis in the original).²⁹

Pursuant to Metra policy, employees must record the *actual time worked* and time spent off duty and must submit their FRA log to the appropriate Time Reviser.³⁰ Metra employees explained that at the end of the month, the FRA logs were placed in a box to be reviewed and then retained by Metra.

2. Federal Railroad Administration Safety Specialist [REDACTED]

On September 4, 2012, investigators interviewed Federal Railroad Administration Railroad Safety Specialist [REDACTED]. [REDACTED] told investigators he has training and

²⁷ See *General Code of Operating Rules, Sixth Edition, Section 1.17* (April 7, 2010) and *Metra Electric Bulletin Notice No.1, Item No. 7* (January 1, 2011).

²⁸ See Appendix to Report, Exhibit 2 for a copy of the FRA log Instructions relevant to this investigation.

²⁹ See Appendix to Report, Exhibit 2 and Exhibit 9 for a copy of the *Metra Electric Bulletin Notice No. 1, Item No. 7* (January 1, 2011).

³⁰ See “*System Special Instructions 1.17,*” and *Metra Electric Bulletin Notice No.1, Item No. 7* (January 1, 2011). Senior Director of Training [REDACTED] was interviewed on May 10, 2012 and told investigators that he and his staff provide training to conductors on the requirements of the Federal Railroad Administration regulations. [REDACTED] said that each Metra conductor should be familiar with Metra safety rules and the federal regulations. [REDACTED] also stated that the FRA logs should reflect the hours of service worked and should not simply mirror Crew Call sheets.

experience in Hours of Service regulations, adding he was a “subject matter expert for hours of service reporting.”³¹

██████████ said that commuter railroads, like Metra, are required to have covered employees complete FRA logs. According to ██████████, the Federal Railroad Administration does not collect FRA logs; rather, it only receives reports from the railroad companies when an employee violates the hours of service laws. At that time, the railroad company is required to complete a “Notification of Excess Service Laws Report.”

██████████ was asked if the Federal Railroad Administration would investigate if it was determined that Metra employees were working multiple shifts but only reporting they worked one shift, or if employees did not document in their FRA logs their *actual hours* worked. In response, ██████████ replied that if the allegations turned out to be true, and violations were found in Metra’s record keeping, Metra could be responsible for civil penalties up to \$2,000 per violation. ██████████ also noted that when an employee signs an FRA log, he or she is indicating the document is accurate.

B. Metra Time Off and Payroll Procedures

Metra has time off and payroll procedures to ensure compliance with the above referenced federal and state employment laws and hours of service laws.

1. Engineer, Conductor, and Trainman Work Assignments or Runs

Metra engineers, conductors and trainmen work assignments. Assignments consist of one or more train runs (a train traveling from one location to another).³² The length of time an employee works on each run varies depending upon whether it is a weekday or weekend run.³³

³¹ According to ██████████, the requirements relating to the recording the hours of service are governed by 49 C.F.R. § 228.11 (2009).

2. Metra Crew Call Department

Metra operates a Crew Call department that creates a so-called “Crew Call sheet” that identifies the employees assigned to work on a particular day and their assignment numbers.³⁴

3. Metra Employee “Lay Off” Policy and Crew Call Department’s “Extra Board”

Metra employees receive a certain number of yearly paid vacation and personal days.³⁵ Each year, Metra Electric District Line employees, through their unions, negotiate and schedule vacation and personal days off for the next year.³⁶

The Metra Electric District Line also has a so-called “lay off” policy that applies when Metra’s Crew Call department receives a telephone call from an employee who needs to “lay off” (take time off) or when there is a need to fill extra work, extra trains, or to perform snow removal duty. In order to receive an unscheduled day off, the employee must call the Crew Call department, which attempts to locate another employee able to work the assignment from Metra’s so-called “extra board.”³⁷ In general, the Metra extra board consists of employees with less seniority who are required to be available (on-call) to substitute for a sick employee (or one

³² For example, a particular assignment may consist of a morning train run from University Park to Chicago and an afternoon run from Chicago to University Park.

³³ A document titled, “Metra Electric District Engineer’s Weekday Combinations” is sort of a schedule of train assignments that identify every Metra Electric District Line run and includes the “total time on duty,” or work time for each assignment. For example, the first entry on the Engineer’s Weekday Combinations document identifies “Combination No. 1,” with the “total time on duty” as being 5 hours and 16 minutes. The next entry is “Combination 101” which is the same route as Combination No. 1, but it is on Saturday, and is only a single run, with a “total time on duty” as being 3 hours and 40 minutes. So, on the Crew Call sheet, this assignment would be identified as 01/101.

³⁴ Each assignment number is described in this document, which lists: the train number and departure station; the arrival station, the time of departure; and the total amount of “on duty” time for the employee assignment.

³⁵ The number of yearly paid vacation and personal days varies depending upon seniority and is governed by collective bargaining agreements, but can total as much as five weeks of vacation time and ten personal days.

³⁶ When employees retire from Metra, they may be paid for vacation and personal days remaining in their benefit banks, at a rate indicated in the appropriate collective bargaining agreement.

³⁷ The respective collective bargaining agreements between Metra and its union employees have very specific provisions relating to the extra board and its procedures. See Appendix to the Report, Exhibits 3 and 4 for a copy of collective bargaining agreement excerpts that contain the language relating to the use of the extra board.

seeking time off). Extra board employees are paid to be on-call, regardless of whether they are assigned work or not.

Metra employees who seek time off through the lay off process may be denied time off, depending on the availability of extra board employees, and will generally *not know* if their request has been approved until the day before the requested absence. In light of the Hours of Service Act requirements and other Metra policies, conductors, trainmen, and engineers are *not allowed* to take leave for a few hours during their assigned workday, rather, they must take time off in full-day increments.

After receiving the employee's request for time off (other than an already annually scheduled vacation day), the Crew Caller who receives the request places the request in the "Red Book," documents whether the request is approved, and enters the information into the computerized "Crew Calling System."³⁸

4. Metra's Crew Call and Payroll Departments: Pay Calculations

Investigators interviewed Metra Director of Payroll [REDACTED] about the process by which the Payroll department pays engineers and conductors.³⁹ [REDACTED] explained the process as follows:

- The Crew Call department enters assignment information into the Crew Calling System.
- At the end of the pay period, the Payroll department's computerized system interfaces with the Crew Calling System to transfer the assignment information to the payroll system.
- Payroll pays the employee identified in the system as the individual who worked the assignment.

³⁸ Metra's Chief Crew Caller, [REDACTED], who was interviewed on January 9, 2013, stated the Red Book is maintained by Crew Callers and is a backup reference for the sick time, personal time, and vacation time entered in the Crew Calling System.

³⁹ [REDACTED] was interviewed on February 16 and April 17, 2012.

██████████ explained the payroll process used when an employee changes his assignment through the extra board/lay off process as follows:

- The Crew Call department changes the information in the Crew Calling System to reflect the change in assignment.
- The payroll system interfaces with the Crew Calling System.
- The substitute employee, *i.e.* the individual who actually worked the assignment, is paid rather than the originally-assigned employee.

As set forth above, if an employee calls the Crew Call department to take a sick day or to request to take an unscheduled personal or vacation day, the Crew Call department uses the extra board to fill the vacancy, verifies that the employee has available personal or vacation time, and then records the employee's absence in the Crew Calling System. By following this procedure, Metra's Crew Call department records reflect that the employee did not work and thus will *not be paid* for the run they were assigned to work, and also reflects when an employee uses a personal or vacation day.⁴⁰

5. Metra Employees Rate of Pay

Metra engineers, conductors, and trainmen are generally paid based upon their assignment. Conductors and engineers also receive compensation for any action that deviates from their normal schedule, such as when an employee works overtime. In addition, employee pay varies depending on seniority and the assignments worked. Pay for more complex or longer assignments may be greater than pay for shorter or simpler assignments.⁴¹ In other words, not all engineers, conductors, and trainmen are paid at the same rate. Trainmen, conductors, and

⁴⁰ ██████████ was also asked about Change in Assignment forms and her response is set forth below on page 18 of this report.

⁴¹ According to Payroll Reviser ██████████, if Metra employees do not use their allotted benefit time in a given year, they are allowed to roll it over to the next year into the employees' benefit reserve accounts. She also stated that benefit compensation upon retirement is dictated by the employee's collective bargaining agreement.

engineers who work extra board assignments receive a guaranteed daily minimum amount but are also paid for assignments they work.

C. Metra Electric District Line Change in Assignment Forms

During the course of this investigation, investigators discovered the existence of a so-called “Change in Assignment” form and practice used by Metra Electric District Line staff. This practice was referred to by nearly all persons interviewed as “swapping.” According to Metra employees and managers, the change in assignment practice was created to allow an employee to “swap” assignments with a co-worker so the employee could take a day off without having to go through the Crew Call department and extra board/lay off procedure.

To effectuate the practice, Metra Electric District Line staff created a Change in Assignment form⁴² that was used to document changes in assignment. The form contained a place for Metra supervisors to approve a particular change in assignment. According to Metra employees, the Change in Assignment form was kept in the office. If an employee wished to swap his assignment, he would complete the form and a supervisor would sign the form, approving the swap.

In effect, however, the OEIG discovered that the change in assignment practice failed to act as an assignment swapping mechanism. Investigators discovered that the change in assignment practice did not mean two employees were exchanging assignments with each other, but rather was a term meant to describe when one employee agreed to work an assignment for another employee, sometimes (as set forth below) for cash and with no reciprocal obligation or requirement. As discussed more fully below, the OEIG discovered that the change in assignment practice led to Metra employees regularly completing their FRA logs incorrectly and receiving

⁴² The OEIG discovered that there have been numerous iterations of the Change in Assignment form, however, each has served the same purpose. See Appendix to Report, Exhibit 5 for sample Change in Assignment forms.

incorrect pay, in some instances, receiving pay for assignments they did not complete and in other instances, not receiving pay for assignments they did complete.

D. Interviews of Metra Electric District Line Managers Regarding the Change in Assignment Practice and its Effect on employee FRA Logs and Payroll

As discussed more fully below, the OEIG conducted an analysis comparing Change in Assignment forms with employee FRA logs. That analysis revealed that following a change in assignment, employees regularly included incorrect information in their FRA logs, and were incorrectly paid. As a result, OEIG investigators interviewed Metra employees and Metra Electric District Line managers about the change in assignment practice, their knowledge of same, and the effect of the practice on FRA logs and Metra payroll.

1. Chief Crew Caller [REDACTED]

When OEIG investigators interviewed Chief Crew Caller [REDACTED],⁴³ she could not verify if the change in assignment practice was then occurring at the Metra Electric District Line, but did acknowledge that the practice did occur in the past and when it occurred, the Change in Assignment forms were *never* transmitted to the Crew Callers. [REDACTED] also said Crew Callers were never involved in the practice and did not document any changes in assignments in the Red Book or the Crew Calling System. As a result, according to [REDACTED], the employee who *did not work* would be paid by Metra for working that particular assignment and would be responsible for paying the Metra employee *who did work*.

2. Director of Payroll [REDACTED]

During the interview with Metra's Director of Payroll, [REDACTED], investigators showed [REDACTED] Change in Assignment forms. [REDACTED] reviewed the forms and stated she had never seen them before. [REDACTED] reiterated that her department does not receive any

⁴³ [REDACTED] was interviewed on January 9, 2013.

form and that any change in assignment has to be recorded in the Crew Calling System before the Payroll department would be aware of the change. In other words, ██████████ said that unless the Crew Callers entered the change in assignment information into the Crew Calling System, the Metra employee who was assigned to work, not the substitute employee, was the employee Metra paid for that assignment.

3. Payroll Reviser ██████████

The OEIG also interviewed Payroll Reviser ██████████⁴⁴ about the change in assignment practice and the Change in Assignment form. ██████████ acknowledged that she heard rumors that trainmen, conductors and engineers were swapping and exchanging shifts but also said the Payroll department was *never advised* of the swaps and, to her knowledge, did not receive any type of documentation regarding the change in assignment practice.

██████████ was unaware of who maintained the Change in Assignment forms and when asked if job swaps affected an employee's pay, she stated, "As far as I was concerned, as long as I didn't have a time sheet, no." When shown a Change in Assignment form, ██████████ ██████████ said, "[I] have never seen a sheet like this ... [it] has nothing to do with my work."

4. Director of Operations for the Metra Electric District Line Janet Carbonelli

Janet Carbonelli told investigators⁴⁵ that as Director of Operations for the Metra Electric District Line, her duties include the day-to-day supervision of the operations of the Metra Electric District Line.⁴⁶

⁴⁴ ██████████ was interviewed on January 31, 2013.

⁴⁵ Ms. Carbonelli was interviewed on August 25, 2011 and June 25, 2012.

⁴⁶ In response to an OEIG request for documents, Metra inadvertently failed to produce the Job Description for the Director of Operations for the Metra Electric District Line but did produce the Job Description for the Assistant Superintendent of the Metra Electric District Line, a position that reported directly to the Director of Operations. The essential functions of the Assistant Superintendent position included "[s]upervis[ing] the day-to-day ... continued

a. Change in Assignment Practice

When asked about the change in assignment practice, Ms. Carbonelli stated that the practice has been in existence since she assumed her position, that there is no written policy relating to the practice, that employees do not receive training on the practice, and that all managers are aware of the practice. According to Ms. Carbonelli, the change in assignment practice stopped in October 2011, except in “emergency” situations, but was unable to identify any rule or policy that defined what constituted an “emergency.”

b. Change in Assignment Practice’s Effect on FRA logs

Ms. Carbonelli told investigators that Metra Electric District Line employees are trained on completing FRA logs and that these documents also include instructions for completion. She said that each conductor should be familiar with Hours of Service Act regulations, because they receive copies of the regulations, and sign forms acknowledging receipt of those regulations. Ms. Carbonelli confirmed that FRA logs are important for safety reasons, but said that *she does not* compare the FRA logs to Change in Assignment forms or Payroll records to verify if the FRA logs are accurate; rather, she only checks to see if the FRA logs are completed.

c. Change in Assignment Practice’s Effect on Metra Payroll

With regard to which employee Metra paid when the change in assignment practice occurred, Ms. Carbonelli said that the *assigned employee* was the person paid, even when the Change in Assignment form reveals that *another employee* was going to work in place of the initially-assigned employee. According to Ms. Carbonelli, the change in assignment practice *did not* affect payroll because Metra’s Payroll department was not informed of the change. Ms.

performance of employees to ensure safe, efficient and economical operation of trains in compliance with rules and schedules,” and “[e]nsur[ing] strict adherence to all safety and operating rules and practices.”

Carbonelli said she was unaware of Metra employees paying one another in order to change assignments.

5. Then-Metra Electric District Line Senior Trainmaster Cedric Smith

At the time of his interview, Cedric Smith⁴⁷ was a Metra Electric District Line Senior Trainmaster, who said he had worked at Metra for 19 years and reported to Ms. Carbonelli and Assistant Superintendent Charles Earley.⁴⁸ As Senior Trainmaster, Mr. Smith said he was in charge of more than 200 employees and was responsible for educating the employees and enforcing operating safety rules. In that regard, he ensured employees were knowledgeable on the General Code of Operating Rules or “GCOR,” and made certain employees were aware of and complied with Metra Special Instruction rules and related rules and regulations.⁴⁹

a. Change in Assignment Practice

In regards to the change in assignment practice, Mr. Smith said he was familiar with it, stating he believed the practice had been around at least 20 years, and was familiar with the Change in Assignment form, which he referred to as a “swap sheet.” According to Mr. Smith, all district managers and directors knew about the change in assignment practice. Mr. Smith said Metra Electric District Line provided no training to employees on how to complete or use the Change in Assignment form. Mr. Smith said that the change in assignment practice was only used to take off a few hours during the day, not the entire day. Mr. Smith was unaware of any Metra policy, procedure or collective bargaining agreement term relating to the Change in Assignment form or practice. According to Mr. Smith, this practice gave conductors and

⁴⁷ Mr. Smith was interviewed on September 12, 2012.

⁴⁸ Subsequent to his interview, Mr. Smith became the Assistant Superintendent of the Metra Electric District Line. Mr. Smith also said that prior to serving as a Trainmaster, he worked on the Heritage Corridor District and Rock Island District Lines, among others.

⁴⁹ The Job Description for a Senior Trainmaster reflects that one of the essential functions of Mr. Smith’s position at that time was to “[r]ide[] trains to observe, instruct, and rectify the performance of their individual duties to ensure proper compliance with federal regulations and operational practices....”

engineers an opportunity to take time off, while allowing Metra to still have enough manpower to run trains. Mr. Smith said the change in assignment practice was beneficial for both Metra and the employees because employees who swapped were able to swap in the future as a form of payback. He added, however, that he *did not* keep track of the swapping.

b. Change in Assignment Practice's Effect on FRA Logs

Mr. Smith said that FRA logs are required to be maintained in order to track employee work and rest hours, as well as for safety reasons, and said employees turn in their logs monthly. Mr. Smith said he conducts a minimal review of the FRA logs to ensure they are complete but *does not* compare the FRA logs to Change in Assignment forms, Crew Call sheets, or Payroll records to determine if the FRA logs are completed accurately. Mr. Smith further stated that he did not believe he was supposed to verify the FRA logs were accurate when employees swapped assignments. Nevertheless, Mr. Smith confirmed that the FRA logs are “very important” and should be accurate, reflecting the actual hours worked.

Mr. Smith also told investigators that if a swap was made that affected a covered employee's start or end time, the assignment should be accurately documented in the employee's FRA logs. According to Mr. Smith, he added the two bullet points at the bottom of the Change in Assignment form that read as follows:

- ❖ “Conductor: Your replacement is responsible for completing / submitting original TTR1.”⁵⁰
- ❖ “If trade changes your tie up time⁵¹ or starting time, the Hours of Service Report for that day must reflect these changes.”

Mr. Smith stated that the above-referenced instructions were added to the Change in Assignment form sometime in 2010 because he was “uncomfortable” signing (approving) the form and wanted to emphasize that employees who swapped assignments were responsible for monitoring

⁵⁰ TTR1 is a form that documents, among other things, the number of cars on a train, the crew, the number of passengers, and the length of time between when the train left and returned to the yard.

⁵¹ According to interviews conducted, the “tie up time” is the time when a conductor finishes his assignment.

their own hours of service and for not working longer than they should. Mr. Smith said Metra employees are *not trained* to document their FRA logs to mirror Crew Call sheets or Payroll records. He said FRA logs should reflect the actual times an employee works or is on duty.

Mr. Smith told investigators that of the FRA logs and other documents, including the Change in Assignment forms, Crew Call sheets, and Payroll records, the *FRA logs* should be the most accurate because they are given to the federal government. Mr. Smith said it was possible for two employees to swap assignments without a supervisor's knowledge or approval. Finally, Mr. Smith said he would only approve changes in assignments for an emergency or a return favor. Mr. Smith, however, also said that sometime in 2012, the change in assignment practice had been stopped completely, even for emergencies, and that the Metra Electric District Line no longer has Change in Assignment forms.

c. Change in Assignment Practice's Effect on Metra Payroll

When asked about the effect the change in assignment practice had on Metra's payroll, Mr. Smith said that he knew that employees who participated in the practice were paid when they did not work because, according to Mr. Smith, the Payroll department did not receive the Change in Assignment forms. Mr. Smith stated he did not believe it was normal for employees to be paid when they did not work. When asked why someone should be paid when they did not work, Mr. Smith replied, "that's the way they had it ... the way that this ... this whole change of assignment [worked]." When asked who should be paid for swaps, Mr. Smith responded, "they both should be paid for their own assignments."

6. Then-Metra Electric District Road Foreman of Engines Darrin Austin

At the time of his interview, Darrin Austin was the Metra Electric District Line Road Foreman of Engines,⁵² and said he had been in that role for two years⁵³ and reported directly to Director of Operations Janet Carbonelli.⁵⁴ Mr. Austin said he supervised about 200 employees.⁵⁵

a. Change in Assignment Practice

Mr. Austin said he was familiar with the Metra Electric District Line Change in Assignment form, which he described as a “swap sheet.” He stated that the Metra Electric District Line does not train employees on how to complete or use the form. According to Mr. Austin, this practice was only to be used for emergencies to take a few hours off. However, over time, the practice expanded and employees used swaps to take time off. Mr. Austin believed that the practice of changing assignments had been around for a long time but was unaware of any Metra policy, procedure, or collective bargaining agreement term relating to the practice. Mr. Austin said he thought the change in assignment practice was beneficial for both Metra and employees and said that employees swapped assignments and would later swap as a form of payback. Mr. Austin stated that he had no direct knowledge of conductors or engineers paying each other to change assignments. He did say, however, that he has heard “rumors” that conductors were exchanging money to change assignments. He also said he would be surprised to learn that conductors admitted to paying each other cash to change assignments. Mr. Austin also stated that he believed the change in assignment practice stopped during the prior year (as

⁵² Mr. Austin was interviewed on September 13, 2012.

⁵³ Previously, Mr. Austin was a Tower Operator for one year at the Metra Electric District Line and an engineer for three years at the Rock Island District Line. Mr. Austin’s experience also includes positions as a Clerk, Tower operator, assistant conductor, conductor, Trainmaster and Road Foreman of Engines.

⁵⁴ Subsequent to his interview, Mr. Austin became a Senior Trainmaster at the Metra Electric District Line.

⁵⁵ The Job Description for the Road Foreman of Engines reflects that the essential functions of Mr. Austin’s position at that time included “[m]onitor[ing] and instruct[ing] employees in the proper performance of their duties to ensure safe and efficient on-time performance” and “[p]erform[ing] efficiency tests to determine employee’s [sic] knowledge of and compliance with operating rules.”

noted below, Mr. Austin was interviewed in September 2012) and that Ms. Carbonelli is now the only supervisor for the Metra Electric District Line that can approve changes in assignments.

b. Change in Assignment Practice's Effect on FRA logs

Mr. Austin stated that employees are responsible for documenting their hours of service and are trained, when hired, to document their actual hours worked, not to mirror Crew Call sheets or Payroll records. He was unable to say, however, if employees improperly or inaccurately completed their FRA logs when they changed assignments. Mr. Austin told investigators that he reviews FRA logs, but only looks to see if they are completed. In other words, he does not compare FRA logs to Change in Assignment forms, Crew Call sheets, or Payroll records to see if the FRA logs are accurately completed.

According to Mr. Austin, FRA logs are important, should be accurate, should reflect the actual hours worked to ensure no one violates the Hours of Service regulations, and are maintained to ensure employees are obtaining proper rest and ultimately for safety reasons. In fact, Metra's excess hours report is dependent on employees correctly completing their FRA logs and self-reporting violations. Mr. Austin said he does not complete any audit of FRA logs; rather, he only looks to ensure documents are completed and that an employee does not work more than the allowed number of hours. He explained that all hours worked by employees should be documented in their FRA logs.

Mr. Austin stated he did not keep track of swaps but said if a swap was made that affected an employee's "start up or tie up time," the change in assignment should be accurately documented in an employee's FRA logs. Mr. Austin said the *FRA logs* should be the most accurate document, when compared to the Change in Assignment forms or Crew Call sheets.

c. Change in Assignment Practice's Effect on Metra Payroll

When asked about the change in assignment practice and its effect on Metra payroll, Mr. Austin stated that he would consider Payroll records to be falsified if Metra compensated employees who did not work.

7. Metra Electric District Trainmaster Christopher Dorsey

Investigators interviewed Metra Electric District Trainmaster Christopher Dorsey,⁵⁶ who said he had been a Trainmaster for about 14 months, and reported directly to Ms. Carbonelli.⁵⁷ Among other things, Mr. Dorsey had been a conductor on the Metra Electric District Line for eight years, at which time he reported to Peter Zwolfer.

a. Change in Assignment Practice

Mr. Dorsey confirmed he was familiar with the Metra Electric District Line Change in Assignment form and said Metra provided no training on how to complete or use the form. He also said he was not aware of any Metra policy, procedure, or collective bargaining agreement term relating to the Change in Assignment form or practice. “Swapping,” according to Mr. Dorsey, had been around for many years and employees were permitted to change assignments during weekdays, but only for a run or two, and not an entire day. Mr. Dorsey said that on Saturdays and Sundays, employees could change an entire assignment and get a full day off. According to Mr. Dorsey, if a swap was made that affected an employee’s “start up or tie up time,” then that assignment should be accurately documented in his or her FRA logs.

Mr. Dorsey said he had no direct knowledge of conductors or engineers paying each other cash or exchanging gifts to change assignments but said he heard “rumors of \$50 to \$100” being paid by employees for taking assignments and also heard of employees swapping jobs for

⁵⁶ Mr. Dorsey was interviewed on September 13, 2012.

⁵⁷ The Job Description for a Trainmaster reflects that one of the essential functions of Mr. Dorsey’s position at that time was to “[s]upervise Train and Engine crews to ensure compliance with all operating rules, safety rules and Federal Regulations....”

jobs. Mr. Dorsey said when he was a conductor he changed assignments about “a dozen times” to get time off, but never paid another employee to do so. Nevertheless, he said he would not be surprised to learn conductors admitted to paying each other cash to swap assignments. Mr. Dorsey said when an employee came to him and asked for approval to swap, he only made sure that employee was within the Hours of Service Act regulations. Mr. Dorsey recognized that it may be possible for employees to swap assignments with no supervisor’s knowledge or approval.

b. Change in Assignment Practice’s Effect on FRA logs

Mr. Dorsey said that Metra requires all employees who work with the movement of trains, such as conductors, assistant conductors, and engineers, to document their hours of service and rest periods in their FRA logs. He said that FRA logs are maintained for safety reasons and that employees are required to submit their FRA logs to the district every month. According to Mr. Dorsey, FRA logs are “important,” should be accurate, and should reflect the actual hours worked to ensure no one violates the Hours of Service regulations. Mr. Dorsey said he is responsible for reviewing logs when he goes out in the field, but *does not* compare FRA logs to Change in Assignment forms, Crew Call sheets or Payroll records to determine if the FRA logs are completed correctly. Rather, he only looks to see if the FRA logs are completed.

Mr. Dorsey said he would consider FRA logs to be falsified if they were not completed properly. Mr. Dorsey stated he would not consider Payroll records to be falsified if Metra paid employees who did not work because the Change in Assignment forms did not go to the Payroll department.

According to Mr. Dorsey, he approved conductor and engineer changes in assignments until the practice was terminated in 2011. He said that the swaps were discontinued after October 1, 2011, except in emergencies, with Janet Carbonelli’s approval. Mr. Dorsey stated

that now when employees asked him for time off, he referred the employees to Ms. Carbonelli.

E. Senior Metra Leadership and January 2012 Complaint – Relating to Ghost Pay Rolling and Misconduct

At the time this investigation was initiated, Metra's Executive Director was Alex Clifford. On August 27, 2013, Don Orseno was appointed to serve as Metra's Acting Executive Director. On January 31, 2014, Mr. Orseno was appointed permanent Executive Director at a salary of \$262,500 retroactive to August 27, 2013.⁵⁸ In announcing Mr. Orseno's appointment, a Metra Board member stated, among other things, that it "sought an individual that could communicate effectively with legislators, both locally and in Washington, D.C., to promote safe and reliable service throughout the region."⁵⁹

Metra senior leadership staff includes personnel responsible for administrative activities and personnel responsible for operations of the Metra train lines. One of Metra's senior staff members is Senior Director of Labor Relations [REDACTED], who, at the time of his interview,⁶⁰ said his duties and responsibilities included working on collective bargaining agreements between Metra and the labor unions. In addition to [REDACTED], Metra's Operations personnel included the following persons:

1. George Hardwidge—Deputy Executive Director of Operations

⁵⁸ See Metra minutes, http://metrarail.com/metra/en/home/about_metra/leadership/board_meeting_information.html.

⁵⁹ *Id.*

⁶⁰ [REDACTED] was interviewed on February 16, 2012. Prior to serving as Senior Director of Labor Relations, [REDACTED] served as Metra's Chief Negotiating Officer.

At the time of his interview,⁶¹ George Hardwidge was serving as Deputy Executive Director of Operations. Prior to serving in this position, Mr. Hardwidge served as Chief Transportation Officer, a position he held for twelve years. Mr. Hardwidge stated that he reported to then-Chief Executive Officer Alex Clifford and said he was responsible for overseeing all trains operations and about 2,000 Metra employees.⁶² One of Mr. Hardwidge's prior subordinates was then-Chief Transportation Officer Don Orseno.

2. Don Orseno—Chief Transportation Officer

At the time of his initial interview,⁶³ Mr. Orseno was serving as Chief Transportation Officer, a position he had held since June 2011. Mr. Orseno's prior title was Chief Customer Service Officer and according to Mr. Orseno, he had been in the railroad industry for about 38 years, 28 of which had been with Metra. Mr. Orseno said he reported to Deputy Executive Mr. Hardwidge and was responsible for movement of all trains as well as trainmen, conductors, managers and supervisors.⁶⁴ Mr. Orseno's direct subordinates included:

<i>Janet Carbonelli:</i>	Director of Operations, Metra Electric District
<i>Peter Zwolfer:</i>	Senior Director of Suburban Operations, Chicago Union Station District
<i>Matt Husar:</i>	Director of Suburban Operations, Rock Island District ⁶⁵

3. January 2012 Complaint Metra Received Regarding Ghost Pay Rolling and Misconduct

⁶¹ Mr. Hardwidge was interviewed on February 22, 2012.

⁶² The Job Description for the Deputy Executive Director, Operations, reflects that one of the essential functions of Mr. Hardwidge's position at that time was to "[d]irect[] and control[] the overall operations of the Office of the Deputy Executive Director, Operations to ensure that all administrative and operational functions are performed in accordance with established policies and procedures."

⁶³ Mr. Orseno's initial interview was on February 22, 2012.

⁶⁴ The Job Description for the Chief Transportation Officer reflects that the essential functions of Mr. Orseno's position at that time included: "[d]irect[ing] personally and through subordinate personnel the overall daily activities of the Transportation Department" and "[m]onitor[ing] overall commuter and employee safety performance and compliance with operating rules, safety rules and federal regulations."

⁶⁵ Mr. Husar subsequently left Metra.

During the course of conducting its investigation, OEIG investigators became aware that sometime prior to January 26, 2012, former Metra Executive Director Alex Clifford received an anonymous complaint. The anonymous complaint Mr. Clifford received was very similar to the anonymous complaint the OEIG received. One difference between the anonymous complaint Mr. Clifford received, as compared to the one the OEIG received, involved a reference to the FRA log requirements.⁶⁶ Below is a summary of actions Mr. Clifford took when he received the anonymous complaint as well as related interviews.

a. January 26, 2012 Emails regarding the Anonymous Complaint

In a January 26, 2012, 12:08 p.m. email, former Executive Director Alex Clifford emailed [REDACTED] the anonymous complaint, copied George Hardwidge, and wrote as follows:

[REDACTED]: Please research this matter and provide me a report about its factual nature, and if true, what we need to do about it.

Thank you,
Alex.

That same day at 5:00 p.m., in response to the Clifford email, Mr. Hardwidge wrote as follows:

Alex; [sic] I am aware of the practice which was never as described in the allegation. I put a complete stop to it last year. I want to research and make sure that it has not resumed. More to follow.

George.

Again, on the same day at 5:12 p.m., Mr. Hardwidge emailed Don Orseno and Janet Carbonelli, copied Matt Husar and Peter Zwolfer, and wrote the following:

CONFIDENTIAL. . .

I know the history. I need to know that swaps have not been resumed on any district. Also, did or do any officers have knowledge or involvement in the money exchange. Again; [sic] Swaps are not to be authorized or permitted except in extreme or emergency circumstances. Under no circumstance may a swap be made for an entire days [sic] work.

glh

⁶⁶ See Appendix to Report, Exhibit 6 for a copy of the emails and related anonymous complaint Mr. Clifford received and compare with Exhibit 1, which is a copy of the anonymous complaint the OEIG received.

In response to Mr. Hardwidge's email, Ms. Carbonelli responded to Messrs. Hardwidge and Orseno, also on January 26, 2012 at 6:04 p.m. and wrote the following:

Since October 1. [sic] 2011, I have authorized seven swaps, the majority have been for medical appointment or conditions. One swap was last Monday due to employee,s [sic] basement being flooded. In all cases manpower was not available for a personal day and all employees provided documentation of their event. I have no knowledge of any monies exchanged. My officers defer swaps to me.

In light of the above email exchanges, investigators interviewed Mr. Hardwidge and other high ranking Metra employees, including Mr. Orseno regarding their knowledge of the so-called swapping practice.

**b. Interview of Former Deputy Executive Director of Operations
George Hardwidge**

During his interview, George Hardwidge⁶⁷ was shown the anonymous complaint Mr. Clifford received. In response, Mr. Hardwidge said the complaint allegations were incorrect and could not have occurred with job swaps for the following reasons.

First, conductors or engineers taking time off to "golf," could not have occurred because job swaps are for emergencies only.

Second, FRA logs are an absolute application that require the truth "be entered to show the exact work and rest hours" for employees.

Third, "no supervisor, manager or director ever authorized employees to swap jobs between employees for any monetary exchange."

Mr. Hardwidge said that the description of the complainant's allegation sounded like the practice of job swaps expanded to include changes in assignment for non-emergency situations. As such, he "put a complete stop" to the practice in October 2011. He said he might have "sent a memo" to that fact, but "could not locate the memo" and also said he contacted then-Chief

⁶⁷ Mr. Hardwidge was interviewed on February 22, 2012. Although at the time of his interview Mr. Hardwidge was employed by Metra, he has since retired.

Transportation Officer Don Orseno, and “put a stop to swaps.” Mr. Hardwidge, however, said there was “no formal investigation” and there was “no documentation” regarding actions he took.

Mr. Hardwidge explained his understanding of the process by which Metra conductors or engineers on the Metra Electric District Line could request time off⁶⁸ and also described his understanding of the change in assignment practice. According to Mr. Hardwidge, he was aware that the change in assignment practice was being used at the Metra Electric District, Rock Island District, and Chicago Union Station District Lines. Mr. Hardwidge said that conductors and engineers sometimes work six to seven days a week and more than 11 hours a day, and said the change in assignment practice was an important courtesy to employees and management to deal with realistic situations. Mr. Hardwidge was unaware of when the change in assignment practice began, but said it has been a long-standing practice.

According to Mr. Hardwidge, FRA logs require the truth to be entered “to show the exact work and rest hours” of an employee. He explained when employees change assignments, the substitute employees should record the hours they worked on their FRA logs.

Mr. Hardwidge was asked if any employees had been disciplined due to the change in assignment practice, or if any employee switched assignments without management’s approval. In response, Mr. Hardwidge answered, “yes,” but could not remember the exact incident.⁶⁹

Mr. Hardwidge said there were no written policies or controls for swaps and said he never thought the practice was a violation of any policy, although at the time of his interview, he

⁶⁸ Mr. Hardwidge generally described the process in the same manner as other witnesses. According to Mr. Hardwidge, employees must telephone the Crew Caller for available time off and when operations allowed, based on seniority, the Crew Caller could give the time off if a qualified replacement was located from the extra board. If an employee was not available from the extra board, the Crew Caller would deny the request for time off. At no time did employees take a few hours off. If an employee takes time off, it requires a whole day, as employees are not paid by the hour.

⁶⁹ Although he could not remember the specifics, Mr. Hardwidge did recall that a manager heard an employee “over the air,” who the supervisor knew was not assigned to that train. When confronted, the employee said he swapped without authorization. Mr. Hardwidge believed there was a “formal investigation” but did not know the disposition.

said he might describe his feelings differently. After being asked if he saw any potential problems this practice could create, Mr. Hardwidge stated, “all kinds of problems,” including tax consequences and violations of the Federal Railroad Administration regulations. Mr. Hardwidge denied being aware of employees paying one another to exchange assignments.

According to Mr. Hardwidge, Ms. Carbonelli approved seven swaps since October 1, 2011, with a majority being for medical appointments, although one was for an employee whose basement flooded. Director for the Rock Island District Line Matt Husar approved one swap made for a medical reason and Director of Chicago Union Station District Peter Zwolfer reported he had a few employees swap assignments for medical reasons. In total, Mr. Hardwidge confirmed that twelve changes of assignment were approved between October 1, 2011 and January 26, 2012, or after he said he put a stop to the practice. He said, however, that he wants his directors to have the flexibility to allow for changes in assignment for emergency situations.

c. Then-Chief Transportation Officer Don Orseno

On February 22, 2012, investigators interviewed then-Chief Transportation Officer Don Orseno whose duties included overseeing the movement of all trains, and supervision of all trainmen, conductors, managers, and supervisors.⁷⁰ Mr. Orseno said he was aware of the change in assignment practice, which he referred to as “trading” or “swapping” and said the practice had occurred since he had been with Metra, or at least 28 years, but was only to be used for emergencies. According to Mr. Orseno, swapping occurred more on the Metra Electric District Line but also occurred on the Rock Island District and Chicago Union Station District Lines.

In addition, Mr. Orseno said Metra paid the employee who “was actually assigned to the job.” Mr. Orseno said that he was unaware of any exchange of money between employees and

⁷⁰ Mr. Orseno agreed to record his interview, which will be available to Metra.

said that if employees were just changing assignments, there would be no need for any of them to pay each other. Mr. Orseno also said that he would have a problem with employees paying each other cash to swap assignments because there would be tax and other implications. He further stated that he would have a hard time believing that any employees made much money from swapping assignments with others. Mr. Orseno was then asked about the allegations in the complaint that Mr. Clifford received in which there was reference to ghost pay rolling. In response to these questions, Mr. Orseno stated as follows:

...there is not ghost pay rolling, ghost pay rolling to me is if someone is being, being paid for something they're not really doing. These, these individuals whoever they are, are getting paid by us regardless. So that's, that doesn't constitute it to me; what I know of a ghost pay roll is someone that is not even around getting paid. And the cash, I don't know anything about the cash – that's, I don't know.

Mr. Orseno also stated that he discussed the change in assignment practice with the directors of each train line during a September 2011 conference call and the practice was stopped in October 2011, except for emergencies.⁷¹ However, Mr. Orseno acknowledged that there was no document defining what constituted an emergency. Finally, Mr. Orseno said that the Federal Railroad Administration regulations require FRA logs to “reflect what you actually did” and did not have anything to do with pay, but rather related to federal requirements for ensuring employees received proper rest.

d. Then-Senior Director of Suburban Operations, Chicago Union Station District Peter Zwolfer

⁷¹ See Appendix to Report, Exhibit 7 for a copy of notes from this meeting.

At the time of his interview, the Senior Director of Suburban Operations, Chicago Union Station District Line was Peter Zwolfer.⁷² In September 2013, Mr. Zwolfer was named the Acting Deputy Executive Director for Operations. In his interview, Mr. Zwolfer told investigators that he reported directly to Mr. Orseno. Mr. Zwolfer said he was familiar with the Metra Electric District Line's documentation of work for trainmen, conductors and engineers, FRA logs, and Change in Assignment forms.

During his interview, Mr. Zwolfer said that when he was Superintendent of the Metra Electric District Line, each change in assignment, which he referred to as a "trade," was individually documented on a separate form, so a more inclusive form to document changes in assignment was created by his office and with his approval. After being shown a Change in Assignment form, dated Saturday, July 16, 2011, Mr. Zwolfer explained that the Metra Electric District Line used the form on weekends to document "trading."

According to Mr. Zwolfer, trades were seldom made in the Rock Island District or Chicago Union Station District Lines because employees in those two districts work longer shifts. Trades were used extensively at the Metra Electric District Line because of shorter jobs and work hours on the weekends. Mr. Zwolfer stated that management authorized the Metra Electric District Line Change in Assignment form, and the trades were completed with management knowledge and approval. However, there were no Metra policy, procedure or collective bargaining agreements that addressed the practice.

Mr. Zwolfer then explained the practice of changing assignments: employees who wanted to receive time off would locate other employees with the same qualifications to work in place of

⁷² Mr. Zwolfer was interviewed on June 28, 2012 and said he had held this position for five years, and previously held the position of Superintendent of the Metra Electric District Line from May 1998 to June 2007. He had been in the railroad industry for 29 years, and held numerous positions.

them; the two employees entered their names and assignments on the Change in Assignment form; and a supervisor would approve the change in assignment. Mr. Zwolfer said he never participated in the change of assignment practice, with the exception of authorizing changes in assignment. Mr. Zwolfer also said he never got involved with the practice of trainmen, conductors or engineers paying each other cash to work for each other but said that senior management was aware of and *knew of the exchange of cash*, but did not get involved. He said he never heard of an exact dollar amount of money that was exchanged but thought it was right that a person who did not work give a portion or the entire amount of money they were paid to the employee who worked the assignment.

Mr. Zwolfer acknowledged that the change in assignment practice could have circumvented the extra board process but said he never tracked the trades to see if the practice actually affected the extra board. Mr. Zwolfer told investigators that the change in assignment practice did not cause any additional expense to Metra; rather, it provided a process for employees to take time off.⁷³

Investigators asked Mr. Zwolfer if changes in assignment continued at the Chicago Union Station District Line after senior management terminated the practice. In response, he said the practice of trading was generally banned after a conference call with Mr. Orseno and that employees were then only authorized to trade jobs on an emergency basis, with senior management approval. He further explained that the Change in Assignment form was no longer being used by Metra.

⁷³ Mr. Zwolfer stated that he had taken the change in assignment practice away from employees twice during his tenure at the Metra Electric District Line. Both times were during union contract negotiations, when disagreements developed on unwritten policies, and Metra was being challenged by union representation. Mr. Zwolfer stated the change in assignment practice was an unwritten practice, so he treated it the same as the other unwritten policies being challenged, and took the benefit away. In each instance, the change in assignment practice returned after an agreement was reached about the other unwritten policies.

Finally, Mr. Zwolfer stated that conductors, engineers, and trainmen track their hours of service in their FRA logs, and should complete the FRA logs correctly. Mr. Zwolfer confirmed that the supervisors check to ensure the FRA logs are completed, but *do not* compare the FRA logs with other documentation to ensure the FRA logs are completed accurately.

e. ██████████—Senior Director of Labor Relations

██████████ indicated he was knowledgeable about the Metra Electric District Line and the collective bargaining agreement relating to the Metra Electric District Line. ██████████ explained his understanding of the process by which Metra employees ask or obtain time off.⁷⁴ When asked about the change in assignment practice, ██████████ stated he had not heard of the practice until Mr. Clifford received an anonymous letter from an employee alleging a person could sell an assignment for \$100 and not have to work the assignment. After Mr. Clifford received the anonymous letter, he sent an email asking him to investigate the issue. ██████████ stated that Mr. Hardwidge responded to Mr. Clifford's email by saying he was familiar with the practice but had put an end to it in the fall (2011) but that he (Mr. Hardwidge) indicated that he would nonetheless investigate the claims. ██████████ said he did not investigate the allegations per Mr. Clifford's email because Mr. Hardwidge was familiar with the issue. Instead, ██████████ stated he ran into Mr. Hardwidge in the hall and asked him if he had responded to Mr. Clifford because they needed closure on the issue and an email trail showing that action had been taken. Mr. Hardwidge responded that he had investigated and that he would respond to Mr. Clifford.

⁷⁴ According to ██████████, some train lines use a first come first serve basis, and others have made arrangements using a seniority-based system to allow employees to take days off. ██████████ said extra board employees are selected first by seniority and then on a rotational basis, until jobs are filled, and according to ██████████, the median salary for a conductor is about \$77,000 per year and for an engineer about \$87,000 per year.

██████████ was asked if he saw any problems with the allegations in the anonymous complaint. In response, ██████████ stated there would be all kinds of problems, including:

- tax consequences;
- regulation violations;
- drug testing issues;
- documentation of hours served on reports for safety sensitive positions; and
- ensuring rest periods are adequate for employees actually working, which is critical for operating crafts and dispatchers.

██████████ added that:

if it had been occurring, it's just-it's, that's not what we're doing. You know-that, that's-you, you pay a person to come in and do their job. This person, not somebody else. Not to cut side deals. Not to do anything else other than-uh, uh, come in for what you're expected...

When ██████████ was shown examples of Change in Assignment forms, he said he could not recall seeing these forms before, was not familiar with them, and did not know their purpose.

██████████ said that the collective bargaining agreement was silent about switching jobs.

██████████ was asked what would be the benefit for employees to take a partial day off and pay cash to the people filling in for them. ██████████ said there was no benefit, but explained that a person who gave up or sold the job would make money by getting paid while taking part of the day off. The benefit to the employee taking the job would be receiving \$100. According to ██████████, Metra employees cannot take a few hours off during the day, except for extreme circumstances, because an employee must take off the entire day. For example, an employee who wants to go golfing on a beautiful day would be required to request a full day off and cannot just take a few hours off.

F. OEIG Requests for Documents Relating to Metra Change in Assignment Practice and Federal Railroad Administration Logs and Related Training

On March 22, 2012, the OEIG issued a request for documents to Metra employee Matt Husar. In this request for documents, the OEIG asked Metra to produce the following:

Any Metra Bulletin(s) for Engineers and Conductors relating to Job Shifts, Shift Changes, Shift Swaps, or Trading Assignments for Metra and the Rock Island District.

In response to the above referenced March 22, 2012 request for documents, Mr. Husar produced a one-page document. Written on the bottom of the document was the following “BULLETIN NOTICE NO. 1 -- Page 3 of 9.” The document stated, among other things, the following:

Any member of a crew who unexpectedly needs to swap/exchange a run of their assignment with another commuter service employee, due to an emergency, the substituting employee must not violate Hours of Service Rules, and must contact the District Director or his designee for approval.

The exchange cannot be made without permission of the District Director or his designee.⁷⁵

Then, on April 4, 2012, the OEIG issued a request for documents to Metra’s Ethics Officer in which the OEIG sought the following:

A copy of any and all Metra policies, procedures and training manuals related to Federal Railroad Administration (FRA) Logs.

On April 10, 2012, and in response to the above referenced April 4, 2012 request for documents, Metra’s Ethics Officer produced a 307-page document titled “FRA Guide for Preparing Accident/Incident Reports,” and wrote a letter to the OEIG in which she wrote, “Metra follows this guide for FRA reporting.” The 307-page produced document was a United States Department of Transportation Federal Railroad Administration Office of Railroad Safety document relating to “Accident/Incident Reports” not Federal Railroad Administration logs. After OEIG investigators notified Metra’s Ethics Officer of what Metra produced to the OEIG (the 307-page Accident Report Guide), Metra subsequently produced five pages of documents

⁷⁵ See Appendix to Report, Exhibit 8 for a copy of the OEIG request for documents and the document produced.

that appeared to be pages of various other documents (Bulletins) or manuals.⁷⁶ Written on the bottom of one of the five documents was the following “BULLETIN NOTICE NO. 1 -- pages 4, 5 and 6 of 9.” The Bulletin stated, among other things:

- Train and Enginemen are required to maintain records of their Hours of Service.
- The form is designed to cover the entire month and must contain information on each tour of duty, including deadheads, and any covered compensated services performed.
- Unless otherwise instructed, the Hours of Service Laws must be complied with at all times.
- Each individual is responsible for insuring that they are in compliance with all requirements of Hours of Service Laws, including documentation and notification to the proper authority of any violations.
- EACH COVERED EMPLOYEE MUST MAINTAIN THEIR OWN INDIVIDUAL HOURS OF SERVICE REPORT FORM. Information on any covered service must be recorded daily, as performed, in chronological order, in accordance with instructions contained in the example shown on the inside cover of the booklet.⁷⁷

Then, on August 24, 2012, the OEIG issued another request for documents to Metra’s Ethics Officer in which the OEIG sought various documents including the following:

Any and all documents reflecting any training or annual testing provided to trainmen regarding FRA Hours of Service logs.

On September 19, 2012, in response to the above referenced August 24, 2012 request for documents, Metra’s Ethics Officer produced various documents including a 14-page document titled “Hours of Service Guide for Train Employees.” The Hours of Service Guide was dated *June 1, 2012*, or after the OEIG had issued its April 4, 2012 request for documents in which, as set forth above, the OEIG sought “A copy of any and all Metra policies, procedures and training manuals related to Federal Railroad Administration (FRA) Logs.” In addition, in the letter Metra’s Ethics Officer sent to the OEIG, she wrote:

⁷⁶ During his interview, Darrin Austin stated that bulletin notices inform employees how to complete their FRA logs. The bulletins are distributed and are specific to individual Metra districts. He further stated that Metra bulletins serve as instructions to employees. According to Mr. Austin, all important bulletins are re-issued on January 1 of every year to all employees and are posted on the districts’ bulletin boards.

⁷⁷ See Appendix to Report, Exhibit 9 for a copy of the OEIG request for documents and the documents produced.

Additionally, as discussed previously, while we test on the GCOR generally, there are no questions specific to the FRA Hours of Service logs, thus we are not currently providing the exams themselves. Further, Metra's Rules department has indicated that they do not conduct any training covering the preparation of Hours of Service Logs.⁷⁸

G. Review of Changes in Assignment Forms and Related Interviews

During this investigation, investigators reviewed a sample of Metra Electric District Line Change in Assignment forms and compared them to Crew Call sheets, FRA logs, and Payroll records. The Change in Assignment forms and related documents initially reviewed related to changes in assignment that occurred on five separate days prior to October 1, 2011, the date investigators were told the practice ended, namely: June 4 and 10, and July 16, 23, and 27, 2011.

In addition, investigators interviewed some of Metra employees (mostly conductors) involved in the change in assignment practice, including the employees who actually swapped assignments, the supervisor who approved the particular swap, as well as Ms. Carbonelli. For various changes in assignment, investigators created charts/tables that summarize and identify:

First, the name of the employee assigned to work that day, as well as the work assignment number, per the Crew Call sheet.

Second, the name of employee who took the assignment, per the Change in Assignment form, the name of the employee that was "worked in place of," and assignment number.

Third, whether the employees logged working any assignment that day and, if so, which assignments they did log or did not log, per their FRA logs.

Fourth, how much Metra paid the employees for working that day and the work assignment they were paid for working, or not working that day.

Where investigators noted what appeared to be inconsistencies or what appeared to be incorrect information between the various sets of documents, the inconsistent information is *italicized and bolded* in each of the below charts/tables. In addition, if any Metra employees were interviewed

⁷⁸ See Appendix to Report, Exhibit 10 for a copy of the OEIG request for documents and the documents produced.

regarding the circumstances of the particular change in assignment, the interview information is set forth directly after the respective chart/table.

1. **Three Wade Schroder Changes in Assignment**

a. **The Saturday, June 4, 2011 Change with Marco Garzon⁷⁹**

Employee Assignment Per Crew Call sheet	Employee Assignment Per Change in Assignment form	Employee Federal Railroad Administration logs	Employee Payroll records
Marco Garzon #137	Marco Garzon for Wade Schroder #119	<ul style="list-style-type: none"> • Logged working #137 • <i>Didn't log working #119</i> 	<ul style="list-style-type: none"> • Paid \$226.05 for #137 • <i>Not paid for working #119</i>
Wade Schroder #119	No Assignment	<ul style="list-style-type: none"> • <i>Logged working #119</i> 	<ul style="list-style-type: none"> • <i>Paid \$211.92 for working #119 – didn't work</i>

b. **The Saturday, July 16, 2011 Change with Marco Garzon⁸⁰**

Employee Assignment Per Crew Call sheet	Employee Assignment Per Change in Assignment form	Employee Federal Railroad Administration logs	Employee Payroll records
Marco Garzon #501	Marco Garzon for Wade Schroder #119	<ul style="list-style-type: none"> • Logged working #501⁸¹ • <i>Didn't log working #119</i> 	<ul style="list-style-type: none"> • Not paid for working #501 • <i>Not paid for working #119</i>
Wade Schroder # 119	No Assignment	<ul style="list-style-type: none"> • <i>Logged working #119</i> 	<ul style="list-style-type: none"> • <i>Paid \$227.01 for working #119 – didn't work</i>

c. **The Wednesday, July 27, 2011 Change with Nicholas Chou⁸²**

Employee Assignment Per Crew Call sheet	Employee Assignment Per Change in Assignment form	Employee Federal Railroad Administration logs	Employee Payroll records
Nicholas Chou #11	Nicholas Chou for Wade Schroder #19	<ul style="list-style-type: none"> • Logged working #11 • <i>Didn't log working #19</i> 	<ul style="list-style-type: none"> • Paid \$334.66 for #11 • <i>Not paid for working #19</i>
Wade Schroder #19	No Assignment	<ul style="list-style-type: none"> • <i>Logged working #19</i> 	<ul style="list-style-type: none"> • <i>Paid \$298.77 for working #19- didn't work</i>

d. **Wade Schroder Interview Regarding his Changes in Assignment with Marco Garzon and Nicholas Chou**

⁷⁹ See Appendix to Report, Exhibit 11 for the documents relating to this chart.

⁸⁰ See Appendix to Report, Exhibit 12 for the documents relating to this chart.

⁸¹ The Change in Assignment form revealed that on July 16, 2011, Mr. Garzon also swapped his assignment #501 for ██████'s assignment #505. As such, his FRA log entry for this incident is also inconsistent with the Change in Assignment form.

⁸² See Appendix to Report, Exhibit 13 for the documents relating to this chart.

Investigators interviewed Metra Conductor Wade Schroder⁸³ regarding the June 4, July 16 and 27, 2011 changes in assignment. The Crew Call sheets revealed that he only had one assignment for each day. After reviewing various documents, including the Change in Assignment forms, Mr. Schroeder said:

- he was assigned to work assignment #119 on June 4 and July 16, 2011;
- he was assigned to work assignment #19 on July 27, 2011;
- Marco Garzon worked assignment #119 for him on June 4 and July 16, 2011;
- Nicholas Chou worked a portion of assignment #19 for him on July 27, 2011;
- he paid Mr. Garzon \$60 cash for working assignment #119 for him on June 4 and July 16, 2011; and
- he paid Mr. Chou \$40 to work for him on July 27, 2011.

Mr. Schroder was asked why his June 4 and July 16, 2011 FRA logs reflected that he worked assignments on days he had not. In response, Mr. Schroder stated that he logged working assignments #119 and #19 because that was the way he decided to document it, and was never told to do it any other way.⁸⁴ In addition, Mr. Schroder said he was afraid that if the paper trail failed, Metra would not pay him. Mr. Schroder stated that his signature on the FRA logs indicated that he completed the FRA logs, not that they were accurate.

Importantly, Mr. Schroder said *he never swapped or worked* for other employees.⁸⁵ Rather, Mr. Schroder said that others would swap or work for him and said that others worked for him during the summer months, up to three or four times per month. Finally, Mr. Schroder also said that the amounts paid for swaps were always negotiated between employees.

e. Darrin Austin Interview Regarding the June 4, 2011 Garzon/Schroder Change in Assignment

⁸³ Mr. Schroder was interviewed on September 26, 2012.

⁸⁴ Mr. Schroder also said that he was unsure how to document the swap with Mr. Chou because Mr. Chou worked only a portion of Mr. Schroder's assignment, mid-day, and FRA logs focus on start and end times.

⁸⁵ In fact, as shown in the chart on page 71 of this report, a review of Change in Assignment forms for the period of May 30 to December 31, 2011 reflect that others worked for Mr. Schroder on 14 occasions and that Mr. Schroder never worked for others.

Investigators interviewed Metra Electric District Line Road Foreman of Engines Darrin Austin.⁸⁶ After reviewing the various documents involved in the June 4, 2011 Garzon/Schroder change in assignment, Mr. Austin said he approved the change in assignment. Mr. Austin initially said that it was possible that Mr. Garzon and Mr. Schroder *did not* change assignments but after further review, he said that if the Change in Assignment form was correct, then both men completed their FRA logs incorrectly.

2. Two [REDACTED] and Nicholas Chou Changes in Assignment

a. The Saturday, June 4, 2011 [REDACTED]/Chou Change in Assignment⁸⁷

Employee Assignment Per Crew Call sheet	Employee Assignment Per Change in Assignment form	Employee Federal Railroad Administration logs	Employee Payroll records
[REDACTED] #116	[REDACTED] for Nicholas Chou #111	<ul style="list-style-type: none"> • Logged working #116 • Logged working #111 	<ul style="list-style-type: none"> • Paid \$264.00 for #116 • <i>Not paid for working #111</i>
Nicholas Chou #111	No Assignment	<ul style="list-style-type: none"> • Didn't log working any assignment 	<ul style="list-style-type: none"> • <i>Paid \$244.05 for working #111- didn't work</i>

b. The Saturday, July 16, 2011 [REDACTED]/Chou Change in Assignment⁸⁸

Employee Assignment Per Crew Call sheet	Employee Assignment Per Change in Assignment form	Employee Federal Railroad Administration logs	Employee Payroll records
[REDACTED] #116	[REDACTED] for Nicholas Chou #111	<ul style="list-style-type: none"> • Logged working #116 • Logged working #111 	<ul style="list-style-type: none"> • Paid \$281.99 for #116 • <i>Not paid for working #111</i>
Nicholas Chou #111	No Assignment	<ul style="list-style-type: none"> • Didn't log working any assignment 	<ul style="list-style-type: none"> • <i>Paid \$261.44 for working #111- didn't work</i>

c. [REDACTED] Interview Regarding his Changes in Assignment

⁸⁶ As previously noted, Mr. Austin was interviewed on September 13, 2012 or *before* investigators interviewed Mr. Schroder, who was interviewed on September 26, 2012.

⁸⁷ See Appendix to Report, Exhibit 14 for the documents relating to this chart.

⁸⁸ See Appendix to Report, Exhibit 15 for the documents relating to this chart.

Investigators interviewed Metra Conductor ██████████⁸⁹ regarding the June 4 and July 16, 2011 changes in assignment he had with Mr. Chou.⁹⁰ The Crew Call sheets revealed that he only had one assignment for each day. After reviewing various documents, including the Change in Assignment forms, ██████████ said:

- he was assigned to work assignment #116 on June 4 and July 16, 2011;
- he agreed to work assignment #111 for Mr. Chou on June 4 and July 16, 2011;
- he logged working assignments #111 and #116 because he worked both assignments those days;
- he was not paid for working assignment #111 either on June 4 or July 16, 2011; and
- he did not receive any money from Mr. Chou for working assignment #111 either June 4 or July 16, 2011.

██████████ told investigators that it was a common practice for Metra employees to pay each other to change assignments and said he usually only changed assignments with other conductors who would work for him on a later date, not for money. However, ██████████ later stated that he had in fact paid another employee \$70 to work for him when he had a doctor's appointment. In addition, he said he accepted cash from co-workers to work their assignments but was unable to recall names. Finally, ██████████ said Mr. Zwolfer was aware of the changes in assignment.

d. Nicholas Chou Interview Regarding Changes in Assignment

Investigators interviewed Metra Conductor Nicholas Chou⁹¹ regarding the June 4 and July 16, 2011 changes in assignment. The Crew Call sheets revealed that he only had one assignment for each day. After reviewing various documents, Mr. Chou said:

- he was assigned to work assignment #111 on June 4 and July 16, 2011;
- ██████████ agreed to work assignment #111 for him on June 4 and July 16, 2011;
- he did not log working assignment #111 on either day because he did not work those days;
- he was not aware of employees paying each other for changing assignments;⁹² and

⁸⁹ ██████████ was interviewed on April 20, 2012.

⁹⁰ In addition to the two changes in assignment referenced in this report, ██████████ and Mr. Chou changed assignments on other dates as well, including July 23, 2011.

⁹¹ Mr. Chou was interviewed on April 18, 2012.

- he was paid for working assignment #111 on both days even though he did not work.

In addition, Mr. Chou told investigators that senior managers were aware of the change in assignment practice because they were approving the changes.

e. Interview of Cedric Smith Regarding the ██████/Chou Changes in Assignment

After reviewing the various documents relating to the ██████/Chou changes in assignments, Mr. Smith confirmed that he approved the July 16, 2011 change in assignment for Mr. Chou and ██████ and that it appeared they both completed their FRA logs accurately.

Mr. Smith further explained that he does not, nor did any other manager or supervisor at Metra Electric District Line, keep track of any changes in assignment that occurred in order to pay back another employee for a prior change in assignment.

3. The Saturday, June 4, 2011 Dorsett/█████ Change in Assignment⁹³

Employee Assignment Per Crew Call sheet	Employee Assignment Per Change in Assignment form	Employee Federal Railroad Administration logs	Employee Payroll records
Richard Dorsett #126	Richard Dorsett for ██████ #105	<ul style="list-style-type: none"> • Logged working #126 • <i>Didn't log working #105</i> 	<ul style="list-style-type: none"> • Paid \$274.87 for #126 • <i>Not paid for working #105</i>
█████ # 105	No Assignment	<ul style="list-style-type: none"> • <i>Logged working #105</i> 	<ul style="list-style-type: none"> • <i>Paid \$245.07 for working - #105 – didn't work</i>

Investigators interviewed Metra Engineer ██████⁹⁴ regarding the June 4, 2011 change in assignment he had with Richard Dorsett. The Crew Call sheets revealed that he only had one assignment that day. After reviewing various documents, including the Change in Assignment forms, ██████ said:

⁹² At the time of Mr. Chou's interview (April 18, 2012), investigators were unaware that Mr. Schroder paid Mr. Chou \$40 for working either assignment #19 or a portion of it for Mr. Schroder on July 27, 2011 and thus did not question Mr. Chou regarding his statement. In any event, the OEIG concludes that Mr. Chou failed to cooperate with OEIG investigators when he denied knowing about employees paying each other. However, in light of the 18-month statute of limitations period expiring, the OEIG will not make a finding.

⁹³ See Appendix to Report, Exhibit 16 for the documents relating to this chart.

⁹⁴ ██████ was interviewed on September 27, 2012.

- Mr. Dorsett worked assignment #105 for him on June 4, 2011;
- he did not pay Mr. Dorsett to work assignment #105;
- his FRA logs reflect he worked assignment #105, even though he did not work the assignment; and
- he was paid by Metra for working assignment #105, even though he did not work the assignment.

In addition, ██████ told investigators that he documented his scheduled time (in his FRA logs), whether he worked the assignment or not. ██████ also said that he was unaware of any exchange of gifts for changes in assignment. ██████ indicated that his signature on the FRA log only indicates the log was completed by him, *not* that it was *true and accurate*. According to ██████, supervisors approved changes of assignment so long as it did not affect the hours of service. Finally, ██████ stated that all changes of assignment ended in early 2012.

4. **The Saturday, June 4, 2011 Simnick/█████ Change in Assignment⁹⁵**

Employee Assignment Per Crew Call sheet	Employee Assignment Per Change in Assignment form	Employee Federal Railroad Administration logs	Employee Payroll records
Michael Simnick #108	Michael Simnick for ██████ #220 ⁹⁶	<ul style="list-style-type: none"> • Logged working #8⁹⁷ • <i>Didn't log working #220 or #130</i> 	<ul style="list-style-type: none"> • Paid \$211.92 for #108 • <i>Not paid for working #220 or #130</i>
█████ #130	No Assignment	<ul style="list-style-type: none"> • Didn't log working any assignment 	<ul style="list-style-type: none"> • <i>Paid \$226.05 for working #130- didn't work</i>

a. **Interview of Cedric Smith Regarding the Change in Assignment**

⁹⁵ See Appendix to Report, Exhibit 17 for the documents relating to this chart.

⁹⁶ The Change in Assignment form, as reflected in Exhibit 17, shows that the assignment was incorrectly identified as assignment #220 instead of #130.

⁹⁷ Mr. Simnick's FRA log, as reflected in Exhibit 17, shows that Mr. Simnick incorrectly identified working assignment #8 instead of #108.

Investigators interviewed Metra Senior Trainmaster Cedric Smith regarding the June 4, 2011 change in assignment between Simnick/[REDACTED]. The Crew Call sheet revealed that Messrs. Simnick and [REDACTED] only had one assignment that day. After reviewing various documents, including the Change in Assignment forms, Mr. Smith said:

- he approved the Simnick/[REDACTED] change in assignment on June 3, 2011; and
- the documents reveal that Mr. Simnick did not complete his logs correctly, if he had in fact worked that assignment for [REDACTED].

However, Mr. Smith also stated that the two men may have completed their logs correctly, depending upon the circumstances.

b. [REDACTED] Interview Regarding his Change in Assignment

Investigators interviewed Metra Conductor [REDACTED]⁹⁸ regarding the June 4, 2011 change in assignment he had with Michael Simnick. The Crew Call sheet revealed that he only had one assignment that day. After reviewing various documents, including the Change in Assignment forms, [REDACTED] said:

- he was assigned to work assignment #130 on June 4, 2011;
- the forms reflected that Mr. Simnick worked the assignment for him that day;
- he did not log working the assignment because he did not work that day; and
- he was paid for working assignment #130 even though he did not work that day.

In addition, [REDACTED] told investigators that he never paid anyone for working for him, he was never paid for working for someone else, and that he had never heard of other employees paying each other. He also said that all changes in assignment were approved by supervisors. Finally, [REDACTED] stated that the change in assignment practice has been terminated.

5. The Saturday, June 4, 2011 [REDACTED]/[REDACTED] Change in Assignment⁹⁹

⁹⁸ [REDACTED] was interviewed on February 20, 2014.

⁹⁹ See Appendix to Report, Exhibit 18 for the documents relating to this chart.

Employee Assignment Per Crew Call sheet	Employee Assignment Per Change in Assignment form	Employee Federal Railroad Administration logs	Employee Payroll records
██████████ #102	██████████ for ██████████ #132	<ul style="list-style-type: none"> • Logged working #132 • <i>Didn't log working #102</i> 	<ul style="list-style-type: none"> • Paid \$211.92 for #102 • <i>Not paid for working #132</i>
██████████ #132	No Assignment	<ul style="list-style-type: none"> • <i>Logged working #32¹⁰⁰</i> 	<ul style="list-style-type: none"> • <i>Paid \$244.05 for working #132- didn't work</i>

a. **Cedric Smith Interview Regarding the ██████/██████ Change in Assignment**

Investigators interviewed Metra Senior Trainmaster Cedric Smith regarding the June 4, 2011 ██████/██████ change in assignment. After reviewing various documents, including the Change in Assignment form, Mr. Smith said:

- he approved the change in assignment on June 3, 2011;
- the documents reveal that ██████ worked assignment #132 for ██████;
- ██████ did not complete his FRA logs correctly, as he did not log working assignment #102; and
- ██████ did not complete his FRA logs correctly, as he logged working assignment #32.

Mr. Smith agreed that the FRA logs for both men were fraudulent.

b. ██████ – Interview

On February 19, 2014, investigators began to interview Metra Conductor ██████ regarding his June 4, 2011 change in assignment. The Crew Call sheets revealed that he had only one assignment that day. During the interview, ██████ was shown various documents, including the Change in Assignment forms and his Metra Payroll records.

Of the documents shown to ██████, one was a copy of his Metra Payroll records, which reflected that he was paid \$244.05 for working assignment #132 on June 4, 2011 even though the Change in Assignment form revealed that he did not work that day. When ██████

¹⁰⁰ ██████'s FRA log, as reflected in Exhibit 18, reveals that ██████ incorrectly identified working assignment #32 rather than #132.

was asked if Metra had ever paid him for not working, he declined to answer the question and asked to end the interview in order to retain legal counsel.¹⁰¹

c. ██████ – Interview

On February 19, 2014, investigators began to interview Metra Conductor ██████ regarding his June 4, 2011 change in assignment. The Crew Call sheets revealed ██████ was only assigned one assignment that day and after reviewing various documents, including a Change in Assignment form, ██████ asked to end the interview in order to retain legal counsel.

6. Two Mario Ramos Changes in Assignment

a. The Saturday, July 16, 2011 Change in Assignment with ██████¹⁰²

Employee Assignment Per Crew Call sheet	Employee Assignment Per Change in Assignment form	Employee Federal Railroad Administration logs	Employee Payroll records
Mario Ramos #138	Mario Ramos for ██████ #119	<ul style="list-style-type: none"> • Logged working #38¹⁰³ • <i>Didn't log working #119</i> 	<ul style="list-style-type: none"> • Paid \$242.14 for #138 • <i>Not paid for working #119</i>
█████ #119	No Assignment	<ul style="list-style-type: none"> • Didn't log working any assignment 	<ul style="list-style-type: none"> • <i>Paid \$242.14 for working #119- didn't work</i>

b. The Saturday, July 23, 2011 Change in Assignment with ██████¹⁰⁴

Employee Assignment Per Crew Call sheet	Employee Assignment Per Change in Assignment form	Employee Federal Railroad Administration logs	Employee Payroll records
Mario Ramos #138	Mario Ramos for ██████ #104	<ul style="list-style-type: none"> • Logged working #138 • <i>Didn't log working #104</i> 	<ul style="list-style-type: none"> • Paid \$242.14 for #138 • <i>Not paid for working #104</i>
█████ #104	No Assignment	<ul style="list-style-type: none"> • Didn't log working any assignment 	<ul style="list-style-type: none"> • <i>Paid \$261.44 for working #104- didn't work</i>

c. Interview of Mario Ramos Regarding his Changes in Assignment

¹⁰¹ As set forth below, on February 27, 2014, investigators informed ██████, ██████ and others that their attendance at future interviews was no longer required.

¹⁰² See Appendix to Report, Exhibit 19 for the documents relating to this chart.

¹⁰³ Mr. Ramos' FRA log, as reflected in Exhibit 19, shows that Mr. Ramos incorrectly identified working assignment #38 instead of #138.

¹⁰⁴ See Appendix to Report, Exhibit 20 for the documents relating to this chart.

Investigators interviewed Metra Conductor Mario Ramos¹⁰⁵ regarding his two changes in assignment.¹⁰⁶ The Crew Call sheets revealed he had only one assignment on each of those days.

After reviewing various documents, including Change in Assignment forms, Mr. Ramos said:

- he worked assignment #119 for [REDACTED] on July 16, 2011;
- he worked assignment #104 for [REDACTED] on July 23, 2011;
- he did not log working assignments # 119 or #104 because he did not want to document working for someone else;
- he was paid \$40-50 cash to work assignment #119 by [REDACTED];
- he was paid \$40-50 cash to work assignment #104 by [REDACTED]; and
- Metra did not pay him for working either assignment #119 or #104.

In addition, Mr. Ramos told investigators that he never changed an assignment without supervisor approval, but he did not know if supervisors were aware of money being exchanged between employees. Mr. Ramos also said that changes in assignment may have affected the extra board assignments. Finally, Mr. Ramos stated that Metra did not have any gains or losses when employees changed assignments.

7. Two [REDACTED] Changes in Assignment

a. The Saturday, July 16, 2011 Change in Assignment with Lauvel Crawford¹⁰⁷

Employee Assignment Per Crew Call sheet	Employee Assignment Per Change in Assignment form	Employee Federal Railroad Administration logs	Employee Payroll records
Lauvel Crawford #123	Lauvel Crawford for [REDACTED] #127	<ul style="list-style-type: none"> • Logged working #123 • <i>Didn't log working #127</i> 	<ul style="list-style-type: none"> • Paid \$227.01 for #123 • <i>Not paid for working #127</i>
[REDACTED] #127	No Assignment	<ul style="list-style-type: none"> • Didn't log working any assignment 	<ul style="list-style-type: none"> • <i>Paid \$276.70 for working #127 – didn't work</i>

b. The Saturday, July 23, 2011 Change in Assignment with Jose Garzon¹⁰⁸

¹⁰⁵ Mr. Ramos was interviewed on September 27, 2012.

¹⁰⁶ Investigators also questioned Mr. Ramos about a June 10, 2011 change in assignment, but he was unable to recall all of the details of that transaction.

¹⁰⁷ See Appendix to Report, Exhibit 21 for the documents relating to this chart.

Employee Assignment Per Crew Call sheet	Employee Assignment Per Change in Assignment form	Employee Federal Railroad Administration logs	Employee Payroll records
Jose Garzon #109	Jose Garzon for ██████ #127	<ul style="list-style-type: none"> • Logged working #109 • <i>Didn't log working #127</i> 	<ul style="list-style-type: none"> • Paid \$227.01 for #109 • <i>Not paid for working #127</i>
██████ #127	No Assignment	<ul style="list-style-type: none"> • Didn't log working any assignment 	<ul style="list-style-type: none"> • <i>Paid \$261.57 for working #127- didn't work</i>

c. Ms. Carbonelli Interview Regarding the Crawford/██████ Change in Assignment

Metra Electric District Line Director of Operations Janet Carbonelli was interviewed regarding the Crawford/██████ July 16, 2011 change in assignment. After reviewing the various documents, Ms. Carbonelli confirmed that Mr. Crawford's FRA logs appeared to be incorrect and that he was not paid for working assignment #127 even though he did work that assignment. When asked if what had occurred between Mr. Crawford and ██████ was correct, Ms. Carbonelli stated:

"To me, it's-it's a swap. Uhm it's – ██████ is going to go in and work for Mr. Crawford at some time and it sets them back, you know, to where they should be, money wise."

According to Ms. Carbonelli, Mr. Crawford would make sure that ██████ worked for him sometime in the future to pay him back.¹⁰⁹

d. Mr. Crawford Interview Regarding his July 16, 2011 Change in Assignment with ██████

Investigators interviewed Metra Conductor Lauvel Crawford,¹¹⁰ regarding his July 16, 2011 change in assignment. The Crew Call sheets revealed that he was only assigned one

¹⁰⁸ See Appendix to Report, Exhibit 22 for the documents relating to this chart.

¹⁰⁹ However, as set forth in the chart on page 71 of this report and confirmed by ██████, she only had other work assignments for her and did not work assignments for others. In any event, in response to questions regarding the July 16, 2011 ██████/██████ change in assignment (see page 56 of this report), Ms. Carbonelli said she did not keep track of swaps or changes in assignment and based on this statement, there is no reason to think she would have known that ██████ only asked others to work assignments, as opposed to actually swapping assignments.

¹¹⁰ Mr. Crawford was interviewed on April 25, 2012.

assignment that day. After reviewing various documents, including the Change in Assignment form, Mr. Crawford said:

- he worked assignment #127 for ██████ on July 16, 2011;
- his FRA logs did not reflect working assignment #127 because his FRA logs only reflect work *assigned* to him; and
- Metra did not pay him for working assignment #127.

In addition, Mr. Crawford told investigators that he was never instructed by Metra to log assignments he worked for other conductors and said he believed he was only obligated to log time for which Metra *paid him* and said his FRA logs, Crew Call sheets, and Payroll records should all *mirror one another*.

Nevertheless, Mr. Crawford confirmed that he has received or provided gifts, such as lunches or liquor, for changing assignments on many occasions. He acknowledged that he paid someone to take his assignment on one occasion. In addition, Mr. Crawford told investigators that Metra employees have changed assignments without obtaining supervisory approval. Mr. Crawford also said Metra management was aware of the change of assignment practice, including exchanges of money but that the change in assignment practice has ended.¹¹¹

e. ██████ Interview Regarding her July 16, 2011 Change in Assignment with Mr. Crawford

Investigators also interviewed Metra Conductor ██████,¹¹² regarding her change in assignment. The Crew Call sheets revealed that she only had one assignment that day. After reviewing various documents, including the Change in Assignment form, ██████ stated:

- she did not work assignment #127 on July 16, 2011;
- Metra paid her for working assignment #127 even though she did not work that day;
- her FRA log did not reflect she worked assignment #127 because she did not work it; and

¹¹¹ This statement is inconsistent with the February 28, 2014 letter Metra's General Counsel sent the OEIG in which she stated that the management's position is that the practice only exists with supervisor's approval and only for emergencies. See pages 81-82 of this report for the text of the complete letter.

¹¹² ██████ was interviewed on April 19, 2012.

- she paid Mr. Crawford \$100 cash to work assignment #127 that day.

In addition, ██████ said she has paid other conductors \$100 to work for her (on other occasions). ██████, however, denied that she ever worked for other Metra employees. In addition, ██████ said she knew some employees swapped assignments without supervisory approval and said that Metra management, including Mr. Hardwidge, Mr. Orseno, and Ms. Carbonelli, knew about the change in assignment practice and that money was exchanged for changing assignments.

f. **Mr. Dorsey Interview Regarding the Crawford/█████ Change in Assignment**

Metra Electric District Line Trainmaster Christopher Dorsey was interviewed¹¹³ regarding the July 16, 2011 change in assignment involving Mr. Crawford and ██████. After reviewing the Crew Call sheet, the Change in Assignment form, the FRA logs and Metra Payroll records for each employee, Mr. Dorsey confirmed that he had approved the Crawford/█████ change in assignment and also said:

- Mr. Crawford's FRA logs were incorrect, as he did not log working assignment #127 for ██████;
- ██████'s FRA logs were correct;
- Metra did not pay Mr. Crawford for working assignment #127 (though he worked); and
- Metra paid ██████ for working assignment #127 (though she did not work).

Mr. Dorsey said one of the set of FRA logs had to be inaccurate, because either Mr. Crawford failed to document working for ██████ or ██████ failed to document working.

¹¹³ Mr. Dorsey was interviewed on September 13, 2012.

g. Mr. Jose Garzon Interview Regarding his July 23, 2011 Change in Assignment with [REDACTED]

Investigators interviewed Metra Conductor Jose Garzon¹¹⁴ regarding his July 23, 2011 change in assignment with [REDACTED]. The Crew Call sheets revealed that he only had one assignment that day. After reviewing various documents, including the Change in Assignment form, Mr. J. Garzon said:

- he worked assignment #127 for [REDACTED] on July 23, 2011;
- [REDACTED] did not pay him to work the assignment;
- his FRA log did not reflect he worked the assignment because he neglected to complete the FRA log correctly; and
- he was not paid by Metra for working the assignment.

h. Mr. Austin Interview Regarding the Garzon/[REDACTED] Change in Assignment

Metra Electric District Line Road Foreman of Engines Darrin Austin was also interviewed regarding the July 23, 2011 J. Garzon/[REDACTED] change in assignment. After reviewing the documents, Mr. Austin said they showed that Mr. J. Garzon did not properly document the hours worked in his FRA logs, and confirmed that Metra paid [REDACTED] for working run #127, even though she did not work.

8. The Saturday, July 16, 2011 [REDACTED]/[REDACTED] Change in Assignment¹¹⁵

Employee Assignment Per Crew Call sheet	Employee Assignment Per Change in Assignment form	Employee Federal Railroad Administration logs	Employee Payroll records
[REDACTED] #108	[REDACTED] for #120	<ul style="list-style-type: none"> • Logged working #108 • Logged working #120 	<ul style="list-style-type: none"> • Paid \$261.44 for #108 • <i>Not paid for working #120</i>
[REDACTED] #120	No Assignment	<ul style="list-style-type: none"> • Didn't log working any assignment 	<ul style="list-style-type: none"> • <i>Paid \$242.14 for working #120 - didn't work</i>

¹¹⁴ Mr. J. Garzon was interviewed on September 25, 2012.

¹¹⁵ See Appendix to Report, Exhibit 23 for the documents relating to this chart.

a. [REDACTED] Interview Regarding his Change in Assignment

Investigators interviewed Metra Conductor [REDACTED]¹¹⁶ regarding his July 16, 2011 change in assignment with [REDACTED]. The Crew Call sheets revealed that he only had one assignment that day. After reviewing various documents, including the Change in Assignment form, [REDACTED] said:

- he was assigned to work assignment #108, worked, and was paid to work assignment #108 that day;
- he worked assignment #120 for [REDACTED] that day but was not paid by Metra to work assignment #120; and
- his FRA logs reflected working assignments #108 and #120 because he worked both assignments that day.

At the end of his interview, [REDACTED] told investigators that he might have paid someone to work for him but he never received money because he did not like the practice. In addition, [REDACTED] stated that he did recall paying Metra Electric District Line conductor [REDACTED] about \$60 to work for him once, a few years ago. Finally, [REDACTED] also said he had heard other conductors were paying \$40 to \$60 for changes in assignment.

b. [REDACTED] Interview Regarding his Change in Assignment

Investigators interviewed Metra Conductor [REDACTED]¹¹⁷ regarding his July 16, 2011 change in assignment with [REDACTED]. The Crew Call sheets revealed that he only had one assignment that day. After reviewing various documents, including the Change in Assignment form, [REDACTED] said:

- he was assigned to work assignment #120, but [REDACTED] worked assignment #120 for him that day;
- he worked for [REDACTED] the following week;
- he did not pay [REDACTED] for working for him on July 16, 2011;
- his FRA logs do not reflect he worked any assignment that day because he did not work an assignment; and

¹¹⁶ [REDACTED] was interviewed on April 19, 2012.

¹¹⁷ [REDACTED] was interviewed on April 25, 2012.

- Metra paid him for working assignment #120, even though he did not work the assignment that day.

In addition, ██████ told investigators that he had heard some conductors exchanged money for changes in assignment but could provide no further information about names.

c. Ms. Carbonelli Interview Regarding the ██████/██████ Change in Assignment

Investigators also interviewed Metra Electric District Line Director of Operations Janet Carbonelli about the ██████/██████ change in assignment. Ms. Carbonelli confirmed that Metra paid ██████ for working assignment #120 even though he did not work the assignment that day and that she assumed that ██████ worked on some other occasion for ██████. However, Ms. Carbonelli was unable to confirm that ██████ did work for ██████ sometime in the future. She stated that she would assume he had, but she did not keep track of those sorts of things.

9. The Saturday, July 16, 2011 ██████/██████ Change in Assignment¹¹⁸

Employee Assignment Per Crew Call sheet	Employee Assignment Per Change in Assignment form	Employee Federal Railroad Administration logs	Employee Payroll records
██████████ (No Assignment)	██████████ for #32	• Didn't log working #124	• Not paid for working #124
██████████ #124	No Assignment	• Logged working #124	• Paid \$275.04 for working #124 – didn't work

a. Ms. Carbonelli Interview Regarding the ██████/██████ Change in Assignment

Investigators interviewed Metra Electric District Line Director of Operations Janet Carbonelli¹¹⁹ about the July 16, 2011 ██████/██████ change in assignment. After reviewing the documents, Ms. Carbonelli stated that ██████ may not have been listed on the Crew Call

¹¹⁸ See Appendix to Report, Exhibit 24 for the documents relating to this chart.

¹¹⁹ Ms. Carbonelli was interviewed regarding this change in assignment on June 25, 2012.

sheet for Saturday, July 16, 2011 because he might have been working the Sunday shift and may have been off Saturday, July 16, 2011. Ms. Carbonelli was asked if [REDACTED]'s FRA logs were correct if the Change of Assignment form reflected he had worked assignment #124. In response, Ms. Carbonelli stated:

“The only thing I got -- I can possibly think is if they maybe at the last minute [they] said, ‘Hey we’re not gonna change.’”

After being asked to review various documents (the Crew Call sheet, Change in Assignment form, FRA logs for the two men, and Metra Payroll records) and compare them with each other, Ms. Carbonelli said she was *unable to determine* exactly what occurred that day.

10. Two Jose Garzon Changes in Assignment

a. The Saturday, July 16, 2011 J. Garzon/Simnick/[REDACTED] Changes in Assignment¹²⁰

Employee Assignment Per Crew Call sheet	Employee Assignment Per Change in Assignment form	Employee Federal Railroad Administration logs	Employee Payroll records
Jose Garzon (No assignment)	Jose Garzon for Michael Simnick #111 Jose Garzon for [REDACTED] #104	<ul style="list-style-type: none"> • <i>Didn't log working #111</i> • <i>Didn't log working #104</i> 	<ul style="list-style-type: none"> • <i>Not paid for working #111</i> • <i>Not paid for working #104</i>
Michael Simnick #111	No Assignment	<ul style="list-style-type: none"> • Didn't log working any assignment 	<ul style="list-style-type: none"> • <i>Paid \$227.01 for working #111 – didn't work</i>
[REDACTED] #104	No Assignment	<ul style="list-style-type: none"> • Didn't log working any assignment 	<ul style="list-style-type: none"> • <i>Paid \$261.44 for working #104-didn't work</i>

¹²⁰ See Appendix to Report, Exhibit 25 for the documents relating to this chart.

b. The Saturday, July 23, 2011 J. Garzon/ [REDACTED] Change in Assignment¹²¹

Employee Assignment Per Crew Call sheet	Employee Assignment Per Change in Assignment form	Employee Federal Railroad Administration logs	Employee Payroll records
Jose Garzon #109	Jose Garzon for [REDACTED] #116 ¹²²	<ul style="list-style-type: none"> • Logged working #109 • <i>Didn't log working #116</i> 	<ul style="list-style-type: none"> • Paid \$227.01 for #109 • <i>Not paid for working #116</i>
[REDACTED] #116	No Assignment	<ul style="list-style-type: none"> • No FRA logs 	<ul style="list-style-type: none"> • <i>Paid \$247.56 for working #116 – didn't work</i>

c. Jose Garzon Interview Regarding his Changes in Assignment

Investigators interviewed Metra Conductor Jose Garzon¹²³ regarding his July 16, 2011 changes in assignment with both Mr. Simnick and [REDACTED], and his July 23, 2011 change in assignment with [REDACTED]. The Crew Call sheets revealed that he had no assignment on July 16, 2011, and only had one assignment on July 23, 2011. During his interview, and after reviewing various documents, including the Change in Assignment forms, Mr. Jose Garzon said (regarding the July 16, 2011 changes in assignment) that:

- he must have been off (not assigned) work on July 16, 2011;
- he agreed to work assignment #111 for Mr. Simnick that day;
- he also agreed to work assignment #104 for [REDACTED] that day
- neither Mr. Simnick nor [REDACTED] paid him to work their assignments that day; and
- his FRA log did not reflect he worked either assignment #111 or #104 because he neglected to complete his FRA log accurately.

With regard to the July 23, 2011 change in assignment, Mr. Jose Garzon said:

- he agreed to work assignment #116 for [REDACTED] that day;
- [REDACTED] did not pay him to work his assignment that day; and
- his FRA log did not reflect he worked assignment #116 because he neglected to complete his FRA log accurately.

Mr. Jose Garzon told investigators that he was not trying to hide anything with regard to his FRA

¹²¹ See Appendix to Report, Exhibit 26 for the documents relating to this chart.

¹²² The Change in Assignment form, as reflected in Exhibit 26, reveals that Mr. J. Garzon also changed assignments with [REDACTED] and [REDACTED] that day.

¹²³ Mr. J. Garzon was interviewed on September 25, 2012.

logs and that Metra did not pay him for working the assignments for Mr. Simnick, [REDACTED], or [REDACTED]. Finally, Mr. Jose Garzon stated that he had heard rumors that conductors paid each other for job swaps, but that he did not engage in the practice and that he would swap jobs for others about once or twice per month and they would swap for him about once per month.

11. The Saturday, July 23, 2011 Dorsett/[REDACTED] Change in Assignment¹²⁴

Employee Assignment Per Crew Call sheet	Employee Assignment Per Change in Assignment form	Employee Federal Railroad Administration logs	Employee Payroll records
Richard Dorsett #126	Richard Dorsett for [REDACTED] on #105	<ul style="list-style-type: none"> • Logged working #126 • <i>Didn't log working #105</i> 	<ul style="list-style-type: none"> • Paid \$285.06 for #126 • <i>Not paid for working #105</i>
[REDACTED] #105	No Assignment	<ul style="list-style-type: none"> • <i>Logged working #105</i> 	<ul style="list-style-type: none"> • <i>Paid \$254.22 for working #105 – didn't work</i>

a. Darrin Austin Interview Regarding the Dorsett/[REDACTED] Change in Assignment

Investigators interviewed Metra District Line Road Foreman of Engines Darrin Austin regarding the July 23, 2011 Dorsett/[REDACTED] change in assignment. After reviewing documents, Mr. Austin said they revealed that Mr. Dorsett did not complete his FRA logs correctly when he did not document working for [REDACTED] on assignment #105. In addition, he said that [REDACTED] also did not accurately complete his FRA logs because he documented working assignment #105, when he had not.

Mr. Austin then speculated that assignment #105 may have had more than one train, and Mr. Dorsett only worked one train. However, after further examination of the documents, Mr. Austin reiterated that the FRA logs are inaccurate and incorrect for both Mr. Dorsett and [REDACTED], and then suggested that perhaps Mr. Dorsett and [REDACTED] *may not have swapped*.¹²⁵

¹²⁴ See Appendix to Report, Exhibit 27 for the documents relating to this chart.

¹²⁵ Mr. Austin was interviewed on September 13, 2012, at which time investigators had yet to interview [REDACTED], which did not occur until September 27, 2012. And, as set forth below, during his interview, [REDACTED] told investigators that the two men did swap that day.

b. [REDACTED] Interview Regarding his Change in Assignment

Investigators interviewed Metra Engineer [REDACTED]¹²⁶ regarding the July 23, 2011 change in assignment. The Crew Call sheet revealed that he only had one assignment that day. After reviewing documents, including the Change in Assignment form, [REDACTED] said:

- Mr. Dorsett worked at least a portion of assignment #105 for him on July 23, 2011; and
- he was paid by Metra for working assignment #105, even though he did not work that day.

[REDACTED] was asked why he logged having worked assignment #105 when he had not worked the assignment that day. In response, he said he documented his scheduled work times on his FRA logs even when he did not work, and his signature only indicates the FRA log was completed by him.

12. Four Additional Saturday, June 4, 2011 Changes in Assignment¹²⁷

a. The Saturday, June 4, 2011 [REDACTED] / [REDACTED] Change in Assignment¹²⁸

Employee Assignment Per Crew Call sheet	Employee Assignment Per Change in Assignment form	Employee Federal Railroad Administration Logs	Employee Payroll Records
[REDACTED] #505	[REDACTED] for #501	<ul style="list-style-type: none"> • Logged working #505 • <i>Didn't log working #501</i> 	<ul style="list-style-type: none"> • Not paid for working #505¹²⁹ • <i>Not paid for working #501</i>
[REDACTED] #501	No Assignment	<ul style="list-style-type: none"> • <i>Logged working #501</i> 	<ul style="list-style-type: none"> • Not paid for working #501¹³⁰

¹²⁶ [REDACTED] was interviewed on September 27, 2012.

¹²⁷ OEIG investigators were unable to interview as many conductors and engineers as it had hoped to for a number of reasons including scheduling issues and time constraints. For those employees whom the OEIG did not interview, the OEIG is not suggesting or concluding that they did not cooperate.

¹²⁸ See Appendix to Report, Exhibit 28 for the documents relating to this chart.

¹²⁹ The Payroll records, as reflected in Exhibit 28, reveal that [REDACTED] was not paid for working his original assignment, assignment #505.

¹³⁰ The OEIG did not seek to determine why [REDACTED] was not paid for working assignment #501. The OEIG notes that it requested all Payroll records for Metra Electric District Line conductors and engineers for the time period May 30, 2011 to December 31, 2011. The documents provided do not show any payments from Metra to [REDACTED] before June 16, 2011.

b. The Saturday, June 4, 2011 [REDACTED] / [REDACTED] Change in Assignment¹³¹

Employee Assignment Per Crew Call sheet	Employee Assignment Per Change in Assignment form	Employee Federal Railroad Administration logs	Employee Payroll Records
[REDACTED] #103	[REDACTED] for [REDACTED] (no assignment listed)	<ul style="list-style-type: none"> • Logged working #103 • <i>Didn't log working #107</i> 	<ul style="list-style-type: none"> • Paid \$218.71 for #103 • <i>Not paid for working #107</i>
[REDACTED] #107	No Assignment	<ul style="list-style-type: none"> • <i>Logged working #107</i> 	<ul style="list-style-type: none"> • <i>Paid \$218.71 for working #107 - didn't work</i>

c. The Saturday, June 4, 2011 [REDACTED] / [REDACTED] Change in Assignment¹³²

Employee Assignment Per Crew Call sheet	Employee Assignment Per Change in Assignment form	Employee Federal Railroad Administration logs	Employee Payroll records
[REDACTED] (No Assignment)	[REDACTED] for [REDACTED] #104	<ul style="list-style-type: none"> • Logged working #104 	<ul style="list-style-type: none"> • Not paid for working #104
[REDACTED] #104	No Assignment	<ul style="list-style-type: none"> • No FRA log¹³³ 	<ul style="list-style-type: none"> • <i>Paid \$218.71 for #104</i>

d. The Saturday, June 4, 2011 [REDACTED] / [REDACTED] Change in Assignment¹³⁴

Employee Assignment Per Crew Call sheet	Employee Assignment Per Change in Assignment form	Employee Federal Railroad Administration logs	Employee Payroll records
[REDACTED] #302	[REDACTED] for [REDACTED] #111	<ul style="list-style-type: none"> • Logged working #302 • <i>Didn't log working #111</i> 	<ul style="list-style-type: none"> • <i>Not paid for working #302</i>
[REDACTED] #111	No Assignment	<ul style="list-style-type: none"> • <i>Didn't log working any assignment</i> 	<ul style="list-style-type: none"> • <i>Paid \$218.71 working #111- didn't work</i>

¹³¹ See Appendix to Report, Exhibit 29 for the documents relating to this chart.

¹³² See Appendix to Report, Exhibit 30 for the documents relating to this chart.

¹³³ Metra did not provide a copy of his FRA log in response to the relevant request for documents.

¹³⁴ See Appendix to Report, Exhibit 31 for the documents relating to this chart.

13. Three Additional Friday, June 10, 2011 Changes in Assignment

a. The Friday, June 10, 2011 [REDACTED] Change in Assignment¹³⁵

Employee Assignment Per Crew Call sheet	Employee Assignment Per Change in Assignment form	Employee Federal Railroad Administration logs	Employee Payroll records
[REDACTED] #303	[REDACTED] for #20	<ul style="list-style-type: none"> • Logged working #303 • <i>Didn't log working #20</i> 	<ul style="list-style-type: none"> • Not paid for working #303¹³⁶ • <i>Not paid for working #20</i>
[REDACTED] #20	No Assignment	<ul style="list-style-type: none"> • <i>Logged working #20</i> 	<ul style="list-style-type: none"> • <i>Paid \$294.19 working #20-didn't work</i>

b. The Friday, June 10, 2011 [REDACTED] Change in Assignment¹³⁷

Employee Assignment Per Crew Call sheet	Employee Assignment Per Change in Assignment form	Employee Federal Railroad Administration logs	Employee Payroll records
[REDACTED] #301	[REDACTED] for #14	<ul style="list-style-type: none"> • Logged working #301 • <i>Didn't log working #14</i> 	<ul style="list-style-type: none"> • Not paid for working #301¹³⁸ • <i>Not paid for working #14</i>
[REDACTED] #14	No Assignment	<ul style="list-style-type: none"> • <i>Logged working #14</i> 	<ul style="list-style-type: none"> • <i>Paid \$419.97 working #14 - didn't work</i>

c. The Friday, June 10, 2011 [REDACTED] Change in Assignment¹³⁹

Employee Assignment Per Crew Call sheet	Employee Assignment Per Change in Assignment form	Employee Federal Railroad Administration logs	Employee Payroll records
[REDACTED] #10	[REDACTED] for #205 ¹⁴⁰	<ul style="list-style-type: none"> • Logged working #10 • <i>Didn't log working #205</i> 	<ul style="list-style-type: none"> • Paid \$271.50 for #110 • <i>Not paid for working #205 or #14</i>
[REDACTED] #14	No Assignment	<ul style="list-style-type: none"> • <i>Logged working #9¹⁴¹</i> 	<ul style="list-style-type: none"> • <i>Paid \$286.81 working #14-didn't work</i>

¹³⁵ See Appendix to Report, Exhibit 32 for the documents relating to this chart.

¹³⁶ The Payroll records, as reflected in Exhibit 32, reveal that [REDACTED] was not paid for working his original assignment, assignment #303.

¹³⁷ See Appendix to Report, Exhibit 33 for the documents relating to this chart.

¹³⁸ The Payroll records, as reflected in Exhibit 33, reveal that [REDACTED] was not paid for working his original assignment, assignment #301.

¹³⁹ See Appendix to Report, Exhibit 34 for the documents relating to this chart.

¹⁴⁰ It appears the assignment was incorrectly identified as assignment #205, instead of assignment #14, on the Change in Assignment form

¹⁴¹ It appears [REDACTED] was identifying assignment numbers on his FRA logs as the chronological assignment number he worked that month as opposed to the number indicated on the Crew Call sheet. For example, [REDACTED] had worked on 8 prior occasions before being assigned assignment #14 on June 10, 2011. Therefore, [REDACTED] indicated this assignment number to be #9, instead of #14, on his FRA log.

14. Four Additional Saturday, July 16, 2011 Changes in Assignment

a. The Saturday, July 16, 2011 [REDACTED] / [REDACTED] Change in Assignment¹⁴²

Employee Assignment Per Crew Call sheet	Employee Assignment Per Change in Assignment form	Employee Federal Railroad Administration logs	Employee Payroll records
[REDACTED] #132	[REDACTED] for #125	<ul style="list-style-type: none"> • Logged working #132 • Didn't log working #125 	<ul style="list-style-type: none"> • Paid \$227.01 for #132 • Not paid for working #125
[REDACTED] #125	No Assignment	<ul style="list-style-type: none"> • Didn't log working any assignment 	<ul style="list-style-type: none"> • Paid \$242.14 for #125- didn't work

b. The Saturday, July 16, 2011 [REDACTED] / [REDACTED] / [REDACTED] Change in Assignment¹⁴³

Employee Assignment Per Crew Call sheet	Employee Assignment Per Change in Assignment form	Employee Federal Railroad Administration logs	Employee Payroll records
[REDACTED] #122	[REDACTED] for #107 [REDACTED] for #112	<ul style="list-style-type: none"> • Logged working #122 • Logged working #107 • Logged working #112 	<ul style="list-style-type: none"> • Paid \$227.01 for #122 • Not paid for working #107 • Not paid for working #112
[REDACTED] #107	No Assignment	<ul style="list-style-type: none"> • Logged working #107 	<ul style="list-style-type: none"> • Paid \$261.57 for working #107- didn't work
[REDACTED] #112	No Assignment	<ul style="list-style-type: none"> • Logged working #112 	<ul style="list-style-type: none"> • Paid \$276.70 for working #112- didn't work

c. The Saturday, July 16, 2011 [REDACTED] / [REDACTED] Change in Assignment¹⁴⁴

Employee Assignment Per Crew Call sheet	Employee Assignment Per Change in Assignment form	Employee Federal Railroad Administration logs	Employee Payroll records
[REDACTED] (No assignment)	[REDACTED] for #127	<ul style="list-style-type: none"> • Didn't log working #127 	<ul style="list-style-type: none"> • Not paid for working #127
[REDACTED] #127	No Assignment	<ul style="list-style-type: none"> • Didn't log working any assignment 	<ul style="list-style-type: none"> • Paid \$254.22 for working #127 - didn't work

¹⁴² See Appendix to Report, Exhibit 35 for the documents relating to this chart.

¹⁴³ See Appendix to Report, Exhibits 36 and 37 for the documents relating to this chart.

¹⁴⁴ See Appendix to Report, Exhibit 38 for the documents relating to this chart.

15. Three Additional Saturday, July 23, 2011 Changes in Assignment

a. The Saturday, July 23, 2011 ██████/██████ Change in Assignment¹⁴⁵

Employee Assignment Per Crew Call sheet	Employee Assignment Per Change in Assignment form	Employee Federal Railroad Administration logs	Employee Payroll records
██████ #103	██████ for ██████ #107	<ul style="list-style-type: none"> • Logged working #103 • <i>Didn't log working #107</i> 	<ul style="list-style-type: none"> • Paid \$226.94 for #103 • <i>Not paid for working #107</i>
██████ #107	No Assignment	<ul style="list-style-type: none"> • <i>Logged working #107</i> 	<ul style="list-style-type: none"> • <i>Paid \$226.94 for working #107- didn't work</i>

b. The Saturday, July 23, 2011 ██████/██████ Change in Assignment¹⁴⁶

Employee Assignment Per Crew Call sheet	Employee Assignment Per Change in Assignment form	Employee Federal Railroad Administration logs	Employee Payroll records
██████ (No Assignment)	██████ for ██████ #127	<ul style="list-style-type: none"> • <i>Didn't log working #127</i> 	<ul style="list-style-type: none"> • <i>Not paid for Working #127</i>
██████ #127	No Assignment	<ul style="list-style-type: none"> • <i>Logged working #127</i> 	<ul style="list-style-type: none"> • <i>Paid \$254.22 for working #127- didn't work</i>

c. The Saturday, July 23, 2011 ██████/██████ Change in Assignment¹⁴⁷

Employee Assignment Per Crew Call sheet	Employee Assignment Per Change in Assignment form	Employee Federal Railroad Administration logs	Employee Payroll records
██████ (No Assignment)	██████ for ██████ #121	<ul style="list-style-type: none"> • Logged working #121 	<ul style="list-style-type: none"> • No Payroll records
██████ #121	No Assignment	<ul style="list-style-type: none"> • No FRA log¹⁴⁸ 	<ul style="list-style-type: none"> • <i>Paid \$261.79 for working #121- didn't work</i>

¹⁴⁵ See Appendix to Report, Exhibit 39 for the documents relating to this chart.

¹⁴⁶ See Appendix to Report, Exhibit 40 for the documents relating to this chart.

¹⁴⁷ See Appendix to Report, Exhibit 41 for the documents relating to this chart.

¹⁴⁸ Metra did not provide a copy of ██████'s FRA log in response to the relevant request for documents.

16. Four Additional Wednesday, July 27, 2011 Changes in Assignment

a. The Wednesday, July 27, 2011 [REDACTED] / [REDACTED] Change in Assignment¹⁴⁹

Employee Assignment Per Crew Call sheet	Employee Assignment Per Change in Assignment form	Employee Federal Railroad Administration logs	Employee Payroll records
[REDACTED] #28	[REDACTED] for [REDACTED] #11	<ul style="list-style-type: none"> • Logged working #28 • Didn't log working #11 	<ul style="list-style-type: none"> • Paid \$328.85 for #28 • Not paid for working #11
[REDACTED] #11	No Assignment	<ul style="list-style-type: none"> • Logged working #11 	<ul style="list-style-type: none"> • Paid \$308.54 for working #11

b. The Wednesday, July 27, 2011 [REDACTED] / [REDACTED] Change in Assignment¹⁵⁰

Employee Assignment Per Crew Call sheet	Employee Assignment Per Change in Assignment form	Employee Federal Railroad Administration logs	Employee Payroll records
[REDACTED] #2	[REDACTED] for [REDACTED] #28	<ul style="list-style-type: none"> • Logged working #2 • Didn't log working #28 	<ul style="list-style-type: none"> • Paid \$229.19 for #2 • Not paid for working #28
[REDACTED] #28	No Assignment	<ul style="list-style-type: none"> • Logged working #28 	<ul style="list-style-type: none"> • Paid \$357.14 for working #28- didn't work

c. The Wednesday, July 27, 2011 [REDACTED] / [REDACTED] Change in Assignment¹⁵¹

Employee Assignment Per Crew Call sheet	Employee Assignment Per Change in Assignment form	Employee Federal Railroad Administration logs	Employee Payroll records
[REDACTED] #45	[REDACTED] for [REDACTED] #24	<ul style="list-style-type: none"> • Logged working #45 • Didn't log working #24 	<ul style="list-style-type: none"> • Paid \$283.75 for #45 • Not paid for working #24
[REDACTED] #24	No Assignment	<ul style="list-style-type: none"> • Logged working #24 	<ul style="list-style-type: none"> • Paid \$290.89 for working #24 - didn't work

¹⁴⁹ See Appendix to Report, Exhibit 42 for the documents relating to this chart.

¹⁵⁰ See Appendix to Report, Exhibit 43 for the documents relating to this chart.

¹⁵¹ See Appendix to Report, Exhibit 44 for the documents relating to this chart.

d. The Wednesday, July 27, 2011 ██████████/██████████ Change in Assignment¹⁵²

Employee Assignment Per Crew Call sheet	Employee Assignment Per Change in Assignment form	Employee Federal Railroad Administration logs	Employee Payroll records
██████████ #302	██████████ for #13	<ul style="list-style-type: none"> • Logged working #302 • <i>Didn't log working #13</i> 	<ul style="list-style-type: none"> • Not paid for working #302¹⁵³ • <i>Not paid for working #13</i>
██████████ #13	No Assignment	<ul style="list-style-type: none"> • <i>Logged working #13</i> 	<ul style="list-style-type: none"> • <i>Paid \$321.40 for working #13 - didn't work</i>

H. Inconsistencies In Employee FRA Logs, Payroll Records, and Change in Assignment forms After October 1, 2011

The OEIG also reviewed Metra Crew Call sheets, Change in Assignment forms, FRA logs, and employee Payroll records for the Metra Electric District Line for the period between October 1, and December 31, 2011. Investigators reviewed these documents in order to determine if employees continued to inaccurately document assignments in their FRA logs.

A review of documents indicates that changes in assignment continued to occur after October 1, 2011 and revealed that discrepancies in documentation of employee FRA logs also continued to occur. Investigators reviewed information relating to the following dates: October 6, and November 10, 12, and 22, 2011, and identified numerous inconsistencies.

¹⁵² See Appendix to Report, Exhibit 45 for the documents relating to this chart.

¹⁵³ The Payroll records, as reflected in Exhibit 45, reveal that ██████████ was not paid for working his original assignment, assignment #302.

1. The Thursday, October 6, 2011 [REDACTED] / [REDACTED] Change in Assignment¹⁵⁴

Employee Assignment Per Crew Call sheet	Employee Assignment Per Change in Assignment form	Employee Federal Railroad Administration logs	Employee Payroll records
[REDACTED] (No Assignment)	[REDACTED] for [REDACTED] #11	<ul style="list-style-type: none"> • Logged working #9 • <i>Didn't log working #11</i> 	<ul style="list-style-type: none"> • Paid \$305.39 for #9
[REDACTED] (No Assignment)	No Assignment	<ul style="list-style-type: none"> • <i>Logged working #11</i> 	<ul style="list-style-type: none"> • <i>Paid \$308.54 for working #11- didn't work</i>

2. The Thursday, November 10, 2011 [REDACTED] / [REDACTED] Change in Assignment¹⁵⁵

Employee Assignment Per Crew Call sheet	Employee Assignment Per Change in Assignment form	Employee Federal Railroad Administration logs	Employee Payroll records
[REDACTED] #23	[REDACTED] for [REDACTED] #28	<ul style="list-style-type: none"> • Logged working #22 • <i>Didn't log working #28 or #03</i> 	<ul style="list-style-type: none"> • Paid \$299.56 for #22 • <i>Not paid for working #28 or #03</i>
[REDACTED] #03	No Assignment	<ul style="list-style-type: none"> • No FRA log¹⁵⁶ 	<ul style="list-style-type: none"> • <i>Paid \$357.14 for working #28 - didn't work</i>

3. The Saturday, November 12, 2011 [REDACTED] / [REDACTED] Change in Assignment¹⁵⁷

Employee Assignment Per Crew Call sheet	Employee Assignment Per Change in Assignment form	Employee Federal Railroad Administration logs	Employee Payroll records
[REDACTED] (No Assignment)	[REDACTED] for [REDACTED] #101 ¹⁵⁸	<ul style="list-style-type: none"> • <i>Didn't log working #101</i> 	<ul style="list-style-type: none"> • <i>Not paid for working #28</i>
[REDACTED] #232	No Assignment	<ul style="list-style-type: none"> • Didn't log working any assignment 	<ul style="list-style-type: none"> • <i>Paid \$227.01 for working #102 - didn't work¹⁵⁹</i>

4. The Tuesday, November 22, 2011 [REDACTED] / [REDACTED] Change in Assignment¹⁶⁰

¹⁵⁴ See Appendix to Report, Exhibit 46 for the documents relating to this chart.

¹⁵⁵ See Appendix to Report, Exhibit 47 for the documents relating to this chart.

¹⁵⁶ Metra did not provide a copy of [REDACTED]'s FRA log in response to the relevant request for documents.

¹⁵⁷ See Appendix to Report, Exhibit 48 for the documents relating to this chart.

¹⁵⁸ The Change in Assignment form, as reflected in Exhibit 48, reflects that [REDACTED] worked run #101 in place of [REDACTED] rather than run #232, which [REDACTED] was assigned to, per the Crew Call sheet for that day. In light of [REDACTED]'s decision to end his interview, investigators were unable to ask him about this change in assignment.

¹⁵⁹ The Payroll records, as reflected in Exhibit 48, reflects that [REDACTED] was paid for working assignment #102 instead of the originally assigned #232.

¹⁶⁰ See Appendix to Report, Exhibit 49 for the documents relating to this chart.

Employee Assignment Per Crew Call sheet	Employee Assignment Per Change in Assignment form	Employee Federal Railroad Administration logs	Employee Payroll records
██████████ (No Assignment)	██████████ for ██████████ #23	<ul style="list-style-type: none"> • <i>Logged working #302</i> • <i>Didn't log working #23</i> 	<ul style="list-style-type: none"> • <i>Not paid for working #23¹⁶¹</i>
██████████ (No Assignment)	No Assignment	<ul style="list-style-type: none"> • <i>Logged working #23</i> 	<ul style="list-style-type: none"> • <i>Paid \$299.42 for working #23 - didn't work</i>

I. Financial Review of Select Change in Assignments for Select Metra Employees

In order to obtain a financial overview of the number of times Metra employees were paid when in fact they did not work, per the Change in Assignment forms, investigators conducted a financial review of a select number of Change in Assignment forms and compared them to Metra Payroll records. Investigators were seeking to determine how much money Metra employees were paid, and in how many instances employees were either paid or not paid, when they engaged in a change of assignment.

Investigators reviewed the Change in Assignment forms for 15 Metra Electric District Line employees for the period of May 30, 2011 to December 31, 2011. As set forth in the below chart, the name of the employee is followed by:

- the number of assignments *not worked* on a specific day per the Change in Assignment form
- the number of assignments *worked* per the Change in Assignment form, and
- the respective dates.

The last column of the below chart contains the amount the employee was paid or was not paid by Metra for working that assignment on that particular day. For example, if per the Crew Call sheet, the employee was assigned to work the assignment, regardless of whether they worked the assignment or not, Metra records reveal the employee was paid. However, if the employee was

¹⁶¹ The OEIG notes that of the documents provided by Metra, there were no Payroll records indicating ██████████ was paid by Metra during the time period October 1, 2011 to December 31, 2011.

assigned to work per the Change in Assignment form, although the employee may have been paid cash by another employee to work that day (or received a gift) unless Metra Payroll records reflect that Metra paid the employee, the figure in this column will be \$0.

In addition, the grand total each employee was paid during this limited time period is set forth at the end of their respective sections.

Chart of Metra Employees
Who Engaged in Change in Assignment Practice

Name	Assignments not Worked Per Change in Assignment Form	Assignments Worked Per Change in Assignment Form	Change in Assignment Day	Amount Metra Paid for Employee for that Day ¹⁶²
██████████	1		6/1/2011	\$302.54
██████████	1		6/3/2011	\$302.54
██████████	1		6/7/2011	\$302.54
██████████	1		6/11/2011	\$0.00
██████████	1		6/13/2011	\$294.51
██████████	1		6/17/2011	\$294.51
██████████	1		6/22/2011	\$323.00
██████████	1		6/24/2011	\$323.00
██████████	1		6/28/2011	\$323.00
██████████	1		7/8/2011	\$334.87
██████████	1		7/14/2011	\$334.87
██████████	1		7/16/2011	\$275.04
██████████	1		7/18/2011	\$305.39
██████████	1		7/22/2011	\$305.39
██████████	1		8/3/2011	\$305.39
██████████	1		8/19/2011	\$305.39
Totals	16	0		\$4,631.98¹⁶³
██████████	1		6/2/2011	\$309.98
██████████	1		6/4/2011	\$218.71

¹⁶² This column references only payments made by Metra for the change in assignment in question. Payroll records may reveal that these employees were paid for other assignments worked on these days.

¹⁶³ See Appendix to Report, Exhibit 50 for the documents relating to this chart.

██████████	1		6/7/2011	\$315.50
██████████	1		6/14/2011	\$315.50
██████████	1		6/16/2011	\$315.50
██████████	1		6/21/2011	\$309.98
██████████	1		6/23/2011	\$309.98
██████████	1		6/28/2011	\$309.98
██████████	1		6/30/2011	\$309.98
██████████	1		7/5/2011	\$321.40
██████████	1		7/7/2011	\$321.40
██████████	1		7/12/2011	\$321.40
Name	Assignments not Worked Per Change in Assignment Form	Assignments Worked Per Change in Assignment Form	Change in Assignment Day	Amount Metra Paid for Employee for that Day
██████████	1		7/14/2011	\$321.40
██████████	1		7/21/2011	\$321.40
██████████	1		7/23/2011	\$226.94
██████████	1		8/2/2011	\$321.40
██████████		1	6/24/2011	\$0.00
Totals	16	1		\$4,870.45¹⁶⁴
██████████	1		6/4/2011	\$226.05
██████████	1		6/11/2011	\$226.05
██████████	1		6/18/2011	\$226.05
██████████	1		6/25/2011	\$226.05
██████████	1		7/2/2011	\$242.14
██████████	1		7/9/2011	\$242.14
██████████	1		7/16/2011	\$242.14
██████████	1		8/6/2011	\$224.40
██████████	1		8/20/2011	\$224.40
██████████	1		8/27/2011	\$224.40
██████████	1		9/3/2011	\$242.14
██████████	1		9/10/2011	\$242.14
██████████	1		9/17/2011	\$242.14
██████████	1		9/24/2011	\$242.14
██████████		1	6/4/2011	\$0.00
██████████		1	6/11/2011	\$0.00
██████████		1	6/13/2011	\$0.00
██████████		1	6/18/2011	\$0.00

¹⁶⁴ See Appendix to Report, Exhibit 51 for the documents relating to this chart.

		1	6/22/2011	\$0.00
		1	6/25/2011	\$0.00
		1	6/29/2011	\$0.00
		1	7/2/2011	\$0.00
		1	7/9/2011	\$0.00
		1	7/16/2011	\$0.00
		1	7/18/2011	\$0.00
		1	8/6/2011	\$0.00
		1	8/20/2011	\$0.00
		1	8/27/2011	\$0.00
Name	Assignments not Worked Per Change in Assignment Form	Assignments Worked Per Change in Assignment Form	Change in Assignment Day	Amount Metra Paid for Employee for that Day
		1	9/3/2011	\$0.00
		1	9/10/2011	\$0.00
		1	9/24/2011	\$0.00
Totals	14	17		\$3,272.38¹⁶⁵
Schroder, Wade J.	1		6/4/2011	\$211.92
Schroder, Wade J.	1		6/18/2011	\$211.92
Schroder, Wade J.	1		6/25/2011	\$211.92
Schroder, Wade J.	1		7/2/2011	\$227.01
Schroder, Wade J.	1		7/9/2011	\$227.01
Schroder, Wade J.	1		7/11/2011	\$298.77
Schroder, Wade J.	1		7/16/2011	\$227.01
Schroder, Wade J.	1		7/23/2011	\$227.01
Schroder, Wade J.	1		7/27/2011	\$298.77
Schroder, Wade J.	1		8/20/2011	\$210.20
Schroder, Wade J.	1		8/27/2011	\$210.20
Schroder, Wade J.	1		9/3/2011	\$227.01
Schroder, Wade J.	1		9/17/2011	\$227.01
Schroder, Wade J.	1		9/24/2011	\$227.01
Totals	14	0		\$3,242.77¹⁶⁶
Fitts, Vernell	1		6/4/2011	\$259.65
Fitts, Vernell	1		6/11/2011	\$245.52
Fitts, Vernell	1		6/18/2011	\$245.52

¹⁶⁵ See Appendix to Report, Exhibit 52 for the documents relating to this chart.

¹⁶⁶ See Appendix to Report, Exhibit 53 for the documents relating to this chart.

Fitts, Vernell	1		6/25/2011	\$259.65
Fitts, Vernell	1		7/2/2011	\$276.70
Fitts, Vernell	1		7/9/2011	\$276.70
Fitts, Vernell	1		7/16/2011	\$276.70
Fitts, Vernell	1		7/23/2011	\$261.57
Fitts, Vernell	1		8/6/2011	\$244.76
Fitts, Vernell	1		8/20/2011	\$244.76
Fitts, Vernell	1		8/27/2011	\$244.76
Fitts, Vernell	1		9/3/2011	\$276.70
Fitts, Vernell	1		9/10/2011	\$276.70
Name	Assignments not Worked Per Change in Assignment Form	Assignments Worked Per Change in Assignment Form	Change in Assignment Day	Amount Metra Paid for Employee for that Day
██████████	1		9/17/2011	\$261.57
Totals	14	0		\$3,651.26¹⁶⁷
██████████	1		6/4/2011	\$226.05
██████████	1		7/14/2011	\$307.74
██████████	1		7/15/2011	\$307.74
██████████	1		9/13/2011	\$276.68
██████████		1	6/4/2011	\$0.00
██████████		1	6/10/2011	\$0.00
██████████		1	6/11/2011	\$0.00
██████████		1	6/12/2011	\$0.00
██████████		1	6/19/2011	\$0.00
██████████		1	6/26/2011	\$0.00
██████████		1	7/3/2011	\$0.00
██████████		1	7/4/2011	\$0.00
██████████		1	7/4/2011	\$0.00
██████████		1	7/5/2011	\$0.00
██████████		1	7/17/2011	\$0.00
██████████		1	7/24/2011	\$0.00
██████████		1	7/31/2011	\$0.00
██████████		1	9/6/2011	\$0.00
██████████		1	9/23/2011	\$0.00
██████████		1	9/30/2011	\$0.00
Totals	5	16		\$1,118.21¹⁶⁸

¹⁶⁷ See Appendix to Report, Exhibit 54 for the documents relating to this chart.

¹⁶⁸ See Appendix to Report, Exhibit 55 for the documents relating to this chart.

██████████	1		6/12/2011	\$318.96
██████████	1		6/19/2011	\$318.96
██████████	1		6/26/2011	\$318.96
██████████	1		6/30/2011	\$419.97
██████████	1		7/3/2011	\$330.47
██████████	1		7/10/2011	\$330.47
██████████	1		7/17/2011	\$330.47
██████████	1		8/5/2011	\$435.23
██████████	1		8/19/2011	\$435.23
██████████	1		8/22/2011	\$435.23
Name	Assignments not Worked Per Change in Assignment Form	Assignments Worked Per Change in Assignment Form	Change in Assignment Day	Amount Metra Paid for Employee for that Day
██████████	1		9/4/2011	\$330.47
██████████	1		9/18/2011	\$330.47
██████████	1		9/30/2011	\$435.23
Totals	13	0		\$4,770.12¹⁶⁹
Dorsett, Richard M	1		7/2/2011	\$285.06
Dorsett, Richard M.		1	6/4/2011	\$0.00
Dorsett, Richard M.		1	6/11/2011	\$0.00
Dorsett, Richard M.		1	6/18/2011	\$0.00
Dorsett, Richard M.		1	6/25/2011	\$0.00
Dorsett, Richard M.		1	7/23/2011	\$0.00
Dorsett, Richard M.		1	7/29/2011	\$0.00
Dorsett, Richard M.		1	8/6/2011	\$0.00
Dorsett, Richard M.		1	8/18/2011	\$0.00
Dorsett, Richard M.		1	8/20/2011	\$0.00
Dorsett, Richard M.		1	8/27/2011	\$0.00
Dorsett, Richard M.		1	9/3/2011	\$0.00
Dorsett, Richard M.		1	9/10/2011	\$0.00
Dorsett, Richard M.		1	9/17/2011	\$0.00
Dorsett, Richard M.		1	9/24/2011	\$0.00
Dorsett, Richard M.		1	9/30/2011	\$0.00
Totals	1	15		\$285.06¹⁷⁰
██████████	1		6/4/2011	\$218.71

¹⁶⁹ See Appendix to Report, Exhibit 56 for the documents relating to this chart.

¹⁷⁰ See Appendix to Report, Exhibit 57 for the documents relating to this chart.

██████████	1		6/11/2011	\$218.71
██████████	1		6/25/2011	\$218.71
██████████	1		7/15/2011	\$323.48
██████████	1		7/29/2011	\$304.12
██████████	1		8/20/2011	\$226.94
██████████	1		9/3/2011	\$226.94
██████████	1		9/11/2011	\$330.47
██████████	1		9/25/2011	\$330.47
██████████		1	6/4/2011	\$0.00
██████████		1	6/11/2011	\$0.00
Name	Assignments not Worked Per Change in Assignment Form	Assignments Worked Per Change in Assignment Form	Change in Assignment Day	Amount Metra Paid for Employee for that Day
██████████		1	6/25/2011	\$0.00
██████████		1	8/20/2011	\$0.00
Totals	9	4		\$2,398.55¹⁷¹
██████████	1		6/18/2011	\$244.05
██████████	1		6/25/2011	\$244.05
██████████	1		7/1/2011	\$375.35
██████████	1		7/2/2011	\$261.44
██████████	1		7/15/2011	\$375.35
██████████	1		7/16/2011	\$261.44
██████████	1		7/23/2011	\$261.44
Totals	7	0		\$2,023.12¹⁷²
Simnick, Michael D.	1		6/11/2011	\$211.92
Simnick, Michael D.	1		7/16/2011	\$227.01
Simnick, Michael D.	1		8/6/2011	\$210.20
Simnick, Michael D.	1		9/10/2011	\$227.01
Simnick, Michael D.		1	6/4/2011	\$0.00
Simnick, Michael D.		1	6/11/2011	\$0.00
Totals	4	2		\$876.14¹⁷³
██████████	1		6/29/2011	\$214.10
██████████	1		8/17/2011	\$212.38
██████████		1	7/27/2011	0

¹⁷¹ See Appendix to Report, Exhibit 58 for the documents relating to this chart.

¹⁷² See Appendix to Report, Exhibit 59 for the documents relating to this chart.

¹⁷³ See Appendix to Report, Exhibit 60 for the documents relating to this chart.

██████████		1	06/04/11	0
Totals	2	3		\$426.48¹⁷⁴
██████████	1		7/2/2011	\$227.01
██████████	1		7/23/2011	\$247.56
██████████		1	7/2/2011	\$0.00
██████████		1	7/23/2011	\$0.00
Totals	2	2		\$474.57¹⁷⁵
Name	Assignments not Worked Per Change in Assignment Form	Assignments Worked Per Change in Assignment Form	Change in Assignment Day	Amount Metra Paid for Employee for that Day
██████████	1		9/17/2011	\$254.22
██████████	1		9/24/2011	\$254.22
Totals	2	0		\$508.44¹⁷⁶
Grand Totals	119	60		\$32,549.53

As shown by the above chart, a number of the above-referenced Metra employees had others work for them even though they never worked for others, which would indicate that changes in assignment were not one-for-one transactions. In addition, some employees appeared to have worked for others more often than others worked for them. This would again appear to indicate that these employees also did not engage in one-for-one transactions or swaps.

J. Attempted Interviews of Additional Metra Conductors and Senior Level Employees, including Executive Director Don Orseno

After having conducted multiple interviews of Metra employees (mostly conductors), reviewing and analyzing a voluminous amount of Metra documents, and creating the above charts, OEIG investigators began to take steps to verify how prevalent the change in assignment practice was after December 2011. Investigators were particularly interested in determining whether Metra employees who were required to log their work time were still engaging in

¹⁷⁴ See Appendix to Report, Exhibit 61 for the documents relating to this chart.

¹⁷⁵ See Appendix to Report, Exhibit 62 for the documents relating to this chart.

¹⁷⁶ See Appendix to Report, Exhibit 63 for the documents relating to this chart.

changes of assignment, even if only for “emergency” reasons, how often they were doing so, and how they recorded their time in their FRA logs. Investigators were also interested in determining whether the Change in Assignment forms were still being used and were now being transmitted to Metra’s Payroll department. Additionally, investigators sought to determine whether employees were still being paid for working particular assignments when they had not worked those assignments. In February 2014, OEIG investigators sought to interview several Metra employees, some of which had already been interviewed regarding certain aspects of this investigation, and some of which had not been previously interviewed. Specifically, the efforts of OEIG investigators to interview certain individuals are described below.

1. Interviews of Additional Metra Conductors

As stated in part above, in February 2014, investigators interviewed additional employees regarding the current status of the change in assignment practice. As such, Metra conductors Marco Garzon, [REDACTED], [REDACTED], and [REDACTED] appeared for interviews. During their respective interviews, Messrs. Garzon, [REDACTED], and [REDACTED] terminated their interviews and sought to return with counsel. Prior to terminating their interviews, however, each of these three men indicated that they were aware that they had to record their work hours on their FRA logs and they were aware of the change in assignment practice.

During his interview, among other things, [REDACTED] stated that employees stopped switching assignments “a couple” of years prior to this interview (February 2014). According to [REDACTED], someone switched assignments without documenting it on the Change of Assignment form and “ruined it for everyone.” [REDACTED] stated that employees were never informed, formally or informally, that they could no longer switch assignments, but that after the individual switched assignments without documenting it, the Change in Assignment form was removed from the office at the station, where it had always been kept.

2. Efforts to Re-Interview Janet Carbonelli and Interview Metra Comptroller Arun Saxena

In light of the numerous Metra covered employees who had changed assignments with each other but failed to accurately record their hours of service coupled with the fact that it was unclear to OEIG investigators if the change in assignment practice was continuing,¹⁷⁷ even if only in emergency situations, investigators sought to re-interview Ms. Carbonelli. Specifically, investigators sought to re-interview and ask her:

- whether she continued to approve changes in assignment in 2013 or 2014;
- whether she was aware of any recent definition of what constituted an “emergency;”
- whether she kept employee documentation reflecting that changes in assignment were for a legitimate emergency;¹⁷⁸
- whether she was aware if employees who did not *work* because they changed assignments (even in emergencies) continued to *receive pay*;
- whether she was aware if employees *who did work* for others (even in emergencies) continued to *not receive pay* for the day they worked;
- whether she took any steps to make certain that Metra’s Payroll department was aware of the changes in assignment so as to make sure the correct employee was paid;
- whether she took steps to make certain that employees *who did work* per the changed assignments (even in emergencies) correctly completed their FRA logs;
- whether she took steps to make certain that employees who *did not work* per the changed assignments correctly completed their FRA logs;
- whether she was aware of any recent circumstances under which employees were paying each other to change assignments (even in emergencies); and
- whether she approved any changes in assignment in non-emergency circumstances.

In addition, investigators sought to interview Metra Comptroller Arun Saxena, who had never been interviewed, regarding the subject matter of this investigation and ask him:

- whether he was aware of the change in assignment practice (even in emergencies);
- whether he was aware that Metra employees *were paid* when *they did not work*;

¹⁷⁷ As noted in this report, some witnesses reported that the change in assignment practice ended completely, others indicated the practice continued but only in emergencies.

¹⁷⁸ In a January 26, 2012 email referenced above (on page 30 of this report), Ms. Carbonelli had responded to a question from former Deputy Executive Director of Operations George Hardwidge the following: “I have authorized seven swaps, the majority have been for medical appointment or conditions. One swap was last Monday due to employee,s [sic] basement being flooded. In all cases manpower was not available for a personal day and all employees *provided documentation of their event*. I have no knowledge of any monies exchanged. My officers defer swaps to me.” (emphasis added).

- whether he was aware that Metra employees *were not paid* when *they did work*;
- whether the receipt of Metra pay by non-working employees meant that the employees' wage earnings were incorrectly reported to state and federal authorities;
- whether he was aware of any tax implications of paying employees who did not work;
- whether he was aware of any tax implications of not paying employees who did work;
- whether he was aware of any tax implications of employees receiving cash (from other employees) for working assignments initially assigned to other employees;
- whether he was aware of how the change in assignment practice resulted in the non-deduction of employee personal and/or vacation time; and
- whether he was aware of how the change in assignment practice may have affected employee retirement payouts.

Investigators contacted Ms. Carbonelli and Mr. Saxena and their respective OEIG interviews were scheduled for February 19, 2014. However, on February, 18, 2014, prior to their interviews, the OEIG received an email from a Metra attorney that read as follows:

Fallon:

As you discussed with Sue-Ann earlier, I will be representing Janet Carbonelli and Arun Saxena for the interviews in the above captioned investigation that are scheduled tomorrow. In order to prepare for Ms. Carbonelli's interview, please provide me with any copies of the transcripts or summary reports for Ms. Carbonelli's previous interview(s). As you know, Ms. Carbonelli provided several hours of testimony to your office roughly 2 years ago. Due process would require that she be provided a copy of this information. Second, we would like to record the interviews. We see no basis in the law that would require that these requests should be denied. Kindly let me know if the OEIG objects to either of these requests as soon possible. Otherwise, we may request EEC guidance in this regard and we may not be able to proceed until we receive said guidance.

Thank you for your attention to this matter.

[Metra Attorney]

Attorney II, Law Department, Metra

In response to the above email and on the same day, OEIG wrote back and stated the following:

Dear [Metra Attorney]-

I am Special Counsel for the OEIG. I have been asked to respond to your email below to Deputy Inspector General Opperman.

First, we have no objection to an attorney from Metra's law department serving as an interviewee's representative, so long as that attorney is not "involved" in the investigation, i.e., is not a potential witness in the matter and will not potentially be involved in the implementation of any remedial action to be taken as a result of the investigation. We have no reason to believe that you are or will be involved in the investigation in either of those respects, and therefore have no objection to you representing Ms. Carbonelli and Mr. Saxena at their respective OEIG interviews.

Second, as we have explained to Ms. Rosen, Section 20-95(d) of the Ethics Act obligates the OEIG to maintain the confidentiality of its investigatory files, as follows:

“Unless otherwise provided in this Act, all investigatory files and reports of the [OEIG], other than monthly reports required under Section 20-85, are confidential, are exempt from disclosure under the Freedom of Information Act, and shall not be divulged to any person or agency, except as necessary (i) to a law enforcement authority, (ii) to the ultimate jurisdictional authority, (iii) to the Executive Ethics Commission, (iv) to another Inspector General appointed pursuant to this Act, or (v) to an Inspector General appointed or employed by a Regional Transit Board in accordance with Section 75-10.”

5 ILCS 430/20-95(d). Section 20-90(b) of the Ethics Act further provides that “each [OEIG], ... shall keep confidential and shall not disclose information exempted from disclosure under the Freedom of Information Act or by this Act[.]” 5 ILCS 430/20-90(b). Recordings, notes, interview reports and transcripts are part of the OEIG’s investigatory files, and thus may not be disclosed under the foregoing statutory provisions. Those provisions make no exception for files or documents that may contain the statements of witnesses. The statute delineates five exceptions to the confidentiality requirement. Persons whom the OEIG interview are not among those exceptions. Thus, we must decline to provide Ms. Carbonelli or Mr. Saxena with any transcripts or reports from their prior interviews.

Third, for the same reasons, we cannot permit the interviewee to record the interview. All the more so, we cannot permit any third party (e.g., Metra) to record an investigatory interview by our Office.

We are prepared to proceed with the interviews of Ms. Carbonelli and Mr. Saxena as scheduled, or later this week or early next week if you prefer, with you as their representative. If you wish to seek a determination from the EEC under Section 1620.300(c)(5) of the Administrative Code, we ask that you do so promptly.

Please let us know how you would like to proceed. (emphasis in original)

On Tuesday, February 18, 2014, the Metra attorney responded as follows via email:

Thank you for your prompt reply. I believe at this time we will seek a determination from the EEC¹⁷⁹ and would like to take you up on your offer to tentatively reschedule the interviews. I will be in touch.

[Metra Attorney]

Attorney II, Law Department, Metra

As of the end of the business day on Wednesday, February 26, 2014, the OEIG had not been informed that Metra had taken any action to seek any sort of determination from the Executive Ethics Commission and had not heard from Metra’s Law Department.

3. OEIG Efforts to Re-Interview Executive Director Don Orseno

¹⁷⁹ The EEC is the Executive Ethics Commission, an independent state agency.

During the same time period and in addition to Ms. Carbonelli and Mr. Saxena, OEIG investigators also sought to re-interview Metra Executive Director Don Orseno in order to ask him many of the same questions they intended to ask Ms. Carbonelli and Mr. Saxena (set forth above), and also ask him:

- whether he was aware if the change of assignment practice was still occurring and if so, under what circumstances;
- whether there were now any policies defining what constituted an “emergency” for the change in assignment practice;
- whether he was aware that Metra Electric District Line management did not compare employee FRA logs with Payroll records or other records to determine accuracy;
- whether any employee that was still changing assignments was also still being paid by Metra even though they did not work;
- whether he was aware that some conductors asked others to work for them, but they never worked for others, thus a change in assignment was not always a one-for-one swap;
- whether, after his initial interview,¹⁸⁰ he directed management staff to make any other changes to their practices and/or policies to more closely monitor the change in assignment practice, report changes in assignment to the Payroll department, or to take any other potential corrective action;
- whether, after his initial interview, he (or any of the other managers) tried to reconcile FRA logs to determine of any employees who may have engaged in the change of assignment practice and completed FRA logs inaccurately to determine whether they might have exceeded hour limits set by the Hours of Service Act, and if so, report same to the Federal Railroad Administration; and
- whether he was aware if Metra’s Audit department ever conducted any audit regarding employee FRA logs, and if so, what the results of that audit were.

Specifically, on Tuesday February 4, 2014, an OEIG investigator spoke with Mr. Orseno in order to schedule his interview, which was eventually set for Thursday, February 20, 2014 at 10:00 a.m. However, on February 19, 2014 at 4:50 p.m., Mr. Orseno emailed the OEIG investigator the following:

Carl if you get this message can you please give me a call on my cell phone [personal cell phone number listed] I’m not to be able to make the meeting tomorrow but I want to touch base with you so we can discuss it.
Thank you

¹⁸⁰ Mr. Orseno was interviewed on one occasion on February 22, 2012. The interview of Mr. Orseno that day began at approximately 3:38 p.m. and ended at approximately 4:33 p.m. or lasted just under one-hour.

Don

The next day, February 20, 2014, Mr. Orseno spoke with the OEIG investigator and asked him if he was able to have lunch with him “Dutch.” In light of the ongoing investigation in this matter, the OEIG instructed the assigned investigator to *not have lunch* with Mr. Orseno. On February 20, 2014 at 2:29 p.m., the investigator emailed Mr. Orseno and wrote:

Mr. Orseno, Please let me know when you can re-schedule your interview. We would like to schedule it as soon as possible. Thanks Don, Carl.

On Saturday, February 22, 2014, the OEIG investigator sent another email with an attached letter from Executive Inspector General Ricardo Meza to Mr. Orseno, reiterating the OEIG’s request to reschedule his interview.

As of the end of the business day on *Wednesday, February 26, 2014*, investigators had not received any response from Mr. Orseno regarding either the February 20 or 22, 2014 interview requests.

4. OEIG Decides to Terminate Efforts to Re-Interview Don Orseno and Janet Carbonelli and Interview Comptroller Arun Saxena and Metra’s February 28, 2014 Letter to the OEIG

On Thursday, February 27, 2014, the OEIG decided to end its efforts to re-interview Mr. Orseno and Ms. Carbonelli as well as its efforts to interview Mr. Saxena. Therefore, the OEIG informed Metra that it no longer required the attendance of either Ms. Carbonelli or Mr. Saxena for an interview. The same day, Mr. Orseno and a number of Metra conductors who had ended their interviews because they sought to retain counsel were also notified that their attendance at interviews was no longer required.¹⁸¹

¹⁸¹ The OEIG is not suggesting or concluding that Mr. Orseno, Ms. Carbonelli, Mr. Saxena, or any of the other Metra employees whose interviews were canceled failed to cooperate with investigators. Rather the OEIG has opted to close this investigation at this time.

On February 28, 2014, the day after the OEIG notified the above referenced persons that their attendance was no longer required, Metra's General Counsel sent the OEIG a letter writing:

I am writing in response to your recent correspondence, withdrawing your requests for the interviews of Donald Orseno, Janet Carbonelli, and Arun Saxena in the above matter. We appreciate your re-consideration of these interviews, particularly in light of the time constraints of each.

We have been informed that your office was concerned with whether the *employment practice* relative to the above-referenced OEIG case is still occurring. Management's position is that it *only exists with supervisor's approval and only for emergencies*. This position was also confirmed by various union representatives as late as yesterday.

(emphasis added). The OEIG did not respond to the letter from Metra's General Counsel and as set forth below, is closing this investigation at this time.

IV. Analysis

A. **Metra Management and Employees Engaged in a Change in Assignment Practice that Resulted in Covered Employees Incorrectly Completing their Federal Railroad Administration Hours of Service Logs**

1. **Hours of Service Laws and Metra Employee Conduct Policy**

Federal law requires covered employees to comply with the Hours of Service Act. The purpose of this Act is simple, “to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees....”¹⁸² As such, the Hours of Service Act, as well as Metra policy, requires covered employees to maintain accurate records, *e.g.* FRA logs, documenting, amongst other things, hours worked.¹⁸³ If FRA logs reveal that an employee has worked hours of service in excess of those delineated by the Act, Metra is required to make an excess service report to the Federal Railroad Administration.¹⁸⁴ Individuals and entities that falsify reports required by the Hours of Service Act or otherwise violate the Act are subject to civil and criminal penalties.¹⁸⁵

In fact, according to information on the Federal Railroad Administration’s website, the FRA’s expressed goal is to reduce human factor caused accidents.¹⁸⁶ The Federal Railroad Administration also states that it is a data-driven agency and that “Every regulation and enforcement action we issue is based on facts and sound research...”¹⁸⁷

¹⁸² 49 C.F.R. § 228, Appendix A (2012).

¹⁸³ See 49 C.F.R. §§ 228.7-228.11 (2011); See *General Code of Operating Rules, Sixth Edition, Section 1.17* (April 7, 2010) and *Metra Electric Bulletin Notice No. 1, Item No. 7* (January 1, 2011).

¹⁸⁴ See 49 C.F.R. § 228.19 (2011).

¹⁸⁵ 49 U.S.C. A. § 21303 (2008); “A civil penalty under this subchapter may be imposed against an individual only for a willful violation. An individual is deemed not to have committed a willful violation if the individual was following the direct order of a railroad carrier official or supervisor under protest communicated to the official or supervisor.” 49 U.S.C.A. § 21304 (1994)

¹⁸⁶ See www.fra.dot.gov/elib/details/L04936.

¹⁸⁷ See www.fra.dot.gov/elib/details/L04936.

Moreover, in the section of Metra's Non-Contract Employee Handbook titled "Employee Conduct," Metra identifies "Rules of Conduct." The section regarding employee conduct states, among other things, the following:

Since Metra is the leading commuter rail service in the Chicago area, all Metra employees are placed in the public's eye. That also means that we need to be constantly aware of how we appear to the outside world...¹⁸⁸

In addition, in the Rules of Conduct section, Metra writes that it requires all Metra employees to exercise good judgment and demonstrate high standards of conduct at all times and also lists "typical, but not all-inclusive" kinds of actions which may result in discipline.¹⁸⁹ The types of actions which may result in discipline are listed as 25 Rules of Conduct, identified as "RC1" through "RC 25." One of the actions that may result in discipline, identified as RC7, is:

Failure to efficiently and appropriately perform assigned job duties; negligence in the performance of duties.¹⁹⁰

Another type of action that may result in discipline, per Metra Rule of Conduct RC10, is:

Failure to exercise good judgment.¹⁹¹

The OEIG's investigation revealed that numerous managers failed to "efficiently and appropriately perform assigned job duties," and failed "to exercise good judgment," when they permitted "swapping," or changes of assignment to occur, without taking sufficient steps to make certain those employees accurately recorded their hours of service on FRA logs, in violation of Metra Rules of Conduct, specifically RC7 and RC10.

¹⁸⁸ Metra Non-Contract Employee Handbook, revised 2006, at pg. G-1.

¹⁸⁹ *Id.*

¹⁹⁰ *Id.*

¹⁹¹ *Id.* at pg. G-2.

2. Review of Change in Assignment Practice vis-à-vis FRA Logs

The OEIG's analysis and subsequent interviews in this case revealed that for decades, Metra allowed numerous covered employees who worked on the Metra Electric District Line and likely other train lines to engage in a change in assignment practice that resulted in the repeated and regular inclusion of false information in their FRA logs. Specifically, covered employees:

- recorded in their FRA logs assignments they did not work;
- failed to record assignments they did work, and
- at times attempted to make the FRA logs simply mirror other forms of documentation.

Even though Metra managers allowed their employees to engage in this change in assignment practice, this investigation revealed that they took insufficient steps to make certain that covered employees who did engage in this practice nevertheless accurately completed their FRA logs.

a. Metra Managers Failed to Ensure Employees who Changed Assignments Also Accurately Logged their Hours of Service

In their respective roles, George Hardwidge, Don Orseno, Janet Carbonelli, Cedric Smith, Darrin Austin, and Christopher Dorsey each had varying oversight responsibility of Metra Electric District Line employees.¹⁹² In each of their interviews, these managers admitted they were aware of the change in assignment practice. However, the investigation revealed that none of them appeared to have taken appropriate action or exercised good judgment to properly monitor how the change in assignment practice affected the manner in which Metra employees completed their FRA logs. In other words, although there were numerous rules in place requiring *employees* to accurately record their hours of service on their FRA logs, no *manager* took appropriate action to ensure covered employees *did* accurately complete their FRA logs to

¹⁹² At the time of his interview, Mr. Peter Zwolfer did not have management responsibilities over the Metra Electric District Line, although he had in the past. The OEIG is not issuing any findings regarding Mr. Zwolfer but recognizes that Metra is not limited by this decision and may nevertheless discipline Mr. Zwolfer if it desires.

include hours actually worked if they changed assignments, not merely the hours they were assigned to work. Below is detailed information regarding each manager.

i. Deputy Executive Director of Operations George Hardwidge

George Hardwidge, the then-Deputy Executive Director of Operations and prior Chief Transportation Officer, was responsible for overseeing all train operations and about 2,000 Metra employees. Mr. Hardwidge confirmed that he was aware of the change of assignment practice. However, Mr. Hardwidge failed to take appropriate action to ensure the integrity of the FRA logs in those instances in which employees engaged in the change in assignment practice.

Despite admitting that he saw all kinds of problems the change in assignment practice could create, Mr. Hardwidge nonetheless acknowledged that there were no written policies or controls regarding the practice. Given his high-ranking position and authority, and in light of his knowledge of the change in assignment practice and the problems the practice could produce, Mr. Hardwidge had a duty to ensure employees who changed assignments *also* properly completed their FRA logs, but failed to take any action to do so and thus failed to “efficiently and appropriately perform [his] assigned job duties,” and failed “to exercise good judgment,” in violation of RC7 and RC10.

ii. Chief Transportation Officer Don Orseno

Then-Chief Transportation Officer and now Executive Director Don Orseno, whose duties included overseeing the movement of *all* trains, and supervision of *all* trainmen, conductors, managers, and supervisors, also said that he was aware of the change in assignment practice, which he referred to as “trading” or “swapping.” In fact, according to his job duties (when he served as Chief Transportation Officer) the so-called “essential functions” of Chief Transportation Officer at that time included:

[d]irect[ing] personally and through subordinate personnel the overall daily activities of the Transportation Department” and “[m]onitor[ing] overall commuter and employee safety performance and *compliance with* operating rules, safety rules and *federal regulations*.

(emphasis added). Despite Mr. Orseno’s responsibilities, he not only knew the change in assignment practice had been occurring since he first started with Metra, or at least 28 years, but when he became Chief Transportation Officer, allowed it to continue and in fact appears to continue to allow it to occur in “emergencies,” a term which may still be undefined. In any event, although Mr. Orseno told investigators that swapping occurred more on the Metra Electric District Line, he nonetheless acknowledged that it also occurred on other Metra lines and in particular the Rock Island District and Union Station District Lines.

There is no dispute that Mr. Orseno recognized that federal regulations require FRA logs to reflect the work an employee actually does and that the logs are used to ensure employees receive proper rest. However, despite this knowledge and knowledge of the change in assignment practice, Mr. Orseno failed to take sufficient steps to confirm that those employees who engaged in the change in assignment practice accurately completed their FRA logs, which as noted above was one of his essential job duties. Mr. Orseno also failed to take sufficient steps to make certain managers and supervisors he oversaw, including Janet Carbonelli, took steps to guarantee that employees who changed assignments nevertheless accurately recorded their work time on their respective FRA logs.

In his February 22, 2012 OEIG interview, Mr. Orseno stated that he discussed the change in assignment practice with the directors of each train line during a September 15, 2011 conference call and also said the practice was stopped in October 2011, except for emergencies. However, a review of FRA logs for select days *after October 1, 2011* and in particular on October 6 and November 10, 12 and 22, 2011 revealed that Metra employees who engaged in the

change in assignment practice *still* appeared to have included incorrect information in their FRA logs. Thus, even assuming the change in practice is now only limited to emergency situations, the four days reviewed after October 1, 2011, reveal that some Metra employees may still not be accurately recording their FRA logs. In short, Mr. Orseno failed to make certain that employees who engaged in the change in assignment practice prior to October 1, 2011 accurately recorded their hours of service on their FRA logs. Thus, Mr. Orseno failed to “efficiently and appropriately perform [his] assigned job duties,” and failed “to exercise good judgment,” in violation of RC7 and RC10.

iii. Director of Operations Janet Carbonelli

Janet Carbonelli told investigators that as Director of Operations for the Metra Electric District Line, her duties include the day-to-day supervision of Metra Electric District Line operations and ensuring that all trains are operational and adequately staffed. Like other supervisors and managers, Ms. Carbonelli said she knew about the change in assignment practice, for which there was no written policy, and for which employees did not receive training.

Although Ms. Carbonelli told investigators that Metra Electric District Line employees are trained on completing FRA logs and said each conductor should be familiar with the Hours of Service Act and related regulations, she stated she *did not* compare the FRA logs to other documents to verify that the FRA logs were accurate; rather, she only checked to see if the FRA logs were completed. By not comparing FRA logs to any other documents, there was no way Ms. Carbonelli would be able to determine whether the FRA logs were indeed accurate. In other words, simply looking at employee FRA logs did not inform Ms. Carbonelli of the accuracy of them. Rather, the review completed by Ms. Carbonelli would only reveal whether the employee wrote something in each column of the FRA log, not whether *what was* recorded accurately

reflected the employee's true hours of service. Failing to compare employee FRA logs against any other document is an exercise in futility. As set forth in this investigation, the OEIG concludes that Ms. Carbonelli allowed employees to engage in the change in assignment practice on numerous occasions prior to October 1, 2011, without taking sufficient steps to ensure that they accurately recorded their hours of service on their FRA logs. Thus, Ms. Carbonelli failed to "efficiently and appropriately perform [her] assigned job duties," and failed "to exercise good judgment," in violation of RC7 and RC10.

iv. Senior Trainmaster Cedric Smith

Then-Senior Trainmaster and current Assistant Superintendent of the Metra Electric District Line Cedric Smith told investigators that as Senior Trainmaster, he was in charge of more than 200 employees, was responsible for *educating* the employees and *enforcing* operating safety rules, and was responsible for ensuring employees were aware of and complied with Metra Special Instruction rules and related rules and regulations. In addition, the investigation revealed that Mr. Smith was familiar with the change in assignment practice.

When asked about the change in assignment practice and its effect on FRA logs, Mr. Smith told investigators that if a swap was made that affected a covered employee's "start up or tie up time," the assignment *should be accurately* documented in the employee's FRA logs. Because of that requirement and because he was "uncomfortable" signing or approving a Change in Assignment form, or what he referred to as a "swap sheet," he wanted to emphasize that employees who swapped were responsible for monitoring their own hours of service and for not working longer than they should. Thus, Mr. Smith stated he added the two bullet points of instruction at the bottom of the Change in Assignment form. This activity, however, was not sufficient, because, as Mr. Smith told investigators, he *did not keep track* of the swapping and said he only conducted a minimal review of the FRA logs to ensure they were complete. Mr.

Smith also *did not* compare the FRA logs to other documents to determine if the FRA logs were completed accurately. Moreover, Mr. Smith stated that *no one provided training* to employees on how to complete or use the Change in Assignment form. In short, Mr. Smith also took insufficient steps to make certain employees who engaged in the change in assignment practice prior to October 1, 2011, nevertheless accurately completed their FRA logs. Thus, Mr. Smith failed to “efficiently and appropriately perform [his] assigned job duties,” and failed “to exercise good judgment,” in violation of RC7 and RC10.

v. Road Foreman of Engines Darrin Austin

Investigators interviewed then-Metra Electric District Line Road Foreman of Engines and current Senior Trainmaster Darrin Austin, who said he was familiar with the Metra Electric District Line Change in Assignment form, which he described as a “swap sheet.” Mr. Austin said that Metra does not train employees on how to complete or use the form.

According to Mr. Austin, employees are responsible for documenting their hours of service on their FRA logs and are trained, when hired, to document their *actual hours* worked, not to mirror Crew Call sheets or Payroll records. Nevertheless, he was unable to say if employees improperly or inaccurately completed their FRA logs when they changed assignments because when he reviews FRA logs, he *only looks to see if they are completed* and the employee has not worked more than permitted by the Hours of Service Act. In other words, he too does not compare FRA logs to other documents to make certain the FRA logs are accurately completed, which as noted above is an exercise in futility. Mr. Austin took insufficient steps to make certain employees who engaged in the change in assignment practice prior to October 1, 2011, nevertheless accurately completed their FRA logs. Thus, Mr. Austin failed to “efficiently

and appropriately perform [his] assigned job duties,” and failed “to exercise good judgment,” in violation of RC7 and RC10.

vi. Metra Electric District Trainmaster Christopher Dorsey

Investigators interviewed Metra Electric District Trainmaster Christopher Dorsey, who was also familiar with the Metra Electric District Line change in assignment practice and who said that when an employee came to him and asked for approval to swap, he only made sure that employee was within the Hours of Service Act and related regulations prior to approving the request.

Mr. Dorsey said he was responsible for reviewing FRA logs when he went out in the field, but *does not* compare FRA logs to other documents to determine if the FRA logs are completed correctly. Rather, he only looks to see if the FRA logs are completed. Mr. Dorsey said he would consider FRA logs to be falsified if they were not completed properly. Despite his role in approving changes in assignments, or swaps, and his knowledge that FRA logs would be false if they were not completed properly, the OEIG concludes that Mr. Dorsey took insufficient steps to make certain employees who engaged in the change in assignment practice prior to October 1, 2011, nevertheless accurately completed their FRA logs. Thus, Mr. Dorsey failed to “efficiently and appropriately perform [his] assigned job duties,” and failed “to exercise good judgment,” in violation of RC7 and RC10.

vii. Summary

Metra management’s actions to permit “swapping” without appropriate review of FRA logs directly led to the falsification, or at a minimum inaccurate completion of FRA logs. Equally disturbing is how Metra management readily rationalized the potential to jeopardize public safety for operating expediency and simple convenience.

In light of the myriad discrepancies in the relevant records, and in particular employee FRA logs, OEIG investigators were simply unable to discern whether Metra employees ever worked hours in excess of those hours allowed by the Hours of Service Act. Similarly, OEIG investigators were unable to ascertain how Metra managers *could have reasonably relied* upon the FRA logs in determining whether an Hours of Service Act violation might have occurred. Moreover, because the Hours of Service Act and corresponding regulations provide for civil penalties for violations of the Act, Metra management has unnecessarily and repeatedly exposed itself to financial penalties and safety issues.

As a result of this investigation, the OEIG concludes that:

- George Hardwidge allowed the change in assignment practice to continue through at least October 1, 2011 without taking appropriate action to adequately monitor covered employee FRA recordkeeping and thus the allegation that he violated Metra Rules of Conduct RC7 and RC10 is **FOUNDED**.
- Don Orseno allowed the change in assignment practice to continue through at least October 1, 2011 without taking appropriate action to adequately monitor covered employee FRA recordkeeping and thus the allegation that he violated Metra Rules of Conduct RC7 and RC10 is **FOUNDED**.
- Janet Carbonelli allowed the change in assignment practice to continue through at least October 1, 2011 without taking appropriate action to adequately monitor covered employee FRA recordkeeping and thus the allegation that she violated Metra Rules of Conduct RC7 and RC10 is **FOUNDED**.
- Cedric Smith allowed the change in assignment practice to continue through at least October 1, 2011 without taking appropriate action to adequately monitor covered employee FRA recordkeeping and thus the allegation that he violated Metra Rules of Conduct RC7 and RC10 is **FOUNDED**.
- Darrin Austin allowed the change in assignment practice to continue through at least October 1, 2011 without taking appropriate action to adequately monitor covered employee FRA recordkeeping and thus the allegation that he violated Metra Rules of Conduct RC7 and RC10 is **FOUNDED**.
- Christopher Dorsey allowed the change in assignment practice to continue through at least October 1, 2011 without taking appropriate action to adequately monitor covered

employee FRA recordkeeping and thus the allegation that he violated Metra Rules of Conduct RC7 and RC10 is **FOUNDED**.

b. Metra Covered Employees who Changed Assignments Failed to Accurately Log their Hours of Service

i. Review of Change in Assignment Practice vis-à-vis FRA Logs

The OEIG investigation discovered that a number of Metra employees knowingly inaccurately completed or falsified their FRA logs in violation of the Hours of Service Act and Metra policies. OEIG investigators reach this finding after comparing Change in Assignment forms with corresponding employee Crew Call sheets and FRA logs for only *five select days* in June and July 2011 and *four select days* in October and November 2011. The OEIG review revealed that in this very short time period, on multiple occasions, numerous Metra employees included incorrect information in their FRA logs.¹⁹³

ii. Employees who Admitted their FRA Logs Contained Inaccurate Information

The OEIG interviewed several employees whose FRA logs appeared to have been incorrect or falsified. The following individuals verified during their interviews that they indeed incorrectly completed their logs,¹⁹⁴ although some said it was simply the result of “neglect.”

- Wade Schroder said that his June 4, July 16 and 27, 2011 FRA logs reflected that he worked assignments on those days even though *he did not* because that was the way he decided to document it, and was never told to do it any other way. In addition, he said he was afraid that if the paper trail failed, Metra would *not pay him*. Moreover, Mr.

¹⁹³ Fortunately, this investigation did reveal, however, that numerous employees who engaged in the change in assignment practice and did not work, also did not record their hours of service as if they had worked. In other words, they did complete their FRA logs accurately.

¹⁹⁴ Among those employees who admittedly inaccurately completed their FRA log was [REDACTED]. Specifically, [REDACTED] informed investigators that his June 4, 2011 and July 23, 2011 FRA logs reflected that he worked assignments on those days even though *he did not work* because he documented his scheduled time (in his FRA logs), whether he worked the assignment or not. Moreover, [REDACTED] also brazenly stated that he would document time on his FRA logs even though he did not work, and said his signature only indicates the FRA log was completed by him, *not* that it was *true and accurate*. However, in light of the fact that [REDACTED] has since retired, the OEIG is making no findings relating to his conduct.

Schroder openly stated that his signature only indicates the FRA log was completed by him, *not* that it was *true and accurate*.

- Mario Ramos said that his July 16 and 23, 2011 FRA log did not reflect that he worked assignments on those days for other employees even though he did work on those days. According to Mr. Ramos, he did not accurately record his hours of service in his FRA logs because he did not want to document working for someone else.
- Lauvel Crawford said his July 16, 2011 FRA log did not reflect that he worked assignments on those days for another employee even though he did work on that day. When asked why he failed to accurately record his hours of service, Mr. Crawford stated that his FRA logs only reflect work assigned to him.
- Jose Garzon said that his July 16 and 23, 2011 FRA log did not reflect that he worked assignments on those days for other employees even though he did work on those days. According to Mr. Garzon, his failure to accurately record his hours of service was the result of neglect.

iii. Employees whose FRA Logs Were Determined to be Inaccurate Based on Interviews with Other Employees

Based on the admissions of the above individuals and other interviewed employees, the OEIG is also able to conclude that the following employees also incorrectly documented their hours of service on their FRA logs:

- Marco Garzon did not indicate on his June 4 or July 16, 2011 FRA logs that he worked assignment #119. Mr. Schroder, who was assigned to work assignment #119 on those days, said that Mr. Garzon worked those assignments for him.
- Nicholas Chou did not indicate on his July 27, 2011 FRA log that he worked assignment #19. Mr. Schroder, who was assigned to work assignment #19 on that day, said that Mr. Chou worked a portion of that assignment for him.
- Richard Dorsett did not indicate on his June 4, 2011 FRA log that he worked assignment #105. ██████████, who was assigned to work assignment #105 on that day, said Mr. Dorsett worked that assignment for him.
- Richard Dorsett did not indicate on his July 23, 2011 FRA log that he worked assignment #105. ██████████, who was assigned to work assignment #105 on that day, said he did not work that day and that Mr. Dorsett worked at least a portion of the assignment for him.
- Michael Simnick did not indicate on his June 4, 2011 FRA log that he worked assignment #130. ██████████, who was assigned to work assignment #130 on that day, said that he did not work that day and that the documents indicated Mr. Simnick worked that assignment for him.

**iv. Employees whose June or July 2011 FRA Logs
Appeared to be Inaccurate but for whom No Interviews
Were Conducted**

In addition to the instances in which Metra employees confirmed having incorrectly recorded their hours of service on their FRA logs, the OEIG's review of Change in Assignment forms with Crew Call sheets as well as FRA logs revealed additional numerous instances in which it clearly appeared that employees incorrectly completed or may have indeed falsified their FRA logs. Below are examples in which it appears to the OEIG that one or more Metra employee *did not record* their hours of service in their FRA logs accurately:

- On June 4, 2011, [REDACTED] worked assignment #501 for [REDACTED] per the Change in Assignment form but *did not record* working that assignment on his FRA log.
- On June 4, 2011, [REDACTED] *did not work* assignment #501 per the Change in Assignment form but *did record having worked* that assignment on his FRA log.
- On June 4, 2011, [REDACTED] worked an assignment for [REDACTED] per the Change in Assignment form but *did not record working* the assignment on his FRA log.
- On June 4, 2011, [REDACTED] *did not work* an assignment per the Change in Assignment form but *did record having worked* an assignment on his FRA log.
- On June 4, 2011, [REDACTED] was *assigned to work* assignment #111 for [REDACTED] per the Change in Assignment form but *did not record having worked* assignment #111 that day.
- On June 10, 2011 [REDACTED] was *assigned to work* assignment #20 per the Change in Assignment form but his FRA log revealed that he *did not log working* assignment #20 that day.
- On June 10, 2011, [REDACTED] *did not work* assignment #20 per the Change in Assignment form but *recorded having worked* that assignment on his FRA log.
- On June 10, 2011, [REDACTED] was *assigned to work* run #14 per the Change in Assignment form but his FRA log revealed that he *did not log working* run #14 that day.
- On June 10, 2011 [REDACTED] *did not work* assignment #14 per the Change in Assignment form but *recorded having worked* that assignment on his FRA log.
- On June 10, 2011, [REDACTED] was *assigned to work* run #205 per the Change in Assignment form but his FRA log revealed that he *did not log working* run #205 that day.

- On June 10, 2011, ██████████ *did not work* an assignment per the Change in Assignment form *but recorded having worked* assignment #9 on his FRA log.
- On July 16, 2011, ██████████ was *assigned to work* run #125 per the Change in Assignment form but his FRA log revealed that he *did not log working* run #125 that day.
- On July 23, 2011, ██████████ was *assigned to work* run #127 per the Change in Assignment form but his FRA log revealed that he *did not log working* run #127 that day.
- On July 27, 2011, ██████████ was *assigned to work* run #11 per the Change in Assignment form but his FRA log revealed that he *did not log working* run #11 that day.
- On July 27, 2011, ██████████ was *assigned to work* run #24 per the Change in Assignment form but his FRA log revealed that he *did not log working* run #24 that day.
- On July 27, 2011, ██████████ was *assigned to work* run #13 per the Change in Assignment form but his FRA log revealed that he *did not log working* run #13 that day.

v. Employees whose Logs Contained Incorrect Information after October 2011

In addition, and perhaps just as troubling, even though the OEIG was informed by Mr. Orseno that the change in assignment practice ended (around October 2011) except in emergency circumstances, a review of Change in Assignment forms and Crew Call sheets along with FRA logs *after October 1, 2011* (or on October 6 and November 10, 12 and 22, 2011) revealed that Metra employees still incorrectly appeared to have recorded their hours of service on their FRA logs. Ms. Carbonelli and other managers told investigators that the change in assignment practice stopped in October 2011, except in “emergency” situations, yet an analysis of documentation from four select dates in October and November 2011 revealed that employees appeared to have continued to include incorrect information in their FRA logs. Below are the four examples:

- On October 6, 2011, a Change in Assignment form Ms. Carbonelli approved reflects that ██████████ agreed to work assignment #11 for ██████████. However, ██████████ *did not log working* assignment #11 on her FRA log. In addition, ██████████ FRA log reflects that he *worked assignment* #11 that day.

- On November 10, 2011, a Change in Assignment form Ms. Carbonelli approved reflects that [REDACTED] agreed to work either assignment #28 or #03 for [REDACTED]. However, [REDACTED] *did not log* working assignment #28 or #03 on his FRA log. Metra did not produce [REDACTED]'s FRA logs and thus investigators are unable to determine what, if any assignment, [REDACTED] recorded on his log that day.
- On November 12, 2011, a Change in Assignment form Ms. Carbonelli approved reflects that [REDACTED] agreed to work assignment #101 for [REDACTED]. However, [REDACTED] *did not log* working assignment #101 on his FRA log. [REDACTED], however, correctly did not log having worked assignment 101 that day, because again, [REDACTED] agreed to work assignment #101 for him.
- On November 22, 2011, a Change in Assignment form Ms. Carbonelli approved reflects that [REDACTED] agreed to work assignment #23 for [REDACTED]. However, [REDACTED] *did not log* working assignment #23 on his FRA log. In addition, [REDACTED] *logged working* assignment #23, even though he was not assigned that run that day.

vi. Summary

Numerous Metra employees who engaged in “swapping” inaccurately recorded their hours of service on their FRA logs. The reasons for the inaccuracies were simply inexplicable and thus these employees also too readily rationalized the potential to jeopardize public safety over operating expediency and simple convenience (to take a day off, usually Saturday).

As such, the OEIG finds:¹⁹⁵

- Wade Schroder falsified his June 4, 2011 FRA log in violation of the Federal Hours of Service Act when he engaged in a change of assignment with Marco Garzon but did not accurately complete his FRA log and thus the allegation is **FOUNDED**.
- Marco Garzon falsified his June 4, 2011 FRA log in violation of the Federal Hours of Service Act when he engaged in a change of assignment with Wade Schroder but did not accurately complete his FRA log and thus the allegation is **FOUNDED**.
- Wade Schroder falsified his July 16, 2011 FRA log in violation of the Federal Hours of Service Act when he engaged in a change of assignment with Marco Garzon but did not accurately complete his FRA log and thus the allegation is **FOUNDED**.

¹⁹⁵ The OEIG is not making findings against Metra employees whose FRA logs appeared to contain incorrect information but who were not interviewed. In short, time limitations, a lack of agency resources, and scheduling issues prevented the OEIG from interviewing these employees. The OEIG, however, recommends that Metra take whatever action it deems appropriate against these employees.

- Marco Garzon falsified his July 16, 2011 FRA log in violation of the Federal Hours of Service Act when he engaged in a change of assignment with Wade Schroder but did not accurately complete his FRA log and thus the allegation is **FOUNDED**.
- Wade Schroder falsified his July 27, 2011 FRA log in violation of the Federal Hours of Service Act when he engaged in a change of assignment with Nicholas Chou but did not accurately complete his FRA log and thus the allegation is **FOUNDED**.
- Nicholas Chou falsified his July 27, 2011 FRA log in violation of the Federal Hours of Service Act when he engaged in a change of assignment with Wade Schroder but did not accurately complete his FRA log and thus the allegation is **FOUNDED**.
- Richard Dorsett falsified his June 4, 2011 FRA log in violation of the Federal Hours of Service Act when he engaged in a change of assignment with [REDACTED] but did not accurately complete his FRA log and thus the allegation is **FOUNDED**.
- Richard Dorsett falsified his July 23, 2011 FRA log in violation of the Federal Hours of Service Act when he engaged in a change of assignment with [REDACTED] but did not accurately complete his FRA log and thus the allegation is **FOUNDED**.
- Mario Ramos falsified his July 16, 2011 FRA log in violation of the Federal Hours of Service Act when he engaged in a change of assignment with [REDACTED] but did not accurately complete his FRA log and thus the allegation is **FOUNDED**.
- Mario Ramos falsified his July 23, 2011 FRA log in violation of the Federal Hours of Service Act when he engaged in a change of assignment with [REDACTED] but did not accurately complete his FRA log and thus the allegation is **FOUNDED**.
- Lauvel Crawford falsified his July 16, 2011 FRA log in violation of the Federal Hours of Service Act when he engaged in a change of assignment with [REDACTED] but did not accurately complete his FRA log and thus the allegation is **FOUNDED**.
- Jose Garzon falsified his July 16, 2011 Metra FRA log in violation of the Federal Hours of Service Act when he engaged in a change of assignment with Michael Simnick and [REDACTED] but did not accurately complete his FRA log and thus the allegation is **FOUNDED**.
- Jose Garzon falsified his July 23, 2011 FRA log in violation of the Federal Hours of Service Act when he engaged in a change of assignment with [REDACTED] but did not accurately complete his FRA log and thus the allegation is **FOUNDED**.
- Michael Simnick falsified his June 4, 2011 FRA log in violation of the Federal Hours of Service Act when he engaged in a change of assignment with [REDACTED] but did not accurately complete his FRA log and thus the allegation is **FOUNDED**.

B. Metra Management and Employees Engaged in a Change in Assignment Practice Resulting in Metra Employees Being Paid when they *Did Not Work* and Metra Employees not Being Paid *When They Did Work*

Federal and Illinois state laws generally require employees to be compensated (paid) for the work they perform.¹⁹⁶ However, parties may enter into collective bargaining agreements in which terms regarding rates of pay, overtime, and other provisions may be agreed upon. Metra and certain of its employees have entered into collective bargaining agreements that cover trainmen, conductors, and engineers.

The collective bargaining agreements Metra entered into with its employees have very specific terms relating to rates of pay.¹⁹⁷ In general, per the collective bargaining agreements, Metra has agreed to pay employees based on assignments they work.¹⁹⁸ The pay also factors in the length of miles an assignment entails and the seniority level of the employee.¹⁹⁹

As set forth above, there is no dispute that numerous Metra managers, including George Hardwidge, Don Orseno, Janet Carbonelli and others, all knew that the change in assignment practice existed and allowed it to continue. It appears that these same managers also knew that when changes in assignment occurred, the employees who were *assigned* to work a particular assignment were the Metra employees paid to work the assignment, even if they did not work. It also appears clear that these managers knew that employees who worked assignments, per the change in assignment practice, were *not paid* by Metra. For example:

- Mr. Orseno and Ms. Carbonelli both stated that they knew that Metra paid the employees who were assigned to the jobs even though those were not the employees who actually worked the job.

¹⁹⁶ See, e.g. 29 U.S.C.A. § 206 (2007); see also 820 ILCS 115/3, 4 (1995).

¹⁹⁷ See the language of the collective bargaining agreements, which was set forth above in footnotes 18 to 25 above.

¹⁹⁸ *Id.*

¹⁹⁹ *Id.*

- Mr. Smith also confirmed that he knew employees who engaged in the change in assignment practice were paid when they did not work. When asked why someone under those circumstances should be paid when they did not work, Mr. Smith replied, “that’s the way they had it,” and explained that it was the way that the change of assignment practice was set up.

Finally, there seems to be no dispute that Metra’s Payroll department was *not notified* when employees changed assignments, pursuant to this practice, and thus paid employees based on the assignments entered into the Crew Calling System, not Change in Assignment forms.

The dispute seems to involve the extent to which the change in assignment practice affected employee pay and whether these managers knew that not all employees engaged in a swap for swap transaction or whether they knew employees exchanged cash rather than a future (or past) swap. Nevertheless, the Change in Assignment forms confirm that numerous employees who engaged in the change in assignment practice *were paid* for days *they did not work* or were *not paid* for days *they did work*. The chart below summarizes and identifies some of the Metra employees who swapped assignments. The last column reflects the total wages earned when the employee changed assignments and *did not work* but were paid from May 30 to December 2011.

Name	Assignments <i>Not Worked</i> Per Change in Assignment Form (were paid by Metra)	Assignments <i>Worked Per</i> Change in Assignment (were not paid by Metra)	Amount Metra Paid Employee for Assignments he <i>did not work</i>
██████████ Total:	16	0	(16 days) \$4,631.98 ²⁰⁰
██████████ Total:	16	1 (not paid)	(16 days) \$5,180.43 ²⁰¹
Wade Schroder Total:	14	0	(14 days) \$3,242.77
Vernell Fitts Total:	14	0	(14 days) \$3,651.26 ²⁰²
██████████ Total:	13	0	(13 days) \$4,770.12 ²⁰³

²⁰⁰ See Appendix to Report, Exhibit 40 for the documents relating to this chart.

²⁰¹ See Appendix to Report, Exhibit 51 for the documents relating to this chart.

²⁰² See Appendix to Report, Exhibit 53 for the documents relating to this chart.

²⁰³ See Appendix to Report, Exhibit 55 for the documents relating to this chart.

██████████ ²⁰⁴ Total:	7	0	(7 days) \$2,023.12 ²⁰⁵
██████████ Total:	14	17 (not paid)	(14 days) \$3,271.78 ²⁰⁶
██████████ Total:	9	4 (not paid)	(9 days) \$2,398.55 ²⁰⁷
██████████ Total:	5	16 (not paid)	(5 days) \$1,118.21 ²⁰⁸
Richard Dorsett Total:	1	15 (not paid)	(1 day) \$285.06 ²⁰⁹

The OEIG's investigation indicates that the total number of work assignments for which Metra did not compensate the correct employee, i.e., the employee who worked, is likely much greater and higher than the OEIG discovered during its investigation. Metra's failure to pay these employees clearly violates, or at a minimum circumvents, federal and Illinois state laws, as well as the terms of the collective bargaining agreements between Metra and its employees. As previously stated, the applicable collective bargaining agreements provide specific rates of pay to which covered employees are entitled, as well as rates of overtime pay. By not paying employees at all for assignments which Metra knows the employees are completing, Metra is bypassing its obligations under the collective bargaining agreements and seemingly violating federal and Illinois state labor laws.

As a result of this investigation, the OEIG concludes that:

- George Hardwidge allowed the change in assignment practice to continue through at least October 1, 2011 without taking appropriate action to make certain that numerous Metra employees were not being paid when they *did not work*, in circumvention of federal and Illinois state laws, and the collective bargaining agreements, and thus the allegation that he violated Metra Rules of Conduct RC7 and RC10 is **FOUNDED**.

²⁰⁴ The OEIG learned during the course of this interview that ██████████ left Metra.

²⁰⁵ See Appendix to Report, Exhibit 58 for the documents relating to this chart.

²⁰⁶ See Appendix to Report, Exhibit 52 for the documents relating to this chart.

²⁰⁷ See Appendix to Report, Exhibit 57 for the documents relating to this chart.

²⁰⁸ See Appendix to Report, Exhibit 54 for the documents relating to this chart.

²⁰⁹ See Appendix to Report, Exhibit 56 for the documents relating to this chart.

- George Hardwidge allowed the change in assignment practice to continue through at least October 1, 2011 without taking appropriate action to make certain that Metra employees were being paid when they *did work*, in circumvention of federal and Illinois state laws, and the collective bargaining agreements, and thus the allegation that he violated Metra Rules of Conduct RC7 and RC10 is **FOUNDED**.
- Don Orseno allowed the change in assignment practice to continue through at least October 1, 2011 without taking appropriate action to make certain that numerous Metra employees were not being paid when they *did not work*, in circumvention of federal and Illinois state laws, and the collective bargaining agreements, and thus the allegation that he violated Metra Rules of Conduct RC7 and RC10 is **FOUNDED**.
- Don Orseno allowed the change in assignment practice to continue through at least October 1, 2011 without taking appropriate action to make certain that Metra employees were being paid when they *did work*, in circumvention of federal and Illinois state laws, and the collective bargaining agreements, and thus the allegation that he violated Metra Rules of Conduct RC7 and RC10 is **FOUNDED**.
- Janet Carbonelli allowed the change in assignment practice to continue without taking appropriate action to make certain that numerous Metra employees were not being paid when they *did not work*, in circumvention of federal and Illinois state laws, and the collective bargaining agreements, and the allegation that she violated Metra Rules of Conduct RC7 and RC10 is **FOUNDED**.
- Janet Carbonelli allowed the change in assignment practice to continue through at least October 1, 2011 without taking appropriate action to make certain that Metra employees were being paid when they *did work*, in circumvention of federal and Illinois state laws, and the collective bargaining agreements, and thus the allegation that she violated Metra Rules of Conduct RC7 and RC10 is **FOUNDED**.
- Cedric Smith allowed the change in assignment practice to continue through at least October 1, 2011 without taking appropriate action to make certain that numerous Metra employees were not being paid when they *did not work*, in circumvention of federal and Illinois state laws, and the collective bargaining agreements, and the allegation that he violated Metra Rules of Conduct RC7 and RC10 is **FOUNDED**.
- Cedric Smith allowed the change in assignment practice to continue through at least October 1, 2011 without taking appropriate action to make certain that Metra employees were being paid when they *did work*, in circumvention of federal and Illinois state laws, and the collective bargaining agreements, and the allegation that he violated Metra Rules of Conduct RC7 and RC10 is **FOUNDED**.
- Darrin Austin allowed the change in assignment practice to continue through at least October 1, 2011 without taking appropriate action to make certain that numerous Metra employees were not being paid when they *did not work*, in circumvention of federal and

Illinois state laws, and the collective bargaining agreements, and thus the allegation that he violated Metra Rules of Conduct RC7 and RC10 is **FOUNDED**.

- Darrin Austin allowed the change in assignment practice to continue through at least October 1, 2011 without taking appropriate action to make certain that Metra employees were being paid when they *did work*, in circumvention of federal and Illinois state laws, and the collective bargaining agreements, and thus the allegation that he violated Metra Rules of Conduct RC7 and RC10 is **FOUNDED**.
- Christopher Dorsey allowed the change in assignment practice to continue through at least October 1, 2011 to continue through at least October 1, 2011 without taking appropriate action to make certain that numerous Metra employees were not being paid when they *did not work*, in circumvention of federal and Illinois state laws, and the collective bargaining agreements, and thus the allegation that he violated Metra Rules of Conduct RC7 and RC10 is **FOUNDED**.
- Christopher Dorsey allowed the change in assignment practice to continue through at least October 1, 2011 without taking appropriate action to make certain that Metra employees were being paid when they *did work*, in circumvention of federal and Illinois state laws, and the collective bargaining agreements, and thus the allegation that he violated Metra Rules of Conduct RC7 and RC10 is **FOUNDED**.

Although the majority of Metra senior managers said they were unaware of the exchange of cash between employees who engaged in the change in assignment practice, at least one readily admitted to knowing of the exchange of cash. Peter Zwolfer confirmed that he knew about this apparent long-standing practice. In fact, when asked about employees paying each other cash, Mr. Zwolfer stated that he thought it was only *right* that employees not working would pay employees who did work for them. Messrs. Smith, Austin, and Dorsey said that they had no firsthand knowledge, but they *heard rumors* that employees paid others to take their work assignments.

On the other hand, Mr. Orseno and Ms. Carbonelli denied knowledge of any exchange of cash between employees who engaged in the change in assignments. This inexplicable explanation is difficult to accept in light of the pervasive and long-standing change in assignment

practice but in any event, if true, this fact further supports the OEIG's finding that neither Mr. Orseno nor Ms. Carbonelli "efficiently and appropriately" performed their "assigned job duties."

Regardless, Mr. Orseno indicated that he would have a problem with employees engaging in that practice (paying money to cover assignments). Mr. Orseno explained that if employees were just changing assignments, there would be *no need for any of them to pay each other*. Yet, as shown during this investigation, oftentimes a swap was not really a swap. Rather Metra managers and employees were using the term "swapping" to refer to instances in which employees simply agreed to work assignments for other employees. There was no obligation for the non-working employees to work assignments in return for the employees who were working for them. In other words, some employees asked other employees to work for them, but they in turn never worked for other employees. One Metra employee who fits into that category, Wade Schroder, told investigators that he asked other employees to work for him, but he never worked for them in return. Thus, a swap was NOT always a swap and not all employees who had others work for them worked for those individuals later in return.

The OEIG's investigation did reveal that numerous Metra employees who engaged in the change in assignment practice actually paid other employees cash (and in some instances gifts) to take their assignments. Below are some examples of cash exchanges:

- Wade Schroder said he paid Marco Garzon \$60 in cash for working run #119 for him on June 4, 2011.
- Wade Schroder said he paid Mr. Garzon \$60 in cash for working run #119 for him on July 16, 2011.
- Wade Schroder said he paid Mr. Chou \$40 for working run #19 for him on July 27, 2011.
- ██████████ said he paid another employee \$70 to work for him.
- ██████████ said he has accepted cash from other Metra employees to work assignments for them.

- Mario Ramos said he was paid by [REDACTED] between \$40 and \$50 in cash for working run # 119 for him on July 16, 2011.
- Mario Ramos said he was paid by [REDACTED] between \$40 and \$50 in cash for working run # 104 for him on July 23, 2011.
- Lauvel Crawford said that on numerous occasions he has given and received cash and gifts in exchange for working assignments for other employees.
- [REDACTED] said she paid Mr. Crawford \$100 in cash for working run #127 for her on July 16, 2011.
- [REDACTED] said that on multiple occasions she paid other conductors \$100 to work for her.
- [REDACTED] said he paid another conductor, [REDACTED], approximately \$60 to work an assignment for him.

Thus, it is apparent that there were numerous off-the-record cash exchanges occurring between Metra employees who engaged in the change in assignment practice.

Nevertheless, the OEIG is not making additional findings regarding the exchange of cash between employees; rather, it is simply reporting what the investigation revealed and making appropriate referrals so that Metra and any other agency²¹⁰ may take whatever action they deem necessary in order to address this matter.

C. Metra Management Allowed Employees to Engage in a Change in Assignment Practice that Circumvented Collective Bargaining Agreement Terms Relating to Use of Extra Board Employees

Differently from the change in assignment practice, Metra has an established procedure for requesting and receiving unplanned time off through the so-called “extra board” process. Collective bargaining agreements which cover Metra’s trainmen, conductors, and engineers,

²¹⁰ The OEIG will refer this matter to the Internal Revenue Service and the Illinois Department of Revenue.

contain terms that discuss the extra board process and the use of employees assigned to work the extra board.²¹¹

The relevant collective bargaining agreements require, among other things, that extra board employees be available and qualified to work, that extra board employees be called, “as nearly as possible [a minimum of] two (2) hours” prior to the assignment’s start time, that extra board employees are guaranteed certain minimum amounts of pay, and that vacancies on the extra board be filled in a specific order of seniority.²¹² Importantly, the collective bargaining agreements state that Metra “shall determine the number of [employees] assigned to an extra board and the headquarters point of such board(s).”²¹³

Although the OEIG requested and reviewed documentation relating to Metra’s procedures for requesting unexpected leave, the document Metra provided does not indicate that employees are instructed to use the extra board process. Rather, the document indicates that:

Any member of a crew who unexpectedly needs to swap/exchange a run of their assignment with another commuter service employee, due to an emergency, the substituting employee must not violate Hours of Service Rules, and must contact the District Director or his designee for approval. The exchange cannot be made without permission of the District Director or his designee.²¹⁴

Importantly, the above-referenced document provided by Metra *does not* prohibit the change in assignment practice, nor does it instruct managers or employees to use the extra board process to request unplanned leave.

²¹¹ See Appendix to the Report, Exhibits 3 and 4 for copies of collective bargaining agreement excerpts that contain language relating to the use of the extra board.

²¹² *Id.*

²¹³ *Id.*

²¹⁴ See Appendix to Report, Exhibit 8 for a copy of the document Metra produced. The OEIG is not suggesting that this Bulletin is still in effect, rather, it is noting the existence of the Bulletin to illustrate that Metra did have a policy inconsistent with the collective bargaining agreement at one time and to the extent that the policy continues, it circumvents the collective bargaining agreement.

The OEIG finds that by permitting the change in assignment practice, Metra managers circumvented the provisions of the collective bargaining agreements relating to the extra board. Equally troubling, based on the language of the agreements, Metra appears to have the authority to increase or decrease the number of employees maintained on the extra board, and could have done so in order to mandate the exclusive use of the extra board process rather than continuing to use Metra's long-standing change in assignment practice.²¹⁵

Even assuming that since October 1, 2011, Metra managers have only permitted changes in assignment for emergency situations, the fact remains that each time the change in assignment practice occurs, it nonetheless circumvents the extra board process provided for by the relevant collective bargaining agreements.

As a result of this investigation, the OEIG concludes that:

- George Hardwidge allowed the change in assignment practice to continue through at least October 1, 2011 which allowed numerous employees to not have to use the extra board, thereby circumventing applicable provisions of collective bargaining agreements and thus the allegation that he violated Metra Rules of Conduct RC7 and RC10 is **FOUNDED**.
- Don Orseno allowed the change in assignment practice to continue through at least October 1, 2011 which allowed numerous employees to not have to use the extra board, thereby circumventing applicable provisions of collective bargaining agreements and thus the allegation that he violated Metra Rules of Conduct RC7 and RC10 is **FOUNDED**.
- Janet Carbonelli allowed the change in assignment practice to continue through at least October 1, 2011 which allowed numerous employees to not have to use the extra board, thereby circumventing applicable provisions of collective bargaining agreements and thus the allegation that she violated Metra Rules of Conduct RC7 and RC10 is **FOUNDED**.

²¹⁵ Moreover, because changes in assignment were *never* reported to the Crew Call or Payroll departments, the change in assignment practice likely allowed employees to avoid having to use leave allotments, which, if unused, are accumulated and paid to employees upon retirement based on a formula provided by the relevant collective bargaining agreements. Thus, Metra may have paid out retiring employees for more benefit time than they should have been entitled to if they had been required to use leave time rather than change assignments.

- Darrin Austin allowed the change in assignment practice to continue through at least October 1, 2011 which allowed numerous employees to not have to use the extra board, thereby circumventing applicable provisions of collective bargaining agreements and thus the allegation that he violated Metra Rules of Conduct RC7 and RC10 is **FOUNDED**.
- Christopher Dorsey allowed the change in assignment practice to continue through at least October 1, 2011 which allowed numerous employees to not have to use the extra board, thereby circumventing applicable provisions of collective bargaining agreements and thus the allegation that he violated Metra Rules of Conduct RC7 and RC10 is **FOUNDED**.
- Cedric Smith allowed the change in assignment practice to continue through at least October 1, 2011 which allowed numerous employees to not have to use the extra board, thereby circumventing applicable provisions of collective bargaining agreements and thus the allegation that he violated Metra Rules of Conduct RC7 and RC10 is **FOUNDED**.

V. Conclusions and Recommendations

Following due investigation, the OEIG issues these findings:

Regarding former Metra Manager George Hardwidge:

- **FOUNDED**—George Hardwidge allowed the change in assignment practice to continue through at least October 1, 2011 without taking appropriate action to adequately monitor covered employee FRA recordkeeping.
- **FOUNDED**—George Hardwidge allowed the change in assignment practice to continue through at least October 1, 2011 without taking appropriate action to make certain that numerous Metra employees were not being paid when they *did not work*, in circumvention of federal and Illinois state laws, and the collective bargaining agreements.
- **FOUNDED**—George Hardwidge allowed the change in assignment practice to continue through at least October 1, 2011 without taking appropriate action to make certain that Metra employees were being paid when they *did work*, in circumvention of federal and Illinois state laws, and the collective bargaining agreements.
- **FOUNDED**—George Hardwidge allowed the change in assignment practice to continue through at least October 1, 2011, which allowed numerous employees to not have to use the extra board, thereby circumventing applicable provisions of collective bargaining agreements.

Regarding Metra Manager Don Orseno:

- **FOUNDED**—Don Orseno allowed the change in assignment practice to continue through at least October 1, 2011 without taking appropriate action to adequately monitor covered employee FRA recordkeeping.
- **FOUNDED**—Don Orseno allowed the change in assignment practice to continue through at least October 1, 2011 without taking appropriate action to make certain that numerous Metra employees were not being paid when they *did not work*, in circumvention of federal and Illinois state laws, and the collective bargaining agreements.
- **FOUNDED**—Don Orseno allowed the change in assignment practice to continue through at least October 1, 2011 without taking appropriate action to make certain the Metra employees were being paid when they *did work*, in circumvention of federal and Illinois state laws, and the collective bargaining agreements.
- **FOUNDED**—Don Orseno allowed the change in assignment practice to continue through at least October 1, 2011 which allowed numerous employees to not have to use the extra board, thereby circumventing applicable provisions of collective bargaining agreements.

Regarding Metra Manager Janet Carbonelli:

- **FOUNDED**—Janet Carbonelli allowed the change in assignment practice to continue through at least October 1, 2011 without taking appropriate action to adequately monitor covered employee FRA recordkeeping.
- **FOUNDED**—Janet Carbonelli allowed the change in assignment practice to continue through at least October 1, 2011 without taking appropriate action to make certain that numerous Metra employees were not being paid when they *did not work*, in circumvention of federal and Illinois state laws, and the collective bargaining agreements.
- **FOUNDED**—Janet Carbonelli allowed the change in assignment practice to continue through at least October 1, 2011 without taking appropriate action to make certain that Metra employees were being paid when they *did work*, in circumvention of federal and Illinois state laws, and the collective bargaining agreements.
- **FOUNDED**—Janet Carbonelli allowed the change in assignment practice to continue through at least October 1, 2011 which allowed numerous employees to not have to use the extra board, thereby circumventing applicable provisions of collective bargaining agreements.

Regarding Metra Manager Cedric Smith:

- **FOUNDED**—Cedric Smith allowed the change in assignment practice to continue through at least October 1, 2011 without taking appropriate action to adequately monitor covered employee FRA recordkeeping.
- **FOUNDED**—Cedric Smith allowed the change in assignment practice to continue through at least October 1, 2011 without taking appropriate action to make certain that numerous Metra employees were not being paid when they *did not work*, in circumvention of federal and Illinois state laws, and the collective bargaining agreements.
- **FOUNDED**—Cedric Smith allowed the change in assignment practice to continue through at least October 1, 2011 without taking appropriate action to make certain that Metra employees were being paid when they *did work*, in circumvention of federal and Illinois state laws, and the collective bargaining agreements.
- **FOUNDED**—Cedric Smith allowed the change in assignment practice to continue through at least October 1, 2011 which allowed numerous employees to not have to use the extra board, thereby circumventing applicable provisions of collective bargaining agreements.

Regarding Metra Manager Darrin Austin:

- **FOUNDED**—Darrin Austin allowed the change in assignment practice to continue through at least October 1, 2011 without taking appropriate action to adequately monitor covered employee FRA recordkeeping.
- **FOUNDED**—Darrin Austin allowed the change in assignment practice to continue through at least October 1, 2011 without taking appropriate action to make certain that numerous Metra employees were not being paid when they *did not work*, in circumvention of federal and Illinois state laws, and the collective bargaining agreements.
- **FOUNDED**—Darrin Austin allowed the change in assignment practice to continue through at least October 1, 2011 without taking appropriate action to make certain that Metra employees were being paid when they *did work*, in circumvention of federal and Illinois state laws, and the collective bargaining agreements.
- **FOUNDED**—Darrin Austin allowed the change in assignment practice to continue through at least October 1, 2011 which allowed numerous employees to not have to use the extra board, thereby circumventing applicable provisions of collective bargaining agreements.

Regarding Metra Manager Christopher Dorsey:

- **FOUNDED**—Christopher Dorsey allowed the change in assignment practice to continue through at least October 1, 2011 without taking appropriate action to adequately monitor covered employee FRA recordkeeping.
- **FOUNDED**—Christopher Dorsey allowed the change in assignment practice to continue through at least October 1, 2011 without taking appropriate action to make certain that numerous Metra employees were not being paid when they *did not work*, in circumvention of federal and Illinois state laws, and the collective bargaining agreements.
- **FOUNDED**—Christopher Dorsey allowed the change in assignment practice to continue through at least October 1, 2011 without taking appropriate action to make certain that Metra employees were being paid when they *did work*, in circumvention of federal and Illinois state laws, and the collective bargaining agreements.
- **FOUNDED**—Christopher Dorsey allowed the change in assignment practice to continue through at least October 1, 2011 which allowed numerous employees to not have to use the extra board, thereby circumventing applicable provisions of collective bargaining agreements.

Regarding Metra Employees

- **FOUNDED**—Wade Schroder falsified his June 4, 2011 FRA log in violation of the Federal Hours of Service Act when he engaged in a change of assignment with Marco Garzon but did not accurately complete his FRA log.
- **FOUNDED**—Marco Garzon falsified his June 4, 2011 FRA log in violation of the Federal Hours of Service Act when he engaged in a change of assignment with Wade Schroder but did not accurately complete his FRA log.
- **FOUNDED**—Wade Schroder falsified his July 16, 2011 FRA log in violation of the Federal Hours of Service Act when he engaged in a change of assignment with Marco Garzon but did not accurately complete his FRA log.
- **FOUNDED**—Marco Garzon falsified his July 16, 2011 FRA log in violation of the Federal Hours of Service Act when he engaged in a change of assignment with Wade Schroder but did not accurately complete his FRA log.
- **FOUNDED**—Wade Schroder falsified his July 27, 2011 FRA log in violation of the Federal Hours of Service Act when he engaged in a change of assignment with Nicholas Chou but did not accurately complete his FRA log.
- **FOUNDED**—Nicholas Chou falsified his July 27, 2011 FRA log in violation of the Federal Hours of Service Act when he engaged in a change of assignment with Wade Schroder but did not accurately complete his FRA log.

- **FOUNDED**—Richard Dorsett falsified his June 4, 2011 FRA log in violation of the Federal Hours of Service Act when he engaged in a change of assignment with [REDACTED] but did not accurately complete his FRA log.
- **FOUNDED**—Richard Dorsett falsified his July 23, 2011 FRA log in violation of the Federal Hours of Service Act when he engaged in a change of assignment with [REDACTED] but did not accurately complete his FRA log.
- **FOUNDED**—Mario Ramos falsified his July 16, 2011 FRA log in violation of the Federal Hours of Service Act when he engaged in a change of assignment with [REDACTED] but did not accurately complete his FRA log.
- **FOUNDED**—Mario Ramos falsified his July 23, 2011 FRA log in violation of the Federal Hours of Service Act when he engaged in a change of assignment with [REDACTED] but did not accurately complete his FRA log.
- **FOUNDED**—Lauvel Crawford falsified his July 16, 2011 FRA log in violation of the Federal Hours of Service Act when he engaged in a change of assignment with [REDACTED] but did not accurately complete his FRA log.
- **FOUNDED**—Jose Garzon falsified his July 16, 2011 Metra FRA log in violation of the Federal Hours of Service Act when he engaged in a change of assignment with Michael Simnick and [REDACTED] but did not accurately complete his FRA log.
- **FOUNDED**—Jose Garzon falsified his July 23, 2011 FRA log in violation of the Federal Hours of Service Act when he engaged in a change of assignment with [REDACTED] but did not accurately complete his FRA log.
- **FOUNDED**—Michael Simnick falsified his June 4, 2011 FRA log in violation of the Federal Hours of Service Act when he engaged in a change of assignment with [REDACTED] but did not accurately complete his FRA log.

The OEIG recommends that the Metra Board of Directors take appropriate action to make certain that Metra management addresses the issues raised in this report and in particular take immediate steps to:

- Ensure that all covered employees accurately complete their FRA logs.
- If possible, recover pay from employees who were not lawfully entitled to receive it.
- If possible, pay employees who were not lawfully paid but were entitled to be paid.
- End the change in assignment practice, even in emergencies.
- Discipline all employees who were identified as having incorrectly completed their FRA logs if still employed.

- Discipline all employees whom Metra *subsequently* identifies or confirms as having incorrectly completed their FRA logs if still employed.
- Take whatever action it deems necessary to make certain Metra and its managers fully comply with all terms of the collective bargaining agreements if still employed.
- Discipline all Metra managers identified as having violated Metra's Rules of Conduct in this report if still employed.
- Take whatever action it deems appropriate with regard to the actions of the former Chief of Transportation and now Executive Director Don Orseno and other senior managers regarding the activities they engaged in as set forth in this report.
- Take whatever additional action they deem appropriate in light of the OEIG's findings.

In addition, the OEIG will refer this matter to the Federal Railroad Administration, as well as appropriate federal and state authorities, for whatever action they deem appropriate.

No further action is required and this matter is closed.

Date: March 3, 2014

Office of Executive Inspector General
for the Agencies of the Illinois Governor
69 W. Washington Street, Ste. 3400
Chicago, IL 60601

Fallon Opperman
Deputy Inspector General and
Chief RTB Division

Carl Weaver
Investigator # 127

Office of Executive Inspector)
General for the Agencies of) Investigation Case No. 11-01032
the Illinois Governor)

METRA'S RESPONSE TO OEIG SUMMARY REPORT
IN INVESTIGATION NO. 11-01032

Sue-Ann Rosen
General Counsel
Metra
547 W. Jackson Blvd.
15th Floor
Chicago, IL 60661

TABLE OF CONTENTS

I.	EXECUTIVE SUMMARY	1
II.	BACKGROUND	4
	A. Pay Under The Collective Bargaining Agreement	4
	B. A Change Of Assignment Cannot Be Restricted To Extra Board Employees	5
	C. The Informal Practice	7
III.	SPECIFIC RESPONSES	8
	Issue #1: Employees' Work Hours Did Not Exceed Federally Mandated Hours Of Service.	8
	Issue #2: Metra Did Not Engage In "Ghost Payrolling"	10
	Issue #3: Metra Did Not Violate The Collective Bargaining Agreements Or Any State Or Federal Law. 13	
IV.	CURRENT STATUS OF THE EXCHANGE OF ASSIGNMENT PRACTICE	15
V.	RESPONSE TO VARIOUS OEIG DISCIPLINARY RECOMMENDATIONS	15
	A. Managers	15
	B. Employees	17
VII.	RESPONSE TO OEIG MANAGEMENT POLICY RECOMMENDATION.....	18
	A. FRA Logs	18
	B. Payroll Revisions	18
	C. Elimination Of Emergency Change Of Assignments	19
	D. Collective Bargaining Agreements	19
VIII.	CONCLUSION.....	20

While some aspects of the OEIG Report may aid Metra in the ongoing development and management of employment practices, Metra respectfully submits that many of the OEIG's conclusions and recommendations are in error and result from the OEIG's apparent misunderstanding of railroad operations and railroad industry employment practices. Specifically, Metra disagrees with the OEIG report in the following fundamental respects.

1. Safety Was Never At Issue -- No Employee Worked In Excess Of Hours Of Service

Metra's mission is to safely operate all service in adherence to a dependable schedule. The OEIG suggested that there "may" have been safety implications because certain employees incorrectly completed their logs. When Metra received the OEIG's findings, Metra immediately audited those logs identified by the OEIG as incorrectly completed. The audit has shown some employees, indeed, inaccurately recorded their hours of service logs. However, Metra's review also found that, in fact, no employee worked in excess of the hours of service limitation imposed by federal law.³ Consequently, the swapping practice never implicated issues of safety for Metra's riders, its employees, or the public as a whole. The Federal Railroad Administration ("FRA") also reviewed Metra's service logs and based upon the information supplied by the OEIG, reached substantially the same conclusion: while certain employees did not complete the form correctly, no work in excess of hours of service limitations was identified.

2. There was NO Ghost Payrolling. The Practice Benefited Labor And Cost Metra Nothing

"Ghost payrolling" is routinely defined as fraud on a public entity by paying the salary of someone who does not actually work and there is no work performed. Metra engaged in no such practice. Every employee performed work for Metra and every work assignment was performed. Thus, neither Metra nor the taxpayers were defrauded. All employees were paid, and in fact, received a guaranteed daily wage rate far in excess of minimum wage rates. However, Metra did not pay one dime more than what was budgeted for each job assignment and the work paid for was duly performed. In addition, this practice violated neither the collective bargaining agreements ("CBA"), nor any federal or state law governing the terms and conditions of

³ See generally 49 U.S.C. §21101 *et seq.* and 49 C.F.R. Part 228.

employment.⁴ Rather, it provided flexibility requested by labor while allowing Metra to operate within tight budgetary constraints. It was a practice accepted by both management and labor, and labor never sought to grieve the practice. Also, since all employees were paid the guaranteed minimum rate or more, no transgression of minimum wage requirements or other law regulating employment occurred.

Ironically, not only were the taxpayers not cheated by the swapping practice, Metra's ending the practice in 2011 except for true emergencies has contributed to a nearly \$900,000 annual increase in Metra's payroll costs to hire additional employees to reduce the need for swapping.

3. The OEIG's Recommendations For Discipline Are Unwarranted and Untimely

The OEIG's recommendation to discipline some employees is untimely because instituting discipline at this late date would violate the CBA. However, Metra is counseling these employees and Metra has instituted rigid audit procedures to ensure employees' strict compliance with federal hours of service regulations. Similarly, the recommendation to discipline managers is unwarranted because they inherited the 40+ year practice, and utilized it to safely operate the trains in tight budgetary times. Further, management had no reason to believe that employees incorrectly filled out their FRA logs, in light of the years of training provided to employees in this regard.

The practice as identified by the OEIG was eliminated in early 2012. Changes in assignment are now initiated and authorized by management; used only for actual emergency (such as employee or family sudden illness or act of nature) and not for convenience; and payroll is adjusted if necessary, to account for the emergency change in assignment.

In sum, there are no ongoing issues or concerns, there have not been any for more than two years, and there has been no violation of the Ethics Act. Accordingly, Metra respectfully suggests that the OEIG has no basis to pursue a complaint before the Executive Ethics

⁴ Significant parts of each CBA are quoted at length in footnotes on pages 8 to 10 of the OEIG Report, and excerpts are included in the Appendix to the Report or Exhibits 3 and 4. The entire CBAs will be available upon request.

Commission. And, there is no reason to publish the OEIG's Report because it involves a practice discontinued well over two years ago, which, although less than perfect, did not threaten public safety, broke no employment laws, and otherwise did not violate the collective bargaining agreements. Further, because of some of the erroneous assumptions in the report, its publication could well lead to unjustified public confusion.

In short, the issues identified here involved only a need to improve administrative practices. Further, in Metra's view, there was no intentional wrongdoing or financial loss to the agency of the type which would warrant punishment or publication.

II. BACKGROUND

The MED is one of three districts directly operated by Metra, and that district alone provides over 2.5 million passenger trips annually. It has safely operated with a 97.5% on time performance rate.⁵ The MED is unique in that its trains run by electric power and its runs are generally shorter than on other Metra districts. Once an employee learns the territory and becomes rules-qualified, he or she generally works exclusively on that district. Metra cannot and does not exchange employees from one district to another. Currently, MED has 123 trainmen and 66 engineers. (Trainmen include conductors, assistant conductors and ticket collectors). In 2011, when this investigation began, MED had 10 fewer employees.

A. Pay Under The Collective Bargaining Agreement

Unlike the majority of salaried employees and shift workers, MED employees are paid under a complex pay schedule negotiated under CBAs based upon long standing railroad practices. MED employees primarily do not work eight-hour shifts. Rather, they generally work 12-hour shifts with appropriate rest periods. Under the CBA, work shifts are determined by "assignments," not "runs." These terms are not the same. A "run" is a single, one-way train trip. Assignments are either a collection of one to twelve daily train runs or miscellaneous jobs.

⁵ Metra's analysis of other major commuter rail systems demonstrates that Metra's systemwide on time performance is the best of the major commuter railroad systems. The MED has the best on time performance of any of Metra's lines.

The OEIG Report confuses the terms “assignment” with “run” which has resulted in the inclusion of incorrect pay amounts in its report. For example, a run can take up to 90-minutes of a 12-hour daily assignment. MED employees work daily assignments scheduled for up to 6 days a week and up to 12 hours each day with federally mandated rest periods. Such a schedule ensures coverage during the morning and evening rush hours. Weekend assignments are typically shorter and have lighter commuter loads.

The OEIG report also incorrectly stated that seniority dictates the rate of pay⁶ and that some employees who performed work were not paid. In fact, the elements in the daily pay rate calculation include the time of day and the number of miles in an assignment, together with contractually guaranteed rates. Pursuant to the CBA, employees are allowed to bid on assignments based upon seniority, and therefore, employees may bid on assignments regardless of what they pay. For example, some employees with seniority prefer to bid on a convenient schedule, which pays less, whereas others have focused on pay alone. Metra engineers and trainmen are paid under a complex, union negotiated, railroad-industry methodology of either a rate for a basic day that is a wage guarantee based on time and travel of 100 miles or less for engineers and 150 miles or less for trainmen, or at the rate constructed for their daily assignment, which comprises runs. Thus, the employee on assignment was paid the guaranteed basic daily rate (which was \$206.46 for engineers and \$203.59 for conductors in 2011) or a higher constructed rate of the assignment held.⁷

B. A Change of Assignment Cannot Be Restricted To Extra Board Employees

The CBA provides for a pool of reserved workers, known as Extra Board employees, to cover runs as necessary. At any time, and depending on the circumstances, there can be anywhere from zero to eight engineers or zero to twelve trainmen available on the Extra Board. Like all employees, the Extra Board employees are paid a minimum monthly guaranteed rate for holding the Extra Board assignment. **The OEIG has concluded that only Extra Board employees should be used to fill vacant job assignments. This statement presumes there**

⁶ OEIG Report at 10 and 99.

⁷Several factors are considered when constructing the rate for an assignment, including the number of hours, the number of miles, and so-called arbitraries like mail-handling, meal allowances, and tie-up time.

are Extra Board employees available at all times. That presumption is not valid. There are times, based upon the needs of the railroad, that there are no available Extra Board employees. Additionally, circumstances, such as geographic location, can prevent Extra Board employees from working another job when adequate notice is not available.⁸ Many factors dictate the use of an Extra Board employee. For example, when construction is ongoing, Extra Board employees are used off-train to ensure safe train operation through construction zones. Because of the small number of Extra Board employees, Metra manages its use of these employees sparingly and carefully so as to not exhaust its reserves.

Metra operates over the most complex rail terminal in North America. Unexpected circumstances frequently and quickly deplete the pool of available Extra Board employees. When this happens, the lack of Extra Board employees can threaten safety and scheduled train service. The OEIG did not consider this condition when it concluded that Metra should utilize only Extra Board employees to fill in assignment gaps.⁹ Moreover, if an employee becomes unable to finish his or her shift for any reason, including illness, and must be replaced in the midst of an assignment, the use of an Extra Board employee is not always an available option. Where possible, Metra will continue to fill vacancies from the Extra Board, but Metra needs the operational flexibility to move employees in a safe manner that does not violate the mandated hours of service, or it will be forced to cancel trains as an unintended consequence.

To be clear, adhering to the OEIG's assertion that vacant job assignments can be filled only with Extra Board employees could, depending upon the circumstance, compromise safety or operations and Metra cannot adopt such an operating practice. While Metra will annul trains if essential to avoid compromising safety, Metra is committed to minimizing such a practice because, as the General Assembly has found, providing public transportation is an essential public purpose and essential to improving mobility of the public and access to jobs.¹⁰ Metra will continue to use its best efforts to meet its statutory purpose.

⁸ Extra Board employees generally are supposed to receive as nearly as possible two hours' notice to report to work, UTU CBA, Rule 18(i), BLET CBA, Rule 20(m).

⁹ OEIG Report at 107, 112.

¹⁰ For a complete list of findings and purpose, see Section 1.02 of the RTA Act, 70 ILCS 3618/1.02.

C. The Informal Practice

Historically, swapping was designed to allow one employee to work a run (part of an assignment) of another employee's assignment. In exchange, his replacement would return the favor, thereafter. Because it was contemplated that MED employees exchanged jobs of like assignments and/or portions of assignments, Metra's payroll department was not notified of the swap because there would have been minimal, if any, pay implications. The pay of either employee was essentially the same (or at a minimum, the guaranteed rate Metra was required to pay) and the difference in pay had no financial impact on Metra or the public.

By 2011, which was the time period of the OEIG investigation, the swapping practice had expanded so that at certain times, employees did not swap a run for a run. Some employees did not reciprocate and complete the swap. The practice had grown in terms of the numbers. In part, this increase occurred because of tight budgetary constraints and the inability of Metra management to grant personal time off when needed. Even with the increased numbers, there was no impact on Metra's payroll. Swapping allowed Metra to run the service during these lean times, while at the same time, providing flexibility to adjust train crews due to employees' personal needs, without impact on the public's safety or Metra's budget. However, Metra still received the service for which it paid, and the payment amount was what Metra agreed to and intended to pay when it established the original assignments.

Further, the chart on pages 70 to 75 of the OEIG Report suggests that an employee who ultimately completed or performed the job assignment received zero compensation; this is factually inaccurate. Under the CBA, the employee received a monthly and daily guaranteed rate.¹¹ Thus, each affected employee received at least the guaranteed rate for his or her service. While some employees may either have been seemingly overpaid or underpaid (an arrangement to which they agreed), the discrepancy in pay was usually not significant and no employee received zero compensation for a day or partial day of work.

Even by 2011, when the practice had expanded in response to budget crunch issues, these informal exchanges were *de minimus*, accounting for only 0.0058 of all MED runs.

¹¹ See, e.g., BLET CBA Rule 7, and UTU CBA Rule 6.

Nevertheless, Metra discontinued the practice and, among other things, increased its staffing, to allow employees more flexibility for time off from work. Thus, Metra increased the number of trainmen and engineers from 179 in 2011 to a current population of 189 (with a commensurate payroll increase of an estimated \$876,984).

For over two plus years, there has been no swapping practice. Instead, the current employment practice allows for changes in assignments only when management-directed, in cases of true emergency or need, when it is not feasible to fill an assignment from the Extra Board without adversely affecting Metra's scheduled operation, and only when proper payroll records are submitted. So, for example, when an engineer becomes ill in the middle of a run, and there is no available Extra Board employee, management (and not the employee) will find another engineer to perform the remaining portion of the assignment, without violating Hours of Service regulations, and notify the call board and the payroll department.

III. SPECIFIC RESPONSES

Issue #1: Employees' Work Hours Did Not Exceed Federally Mandated Hours Of Service.

Metra has no higher priority than the safety of its commuters, staff, and public at large. In pursuit of this priority, Metra has always placed a heavy emphasis on compliance with hours of service. Extensive measures were and continue to be undertaken in order to drill into the minds and practices of every engineer and trainman the importance of complying with the limits of the hours of services law and regulations. In 2011, the principal hours of service limitation prohibited an engineer or trainman from working more than 12 hours in a 24-hour period without an uninterrupted 4-hour break.¹² Metra's crew schedules have always been constructed to comply with the hours of service laws and regulations. Whenever a vacancy needs filling or a schedule requires adjusting, the first question asked concerns hours of service in order to determine employee eligibility for the assignment.

As part of this policy, engineers and trainmen have consistently been given mandatory and extensive training that must be satisfactorily completed before they are allowed to work in

¹² 49 C.F.R. §228.19(c).

the field. A significant part of that training involves instruction on the federal guidelines for hours of service requirements. Employees are taught to complete the form to show their actual hours of service. Hours of service training is incorporated into a five-week classroom instruction. In addition, there is ongoing training and review on the trains for trainmen and engineers regarding completion of hours and service logs. Throughout the year, managers ride trains and randomly check hours of service logbooks of the engineers and trainmen. This is done to ensure that the hours of service logs are completed, and to ensure that service limitation standards are met. Metra regularly issues service bulletins to its employees, reminding them of the federally mandated hours of service obligations. Annual tests are administered by Metra's Rules Department in which hours of service requirements are tested. Safety meetings are held with managers in the MED, efficiency tests are administered by the District to make sure hours of service logbooks are correctly completed, and the MED conducts a monthly review of logbooks to ensure that there have been no hours of service violations that have not been reported. All of these training, instruction, testing, and review procedures were in place and routinely performed in 2011, and they were designed to convey the importance of compliance with hours of service regulations for Metra's trainmen and engineers, and to enforce those requirements.

The OEIG has concluded that certain employees provided false information in their FRA logs, and **suggested** that the inaccurate logs **may have impacted safety**, but identified no specific instance. Thus, when Metra received this information in the OEIG report, Metra immediately audited the identified logs. Metra found that no employee exceeded his/her hours of service. There were no hours of service violations. Metra's own audit was followed by an FRA review of the OEIG's conclusions. **The FRA, charged with regulating the hours of service limitations, also concluded that while certain employees completed their logs incorrectly, no actual hours of service violations were identified.**¹³

Notwithstanding the measures described above, including the extensive training and instruction in completing FRA logs, the OEIG determined that some Metra employees, who engaged in the former swapping practice, inaccurately recorded their hours. Metra will continue to provide training to all engineers and trainmen to re-emphasize the importance of accurate

¹³ A copy of Metra's analysis is attached as Exhibit 1.

completion of FRA paperwork. For those who were identified as having inaccurately completed their logs, Metra will counsel them on the inappropriateness of that conduct. These errors, however, were solely in the completion of paperwork and **resulted in no safety issues**.

Further, through its Audit Department, Metra is instituting audit oversight procedures so that back-end, random and regular audits will be performed to confirm the accuracy of the FRA Hours of Service Report for all covered employees. These audits will use best practices, including the employment of the reporting normal audit standards, reporting of the findings, and reporting of corrective action to be taken as necessary.¹⁴

Issue #2: Metra Did Not Engage In “Ghost Payrolling”

The OEIG reported that persons who worked a change of assignment under the 2011 program were not paid and has improperly referred to it as “ghost payrolling.” Metra objects to that conclusion and characterization, and concurs with neither. Ghost payrolling is an inflammatory, pejorative term that is understood to involve fraud on a public entity or business that is defrauded into paying the salary of someone on the payroll who does not actually work for the victim governmental entity or business. See, Ghost Employees, Fraud Magazine, at 1, at <http://www.fraud-magazine.com/article.aspx?id=4294968370>; Ghost Employee Frauds-Payroll Frauds, JP Sims Consulting, at 1, available at <http://www.jpsimsconsulting.com/books-guides-reports/library/books/fraud-risks/ghost-employees-frauds-payroll-frauds/>; Matthew Garrett, Payroll Fraud-A Big Threat and How to Avoid It, 9/10/13, at 1, available at <http://www.forbes.com/sites/matthewgarrett/2013/09/10/payroll-fraud-a-big-threat-and-how-to-avoid-it>.

Here, Metra and the taxpayers were not defrauded or cheated. As described in detail above, the work for which Metra paid was, in fact, performed. Metra simply paid the assignment rate or portion thereof (and not the guaranteed minimum rate) to the person who swapped rather than the person doing the work. Thus, swapping did not involve a fraudulent ghost payroll

¹⁴ This audit will, as currently planned, include reviewing the employees’ underlying records, such as their hours of service logs, TTR1 trip reports, and time slips (showing late arrival trains, for example) and comparing them with Crew Call sheets. Also, Metra is exploring new technologies to electronically record hours of service time.

scheme. The OEIG's gratuitous labeling of this practice as "ghost payrolling" is irresponsible and not fair to the employees and managers and would have the effect of misleading the public.

Indeed, the chart provided on pages 70-75 in the OEIG Report misstates the facts. This chart appears to have been created without a clear understanding of how Metra's employee payroll and scheduling are handled. Its reference to \$32,549.53 total payment (over or underpayment--it is not clear) is simply wrong. Metra received exactly the services it had expected from its employees at the cost it had expected to incur. If employees swapped, Metra paid no additional cost. Conversely, the practice partly enabled Metra to operate through a financially lean time with reduced staffing levels. Management would not have allowed employee-initiated swaps had it increased Metra's costs. Again, then as now, Metra's train and engine service employees have a guaranteed daily and monthly rate of pay, receipt of which is not dependent upon and is paid whether they actually staff a train.¹⁵ As the OEIG concedes in its chart under footnote 162, there were employees who were paid zero for a day, but "[t]his column references only payments made by Metra for the change in assignment in question. Payroll records may reveal that these employees were paid for other assignments [runs] worked on these days."

While most people understand employment to include either salaried or hourly employees, Metra's train and engine service employees do not fit into either category. To begin with, examining employees' payroll records based on a specific day is misleading and not indicative of their actual pay. The pay is constructed of multiple components a Monday through Friday assignment will incorporate pay for Saturday and Sunday into the wages paid Monday through Friday. This is analogous to a salaried employee's payroll showing 8 hours a day Monday through Friday, though actual hours worked may vary and include the weekend. The OEIG, looking exclusively at the payroll records, apparently did not have the entire picture. Although, the payroll records reviewed by the OEIG may indicate \$0 on some days, this accounting mechanism is done for the convenience of the payroll system because of the complexity of the CBAs. Again, it does not reflect on its face that a Monday through Friday

¹⁵ See BLET CBA Rules 1 and 7; UTU CBA Rules 1 and 6.

assignment will have Saturday/Sunday pay included in the wages. **Thus any reference to \$0 on the chart is inaccurate and misleading.**¹⁶

Additionally, the chart incorrectly uses the terms “assignments” and “runs” interchangeably. As described above, an employee’s assignment is typically a set of runs on a specific day. On weekdays, it was and is generally not possible to work two different assignments on a given day, but a change in the component runs of the assignments may occur. Due to the factors that comprise an assignment and the passing of time, any differential in pay would, at most, be negligible, and impossible to calculate with certainty. It appears that the OEIG mistook the “Change of Assignment” form to literally mean that the entire assignment (with all runs) changed instead of changes to specific runs within that assignment. This is important, because the OEIG’s misunderstanding of this premise caused it to use inaccurate building blocks for its charts, which resulted in a great exaggeration of its numbers. Consequently, the chart is not reflective of Metra’s payroll practices and certainly does not indicate that Metra employees were engaged in “ghost payrolling.” To illustrate why this is important and how the OEIG was mistaken, Metra offers the following examples.

First, on page 41 of the Report, the OEIG inaccurately details a change between Wade Schroder and Nicholas Chou on Wednesday, July 27, 2011. Nicholas Chou was on Assignment 11 and Wade Schroder was on Assignment 19. According to the OEIG Report, Nicholas Chou was paid \$334.66 for working Assignment 11 and was not paid for working Assignment 19, while Wade Schroder was paid \$298.77 for Assignment 19, which he did not work. **This is wrong.** Wade Schroder did work most of *Assignment 19*. Assignment 19 started at 6:05 am and ended at 5:56 pm, while Assignment 11 started at 6:35 am and ended at 6:04 pm. Assignment 11 was comprised of 2 runs and 2 equipment moves, while Assignment 19 was comprised of 4 runs and 2 equipment moves.¹⁷ Nicholas Chou only covered two of Wade Schroder’s 6 runs, (11:20 a.m. to 11:57 a. m. and 12:21 p.m. to 1:00 p.m. or 1 hour 18 minutes of

¹⁶ Given that the OEIG quoted the operative CBA provisions for the daily guaranteed salary rate for engineers and trainmen in footnotes 18 and 22 of its Report, and OEIG Reports #13, #27 and #72 reflect that the OEIG interviewed Metra’s Director of Payroll twice and Metra’s Payroll Supervisor once, the OEIG’s decision to nevertheless report that Metra employees received \$0 for a day of work can most charitably be described as puzzling.

¹⁷ As an example of the complexity of employee pay, Assignment 11, having a shorter on-duty time (11 hours 29 minutes compared to 11 hours 51 minutes for Assignment 19) and having fewer runs (2 runs and 2 equipment moves compared to 4 runs and 2 equipment moves for Assignment 19) actually paid more.

an almost 12 hour Assignment) not the entire assignment as the OEIG states. Neither the on-duty time, nor the off-duty time for either employee was altered and the financial impact, if any, was negligible.

Second, on page 66 of the Report, the OEIG inaccurately details a change between [redacted] and [redacted] was on Assignment 28, while [redacted] was on Assignment 11. According to the OEIG Report, [redacted] was paid \$328.85 for working Assignment 28 and was not paid for working Assignment 11, while [redacted] was paid \$308.54 for Assignment 11, which she did not work.¹⁸ This is wrong. [redacted] did in fact work most of *Assignment* 11. Assignment 28 started at 3:19 a.m. and ended at 9:08 a.m., while Assignment 11 started at 6:45 am and ended at 6:04 pm. Assignment 11 was still comprised of 4 runs and 2 equipment moves, while Assignment 28 was comprised of 5 runs and 1 equipment move. [redacted] only worked one 53-minute run for

In this case, as above, both employees worked their assignments, with the exception of one run covered by another employee and the actual financial impact was negligible to each employee involved.

The above examples of inaccurate calculations demonstrate that the OEIG's suggestion that this practice was tantamount to "ghost payrolling" is unsupported and seriously misleading. The OEIG's conclusion that tens of thousands of dollars were underpaid or overpaid is equally inappropriate and inaccurate. No one was unjustly enriched through this practice, nor was Metra wasting taxpayer money, or defrauded in any sense of the word.

Issue #3: Metra Did Not Violate The Collective Bargaining Agreements Or Any State Or Federal Law.

The OEIG also found that Metra breached its CBAs. Metra respectfully disagrees. There can be no breach if both parties to the contract agree to the practice. In this situation, a long-standing, four-plus-decade practice was developed that both parties accepted, particularly the union. If a violation of the contract was perceived, the CBAs provided an avenue for the employee to grieve the situation, and request additional pay. Neither employees who participated in the swap procedure, nor the unions, ever grieved the issue.

¹⁸ Assignment pay fluctuates monthly dependent on variables such as the number of week/weekend days in a month. Thus, the pay from June and the pay for July will vary for the same assignment.

Evidence that the OEIG collected during the course of its investigation dispels any notion that Metra managers breached the CBAs. Even a cursory review of the 2011 swapping records reveals that the Local Chairmen for the trainmen participated in swapped work assignments.¹⁹ Even more significantly, the evidence reviewed by the OEIG shows that the respective unions actively endorsed and supported the informal swapping practice. In fact, as reflected in the OEIG Report at p. 49, on two occasions, the District Superintendent instituted a policy of refusing to approve any swaps, and the unions then complained about the discontinuance of the practice. As a result, the practice was reinstated, at the unions' behest.²⁰

Further, there is no evidence of minimum wage exposure under the Fair Labor Standards Act. Minimum wage is determined on a workweek basis.²¹ The CBAs guaranteed engineers and trainmen who were available for work payment for a basic day, whether they worked or not, and the basic day rate significantly exceeded minimum wage on a workweek basis. As mentioned above, a basic day rate for engineers in 2011 was \$206.46, and the basic day rate for conductors was \$203.59.²² In comparison, the minimum wage in 2011 was \$58 per day, which is less than 30 percent of the guaranteed basic day rate paid to either engineers or conductors. Moreover, Metra reviewed whether there were overtime issues and found none. In both the Railway Labor Act (RLA) and the FLSA, overtime is a negotiated benefit under the CBAs. Under the RLA, such contractual provisions on overtime supersede the FLSA.²³

While we respect and agree with the OEIG's concern about compliance with CBAs and employment laws in general, there is no evidence to implicate those concerns herein.

¹⁹ The swap involving J [redacted], Local Chairman for the Assistant Conductors, is on page 63 of the OEIG Report. The swap involving the Local Chairman for the Conductors is not referenced in the OEIG Report, but also occurred in 2011.

²⁰ The temporary termination of swapping occurred twice in the context of collective bargaining. The unions objected to other unwritten practices. The MED Superintendent then terminated the swapping practice, as it also was an unwritten practice. The unions objected to the termination of swapping, and ultimately dropped their objections to other unwritten practices. In response, the MED Superintendent resumed allowing swaps to take place.

²¹ 29 U.S.C. §206(a)

²² 2007 BLET CBA, Sec. 3; 2006 UTU CBA, Sec. 3.

²³ *N.J. Transit Policemen's Benevolent Assoc. Local 304 v. New Jersey Transit Corp.*, 806 F.3d 451 (3rd Cir. 1987).

IV. CURRENT STATUS OF THE EXCHANGE OF ASSIGNMENT PRACTICE

The OEIG Report criticizes Metra for continuing to allow changes of assignments for emergency situations, and recommends that changes of assignments be unconditionally eliminated.²⁴ Such action would prove detrimental to Metra's operations, serves no legitimate purpose, and ignores that public transportation, as stated in the Illinois Constitution, is an essential public purpose.²⁵

It goes without saying that personal emergencies can and do arise. In those emergency situations where Extra Board employees are unavailable or the Extra Board is depleted, MED will direct another employee to change his or her assignment. The difference between current practice involving changes of assignment and the discontinued practice is threefold: (1) the employee who is directed to change assignments because of an emergency is selected by management, and not by an involved employee; (2) Metra crew callers are notified and the Payroll Department is made aware of the change of assignment so that the correct employee will be paid; and (3) the changes of assignment occur only in true emergency situations.

V. RESPONSE TO VARIOUS OEIG DISCIPLINARY RECOMMENDATIONS

A. Managers

The OEIG Report issued findings and recommended discipline against each manager in the operations chain of command from Deputy Executive Director of Operations in Metra's corporate downtown office, down to the MED's Trainmaster. The conclusions are identical even though the evidence is not. Managers are accused of: (1) allowing open, union supported, 40+ year swapping practice (that was never a safety issue) to continue until late 2011, without taking appropriate actions to monitor the accuracy of employees' hours of service reports; (2) allowing the swapping practice to continue without adjusting payroll records to reflect the change in a whole or partial assignment; and (3) allowing the practice to continue and allegedly circumventing Extra Board requirements and allegedly violating applicable collective bargaining agreements. The OEIG Report recommends discipline against managers for "[f]ailure to

²⁴ OEIG Report at 112.

²⁵ In addition to the RTA Act, see Section 7, Article XIII of Illinois Constitution.

efficiently and appropriately perform assigned job duties,” Metra Rule of Conduct 7, and “[f]ailure to exercise good judgment,” Metra Rule of Conduct 10. For the reasons stated above, Metra disputes the underlying basis for discipline, but will address the recommendations below.

First, no Metra manager knew or had reason to know that any employee falsified information on FRA logs, whether purposely or inadvertently. Second, all managers had strong reason to believe that the hours and service regulations, pursuant to employees’ hours of service training, were being observed. Third, all managers also knew that the union wanted to continue the practice, and that no employee complained that there was any breach of the CBA. In addition, most of the executive managers, including Mr. Orseno, Metra’s current Executive Director, had no personal knowledge that the practice had expanded by 2011, and they were only aware that like-kind exchanges were being made. Mr. Orseno, in particular, was not aware of any exchanges beyond those like-kind.

Based on the foregoing, the managers’ assumption that employees would accurately complete their hours of service logs was reasonable and does not reflect a lapse of judgment, let alone misfeasance or malfeasance, as to warrant discipline.

With regard to the long-standing institutional failure to ensure that the change of assignment was reported and reflected in payroll, Metra agrees, in retrospect, that there was an **institutional** error in judgment. Swapping was an unwritten longstanding practice unique on the MED that both Metra and the 2011 managers inherited. The affected employees and their unions were content with the payment structure and supported the swapping program; it was a concession for an employee who worked a six-day workweek under demanding conditions; it resulted in no overpayment or underpayment to employees who participated in the practice of sufficient significance to result in the filing of a grievance pursuant to the CBA; and it resulted in no additional cost to Metra, its customers, or the taxpayers. Ultimately the service paid for was the service received. Indeed, Metra operated with decreased staffing and saved money. In doing so, the MED continuously and consistently safely operated with 97% on time performance. Thus, while there were shortcomings, Metra does not believe that discipline is warranted against any manager in the operational chain of command for involvement in a longstanding practice. When management learned, in late summer of 2011, that the swapping practice had expanded

beyond its original scope, the practice was ended and superseded by the current change of assignments policy, *i.e.*, allowed only in emergency situations.

Under these circumstances, Metra believes it would be extremely unfair to single out managerial employees for discipline simply because they dutifully followed a practice which Metra, as an institution, had permitted and condoned for decades based on accepted customs and practices. Metra has thus determined that discipline is not warranted for failure to end the institutional swapping practice earlier.

With respect to the allegations of violations of the collective bargaining agreements, no action is required. The informal swapping practice was conducted for 25 years at Metra without a single grievance ever being filed. The OEIG interviews reflect that when the MED Superintendent ceased the practice on two occasions, the unions complained and requested that this informal swapping practice resume. It is unreasonable for the OEIG to urge that Metra management should be subject to discipline for allegedly violating the CBA under the prior practice. Both the unions and management were willing participants; several local chairmen participated in the practice in 2011; and the unions complained when the practice was stopped. Under these circumstances, Metra has elected not to discipline Metra's managers because there was no breach of the collective bargaining agreements.

B. Employees

The OEIG Report recommends that all identified employees who incorrectly completed FRA logs be disciplined if they are still employed.²⁶ Metra will counsel the involved employees, will continue with mandatory training on hours of service logs and legal requirements, and will conduct spot audits of employees' hours of service logs to ensure that they are accurate. However, it is not feasible or practical to attempt to discipline employees three years after the event. This is particularly true given the contractual time limits (10 days) on issuance of

²⁶ OEIG Report at page 112.

discipline after an occurrence.²⁷ Should Metra become aware of future inaccurate or false reporting of hours in FRA logs, it will pursue prompt and effective discipline to end the practice.

VII. RESPONSE TO OEIG MANAGEMENT POLICY RECOMMENDATION

A. FRA Logs

The OEIG Report recommended that Metra “[e]nsure that all covered employees accurately complete their FRA logs.” As noted above, Metra will continue providing mandatory training to employees on hours of service requirements, will continue its other publication and inspection practices, and has instituted audit procedures to verify the accuracy of the hours of service logs. Metra also is evaluating possible use of electronic recording of hours of service, which could help reduce recording errors. Metra will counsel those employees identified by the OEIG who incorrectly completed their logs, and will pursue disciplinary action if appropriate in the event it discovers future violations.

B. Payroll Revisions

The OEIG Report recommended that, if possible, Metra should recover from employees who were party to a swap and were paid for work they did not perform, and Metra should pay employees who were party to a swap for work they performed on behalf of another employee and for which they were not paid. Metra respectfully declines to do so for the following reasons.

First, Metra received the services for which it made payment, and the employees agreed among themselves that the person to whom the work was originally assigned should receive payment for the work. More importantly, this was done without cost of taxpayer funds and no employee is seeking compensation related to the swapping practice.

Second, at this time, due primarily to the way rates of pay are constructed, it is not feasible to reconstruct the historical use of swapping and pay employees who were not paid as part of a swap, or recover the payments to those who were paid but did not work. It is particularly difficult to reconstruct the pay structure because, while weekend swaps tended to be

²⁷ Under both the BLET and UTU collective bargaining agreements, disciplinary charges must be placed within ten days of the District Superintendent’s notice of the improper conduct or within 10 days of the incident. BLET CBA, Rule 44; UTU CBA Rule 38. Our labor experts have advised that this would require that the charges be brought in 2011. Any charges brought in 2014 would likely result in grievances, which would be upheld by an arbitrator.

for an entire assignment, swaps during the week tended to be for a single, short run, which is only part of an assignment. Due to the lack of detailed factual information, such as the actual hours and miles worked, it is impossible to establish a contractual pay rate for partial assignments. Accordingly, there is simply no way to accurately reconcile the payments and payroll. Also, in many instances, the amount of over or underpayment is not significant, as all employees were paid a contractually minimum guaranteed amount. Thus, the cost of undertaking such an effort would vastly exceed any conceivable benefits. In particular, it must be kept in mind that no employees are asking for the kind of relief recommended by the OEIG.

C. Elimination of Emergency Change Of Assignments

The OEIG Report recommended that Metra “[e]nd the change in assignment [run] practice, even in emergencies.” As stated above, emergencies precluding an employee from completing a workday can and do happen, and it is not always possible to replace that employee with an Extra Board employee. Metra has and will only make management-directed changes of assignment in emergency cases, as necessary, and will continue to notify the payroll department of a change, as it has done since the old practice was eliminated. But for the reasons stated above, Metra will not adopt the OEIG’s recommendation. To do so would compromise both safety and operations and unnecessarily interfere with providing public transportation, an essential public purpose.

D. Collective Bargaining Agreements

The OEIG Report recommends on page 112 that Metra “[t]ake whatever action it deems necessary to make certain that Metra and its managers fully comply with all terms of the collective bargaining agreements if still employed.” Metra expects its managers and employees to abide by applicable collective bargaining agreements, but contrary to the OEIG’s view, no violation of any applicable contract has occurred and the unions found no fault with Metra’s application of the agreements.

VIII. CONCLUSION

Metra respectfully suggests that the OEIG's report and recommendations are wrought with errors and should not be published. Metra strives to provide safe and reliable service to the public and at no time did Metra's informal practice of swapping, which ended more than two years ago, compromise public safety. No employee worked in excess of the hours of service limitation imposed by federal law. All employees who worked a change of assignment received a daily minimum guarantee and no employees were paid "\$0" for their work. Similarly, Metra employees did not engage in ghost payrolling because neither Metra, nor the public, was defrauded: the work for which Metra paid was performed. As stated above, the swapping practice actually saved taxpayers' dollars.

Metra also did not violate the CBAs because the unions actually supported and participated in the longstanding unwritten swapping practice. Extra Board employees were not necessarily available to perform the work. Metra has also revamped its practices to correct any issues that developed under its former practice. Thus, currently, any change in assignment is manager-directed and limited to emergencies, and payroll records reflect a change. Metra also has taken reasonable and appropriate action to ensure that the hours of service logs are accurate and counseling of employees and further training are scheduled. Internal audit procedures implemented by Metra's Audit Department are also in place. As a result, Metra believes that no further action is required and that this matter be closed.

Respectfully submitted,

NORTHEAST ILLINOIS REGIONAL COMMUTER
RAILROAD CORPORATION AND THE COMMUTER
RAIL DIVISION OF THE REGIONAL TRANSPORTATION
AUTHORITY, d/b/a METRA



By: Sue-Ann Rosen
Sue-Ann Rosen, Their General Counsel