

State of New York  
Offices of the Inspector General



Investigation of the  
New York State Bridge Authority

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Inspector General

## EXECUTIVE SUMMARY

In June 2019, *The Hudson Valley News* reported that Joseph Ruggiero, the former executive director of the New York State Bridge Authority, was being paid by the Bridge Authority as an “advisory” consultant while running for the elected position of Dutchess County Executive.<sup>1</sup> Subsequently, the Inspector General received information that when Ruggiero tendered his resignation in February 2019, he entered into a termination agreement with the Bridge Authority that awarded him paid leave accruals and severance totaling \$92,846.58. However, the information suggested that the severance pay, \$58,600.37 for 720 work hours, was calculated contrary to the terms of Ruggiero’s employment agreement with the Bridge Authority. The Office of the New York State Inspector General commenced this investigation to examine the circumstances surrounding Ruggiero’s resignation, severance package, and alleged receipt of consultant fees from the Bridge Authority while running for public office.

The Inspector General found that the Bridge Authority Board of Commissioners in place during the period covered by this investigation abdicated its fiduciary duties in approving a termination agreement for Ruggiero without sufficient and proper information and consideration in ways that benefitted Ruggiero rather than the best interests of the Bridge Authority, its mission, or the public interest.

The Inspector General also found that Ruggiero’s actions around the period of his resignation from the Bridge Authority were for his own benefit and detrimental to the Bridge Authority and New York State. Ruggiero resigned as executive director of the Bridge Authority but continued on at his same salary and benefits for 18 days as the executive assistant to the new acting executive director but provided no services to the new acting executive director during her transition. This extension of his employment also afforded him new leave accruals—208 hours valued at \$16,929—significantly increasing his final payout from the Bridge Authority. Additionally, this self-serving arrangement allowed Ruggiero to formally begin the process of running for county executive while remaining an employee of the Bridge Authority. Moreover, Ruggiero sought, and the board blindly approved, terms of a lucrative severance package. While

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<sup>1</sup> The investigation found no evidence that Ruggiero campaigned for public office during the period following his February 22, 2019 resignation as Bridge Authority executive director and while employed as executive assistant to the acting executive director until March 12, 2019. Further, the investigation revealed no Bridge Authority payments to Ruggiero after his separation from service apart from this severance package.

Ruggiero commenced his run for Dutchess County Executive, he provided minimal services to the Bridge Authority and New York State.

Ruggiero was appointed as Bridge Authority executive director on March 11, 2010. Subsequently, he entered into a written employment agreement with the Bridge Authority that spanned from March 1, 2017 to March 1, 2018. This employment agreement contained provisions for the payment of the value of his accrued leave and severance monies in the event the Bridge Authority did not renew the agreement or terminated the agreement before the end of its term without entering into a new agreement. The investigation, however, found that the employment agreement expired on March 1, 2018, without being amended or renewed.

The investigation revealed that in or around January 2019, Ruggiero requested that the Bridge Authority's outside general counsel, Carl Whitbeck Jr., draft a termination agreement with Ruggiero's specific terms. Ruggiero sought to resign in February 2019 so he could run for Dutchess County Executive without violating a New York State Public Officers Law provision prohibiting State agency leaders from running for elected office.<sup>2</sup> In early 2019, New York State advanced its local primary election date from September to June.<sup>3</sup> By resigning as executive director on February 21, 2019, and transitioning to executive assistant, Ruggiero complied with this Public Officers Law provision. On February 25, 2019, Ruggiero was endorsed by the Dutchess County Democratic Committee to run for county executive.

The February 21, 2019, termination agreement provided that Ruggiero would resign as executive director effective the following day but continue on at his same salary, \$169,290, and benefits in the position of executive assistant to an acting executive director until March 12, 2019. Ruggiero testified that he sought continuation of his employment until March 12, 2019, because on this date he would pass his employment anniversary date, earn additional leave accruals, and thereby maximize his ultimate payout from the Bridge Authority.

The termination agreement also incorporated the language of his expired 2017-18 employment agreement as if that agreement had remained in effect. In addition, the agreement granted Ruggiero payment for the value of his leave accruals and unspecified severance pay, and

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<sup>2</sup> New York State Public Officers Law, Article 2 § 3-C(2).

<sup>3</sup> New York State Election Law § 8-100(1)(a).

provided him continued health, dental, and vision benefits until December 31, 2019, an additional nine months after his planned separation from service.

Prior to the February 21, 2019 meeting of the Bridge Authority's then board, Ruggiero advised then board Chairman Richard Gerentine and then Commissioner Roger Higgins that he was considering leaving his position at the Bridge Authority to run for Dutchess County Executive in the November 2019 election. The other three commissioners serving at that time, Roderick Dressel, Diane Jablonski, and Henry Stanton, were not so advised by Ruggiero. Additionally, Whitbeck did not discuss or provide records reflecting Ruggiero's termination agreement with any board member prior to the February 21, 2019 board meeting.

At its February 21, 2019 meeting, the then Bridge Authority board, Whitbeck, and Ruggiero entered executive session and for the first time discussed Ruggiero's planned resignation, the extension of his employment as an executive assistant, and, in general terms, his receipt of the value of his accrued leave time and unspecified severance pay. No paperwork was presented at the meeting reflecting calculations of the value of Ruggiero's accrued leave and severance.

In addition, while in executive session, Whitbeck incorrectly advised the board that precedent existed at the Bridge Authority to award an executive director severance pay beyond the value of their accrued leave. Following its return to public session, the board unanimously adopted a resolution approving Ruggiero's termination agreement and thereby granting him accruals and severance pay and extending his employment. In his capacity as secretary to the board, Ruggiero signed the board resolution granting him this monetary benefit, which raises the appearance of impropriety. Ruggiero and Gerentine signed the termination agreement.

Significantly, the termination agreement drafted by Whitbeck did not define how severance pay would be calculated. According to Whitbeck, Ruggiero sought 90 *workdays* (720 hours) of severance, which was valued at \$58,600.37. Whitbeck considered this to be "overreaching," which he told Ruggiero, and that the severance should instead be based on 90 *calendar days* (equivalent to 64 workdays, or 512 hours), which had a value of \$41,671.37. However, Whitbeck did not clarify this detail in the agreement and did not inform the board of the differing interpretations and their monetary ramifications—an additional \$16,929—and Ruggiero was ultimately paid the greater amount. Moreover, according to Whitbeck, Ruggiero's

severance pay was not calculated pursuant to the terms of the agreement, but rather, under the board's "plenary power" to reward Ruggiero for his job performance.

Additionally, Ruggiero negotiated the agreement to include his continued employment for 18 days as executive assistant to the new acting executive director, Tara Sullivan.<sup>4</sup> The stated reason for this continued employment was to foster a transition of leadership to the new acting executive director. This extension allowed Ruggiero to receive his same annual salary and benefits until March 12, 2019, one day after the anniversary of his hiring date, permitting him to earn an additional 208 hours of leave accruals valued at \$16,929.<sup>5</sup>

All five then commissioners and Whitbeck testified that they were unaware of this consequence of the employment extension.

According to Sullivan, despite her several requests, Ruggiero did not make himself available to her during this transition period, during which she observed him present at the Bridge Authority offices for only a few hours on each of two days. Ruggiero testified that Sullivan had no need for any transition training in her new role as acting executive director because she was well versed in the duties and responsibilities of the position having been his deputy for almost nine years and acting in his stead during periods of absence.

Pursuant to the then board's resolution, a payroll authorization, effective March 13, 2019, directed the payment to Ruggiero of the value of his leave accruals and 720 hours of severance pay. This payroll authorization was signed by Chair Gerentine and acting Executive Director Sullivan. In total, the termination agreement provided Ruggiero paid leave accruals and severance totaling \$92,846.58.

Although the Bridge Authority board at the time had the legal authority to grant Ruggiero severance pay, the investigation found substantial deficiencies in the process. Of greatest importance, the Inspector General's investigation found that the then board commissioners abdicated their fiduciary duty under New York State Public Authorities Law to exercise care in

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<sup>4</sup> According to Bridge Authority records, Ruggiero worked eight days of this period and used vacation leave accruals for his absence on four days. Ruggiero testified that he used leave during this period because he was transitioning into a campaign.

<sup>5</sup> Coincidentally, the value of the benefit inured to Ruggiero for both the interpretation of 90 "days" as workdays and the additional leave accruals he earned by way of the extension of his employment was the same - \$16,929.

the management and financial activity of the Bridge Authority's affairs to ensure the board acts in the best interest of the Bridge Authority, its mission, and the public interest.

Specifically, the then board commissioners failed to make informed decisions based on a thorough review of the termination agreement, ensure there was precedent for the same, and be cognizant of the ramifications of Ruggiero's continued employment in a new title and his earning of leave accruals.

Indeed, the then board commissioners each testified to having a different understanding of the authority and reasoning for granting Ruggiero severance pay and if precedent existed for the same. Additionally, all board commissioners voted to approve this resolution without having obtained and reviewed any supporting materials, including any calculations of the value of Ruggiero's accruals, extension of employment, and proposed severance.

Relatedly, the Inspector General also found that Whitbeck failed to properly counsel the then board regarding the agreement. Specifically, he did not define a key term of Ruggiero's termination agreement, advise the board prior to and during executive session of the agreement's provisions and the board's legal authority for granting severance pay, review and properly advise the board on precedent at the Bridge Authority for severance pay awarded to prior executive directors, and consider the financial consequences of granting Ruggiero continuing employment in another title to gain the benefit of additional leave accruals.

Pursuant to legislation passed on April 3, 2020, the terms of the former members of the Bridge Authority board were deemed expired.<sup>6</sup> On July 23, 2020, Governor Andrew M. Cuomo nominated and the New York State Senate confirmed a new board.<sup>7</sup> The legislation also provided the Bridge Authority with the authority to enter into a shared services agreement with the New York State Thruway Authority.

Based on this investigation, the Inspector General recommends that all new board members undergo initial and annual training by the Authorities Budget Office, including

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<sup>6</sup> 2020 N.Y. SB 7506 (Pt. EEE), April 3, 2020. The new budget bill amended New York State Public Authorities Law § 527. The former board members served in holdover status until the new board was confirmed. See, New York State Public Officers Law § 5, which provides that an officer shall hold over and continue to discharge the duties of the office after their term expires and until a successor is chosen and qualified.

<sup>7</sup> The new board includes Commissioners Lou Lanza and Ilan Gilbert of Westchester County, Michael O'Brien of Dutchess County, Joan McDonald of Putnam County, Alexander Berardi of Ulster County, and Maria Bruni and Colin Jarvis of Orange County.

compliance with fiduciary duties and responsibilities, good governance practices, and the recently-enacted Severance Pay Limitation Act, which further defines and limits severance pay. In addition, the Bridge Authority should promulgate policy to provide guidance to commissioners on their fiduciary duties and responsibilities. The Authorities Budget Office should also review annual evaluations of each new board member's performance in accordance with New York Public Officers and Public Authorities Laws.<sup>8</sup> Further, the new board should evaluate the feasibility of seeking the return of a portion of Ruggiero's ultimate payout as voted by the previous board. Additionally, the Inspector General recommends that the Office of the New York State Comptroller review Ruggiero's severance package and payout to determine if any adjustments or reductions are appropriate to his ultimate pension calculation. Lastly, the Inspector General recommends that the board review the services provided by Whitbeck.

## BACKGROUND

### **The New York State Bridge Authority**

The New York State Bridge Authority, created in 1932, has jurisdiction over five vehicular bridges in the Hudson Valley region—Bear Mountain, Newburgh-Beacon, Mid-Hudson, Kingston-Rhinecliff, and Rip Van Winkle bridges—and is responsible for their operations and maintenance.<sup>9</sup> The Bridge Authority is financed by toll revenue and receives no State budget appropriations.

Pursuant to its enabling statute, the Bridge Authority's Board of Commissioners consists of seven members appointed by the governor by and with the advice of the senate.<sup>10</sup> During the period covered by this investigation, two commissioner positions remained vacant. Commissioners, who are unpaid and serve five-year terms, select a chairperson from among their members. The members during the time covered by this investigation included Richard Gerentine (Chair), Roger Higgins (Vice Chair), and commissioners Roderick Dressel, Diane Jablonski, and Henry Stanton.

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<sup>8</sup> New York Public Officers Law §§ 32-34 describes how a public officer may be removed from office and the specific removal procedures; New York Public Authorities Law § 527 details the authority's enabling statute.

<sup>9</sup> The Bridge Authority also has jurisdiction over the Walkway over the Hudson pedestrian bridge between Poughkeepsie and Highland, New York.

<sup>10</sup> New York State Public Authorities Law, Article 3, Title 2, New York State Bridge Authority (§§ 525 – 542).

Ruggiero was appointed as the executive director of the Bridge Authority on March 11, 2010. On February 22, 2019, pursuant to a termination agreement, Ruggiero voluntarily resigned his position as executive director. He continued working at the Bridge Authority as the executive assistant to the acting executive director until March 12, 2019.<sup>11</sup>

Carl Whitbeck Jr., of the law firm Whitbeck Benedict & Smith, LLP, of Hudson, New York, is the outside general counsel for the Bridge Authority. Whitbeck has been the general counsel to the Bridge Authority for approximately 27 years.

### **Laws and Guidance For New York State Public Authority Boards**

New York State Public Authorities Law defines the roles and responsibilities of public authority board members.<sup>12</sup> The law requires board members to “execute direct oversight of the authority’s chief executive” and “understand, review and monitor the implementation of fundamental financial and management controls and operational decisions of the authority.” The law also requires that board members:

- Perform each of their duties . . . in good faith and with that degree of diligence, care and skill which an ordinary prudent person in like position would use under similar circumstances, and . . . ultimately apply independent judgment in the best interest of the authority, its mission and the public.
- Execute an acknowledgment . . . in which the board member acknowledges that he or she understands his or her role, and fiduciary responsibilities . . . and acknowledges that he or she understands his or her duty of loyalty and care to the organization and commitment to the authority’s mission and the public interest.
- Participate in state-approved training regarding their legal, fiduciary, financial and ethical responsibilities as directors of an authority within one year of appointment to a board . . . [and] continuing training as may be required to remain informed of best practices, regulatory and statutory changes relating to the effective oversight of the management and financial activities of public authorities and to adhere to the highest standards of responsible governance.

The New York State Authorities Budget Office, which was established to “make public authorities more transparent and accountable, and to act in the public interest consistent with

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<sup>11</sup> On February 20, 2020, Ruggiero was appointed as an assistant deputy comptroller with the Office of the New York State Comptroller at a salary of \$130,000.

<sup>12</sup> New York State Public Authorities Law, Article 9, Title 2, Boards of Public Authorities (§§ 2824 - 2828).



their intended purpose,” analyzes information on and conducts reviews of the operations, practices, and finances of authorities; provides guidance, best practices, and training; and investigates complaints.<sup>13</sup> The Authorities Budget Office also issues an Acknowledgement of Fiduciary Duties and Responsibilities that all board members of public authorities must execute upon their appointment as part of their duties and responsibilities pursuant to Public Authorities Law.

The Bridge Authority Employee Handbook provides guidance to the authority’s employees and board commissioners on its policies, procedures, and benefits. However, it contains no specific guidance for commissioners relative to their fiduciary duties and responsibilities as board members or the requirements of their training.

## INVESTIGATION

Joseph Ruggiero was appointed by the Bridge Authority board as its executive director on March 11, 2010 and served for almost five years as an at-will employee. In January 2015, bills were introduced in the New York State Senate and Assembly seeking to direct the New York State Thruway Authority and Bridge Authority to jointly study a possible merger of the two entities.<sup>14</sup> According to Carl Whitbeck Jr., outside general counsel to the Bridge Authority, it was at this time that Ruggiero initially sought an employment contract with the Bridge Authority.

On March 1, 2015 and again on March 1, 2017, the Bridge Authority entered into one-year employment agreements with Ruggiero to “assure [Ruggiero] of continued employment for at least one year to prevent him from seeking other employment.” The two agreements largely mirrored each other but for the dates of the one-year terms and Ruggiero’s compensation. The terms and conditions of his employment were described in these agreements, which were to be reevaluated annually and considered for renewal. These were Ruggiero’s only employment agreements during his tenure at the Bridge Authority.

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<sup>13</sup> [https://www.abo.ny.gov/abo/about\\_mission.html](https://www.abo.ny.gov/abo/about_mission.html)

<sup>14</sup> S. 2340, A. 4197, 2015-2016 Leg. Sess. (N.Y. 2015). Subsequent versions were introduced in the 2017-2018 and 2019-2020 legislative sessions. All remained in committee. See, Cuomo's Plan to merge Bridge Authority, Thruway defeated, *Times Herald-Record*, July 17, 2020, <https://www.recordonline.com/story/news/2020/04/01/cuomos-plan-to-merge-bridge-authority-thruway-defeated/111842908/>

In pertinent part, Ruggiero's 2017 employment agreement contained two provisions that addressed severance. It read:

Term . . . In the event that the *Employer decides not to renew this Agreement*, notice of such determination shall be given in writing to the Employee not later than ninety (90) days prior to the expiration date of this Agreement. If notice of such determination is given within the ninety (90) day period, Employee's employment shall terminate ninety (90) days from the date of the notice of termination of this Agreement during which time Employee shall continue to be entitled to receive all compensation and benefits provided under this Agreement. Employee shall be entitled to ninety (90) days severance pay in accordance with Article 3 after the expiration of the notice period.

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Termination of Agreement. In the event that *this Agreement is terminated*, other than by a new express written agreement of the parties, prior to or as of March 1, 2018, the Employee shall be paid all accruals, including sick time, personal time, holiday time and vacation time, subject to verification of employment records. The Employer shall continue Employee's health, dental and vision coverage through August 1, 2018. Notwithstanding any issues to the contrary, the employee shall continue to be paid his compensation for not less than the balance of the one year term of employment under this Agreement.<sup>15</sup> (Emphasis added.)

Whitbeck, who drafted both employment agreements, stated that neither agreement addressed Ruggiero's voluntary separation from the Bridge Authority.

In or around January 2019, Ruggiero requested that Whitbeck draft a termination agreement so that Ruggiero could resign from the Bridge Authority and campaign for the elected office of Dutchess County Executive. According to Whitbeck, Ruggiero advised that he had earlier discussed his pending resignation with the board members.

Whitbeck testified that he drafted this termination agreement under terms set by Ruggiero. Although Ruggiero's 2017 – 2018 employment agreement had lapsed after March 1, 2018, the terms of the employment agreement were incorporated by reference in the termination agreement and remained in effect through March 1, 2019. In this agreement, dated February 21, 2019, Ruggiero was to resign as executive director effective February 22, 2019, and continue on at his same salary and benefits as the executive assistant to an acting executive director through March 12, 2019. According to Ruggiero, he chose March 12, 2019 as his final day because on

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<sup>15</sup> The language of the 2015 – 2016 employment agreement mirrored that of the 2017 - 2018 employment agreement but for the dates of the one-year term.

this date, which was one day after the anniversary date of his hiring, he would earn additional leave accruals and maximize his ultimate payout from the Bridge Authority. The termination agreement granted Ruggiero payment for all leave accruals and unspecified severance pay, and continued his health, dental, and vision benefits until December 31, 2019.

Prior to the February 21, 2019 meeting of the Bridge Authority board, Ruggiero advised Chairman Richard Gerentine and Commissioner Roger Higgins that he was considering leaving his position at the Bridge Authority to run for Dutchess County Executive in the November 2019 election. The other three commissioners, Roderick Dressel, Diane Jablonski, and Henry Stanton testified they had not been so advised by Ruggiero. In addition, Whitbeck testified that he did not discuss or provide records reflecting Ruggiero's pending resignation, employment extension, or severance package with any board member prior to the February 21, 2019 board meeting.

At its February 21, 2019 meeting, the Bridge Authority board entered executive session and for the first time discussed Ruggiero's planned resignation, employment extension, and, in general terms, his receipt of the value of his accrued leave time and unspecified severance pay. Whitbeck and Ruggiero were present with the five board members in executive session. Following its return to public session, the board unanimously adopted a resolution approving Ruggiero's termination agreement and thereby granting him accruals and severance pay and extended his employment for a brief period. In his capacity as secretary to the board, Ruggiero signed the board resolution granting him this monetary benefit, which raises the appearance of impropriety. The termination agreement provided Ruggiero the value of his leave accruals and 720 hours of severance pay, totaling \$92,846.58.

A payroll authorization, effective March 13, 2019, was signed by Chair Gerentine and acting Executive Director Sullivan and directed the payment to Ruggiero. Sullivan testified that she found the awarding of severance pay to Ruggiero under these circumstances "unethical," but she had been assured by Chair Gerentine that it was provided for in Ruggiero's contract and the Bridge Authority was "obligated" to pay it, so she reluctantly signed the authorization.

Pursuant to his termination agreement, Ruggiero was to continue employment at the Bridge Authority as executive assistant to acting Executive Director Sullivan through March 12, 2019. During this 12-workday period, Ruggiero used leave accruals for absences on four days.

Sullivan, formerly the deputy executive director at the Bridge Authority for almost nine years, testified to the Inspector General that although she requested several times of Ruggiero to make himself available to her during this transition period, he failed to respond to her requests. Indeed, Sullivan testified that she observed him present at the Bridge Authority offices for only a few hours on each of two workdays and “he didn’t help with the transition . . . nothing.” Ruggiero testified to the Inspector General that as Sullivan had acted as his deputy for many years and assumed his responsibilities during periods when he was absent, she was well versed in the executive director’s responsibilities and no transitional guidance was necessary.

THE BRIDGE AUTHORITY BOARD MEMBERS FAILED TO UPHOLD THEIR FIDUCIARY DUTIES BY FAILING TO SEEK SUFFICIENT GUIDANCE OR CONDUCT AN INFORMED REVIEW OF THE SEVERANCE PACKAGE THEY APPROVED FOR RUGGIERO

**The Bridge Authority Board Failed to Uphold Its Fiduciary Responsibilities**

The Inspector General found that the Bridge Authority board failed to uphold its fiduciary responsibilities and neglected to exercise care in the management of the Bridge Authority’s affairs. Specifically, the board commissioners failed to thoroughly examine the termination agreement and supporting documentation, ensure there was precedent for the severance package awarded, and request to be briefed on the ramifications of Ruggiero’s continued employment in a new title and his earning of leave accruals.

Pursuant to New York State Public Authorities Law and guidance provided by the Authorities Budget Office that defines the duties and responsibilities of public authority board members, board members must perform their duties “in good faith and with that degree of diligence, care and skill which an ordinary prudent person in like position would use under similar circumstances.” In furtherance of that legal requirement, the Authorities Budget Office issues an Acknowledgement of Fiduciary Duties and Responsibilities that all board members of public authorities must execute upon their appointment. Each of the Bridge Authority board members signed such an acknowledgement.

As relevant to this investigation, the acknowledgements require that board members “participate in training sessions . . . and engage fully in the board’s and committee’s decision-making process.” According to Public Authorities Law, board members are required to participate in this training within one year of their appointment and engage in “continuing

training as may be required to remain informed of best practices, regulatory and statutory changes relating to the effective oversight of the management and financial activities of public authorities and to adhere to the highest standards of responsible governance.”<sup>16</sup> However, in response to a request by the Inspector General for all records reflecting initial and continuing training of the board members, the Bridge Authority provided only three training certificates—one each for Gerentine (2008), Jablonski (2016), and Stanton (2016)—who each attended Public Authorities Board Member Training.

The investigation found that the former board commissioners failed to make informed decisions based on a thorough review of the termination agreement and supporting documentation. Despite having little to no forewarning of Ruggiero’s planned resignation and requests for a severance package and extension of his employment in a new title, and having been provided no calculations of the value of Ruggiero’s severance package or the details of severance packages granted to prior Bridge Authority executive directors, the former board nonetheless discussed the matter in executive and public sessions and voted to adopt a resolution awarding the same in under 40 minutes. At no time did any commissioner introduce a resolution and vote to adjourn that agenda item until the next meeting in order to properly research the matter or confirm that Ruggiero and Whitbeck had provided complete information.

In fact, only Gerentine and Higgins testified that Ruggiero had spoken to them before the board meeting of his intention to run for public office. Commissioners Dressel and Jablonski testified that they had not been contacted by Ruggiero about his retirement or severance package before the meeting, and Stanton testified he was “surprised” to learn of it at the board meeting. Whitbeck also provided no information to the board about the matter prior to the board meeting. Ruggiero testified to the contrary: he claimed that he advised the board members during a conference call a few days prior to the February 21, 2019 board meeting that he was resigning.

At its February 21, 2019 meeting, the then board allowed Ruggiero to attend the executive session at which the terms of his severance package would be discussed.<sup>17</sup> Although

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<sup>16</sup> Public Authorities Law, Article 9, Title 2, § 2824(2).

<sup>17</sup> Whitbeck contends that the board did not enter executive session to discuss this matter but rather an “attorney-client” session. New York State’s Open Meetings Law generally requires that all meetings of public bodies be open to the public and that closed “executive” sessions may only be held pursuant to a specific statutory exemption. One such exemption is to discuss “matters leading to the appointment, employment, promotion, demotion, discipline,

New York State Open Meetings Law states, “Attendance at an executive session shall be permitted to any member of the public body and any other persons authorized by the public body,” the Inspector General questions whether the board’s decision to allow Ruggiero to attend executive session had a chilling effect on its deliberative process.<sup>18</sup> One purpose of executive session is to allow board members to confer candidly with fellow board members, which might have been stymied here given Ruggiero’s presence.

The investigation also found that there was no clear understanding by the former commissioners of what basis or legal authority, if any, the board relied upon in approving the terms of this agreement and the issuance of severance pay. Each of the former commissioners testified differently to the Inspector General about their understanding of their authority and reasoning for granting it. Higgins stated that he did not recall if Ruggiero’s severance pay had been contractually required. Jablonski testified that she was uncertain if it had been contractually required or a discretionary action of the board. According to Gerentine and Stanton, Ruggiero’s severance pay was included in his termination agreement. And Dressel testified that the board had not been contractually bound to grant Ruggiero severance pay but had done so because of his job performance. Notably, Whitbeck testified to the Inspector General that the severance payment was awarded outside of the terms of Ruggiero’s employment agreement as a discretionary act of the board pursuant to its plenary power.

Additionally, the investigation found that the former board failed to obtain essential information necessary to make an informed decision that was in the best interest of the Bridge Authority and the public interest, as required by law. The commissioners did not receive, request, or review any prior severance packages granted to Bridge Authority executive directors or calculations of Ruggiero’s leave accruals or severance pay. According to Gerentine, he did not recall any relevant paperwork being presented at the meeting and did not know the total accruals due Ruggiero. Jablonski testified she did not know the amount of Ruggiero’s severance. Ruggiero testified otherwise, claiming that Gerentine advised the commissioners at the February 21, 2019, board meeting of the total amount of his severance package.

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suspension, dismissal or removal of a particular person . . .” The law does not have an exemption for “attorney-client” matters.

<sup>18</sup> New York State Open Meetings Law § 105(2).

No commissioner questioned whether the “ninety (90) days severance pay” referenced in the termination agreement meant working or calendar days – a difference of \$16,929. No commissioner reviewed prior severance packages and instead relied upon Whitbeck’s general statement—which was incorrect—that there was precedent for such severance packages. Even Commissioner Dressel inaccurately testified to his belief that prior Bridge Authority executive directors had received similar severance packages. Lastly, none considered the implications of approving Ruggiero’s extension of employment for several weeks, which resulted in his receiving an additional \$16,929 in the value of newly-earned leave accruals.

### **Outside General Counsel Carl Whitbeck Did Not Provide the Board Sufficient Guidance**

The Inspector General’s investigation found that Whitbeck did not define a key term of Ruggiero’s termination agreement, advise the board prior to and during executive session of the agreement’s provisions and the board’s legal authority for granting severance pay, review and properly advise on precedent at the Bridge Authority for severance pay awarded to prior executive directors, and consider the financial consequences of granting Ruggiero continuing employment in another title to gain the benefit of additional leave accruals.

In or around January 2019, Ruggiero requested that Whitbeck draft a termination agreement providing to him the value of his accrued leave time, an extension of his employment under a new title, and severance monies. According to Whitbeck, Ruggiero advised that he had earlier discussed his pending resignation with the board members. Whitbeck, however, did not confirm whether Ruggiero had advised the entire board of his impending resignation and desire for a severance package—he had not—or that the terms set by Ruggiero were those contemplated by the board.

The February 21, 2019 termination agreement incorporated by reference Ruggiero’s lapsed 2017 – 2018 employment agreement. According to the terms of the termination agreement, Ruggiero would resign as executive director effective February 22, 2019, and continue on at his same salary and benefits as the executive assistant to the acting executive director through March 12, 2019. The agreement granted Ruggiero payment for the value of his leave accruals and unspecified severance pay, and continued his health, dental, and vision

benefits until December 31, 2019.<sup>19</sup> The termination agreement provided that the terms of the employment agreement “remained in effect as if were extended through March 1, 2019.”<sup>20</sup>

The incorporated employment agreement contained only two provisions that addressed the calculation of severance. One provided “ninety (90) days severance pay” if the Bridge Authority terminated Ruggiero’s employment, while the other provided Ruggiero compensation equal to the balance of his contract if the employment agreement was “terminated” before the end of his term “other than by a new express written agreement of the parties.” Neither was applicable here—the Bridge Authority had not terminated Ruggiero and the parties had entered into a new express written agreement. Instead, Whitbeck testified, the board was authorized to grant Ruggiero the value of his leave accruals and \$58,600.37 in severance pay pursuant to its “plenary power” and outside of any terms found in the incorporated employment agreement.

Moreover, by Whitbeck not defining “days” as calendar days, as he recommended to Ruggiero, the termination agreement did not specifically detail how Ruggiero’s severance pay would be calculated. Specifically, according to Whitbeck, Ruggiero sought 90 workdays (720 hours) of severance, which totaled \$58,600.37. Whitbeck testified that he told Ruggiero that this manner of calculation was “overreaching” and that the terms of the agreement might be subject to public disclosure. Therefore, he advised Ruggiero that his severance should be the equivalent of 90 calendar days (64 workdays, or 512 hours), which came to \$41,671.37. However, Whitbeck did not clarify this detail of Ruggiero’s severance in the termination agreement. Additionally, Whitbeck did not inform the board before or during the board meeting of the differing interpretations and their monetary ramifications—a \$16,929 difference that inured to Ruggiero’s benefit.

The investigation also found that Whitbeck did not consider and/or inform the former board of the consequences of the extension of Ruggiero’s employment at the Bridge Authority as the executive assistant to the new acting executive director at his same salary and benefits until March 12, 2019. This extension allowed Ruggiero to remain employed until one day after the anniversary of his hiring date, at which time he received additional personal, vacation, and sick

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<sup>19</sup> For the period March 13 through August 31, 2019, Ruggiero paid the employee’s share of these benefits, and for September 1 through December 31, 2019, Ruggiero paid both the employee and employer share.

<sup>20</sup> Although Ruggiero began employment with the Bridge Authority on March 11, 2010, his two employment agreements during his tenure, the 2015-2016 and 2017-2018 employment agreements, each spanned a one-year period starting on March 1.



leave accruals totaling 208 hours, which had a value of \$16,929.<sup>21</sup> All five commissioners testified to the Inspector General that they were unaware at the time of this consequence of the employment extension. Whitbeck also claimed to be unaware that the extension would trigger Ruggiero's earning of annual leave accruals.<sup>22</sup> To the contrary, Ruggiero testified that the commissioners were aware of his hiring anniversary date and therefore aware that his employment extension would allow him to earn new leave accruals.

Whitbeck also misadvised the board during executive session and/or public session that the Bridge Authority's former executive directors had similarly received severance pay beyond the value of their leave accruals. Chair Gerentine and Commissioners Jablonski testified to the Inspector General that Whitbeck stated that Ruggiero's severance package was consistent with that provided to previous Bridge Authority executive directors. Commissioner Higgins testified that Whitbeck had advised that Ruggiero's severance package was less than former Bridge Authority Executive Director George Sinnott's, who served fewer years than Ruggiero. This was incorrect—Sinnott received only the value of his leave accruals and no other severance monies upon his resignation.<sup>23</sup> Additionally, Commissioner Stanton, himself a former executive director of the Bridge Authority, testified that upon his resignation from that position, he was never offered any severance package and even had to negotiate to receive the value of his leave accruals. Ruggiero, in testimony to the Inspector General, also wrongly claimed that his severance package was similar to severance packages awarded to his predecessors; it was not.

The investigation further found that Whitbeck drafted the termination agreements for both Sinnott and Ruggiero. Therefore, he should have been aware that Sinnott's termination agreement did not provide for additional severance monies. Although the two agreements were substantially similar – both authorized extensions of employment; continued health, vision, and

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<sup>21</sup> Ruggiero received annual leave accruals starting on his first day at the Bridge Authority. In an August 19, 2010, Bridge Authority board resolution, Ruggiero was granted 160 hours of annual vacation leave accruals retroactive to his first day of employment at the Bridge Authority. In addition, Ruggiero's 103 hours of leave accruals from his former employment at the Office of the New York State Comptroller carried over to the Bridge Authority.

<sup>22</sup> That Ruggiero would pass the anniversary date of his hiring—the date when he would earn additional annual leave accruals—was evident by the first section of the termination agreement drafted by Whitbeck. It read, "The employee has been employed by the Employer since March 11, 2010."

<sup>23</sup> According to Bridge Authority records, Sinnott was its executive director from on or around April 20, 2004 to March 11, 2010. He then served as executive assistant to Ruggiero until April 21, 2010. Upon his retirement from the Bridge Authority, Sinnott received the value of 251.50 hours of sick leave accruals and 324 hours of vacation leave accruals, which totaled \$49,389.41.

dental care benefits; and the payout of the value of leave accruals – they differed as to severance. Sinnott’s termination agreement read, “Employee shall be paid all accruals on termination, including sick time, personal time, holiday time and vacation time,” while Ruggiero’s stated, “As provided in past agreements, the Employee shall be paid all accruals, including sick time, personal time, holiday time, vacation time, *and severance pay . . .*” (Emphasis added.)

Once calculated, the termination agreement would provide Ruggiero paid leave accruals and severance totaling \$92,846.58, whereas Sinnott received no severance but only the value of his leave accruals.

### NEW SEVERANCE PAY LIMITATION ACT

Following reports of abuse in the granting of severance packages to public employees<sup>24</sup>, on December 6, 2019, Governor Andrew M. Cuomo signed into law the Severance Pay Limitation Act, which requires that severance pay provided to at-will employees at public authorities “not exceed an amount equivalent to their prior three months’ salary.”<sup>25</sup> The granting of the value of 90 *working* days of severance pay to Ruggiero would have been prohibited under this new law, and would have saved New York State \$16,929.

### FINDINGS AND RECOMMENDATIONS

The Inspector General found that in March 2019, Joseph Ruggiero, the former executive director of the Bridge Authority, received \$92,846.58 from the Bridge Authority Board of Commissioners upon his voluntary resignation. This total included the value of his leave accruals as well as \$58,600.37 in severance pay. The investigation found that although the Bridge Authority board in place during this investigation was not prohibited from granting Ruggiero severance pay under its powers, it had done so pursuant to an unspecific termination agreement, which had been drafted by General Counsel Carl Whitbeck, and after receiving insufficient guidance from Whitbeck.

The investigation also found that Ruggiero outlined the terms he desired in his termination agreement and Whitbeck included those terms in the agreement despite advising Ruggiero that his severance request was “overreaching.”

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<sup>24</sup> See, Earl Jann fired as executive director of Erie County Water Authority, *The Buffalo News*, June 14, 2018, <https://buffalonews.com/2018/06/14/earl-jann-fired-as-executive-director-of-erie-county-water-authority/>

<sup>25</sup> The Severance Pay Limitation Act, New York State Public Authorities Law § 2854.

The Inspector General further found that Ruggiero's actions around the period of his resignation from the Bridge Authority were self-serving and detrimental to the Bridge Authority and New York State. His extension of employment was granted by the then board so that he could provide services to the new acting executive director during her transition, yet he admitted there was no necessity for these services and, in fact, failed to provide any. Moreover, the investigation found that the Ruggiero sought continuation of his employment until March 12, 2019, because on this date he would pass his employment anniversary date, earn additional leave accruals, and thereby maximize his ultimate payout from the Bridge Authority. Ruggiero also sought, and the board blindly approved, terms of a lucrative severance package.

The investigation further found that the former board failed to properly execute its fiduciary duties, which include exercising care in the management of the Bridge Authority's affairs and making informed decisions based on a thorough review of matters. The former board's apparent confusion over the underlying reasons for approving Ruggiero's severance payout demonstrates a troubling lack of understanding when approving an expenditure. Dispensing public funds should be a deliberative process with due consideration given to every dollar spent. The board should have investigated all facts and figures regarding the severance payout before voting on the issue or adjourned the issue to obtain supplemental information.

As noted earlier, on July 23, 2020, Governor Cuomo appointed a new Board of Commissioners for the Bridge Authority. The Inspector General recommends that all new board members undergo initial and annual training by the Authorities Budget Office. This training should encompass issues common to all New York State public authorities as well as the issues raised by this investigation, namely, compliance with fiduciary duties and responsibilities, good governance practices, and the Severance Pay Limitation Act. The Authorities Budget Office should also review annual evaluations prepared by the Bridge Authority, detailing each new member's performance in accordance with the Bridge Authority's enabling statute, fiduciary acknowledgment signed by the member, and any applicable laws, guidance and policy. In addition, the Bridge Authority should promulgate policy to provide guidance to commissioners on their fiduciary duties and responsibilities. Further, the new board should evaluate the feasibility of seeking the return of a portion of Ruggiero's ultimate payout as voted by the previous board. Additionally, the Inspector General recommends that the Office of the New York State Comptroller review Ruggiero's severance package and payout to determine if any

adjustments or reductions are appropriate to his ultimate pension calculation. Lastly, the Inspector General recommends that the incoming board review the services provided by Whitbeck.