

CUYAHOGA COUNTY
AGENCY OF INSPECTOR GENERAL

REPORT OF INVESTIGATION

CASE NUMBER: INVEST-000401

SUBJECT(S) INFO:

Name: James Gallagher
Position: Senior Clerk
Department: Fiscal Office

SOURCE OF REFERRAL: Executive Office

METHOD OF REFERRAL: Direct Phone Call

INITIATED: February 27, 2012

DATE OF REPORT: May 25, 2012

ALLEGATIONS

James Gallagher ("Gallagher") obtained his position with Cuyahoga County and a series of subsequent pay raises by helping former Cuyahoga County Frank Russo ("Russo") improperly influence elections for Cuyahoga County office.

AUTHORITY

Cuyahoga County Agency of Inspector General Ordinance Section 2(c):

The Inspector General is hereby appointed to conduct examinations under Section 2.05 of the County Charter and shall, therefore, have all such rights and duties to investigate fraud, corruption, waste, abuse, misfeasance, malfeasance, and nonfeasance without interference or pressure from any other Public Official or Employee.

COMPLAINT SUMMARY

The Cuyahoga County Agency of Inspector General ("AIG") received a complaint regarding the employment of Gallagher, an employee of the Cuyahoga County Fiscal Office ("Fiscal Office"). The complainant cited an article¹ published in the Cleveland Plain Dealer ("Plain Dealer") regarding an allegation that Gallagher received his County position and a series of subsequent raises after helping Russo improperly influence the 1996 Democratic primary for Cuyahoga County Recorder and the 1998 Democratic

¹ Attached as **Exhibit A**.

primary for Cuyahoga County Auditor. The article alleges that Gallagher influenced the elections for Russo by filing as a candidate for both Democratic primary elections and withdrawing before voting occurred. The article drew comparisons to a similar scheme involving former County employee Joe Gallucci ("Gallucci") in the election for Cuyahoga County Auditor in 2006. Russo and Gallucci have pleaded guilty to Federal criminal charges relating to this scheme.

BACKGROUND

Frank Russo

Russo was initially elected to the position of Cuyahoga County Recorder in 1984. On or about January 9, 1997, Russo was appointed by the Cuyahoga County Democratic Party Central Committee to fill the vacancy in the position of Cuyahoga County Auditor.² Russo subsequently was elected to the position of Cuyahoga County Auditor in November 1998.

Russo was successfully re-elected to the position of Cuyahoga County Auditor in 2002 and 2006. Russo resigned his position as Cuyahoga County Auditor on September 9, 2010 and subsequently pled guilty to twenty-one (21) Federal public corruption-related criminal charges.

James Gallagher

According to Cuyahoga County payroll records³, Gallagher began his employment with the former Cuyahoga County Recorder's Office ("Recorder's Office") during the fourth pay period⁴ of 1997 at the wage rate of approximately \$17.95/hour (\$32,661.20/year). Gallagher had previously worked for the United Brotherhood of Carpenters since 1976.⁵ During the second pay period of 1998 Gallagher received a three percent (3%) pay increase to approximately \$18.48/hour (\$33,641.14/year). Gallagher resigned from his position with the Recorder's Office on May 28, 1998.⁶

On June 1, 1998, Gallagher was hired by Russo in his new capacity as Cuyahoga County Auditor. County payroll records indicate that Gallagher began his employment with the former Cuyahoga County Auditor's Office ("Auditor's Office") at the same wage rate that he was receiving when he departed the Recorder's Office. During the ninth pay period in 1999, though, Gallagher received an eleven percent (11%) pay increase to approximately \$20.50/hour (\$37,313.90/year). Gallagher subsequently received the following pay increases over the course of the next nine (9) years:

- Five percent (5%) increase to approximately \$21.46/hour (\$39,060.06/year) during the eighth pay period of 2000.

² See Exhibit B.

³ Gallagher's payroll history from 1997 to 2011 attached as Exhibit C.

⁴ Cuyahoga County payroll is calculated based on a bi-weekly pay period. Therefore, the fourth pay period approximately encompasses the seventh and eighth calendar weeks of the year.

⁵ See Exhibit D.

⁶ See Exhibit E.

- Six percent (6%) increase to approximately \$22.84/hour (\$41,559.96/year) during the twenty-fourth pay period of 2000.⁷
- Two percent (2%) increase to approximately \$23.29/hour (\$42,391.18/year) during the fourteenth pay period of 2001.
- Five percent (5%) increase to approximately \$24.39/hour (\$44,391.01/year) during the twenty-sixth pay period of 2001.
- Seven percent (7%) increase to approximately \$26.04/hour (\$47,391.24/year) during the nineteenth pay period of 2002.⁸
- Five percent (5%) increase to approximately \$27.35/hour (\$49,775.96/year) during the sixth pay period of 2004.⁹
- Four percent (4%) increase to approximately \$28.46/hour (\$51,791.74/year) during the eighth pay period of 2005.¹⁰
- Three percent (3%) increase to approximately \$29.31/hour (\$53,345.50/year) during the eighth pay period of 2006.
- Three percent (3%) increase to approximately \$30.19/hour (\$54,945.80/year) during the tenth pay period of 2007.

Gallagher received a performance evaluation¹¹ in 1999 that rated his performance as "very good". A subsequent performance evaluation¹² in 2005, however, rated his performance as either "good" or "below average". Gallagher received a written reprimand¹³ on September 23, 2010 for accruing 13.5 hours of absence without leave ("AWOL") time. Gallagher received a three (3) day suspension¹⁴ in July 2007 for accruing an additional 13.25 hours of AWOL time.

On February 26, 2012, Gallagher's wage rate was decreased to approximately \$16.34/hour (\$33,987.20/year) as a result of a job study conducted by an independent consultant on behalf of the Cuyahoga County Human Resources Department.¹⁵

⁷ See Memorandum from Daniel W. Weaver dated November 8, 2000, attached as **Exhibit F**.

⁸ See Memorandum from Joel F. Sacco dated August 26, 2002, attached as **Exhibit G**.

⁹ See Memorandum from Joel F. Sacco dated February 23, 2004, attached as **Exhibit H**.

¹⁰ See Memorandum from Joel F. Sacco dated February 7, 2005, attached as **Exhibit I**.

¹¹ **Exhibit J**.

¹² **Exhibit K**.

¹³ **Exhibit L**.

¹⁴ **Exhibit M**.

¹⁵ See letter from Elise Hara dated February 8, 2012, attached as **Exhibit N**.

INVESTIGATIVE SUMMARY

1996 Cuyahoga County Recorder Election

A Plain Dealer article¹⁶ from January 20, 1996 indicates that the following individuals had filed to appear on the 1996 primary election ballot as candidates for the position of Cuyahoga County Recorder:

- Thomas E. Gallagher (D);
- James Gallagher (D);
- Frank Russo (D);
- Carl LoPresti (R); and
- Susan M. Lawko (R).

A Plain Dealer article¹⁷ from March 20, 1996 indicates that Russo and Lawko were nominated without opposition in the 1996 primary election for the position of Cuyahoga County Recorder. In light of this, it is apparent that Thomas E. Gallagher, James Gallagher and Carl LoPresti each either withdrew his candidacy or was removed from the ballot by the Cuyahoga County Board of Elections ("Board of Elections") prior to the primary election.

1998 Cuyahoga County Auditor Election

A Plain Dealer article¹⁸ from February 20, 1998 indicates that the following individuals had filed to appear on the 1998 primary election ballot as candidates for the position of Cuyahoga County Auditor:

- Frank Russo (D);
- James Gallagher (D); and
- Mike Wise (R).

The minutes¹⁹ from the March 16, 1998 Board of Elections meeting, however, note that candidate James Gallagher withdrew from the May 5, 1998 primary election.²⁰ A Plain Dealer article²¹ from May 6, 1998 indicates that Russo and Mike Wise were nominated without opposition.

¹⁶ Exhibit O.

¹⁷ Exhibit P.

¹⁸ Exhibit Q.

¹⁹ Exhibit R.

²⁰ See Exhibit R at page 8.

²¹ Exhibit S.

2006 Cuyahoga County Auditor Election (Joe Gallucci Sham Candidacy)

As previously noted, Russo and Gallucci both pled guilty to Federal conspiracy charges relating to a sham candidacy scheme that mirrors the type of scheme that is alleged to have occurred between Russo and Gallagher in 1996 and 1998.

According to Federal prosecutors, Gallucci approached an associate of Russo, J. Kevin Kelley ("Kelley")²², about obtaining a job with health benefits in exchange for giving cash or valuables to Russo. Kelley, however, approached Russo with a scheme involving using Gallucci as a sham Republican candidate to wage an ineffectual challenge to Russo in the 2006 race for Cuyahoga County Auditor.

Based on his conversation with Russo, Kelley approached Gallucci and encouraged him to enter the Auditor's race as a Republican and to withdraw after the deadline for the Republican Party to get another candidate. Gallucci subsequently entered the race and did not actively campaign and spent only a small amount of money. He withdrew in October, a month before the election. In late-November 2006, Gallucci received a position in the Auditor's Office at an annual salary of \$67,849.

Interviews

James Gallagher – April 20, 2012

Upon arriving at the interview, Gallagher informed AIG Investigator Mark Cutright ("Cutright") and AIG Paralegal Rebecca Keck ("Keck") that he would not participate in the interview and that he wanted to speak with his attorney. Cutright and Keck terminated the interview upon receiving this response from Gallagher.

James Gallagher – May 18, 2012

Upon arriving at the interview, Cutright presented Gallagher with an AIG Compelled Statement / Garrity Warning form²³ ("Garrity Form") for his review. Gallagher reviewed the Garrity Form and signed the document to certify that he read and understood the notifications contained in the document. Gallagher then stated that he was again declining to participate in the interview based on "the advice of legal counsel." Cutright then reminded Gallagher that his failure to participate could result in disciplinary action, up to and including termination of employment. Gallagher responded by asking Cutright whether the County Executive, Edward FitzGerald ("FitzGerald"), would make the ultimate disciplinary decision. Cutright confirmed that FitzGerald would make the final disciplinary decision. Gallagher then reaffirmed his position that he would not proceed with the interview.

²² Kelley pled to eleven Federal charges relating to bribery, conspiracy and tax charges.

²³ **Exhibit T.** The Garrity Form informs the recipient of the AIG's authority to compel the attendance of witnesses and warns that failure to submit to a witness interview will result in a referral to the County Executive for disciplinary action, up to and including removal from employment. The Garrity Form then provides information relating to the employee's rights as a compelled witness, including the right to union representation and the Constitutional right to avoid making self-incriminating statements ("Garrity Rights"). In *Garrity v. New Jersey* (1967), 385 U.S. 493, the United States Supreme Court held that a compelled statement (under threat of termination of employment) made by a public employee to a public employer in furtherance of an employment-related investigation cannot be used against the public employee in any subsequent criminal prosecution. In addition, any information obtained as a result of this compelled

Analysis

The alleged scheme involved Gallagher entering primary elections against Russo to either dilute the votes between candidates with similar surnames (i.e., having two candidates named "Gallagher" in a race) or to deter other potential candidates from filing for the primary. In exchange for running this sham campaign, Gallagher was allegedly provided a position with the County and significant unwarranted pay increases.

In light of this alleged scheme, it is beneficial to examine the above-cited evidence in a time-line format:

- | | |
|--------------------------|--|
| January 20, 1996 | Plain Dealer article identifies Thomas Gallagher (R), James Gallagher (D), Frank Russo (D), Carl LoPresti (R) and Susan M. Lawko (R) as having filed for the 1996 Cuyahoga County Recorder's primary election. |
| March 20, 1996 | Plain Dealer article states that Frank Russo (D) and Susan M. Lawko (R) were both nominated for the 1996 Cuyahoga County Recorder's election without opposition. |
| February 1997 | Payroll records indicate that Gallagher began employment with the Recorder's Office at a wage rate of approximately \$17.95/hour (\$32,661.20/year) during the second pay period of 2007. |
| January 1998 | Payroll records indicate that Gallagher's salary was increased to approximately \$18.48/hour (\$33,641.14/year). |
| February 20, 1998 | Plain Dealer article identifies Frank Russo (D), James Gallagher (D), and Mike Wise (R) as having filed for the 1998 Cuyahoga County Auditor's primary election. |
| March 16, 1998 | The minutes from a Board of Elections meeting note that candidate James Gallagher withdrew from the May 5, 1998 primary election for Cuyahoga County Auditor. |
| May 6, 1998 | Plain Dealer article stating that Frank Russo (D) and Mike Wise (R) were both nominated for 1998 Cuyahoga County Auditor's Election without opposition. |
| June 1, 1998 | Gallagher was hired by the Cuyahoga County Auditor's Office at a wage rate of approximately \$18.48/hour (\$33,641.14/year). |

statement cannot be used against the public employee in any subsequent criminal prosecution. The Garrity Form clearly sets forth this Constitutional protection.

April 1999	Gallagher received an eleven percent (11%) pay increase to approximately \$20.50/hour (\$37,313.90/year).
April 2000	Gallagher received a five percent (5%) increase to approximately \$21.46/hour (\$39,060.06/year).
November 2000	Gallagher received Six percent (6%) increase to approximately \$22.84/hour (\$41,559.96/year)
June 2001	Gallagher received a two percent (2%) increase to approximately \$23.29/hour (\$42,391.18/year).
December 2001	Gallagher received a five percent (5%) increase to approximately \$24.39/hour (\$44,391.01/year).
August 26, 2002	Gallagher received a seven percent (7%) increase to approximately \$26.04/hour (\$47,391.24/year). The increase was documented on a memorandum from former Personnel Director of the Auditor's Office, Joel Sacco ("Sacco"). The first line of the memo stated "per order FR".
February 23, 2004	Gallagher received a five percent (5%) increase to approximately \$27.35/hour (\$49,775.96/year). The increase was documented on a memorandum from Sacco. The first line of the memo stated "per order FR".
February 27, 2005	Gallagher received a four percent (4%) increase to approximately \$28.46/hour (\$51,791.74/year). The increase was documented on a memorandum from Sacco. The first line of the memo stated "per order FR".
February 2006	Gallagher received a Three percent (3%) increase to approximately \$29.31/hour (\$53,345.50/year).
May 2007	Gallagher received a three percent (3%) increase to approximately \$30.19/hour (\$54,945.80/year)

All told, Gallagher's wage rate increased over sixty-eight percent (68%) between his initial date of hire with the Recorder's Office in 1997 and his final pay raise in mid-2007. Although some of the pay raises may be attributable to across the board cost of living pay adjustments, the Social Security Administration's Consumer Price Index for Urban Wage Earners and Clerical Workers only documented a 30% cost of living increase during this period of time. Therefore, at least 38% of Gallagher's pay increases should be attributable to either merit or promotion.²⁴ The lack of available documentation and

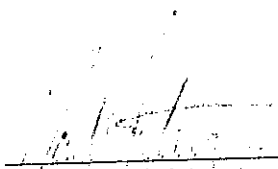
²⁴ It is apparent that the duties currently performed by Gallagher do not support the assertion of additional job duties as the basis for the pay increases. As previously noted, the independent salary study

Gallagher's refusal to submit to an interview, however, prevents the AIG from determining the basis for the additional pay increases.

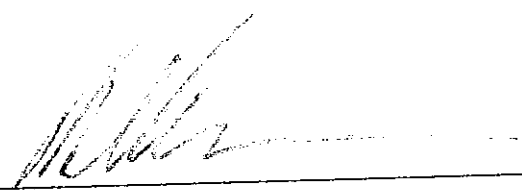
With regard to the election information, Gallagher's failure to submit to an interview and the lack of existing records at the Board of Elections prevents the AIG from determining whether Gallagher was in fact the "James Gallagher" that filed to run in the two primary elections at issue. In response to a records request from the AIG for all documents referencing "James Gallagher" in 1996 and 1998, the Board of Elections was only able to produce the above-noted Board of Elections meeting minutes. According to the Board of Elections, there is limited information available because the requested records have a six (6) year retention period.

CONCLUSION(S) AND RECOMMENDATION(S)

In light of the lack of available documentation and Gallagher's refusal to submit to a witness interview, the AIG is unable to offer final conclusions regarding this investigation. The AIG does, however, recommend that this matter be referred to the County Executive for disciplinary action relating to Gallagher's refusal to submit to a witness interview as mandated by Section 2.05 of the Cuyahoga County Charter and Section 2(c) of the Inspector General Ordinance (Ordinance No. O2011-0019).

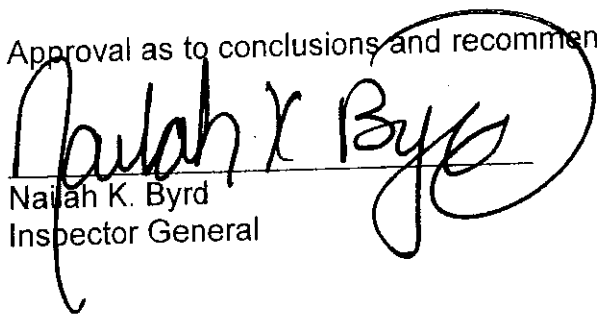


Mark Cutright
Investigator



Matthew Hawes
Deputy Inspector General

Approval as to conclusions and recommendations:



Nailah K. Byrd
Inspector General

5/25/12
Date

determined that Gallagher was being paid approximately 62% more than the market rate for individuals performing similar job functions.