STATE OF NEW HAMPSHIRE
INSURANCE DEPARTMENT

CUSTOMER ENGINEERING SERVICES, LLC,

Petitioner,

v. Docket No. INS 20-079-AP

MITSUI SUMITOMO INSURANCE USA, INC.,

Respondent.

_____/

RESPONDENT'S EXCEPTIONS TO PROPOSED DECISION AND ORDER

Respondent, Mitsui Sumitomo Insurance USA, Inc. ("Mitsui" or "Respondent"), pursuant to New Hampshire Administrative Rule Ins 207.04(a)(2), files these exceptions to the Hearing Officer's ("HO") Proposed Decision and Order ("PDO"), dated June 9, 2021.

Introduction

This matter concerns whether Mitsui properly applied class code 3724 to Petitioner, Customer Engineering Services, LLC's ("CES") New Hampshire-based field service technicians for policy years 2015/2016, 2016/2017, 2017/2018, and 2018/2019, when CES never provided Mitsui with verifiable payroll records that broke out the technicians' time into different class codes. The National Council on Compensation Insurance New Hampshire Workers' Compensation Appeals Board (the "Board") answered that question in the affirmative. The PDO, however, recommends that Mitsui retroactively apply different classification codes to CES' New Hampshire field service technicians for the policy years at issue. (PDO p. 22).

New Hampshire Administrative Rule Ins 207.04 defines the parameters of the Commissioner's review of the PDO as follows:

(4) The commissioner shall, based upon the record, determine whether the respective parties have met their burdens of proof set forth in Ins 206.05 and shall accordingly issue a final decision and order accepting, rejecting, or modifying the proposed decision and order. Any such order shall be subject to reconsideration of any final order pursuant to Ins 207.07 and Ins 207.06;

(5) If the commissioner issues a final decision and order that rejects or otherwise modifies the proposed decision and order:

a. The commissioner's factual determinations in any final order shall be based upon a review of the record;

b. The record shall provide a reasonable basis supporting the rejection or modification of the findings and rulings of the hearing officer;

c. The final decision shall adequately explain the grounds for the commissioner's decision; and

d. The commissioner shall review all evidence in the record and resolve any evidentiary conflicts by applying the commissioner's own expertise and technical judgment.

As shown herein, the PDO fails to place the appropriate burden and standard of proof on CES, misconstrues or ignores certain credible evidence in the record, makes findings based on arguments and issues not raised, and misapplies the law. As such, the Commissioner should reject the HO's Findings of Fact and Legal Analysis as outlined below. The Commissioner should also reject the HO's ultimate recommendation and uphold the decision of the Board.

Background

Mitsui insured CES for 11 years, beginning in 2008. (Stipulation of Facts and Joint Exhibits ("Stipulation") p. 1). CES' New Hampshire-based field service technicians worked in various states and on various types of equipment, ranging from desktop printers, office equipment, and packaging machines. (*Id.*) Mitsui audited the ADP payroll records provided by CES and issued a Final Audit report to CES after each policy year, which showed the class codes applied each year. (*Id.* p. 2). While CES' sole work provider, Fuji, tracked the work done by CES' field service

technicians through a proprietary field service management system called Astea, that information was never provided to Mitsui to perform its workers' compensation audits. (*Id.*).

Mitsui began using classification code 3724 for CES' New Hampshire field service technicians for the policy effective 7/10/2011. (Stipulation p. 2; *see also* PDO p. 5). Code 3724 applies to "contractors specializing in the erection or repair of heavy machinery or equipment at their customers' locations, which may include plants, factories, and mills. This classification also applies to contractors specializing in the installation or repair of electrical apparatus at their customers' locations." (PDO p. 6; *see also* Ex. 7).[1] On the other hand, code 5191, which was applied to CES' New Hampshire field service technicians prior to 2011, "contemplates the installation, inspection, adjustment or repair of all types of office machines such as, but not limited to, calculators, computers and computer-related equipment (modems, printers, etc.) copy machines, fax machines, microfilm equipment, postage machines and typewriters." (PDO p. 7; *see also* Ex. 6). Code 5192 contemplates the "installation, service or repair of all types of vending or coin operated machines." (PDO p. 7).

When determining the proper classification code for the New Hampshire technicians, the NCCI Rules apply. (Stipulation pp. 2, 3). Under the Rules, more than one classification code may be used for an individual employee engaged in more than one operation. (PDO p. 19; Ex. 4 p. 1). For interchange of labor to apply, the insured must keep records that include the actual time spent on each job classification and the hourly wage rate comparable to similar employees in the industry. (PDO p. 19; Ex. 3 p.1).

CES did not contest the classification code applied to its field service technicians until after the 2018/2019 policy period. (Stipulation p. 2). CES initiated the dispute resolution process with

[1] Citations to Ex. # reference the Exhibits from the March 22 and 24, 2021, hearing.

the National Council on Compensation Insurance ("NCCI"). (PDO p. 1; *see also* Ex. 2). Following the presentation of argument and evidence, the Board issued its Decision Notice on October 14, 2020, finding that classification code 3724 was the appropriate classification for CES' New Hampshire employees for the policy years at issue. (PDO p. 2; Ex. 2 p. 3). The Board stated:

> RESOLVED, that no changes be made to the policy periods in dispute . . . . Both Codes 5191 and 3724 could apply to policies if adequate payroll records are provided to the carrier for future policies.

(Ex. 2 p. 3 (emphasis added)).

The Board's decision also states: "The payroll breakdown was not provided during the audits, so the Board agreed that any classification changes would be on a going-forward basis. They also discussed the impact to the experience rating modification if a lower rated classification code were assigned." (Ex. 2 p. 2 (emphasis added)).

CES filed an appeal of the Board's decision with the New Hampshire Insurance Department on November 13, 2020. (PDO p. 2). A hearing was held on March 22 and 24, 2021. (*Id.*) CES and Mitsui each submitted Proposed Recommended Orders. (PDO p. 3). On June 9, 2021, the HO issued the PDO finding that code 5191 is the appropriate code that best describes CES' business in New Hampshire, that code 3724 is the appropriate additional operation code for the technician servicing commercial imaging equipment in an industrial setting, and that code 5192 is the appropriate interchange of labor code to apply for the servicing of vending machines. (PDO p. 1). The HO therefore recommended Mitsui retroactively apply those codes to the policy years at issue. (*Id.* p. 22). Mitsui now submits the following exceptions to the PDO and requests that the Commissioner reject the PDO and affirm the Board's decision.

Exceptions

Exception # 1

Mitsui first takes exception to the HO's application of the burden and standard of proof in the PDO. The HO correctly states:

> The Petitioner, CES, has the burden of demonstrating by a preponderance of the evidence that the Commissioner should not uphold the Board's ruling.

(PDO p. 4 (citing New Hampshire Administrative Rule Ins 206.05)). However, the PDO does not explain how CES met this burden. The preponderance of the evidence standard requires CES to show that, on the balance of probabilities, CES was more right than Mitsui. *See Dunlap v. Daigle,* 444 A.2d 519, 520 (N.H. 1982) (citing *Arnold v. Williams,* 430 A.2d 155, 156 (1981)). The HO completely fails to address this legal standard in the findings of fact or in the legal analysis.

Instead, the HO seemingly shifts the burden of proof to Mitsui, in direct contravention of the required legal standard. The HO, in multiple instances, discusses the purported failure on the part of Mitsui to present certain evidence. For example, the PDO provides:

> "Mitsui did not present any evidence . . . that [CES'] technicians are not responsible for delivering or moving the equipment and do not perform any plumbing or electrical work that may be necessary for the equipment." (PDO p. 17);
>
> "Other than highlighting the size of the equipment, Mitsui did not present any evidence to support its conclusion that 3724 was the appropriate classification code for employees servicing equipment in the retail division." (PDO p. 17);
>
> "Additionally, there was no evidence presented [by Mitsui] to indicate that the retail technicians in New Hampshire serviced any equipment in an industrial setting as contemplated by code 3724 or that the tasks performed on the retail equipment was in any way analogous to the service requirements for the commercial graphics equipment." (PDO pp. 17-18).

Instead, the HO should have addressed whether CES presented credible evidence that code 3724 was not the appropriate classification, or at the very least engage in a balancing of the evidence presented.

Furthermore, and perhaps more importantly, the HO inappropriately shifted the burden of proof to Mitsui as it relates to verifiable payroll records. The NCCI Rules permit Mitsui to assign more than one classification code to employees that perform duties related to more than one code, but only if the employer maintains verifiable payroll records that are acceptable to Mitsui. (Exs. 3, 4; Tr. Vol. II 54:15-55:23)[2]. There is no dispute that CES, as the insured, was responsible for maintaining verifiable payroll records. (Tr. Vol. I 71:13-15; Ex. 33 p. 109; Tr. Vol. II 58:2-4, 59:3-7,117:10-118:2). Applying these rules, the Board found that an adequate breakdown of CES' payroll was not provided during the premium audits, and therefore declined to make any retroactive changes to the classification codes. (Ex. 1 p. 2).[3] However, the HO fails to address how CES met its burden to show that it did provide Mitsui with verifiable payroll records that broke out the work done by each New Hampshire technician. The HO likewise fails to address whether CES even presented sufficient evidence to demonstrate that the Astea data was reliable. Instead, the HO found that Mitsui "presented no evidence to demonstrate that the Astea data was unreliable, that the data could not be verified, or that Mitsui took any steps to try to verify the information in the Astea report." (PDO p. 22). Because the HO misapplied the legal standard and burden of proof applicable to this proceeding, the PDO should be rejected.

[2] Citations to the transcript from the hearing are "Tr. Vol. # page:line(s)."
[3] The NCCI Board discussed the impact of a time bar on changes to the experience rating modification. The HO has not addressed the consequences of that time bar on changes to the experience rating modification in recommending retroactive changes. (*See* Ex. 1 p. 2).

Exception #2

Mitsui takes exception to the HO's Findings of Fact and Legal Analysis related to the distinction between CES's retail or imaging department and its commercial graphics department. Section 4.3 of the PDO's Findings of Fact discusses work purportedly performed by CES's "retail technicians" and "commercial graphics technicians." (PDO pp. 7-10). For example, the HO states that within the retail department, CES technicians serviced photo processing printers, inkjet printers, computers, monitors, vending machines, and packaging machines, while technicians in the commercial graphics department serviced computer plate equipment or flatbed printers. (*Id.*) The HO then uses those categories to conclude that codes 5191 and 5192 should apply to the retail technicians and code 3724 should apply to the commercial graphics technicians. (*See* PDO pp. 16-18). In this regard, the PDO concludes that "Mitsui did not present any evidence to support its conclusion that 3724 was the appropriate classification code for employees servicing equipment in the retail division" and "[t]here was no evidence presented to indicate that the retail technicians in New Hampshire serviced any equipment in an industrial setting as contemplated by code 3724 or that the tasks on the retail equipment was in any way analogous to the service requirements for the commercial graphics equipment." (*Id* pp. 17-18 (emphasis added)).

The HO's distinction between the departments and any reliance thereon must be rejected. CES presented no evidence that prior to the hearing in this matter, CES informed Mitsui of this distinction between retail/imaging and commercial graphics technicians. Instead, all CES employees in question are called field service technicians. (*See* Stipulation p. 2 (referring to the employees at issue as field service technicians)). CES' own witness testified that the employees at issue are titled as "technical service representatives." (Tr. Vol. I 18:7-10). Further, the Astea

records do not use the terms "retail," "imaging," or "commercial graphics." (Exs. 48, 67). The summary of payroll and work orders created by CES for this proceeding do not use the terms "retail," "imaging," or "commercial graphics." (Exs. 61 & 62; *see also* Tr. Vol. I 82:7-13). The materials submitted to the Board did not distinguish between a retail/imaging department and commercial graphics department. (*See* Ex. 2). And the Texas Inspection, on which CES and the HO mistakenly rely, does not use the terms "retail," "imaging," or "commercial graphics." (*See* Ex. 63). Accordingly, the distinction between retail and commercial graphics technicians cannot, and should not, have any bearing on the HO's decision when, during the entire eleven years Mitsui insured CES, CES never once informed Mitsui that the field service technicians were so classified. The HO's Findings of Fact and Legal Conclusions set forth above should therefore be rejected.

Exception # 3

Mitsui takes exception to section 5.3 in the PDO's Legal Analysis which states:

> NCCI *Basic Manual* Rule 1.D.3.d also states in part, "[e]ach distinct type of construction or erection operation must be assigned to the class that specifically describes the operation only if separate payroll records are maintained for each operation." Absent separate payroll records, the highest classification is assigned to that job or location. Mitsui argues that CES did not keep proper payroll records so this rule requires 3724 to be applied to all technicians, as it is the highest rated classification. Mitsui incorrectly applies Rule 1.D.3.d. Rule 1.D.3.d contemplates distinct types of construction and erection operations and is specific to the job or location. Since code 5191 is not a construction and erection code and is a separate business operation, it is not applicable to the situation described in Rule 1.D.3.d. Mitsui's argument also conflicts with Rule 1.D.3.c.3 which clearly provides that a higher classification may be applied to an additional operation not included in the classification of the principal business even absent appropriate records breaking down the payroll.

(PDO p. 19 (emphasis added)). The HO misunderstands Mitsui's argument and has rendered a conclusion that is not supported by the record.

There is nothing in the record to support the conclusion that Mitsui ever argued that Rule 1-D-3-d required code 3724 to be applied to all field service technicians. While Mitsui's pre-

hearing statement references Rule 1-D-3 as applicable law, it did not specifically discuss or reference Rule 1-D-3-d. Instead, as set forth in Mitsui's Proposed Recommended Order, Mitsui's argument is based specifically on Rule 1-D-3-c-4, which provides:

3. Assignment of More Than One Basic Classification

> (4) Policies with more than one classification may include employees working under several classifications. Payroll assignment for these employees is subject to the Interchange of Labor rule. *Refer to Rule 2-G.*
>
> **Note:** If the insured does not maintain verifiable payroll records specific to the additional higher rated operation, then assign the principal and the additional operation the higher rated classification (*Refer to Rule 2-G-2 for the description of proper payroll record*).

(Mitsui's PRO p. 22; *see also* Exs. 4, 58).

Additionally, no testimony proffered during the hearing supports the conclusion that Mitsui relied on or attempted to apply Rule 1-D-3-d. To the contrary, the testimony confirms that Mitsui's argument is based on Rule 1-D-3-c-4. Catherine Tralha, Mitsui's premium audit manager, testified that under Rule 1-D-3-c-4 "some employers qualify for multiple classifications or multiple basic classifications, and this goes on to reiterate that an insured must maintain the proper records in order to assign an employee's individual payrolls between the two classification codes." (Tr. Vol. II 55:5-12).[4] Tralha concluded that, based on Rules 2-G and 1-D-3-c-4:

> If the insured is not able to provide detailed verifiable payroll information specific to split out an employee's wages or to reflect the time the employee spent on two different jobs or types of equipment, then the principal classification which would be the higher rated classification is where the employee's entire wages would be classified.

[4] Tralha was specifically testifying as to Exhibit 4, which is a copy of Rule 1-D-3-c-4 and does not include the language for 1-D-3-d. (Ex. 4).

(Tr. Vol. II 55:17-23). Because nothing in the record establishes that Mitsui made any argument based on Rule 1-D-3-d, and Rule 1-D-3-d was never even mentioned at the hearing, the HO's Legal Analysis to that effect and the statement that Mitsui incorrectly applied Rule 1-D-3-d should be rejected.

Exception #4

Likewise, Mitsui takes exception with the following passage set forth in the PDO's Legal Analysis, section 5.3:

> Even if Rule 1.D.3.d was applicable, it is applied to each job site or location. Each time a technician performs a service call, the technician is working at a different job site or location often times in different states. Therefore, the applicable code would depend on the services provided at the specific job site. Furthermore, RSA 412:32, V[5] requires that for employees involved in construction, erection, or installation, "[t]he payroll for employees hired for a specific job project shall be assigned to the state in which the job is located. Since Code 3724 is a construction erection, and installation code, the New Hampshire technician that services the commercial imaging equipment associated with code 3724 should have his payroll assigned to the state in which each job is located.

(PDO p. 19).

[5] NH RSA 412:32, V specifically states:

> For employers involved in construction, erection, installation and similar contracting operations the following shall apply:
>
> (a) The payroll for employees assigned to a job of 2 days or less duration in a state, other than that of the business headquarters, shall be assigned to the state where the headquarters is located.
> (b) The payroll for employees assigned to a job of 3 days or longer duration in a state, other than that of the business headquarters, shall be assigned to the state where the job is located.
> (c) The payroll for employees assigned to general oversight of an out-of-state job, and not responsible for direct daily supervision, shall be assigned to the state where the headquarters is located.
> (d) The payroll for employees hired for a specific job project shall be assigned to the state in which the job is located.

As set forth in Exception #3, the record is devoid of evidence that Mitsui made any argument based on Rule 1-D-3-d. That alone serves as sufficient basis to reject the HO's analysis. Nevertheless, the HO's statements should also be rejected because the HO offers an alternative method of rating a code 3724 employee that is not applicable here. Specifically, the HO offers that a code 3724 employee's payroll should be assigned to the state in which each job is located, based on the application of RSA 412:32. The record here shows, however, that CES' employees are not hired for specific job projects. Instead, the New Hampshire field service technicians are continuously employed by the same employer (CES) and merely have projects that may require them to travel to other states. (Tr. Vol. I 123:18-21, 124:5-10, 130:3-9; *see also* Stipulation p. 2). Even assuming the HO's alternative method asserted above is correct and proper under the law, it would not be applicable to CES' employees and has no bearing on the application of classification codes. Thus, the HO's discussion concerning Rule 1-D-3-d, code 3724, and RSA 412:32, as outlined above, must be rejected.

Exception #5

Mitsui next takes exception to the HO's conclusion that Mitsui did not ask CES for appropriate records to conduct its workers' compensation premium audit and determine the applicable classification code. (*See generally* PDO pp. 21-22). The HO makes the specific following findings:

> Mr. Hope[6] testified that the Mitsui payroll auditor never asked him to split the payroll into different classification codes.
>
> Mr. Hope . . . testified that Mitsui never asked CES to produce detailed specifics regarding the type of work conducted by CES' New Hampshire technicians.

[6] Jerry Hope is the CFO for CES. (Tr. Vol. I 6:18, 79:15-20).

(PDO pp. 14, 21). The HO accepts Hope's testimony to the exclusion of all other credible testimony and evidence presented, without any indication of a weighing of the evidence or any explanation why Hope's testimony is more believable than the cumulative testimony and evidence presented by both parties.

The evidence shows that prior to a premium audit, the Mitsui auditor sends out a premium audit request, which would include a request for all payroll information pertaining to the policy terms being audited. (Tr. Vol. II 61:17-23). If the auditor is not provided with information sufficient to conduct the audit, he or she would request more information. (Tr. Vol. II 62:10-12). With respect to CES, Mitsui always requested payroll records to perform its premium audit. (Tr. Vol. II 68:20-23). And, every year, Mitsui received payroll records from CES. (Tr. Vol. II 69:1-3). Hope confirmed that Mitsui was always given the records it requested. (Tr. Vol. I 73:2-5). Further, Mitsui's premium audit manager testified that Mitsui would not conduct an audit if it believed it did not have sufficient information to do so. (Tr. Vol. II 62:6-9). Such testimony is uncontroverted.

On the other hand, there is no evidence in the record to support a finding that Mitsui should have been aware that data which broke out the hours worked by each technician on specific equipment (the Astea data) even existed when performing the premium audits. Mitsui's premium audit manager testified that Mitsui always asked if there were any changes to CES' operations to determine whether a split between classification codes would be required. (Tr. Vol. II 96:19-22). However, Mitsui was not provided the Astea data until May of 2020, after the final policy period. (Tr. Vol. II 80:13-21; *see also* Tr. Vol. I 78:19-23; Tr. Vol. II 140:2-11). Thus, Mitsui was not presented with <u>any</u> information during the premium audits that would have informed Mitsui of even the possible existence of the Astea data. And, even if Mitsui was aware of the Astea data at

the time the audits were performed, the evidence clearly shows that CES was not permitted to give that data to Mitsui. (Tr. Vol. I 79:9-14, 102:17-23). It is undisputed that the only available records that could be obtained from CES for purposes of the premium audits were the payroll records that could not be broken out. (Tr. Vol. II 70:21-71:1, 71:8-10; *see also* Ex. 2 p. 132 (CES' own insurance broker stating that "Jerry [Hope] is not able to devise payroll and will not do so in the future.")). Based on the records available, and in accordance with the NCCI Rules, Mitsui appropriately applied code 3724.

Contrary to Hope's testimony, Steven Zaeh[7] testified that Mitsui would ask for a breakdown of payroll, but was never able to get it from CES. (Tr. Vol. II 162:23-163:1). With respect to Zaeh's testimony, however, the HO concluded as follows:

> Mr. Zaeh also testified unpersuasively that Mitsui asked CES for a breakdown of payroll by class code every year. Such a request seems contradictory to Mitsui's assertion that 3724 is the correct classification for New Hampshire technicians. In order for CES to have been able to breakdown payroll by class code, Mitsui and CES would have had to be in agreement regarding which class code applies to each type of equipment. It is clear from this proceeding that the parties have been unable to come to an agreement on the applicability of the different classification codes. Finally, CES was able to provide such a breakdown of payroll following the Texas inspection demonstrating that it was possible once it was clear what machines and tasks fell into each classification code.

(PDO p. 22 (emphasis added). The HO confuses what occurred in Texas with the instant New Hampshire proceeding and shifts the burden of proof from CES to Mitsui.[8]

[7] Zaeh serves as the regional underwriting executive vice-president for Mitsui's Midwest region. (Ex. 54 p. 18). Zaeh has been with Mitsui for 37 years, always with underwriting and management. (*Id*.)

[8] The HO's conclusion also fails because any request for a breakdown by Mitsui is not dependent on an agreement between Mitsui and CES as to which class codes apply. CES could never provide records that broke out time spent on equipment, without any regard to a specific classification code.

The NCCI issued an Inspection and Classification Report related to CES' Texas operations ("Texas Inspection"). (Ex. 63). Following the issuance of the Texas Inspection, CES provided Mitsui with a list that specifically identified those Texas employees that were either 5191 or 3724 technicians. (Tr. Vol. I 61:17-23). CES has put forth no evidence, however, that it provided Mitsui with the Astea data, or anything similar for Texas. Nevertheless, the HO concludes, in rejecting Zaeh's testimony, that "CES was able to provide such a breakdown of payroll following the Texas inspection." (PDO p. 22) The HO's ultimate conclusion is based on the false equivalency of the interchange of labor rules as between Texas and New Hampshire.

Specifically, Texas does not allow for the interchange of labor, while New Hampshire does. NCCI Rule 2-G permits the division of payroll among employees that perform duties related to more than one properly assigned classification if the employer maintains proper payroll records that show the actual time spent working within each job classification. (Ex. 3). Texas does not allow for such division of payroll, but instead requires the entire payroll of employees who interchange to be assigned to the highest rated classification representing any part of their work. (*Id.* p. 2). Thus, the Texas Inspection explained that "a separate Basic Classification is not allowed if there is any interchange of labor. The same service technicians performing the office [sic] machine and photo processing equipment operations also perform the vending machine service work. As such the vending machine service operations are included under Code 5191 rather than Texas Code 5192." (Ex. 63 p. 7). Mitsui accepted CES' division of labor records, that were not Astea data, because of Texas' NCCI rule against the interchange of labor. The Texas rules cannot be applied to New Hampshire. (*See* Ex. 3 (showing specific exceptions to the interchange of labor rule for Texas and not New Hampshire).) Moreover, NCCI made clear multiple times that the Texas inspection only applied to Texas, and only for <u>one policy year</u>. (Ex. 63, p. 4; Ex. 2, p. 27).

Were the New Hampshire Insurance Department to now adopt the Texas rules, the Department would be ignoring and violating its own rules, which permit the interchange of labor. (Ex. 3) Accordingly, the HO's findings and conclusions related to Mitsui's failure to request appropriate records from CES, and equating the CES Texas operations or NCCI report with NH, must be rejected.

Exception #6

Mitsui also takes exception to the following passage in section 5.3 of the PDO's Legal Analysis:

> CES technicians servicing commercial imaging equipment do not service retail equipment and vice versa. Therefore, this interchange of labor rule would only apply to employees classified under 5191 who also serviced vending machines. For the retail technicians, Code 5191 is the principal code as it best describes CES's business in New Hampshire. However, the service of vending machines is properly classified under code 5192. Where records exist that document the actual time a technician spends working on vending machines classified under 5192, code 5192 should be applied instead of code 5191.

(PDO p. 20 (emphasis added)). The "interchange of labor rule" refers to Rule 2-G, which provides:

> Some employees may perform duties directly related to more than one properly assigned classification according to Rule 1-D-3. Their payroll may be divided among the properly assigned classifications provided that:
>
> 1. The classifications can be properly assigned to the employer according to the rules of the classification system, and
>
> 2. The employer maintains proper payroll records, which show the actual payroll by classification for that individual employee.
>
> > a. Records must reflect actual time spent working within each job classification and an average hourly wage comparable to the wage rates for such employees within the employer's industry.
> >
> > b. Estimate or percentage allocation of payroll is not permitted.

(Ex. 3).

First, as discussed in Exception #2 above, the HO's reliance on any distinction between "commercial imaging" technicians and "retail" technicians must be rejected, as it is not supported by the record. As such, the interchange of labor rule should apply to all New Hampshire field service technicians, not just those that CES claims fall within its "retail/imaging department."

Second, as discussed in Exception #5 above, there is no evidence showing that records which "document the actual time a technician spends working on vending machines" exist. (*See* PDO p. 20). As Rule 2-G provides, the onus is on the employer to maintain proper payroll records that show the time a technician may have spent working in various classifications. (Ex. 3). The evidence shows, however, that CES did not provide such records to Mitsui. The ADP payroll data that CES provided to Mitsui did not break out the time spent by each technician on specific pieces of equipment. (Tr. Vol. I 91:16-19). Indeed, Mitsui did not receive any records which split out the employees' time, including into code 5192, until May of 2020, after CES challenged the classification codes applied by Mitsui. (Tr. Vol. II 112:1-7; *see also* Tr. Vol. I 78:18-23; Tr. Vol. II 140:2-11). The HO's conclusion stated above ignores the NCCI requirement that the insured maintain verifiable records and improperly places the duty on the insurer to accept whatever records may or may not exist when applying the interchange of labor rule. The HO's conclusions as stated above should therefore be rejected. However, should the Commissioner require the separation between those technicians that CES claims had no interchange of labor (3724) and those that CES claims worked in multiple classes (5191 and 5192), then the only possible assignment of 5191 and 5192 employees is to assign any employee that worked any part of their time on vending machines to class code 5192, as it is the higher rated classification.

Exception #7

Mitsui next takes exception to the HO's reliance on the NCCI Texas Inspection and Classification Report ("Texas Inspection"). Mitsui requested confirmation of the correct classifications in Texas, resulting in the Texas Inspection. (*Id.*). The HO, in section 4.5 of the PDO's Findings of Fact, focuses extensively on the Texas Inspection. (PDO pp. 12-13 (citing Ex. 63)). In the Legal Analysis, the HO states:

> Mr. Deen's Inspection Report for the Texas operations is persuasive and supports classifying retail technicians under code 5191. Although the inspection is specific to Texas employees, the services and equipment detailed in the report are very similar to the services provided by New Hampshire technicians. Specifically, Mr. Deen found that the work on photo processing equipment was more akin to work in an office setting than a commercial plan or factory and that photo processing equipment was analogous to the office equipment listed in the 5191 code description. In his inspection, Mr. Deen observed some of the same printers serviced by technicians in New Hampshire.

(PDO pp. 16-17).

The HO's reliance on the Texas Inspection in the PDO must be rejected. First, the HO gives the Texas Inspection more weight than its due. The Texas Inspection plainly provides that CES has operations in multiple states and that this "Inspection and Classification Report only addresses operations & employees in Texas." (Ex. 63 p. 4 (emphasis added)). Confirming this statement, Tralha testified that the Texas Inspection is "specific to Texas" and explained that while the classification code may apply in Texas, the operations in New Hampshire might be different. (Tr. Vol. II 100:14-19).

While faulting Mitsui for not evaluating the New Hampshire field service technicians,[9] the HO simultaneously, and erroneously, accepts the Texas Inspection as analogous to the New Hampshire technicians. In so doing, the HO failed to consider the numerous differences between Texas and New Hampshire, as established by the evidence. Specifically, the Texas Inspection states that the Texas technicians service photo labs on cruise ships in Texas and in ports located in different states. (Ex. 63 p. 3). At times, Texas technicians will remain on board the cruise ship to complete service and repairs and catch a flight home from the next port. (*Id.*). In addition, Texas technicians service machines that dispense DVDs, such as Redbox kiosks. (*Id.* pp. 5, 6). There is no evidence that the New Hampshire technicians likewise worked on cruise ships or serviced Redbox kiosks. Further, the workforce in Texas is much larger than in New Hampshire, as Texas has 29 service technicians where New Hampshire has only 7. (*Id.* p. 8; PDO p. 9). CES' own witness, Hope, testified that he did not know whether the Texas and New Hampshire technicians even worked on the same vending machines. (Tr. Vol. I 54:14-55:16) Moreover, NCCI made clear multiple times that the Texas inspection only applied to Texas, and only for one policy year. (Ex. 63, p. 4; Ex. 2, p. 27).

Second, despite the HO's conclusion that the Texas Inspection supports a finding that those technicians in the "retail" department should be classified under code 5191, the Texas Inspection makes no distinction between a "retail/imaging department" and a "commercial graphics department." (*See* Ex. 63). As noted above in Exception #2, the HO's reliance on such distinction, manufactured by CES for this hearing and not previously provided to Mitsui, should be rejected.

[9] *See* PDO p. 11 ("However, Mitsui never conducted an inspection for New Hampshire employees and never asked for any documents to confirm the type of work done by New Hampshire technicians.")

Exception #8

Mitsui takes exception to the HO's statement in section 5.4 of the Legal Analysis which states:

> Mitsui presented no evidence to demonstrate that the Astea data was unreliable, that the data could not be verified, or that Mitsui took any steps to try to verify the information in the Astea reports.

(PDO p. 22). Mitsui also takes exception to footnote 118 which states:

> Mitsui noted several inconsistencies in the payroll summaries included in Exhibits 61, 62, and 66. The payroll summaries are calculations based on the data from the Astea and ADP records. Any miscalculations or errors in the payroll summaries do not necessarily equate to error in the underlying data or records. There was no evidence presented indicating Mitsui took any steps to verify the underlying data from the Astea records.

(*Id.* n. 118). In addition to burden-shifting, the HO's statements set forth above are contradicted by the evidence and the extensive testimony and cross-examination of CES' witnesses during the hearing.

The NCCI Rules require Mitsui to apply the highest classification code if it receives no verifiable payroll breakdown. (Ex. 3). Tralha testified that verifiable payroll records are records that an auditor can match up against an employer's payroll system, or other source document, and from which an auditor can verify that the information is accurate and that there are no discrepancies or inconsistencies. (Tr. Vol. II 57:7-18). For example, if an auditor was provided records that reflected an employee worked four hours on equipment X for the week ending July 12, 2020, the expectation would be that there is either a time card or a work order that also reflects that time. (Tr. Vol. II 113:5-114:8). Tralha further testified that neither training records nor an employer's employment department records can be substituted for verifiable payroll records. (Tr. Vol. II

61:10-16). CES presented no evidence which contradicts Tralha's definition of verifiable payroll records.

The record evidence shows that the Astea data does not meet the definition of verifiable payroll records. First, the Astea data and summaries created therefrom could not be reconciled with CES' payroll records, rendering the data unreliable.[10] Mitsui's premium audit manager testified that she could not tell if Exhibit 62 (which purports to summarize Astea data) was tied in any way to CES' payroll records. (Tr. Vol. II 74:15-17).

And, while Exhibit 61 purports to be a payroll summary, it is wholly inconsistent with the Astea data. Specifically, the total hours in CES' payroll summary do not match the total hours in the Astea data. The data for Jerald Sullivan in policy year 2015/2016 is illustrative. In Exhibit 61, CES' payroll data shows that Sullivan worked 1,940.48 hours. (Ex. 61 p. 1). However, in Exhibit 62, the "Astea time" shows that Sullivan worked only 871.20 hours. (Ex. 62 p. 12). CES' witness testified that the "Astea time" is the total hours from the Astea data. (Tr. Vol. II 23:22-23:1). Thus, with respect to Sullivan for 2015/2016, the Astea time and ADP records differ by 1,069.28 hours. A review of the records in total shows that the discrepancy between the ADP summaries and Astea records for all policy years at issue exceeds 6,500 hours. *See* Ex. A.[11] This amounts to a difference of 15.87% between what can and has already been validated (the ADP payroll records), and the

[10] CES has never provided Mitsui with access to its raw ADP payroll data. CES has only ever provided Mitsui with a summary of the ADP data in spreadsheet format. Because the summary spreadsheet matches CES' Federal and state tax filings, Mitsui has not previously needed access to the raw ADP data. In order to fully verify the information in the Astea reports, which were only recently provided, Mitsui would need access to the raw ADP data so that it may spot check the validity of the information – *e.g.*, review the raw ADP data and Astea reports for a given employee during a given time period to confirm whether they match up.

[11] Exhibit A attached hereto is a summary exhibit that utilizes the information set forth in Exhibits 2 and 3 within CES' Exhibit 66, and CES' Exhibits 61 and 67, to more clearly show the differences between the ADP and Astea data provided, regarding total hours worked by the technicians.

Astea data, which is not known to match any other records provided by CES at the premium audits or any other records CES has submitted to the Board or in this hearing.[12]

CES attempts to explain away this large discrepancy by manufacturing a wholly fictional category called "idle time." CES' own witness testified that in order to have the Astea time match the ADP records, a mathematical calculation was performed to determine the difference between the two and the result was recorded as "idle time." (Tr. Vol. II 23:10-25:7; *see also* Tr. Vol. I 88:4-89:4, 89:1-18). It is undisputed, however, that neither the Astea data nor the ADP records contain a category of information called "idle time." (Tr. Vol. I 89:1-18). The HO seemingly ignores this evidence in reaching her conclusion.

Second, the Astea data could not and cannot be verified because it exists nowhere else. Tralha testified that to be verifiable, the auditor must be able to match the records against an insured's payroll system, be able to verify the information is accurate, and be able to determine where the information is coming from. (Tr. Vol. II 57:7-18; *see also* Tr. Vol. II 113:5-21). As the testimony reveals, the Astea data depicts hours assigned to certain tasks performed by the technicians on specific equipment. (Tr. Vol. I 140:9-10; *see also* Exs. 48, 67). It is unrefuted, however, that the Astea data is <u>not</u> generated from CES' ADP records, as those records cannot break down, by equipment type and classification, the work performed by each technician.[13] (Tr.

[12] The percentage is derived from dividing the total number of hours difference across all policy periods at issue by the total ADP payroll hours for all policy periods at issue. *See* Ex. A.

[13] In this regard, Christian Fridholm, Vice President and General Manager of the Technical Services Division at Fuji, testified the hours worked as shown in each category in Exhibit 62 (Hourly Work Summary and Payroll Breakdown) did not come from the ADP records. (Tr. Vol. I 132: 20-22; Tr. Vol. II 17:19-22).

Vol. 91:16-19). As such, the Astea data cannot be adequately checked against the ADP payroll data, and CES has failed to provide any evidence that the Astea data can otherwise be verified.[14]

Third, neither CES nor its lawyer could determine how to summarize the Astea data in a consistent manner. Both CES' Exhibits 61 (Payroll Summaries) and 62 (Hourly Work Summary and Payroll Breakdown) were purportedly created using the Astea data. (Tr. Vol. I 152:18-22, 154:6-9). Additionally, CES Exhibit 2 within Exhibit 66 (Breakdown of Pay by Equipment Type and Classification) was created using the Astea data. (*See* Ex. 66 pp. 65-75; Tr. Vol. I 91:16-22; Tr. Vol. II 14:6-9). Despite this, the evidence reveals many discrepancies between CES' own exhibits.[15] (*See generally* Exs. 51, 53). For example, in policy year 2015/2016, Exhibit 62 allocated Sullivan's "idle time" to code 5192, while Exhibit 2 from Exhibit 66 allocated his "idle time" to code 5191. (Ex. 53; Tr. Vol. I 93:12-19). In addition, the total wages for 2015/2016 allocated to 5191 and 5192 vary by approximately $23,000 between the exhibits. (Ex. 53; Tr. Vol. I 94:18-95:12). Hope admitted that he did not know which of CES' exhibits prepared for this matter was correct. (Tr. Vol. I 98:19-21).

Lastly, as extensive testimony and cross-examination demonstrated, the summary data is riddled with errors. (*See generally* Exs. 51-53; Tr. Vol. I 159:15-165:22; Tr. Vol. II 32:12-37:17). For example, the Astea data showed that Laurent Liberge worked 225.22 hours on kiosks for policy year 2015/2016, but CES Exhibit 62 indicated that he worked 392.17 hours on kiosks. (Ex. 52; Tr.

[14] CES has not provided any other information that makes the Astea data understandable. There is no evidence of any manuals or guides or explanations as to how the information was collected, other than Fridholm's testimony. (*See* Tr. Vol. I 139:21-143:3; Tr. Vol. II 9:19-13:2). In fact, when Mitsui's counsel asked CES' witness Hope to explain the Astea data, CES' counsel objected that its own witness did not have knowledge on the very data it claims supports a reversal of the Board's finding. (Tr. Vol. I 86:16-87:16).

[15] Fridholm admitted that he and Scott Priz used different "methodologies" when creating the summary charts. (Tr. Vol. I 32:7-12).

Vol. I 85:9-18). Hope admitted that this was a "great difference."[16] (Tr. Vol. I 85:17-18). The HO overlooks this evidence, however, and reduces the evidence of the grave discrepancies to a footnote. (PDO p. 22 n. 118). CES only attempted to make corrections to the errors in the data and exhibits after being provided Mitsui's Exhibits 51-53 (which point out the discrepancies). Indeed, Fridholm attempted to make corrections to the data during the hearing and years after the last policy period ended. (*See, e.g.,* Tr. Vol. I 143:20-144:22, 159:19-161:3, 162:22-164:14). Fridholm's belated efforts to correct the records do not render them any less unreliable.

Even assuming, *arguendo,* that all the Astea data was reliable and verifiable, it still fails to meet the requirements of NCCI Rule 2-G, which states that the payroll records must "show the actual payroll by classification for that individual employee." (Ex. 3 p. 1). As discussed above, Rule 2-G permits payroll to be divided among properly assigned classifications provided that the employer maintains proper payroll records. (*Id.*) Here, the evidence shows that the Astea data undercounts the technicians' time by more than 6,500 hours, and CES has provided no additional information that shows, for each technician, the "actual time spent working within each job classification." (*Id.*) Accordingly, at the premium audits, based on all information CES provided to Mitsui, all wages were properly assigned to the highest rated classification that represents the employees' work.

Based on the foregoing, the HO's conclusion that Mitsui failed to present evidence that the Astea data was unreliable, that it could not be verified, or that Mitsui took no steps to try to verify that information, must be rejected.

[16] Fridholm attempted to explain away this error by testifying that some hours were "put into the wrong bucket," and that such mistake was "correctable." (Tr. Vol. II 163:20-164:2). Even if Fridholm's testimony is to be believed, it does not negate the fact that the evidence establishes the existence of errors in the data which render the records unreliable.

Exception #9

Mitsui takes exception to the HO's references to New Hampshire Revised Statutes 412.35 and 412.32. Specifically, the PDO states:

> Mitsui argues that the classification codes cannot be changed for prior policy years because CES never disputed the code being applied during payroll audits and continued to renew its policy each year. RSA 412.35, I requires, in part, that the insurer charge premium based on the policy holders "actual exposure existing during the term of the policy coverage." The insurer is responsible for assigning the appropriate classification code and performing an appropriate payroll audit in order to determine the proper charge for the actual exposure. Any acquiescence by the insured does not excuse the insurer from comply with the requirements of RSA 412:35.

(PDO p. 15). The PDO also states:

> [A]ny information that can be used to quantify a policy holder's actual exposure in accordance with RSA 412:35 should be considered when calculating the premium. During an audit, the insurer may take steps to verify that the information provided is reliable, and may choose not to consider information that cannot be verified or is found to be unreliable. However, an insurer cannot refuse to consider relevant information and documents without proper vetting.

(PDO pp. 21-22). Since neither Mitsui, CES, nor the Board (whose decision is the subject of this proceeding) ever referenced either statute in relation to this matter, the statutes are not relevant to this proceeding, and the HO's conclusions derived from their application are contradicted by the record evidence.

The HO's reliance on NH RSA 412:32 is addressed in Exception #4, *supra* (explaining that NH RSA 412:32 has no application to CES' employees and no bearing on the application of classification codes). In addition, NH RSA 412:32 and 412:35 are not relevant to this proceeding, which concerns the appropriate classification of CES's New Hampshire field service technicians under the applicable NCCI Rules, and not whether the actual exposure has been captured. NH RSA 412:32 provides specific extraterritorial rules to determine premium for risks with extraterritorial employments, and NH RSA 412:35 requires that final premiums for workers' compensation

policies be issued on an "auditable basis" and be charged based upon "actual exposure existing during the term of the policy coverage." Neither statute provides guidance as to the proper application of classification codes that are governed by the NCCI, as adopted for use in New Hampshire by the New Hampshire Insurance Department. The HO's reliance on these statutes is therefore misplaced.

In addition, the HO's conclusions set forth above are contradicted by the record. Contrary to the PDO, Mitsui does not contend that it may shirk any of its duties to conduct an appropriate payroll audit because CES continued to renew its policy with Mitsui and failed to contest the classification code. (*See* PDO p. 15). Nor is there any evidence establishing that Mitsui did so. As explained herein, the record establishes that Mitsui considered all available information to quantify CES' exposure when conducting its premium audits. CES has proffered no evidence and no testimony that Mitsui did not review the information CES provided for its audit or was even aware of the existence of the Astea data until after the expiration of the last insurance policy.[17] (Tr. Vol. II 80:13-21). Despite this, the HO suggests that Mitsui refused to consider certain information from CES at the premium audits, which is simply not true. Accordingly, the HO's reference to and reliance on NH RSA 412:32 and NH RSA 412:35 should be rejected.

Exception #10

Lastly, Mitsui takes exception with the HO's Finding of Fact on page 9 of the PDO which states "CES technicians do not deliver or move equipment and do not lift any equipment over 50 pounds." (PDO p. 9). The HO once again accepts one small aspect of Hope's testimony without considering or weighing any of the other evidence presented, including Hope's own testimony in

[17] Furthermore, the HO undertakes no analysis of CES's obligation to provide information for proper rating of insurance under NH RSA 412:39. If CES knew of information to break out payroll, CES should have disclosed this information in CES's application for insurance coverage and at each audit. CES clearly did not.

which he agreed that the photos of the large equipment in Mitsui's Exhibit 47 accurately represented the equipment worked on by the NH CES service technicians. (Ex. 47; Tr. Vol. I 113:1-118:19).

In this regard, the HO also fails to appropriately consider the risk engineering surveys performed by Mitsui, which were done to ensure that code 3724 continued to be the proper primary classification code. (Exs. 8, 9; Tr. Vol. II 130:7-19). Zaeh explained that, based on the 2014 risk engineering survey, CES' technicians were

> working on heavy machinery really, heavy equipment. As you can see, their printers are extremely large. The internal components are very heavy. Some are less than fifty pounds. Some are more. Some of them have – some of these printers and machines that they're servicing actually have parts alone that weigh fifty pounds.

(Tr. Vol. II 132:11-19). Zaeh further testified that Mitsui found that "almost forty percent of CES's claims while [Mitsui] wrote the workers' comp policy involved strains to the back and upper extremities." (Tr. Vol. II 135: 9-14). Mitsui performed a review of five of the larger claims and concluded that the cause was from lifting heavy equipment, including one piece that was 200 pounds, one that was 70 pounds, one that was 300 pounds, and one that was close to 100 pounds. (Tr. Vol. II 135:14-21).

The HO fails to provide any analysis as to why Hope's limited testimony is more credible than that of Zaeh's, which discusses the actual workers' compensation claims filed by CES technicians. At best, the HO states that Zaeh's testimony regarding the type of work performed by CES technicians is unpersuasive, noting that Zaeh never explained the basis for his knowledge that the technicians worked on large machines and were required to lift heavy equipment and that Zaeh provided no basis for his opinion that CES' Exhibit 64 was not representative of the machines New Hampshire technicians serviced. (PDO p. 18). The HO's finding in this regard is contradicted by credible record evidence. Hope *himself* admitted that the photos in CES' Exhibit 64 did not include

any photos of the heavy equipment already shown on the record to have been worked on by the NH CES service technicians. (Tr. Vol I 109:9-110:4). The evidence also shows that Zaeh's testimony as to the size of the equipment was based on his direct review of stipulated Exhibit 8 (2014 risk engineering survey). (Tr. Vol. II 132:6-19). Moreover, Zaeh's knowledge as to CES' New Hampshire operations is based on his 11 years of experience with the CES workers' compensation account and his involvement in the yearly stewardship meetings. (Tr. Vol. II 125:6-10, 144:17-20). Nevertheless, the HO blindly accepts one portion of Hope's testimony, despite the fact that he admitted he is not "in depth familiar" with the operations of CES' technicians. (Ex. 54 pp. 3-4). Thus, the HO's finding that CES technicians do not deliver, move, or lift equipment over 50 pounds must be rejected. Likewise, the HO's subsequent conclusion in section 5.2 of the Legal Analysis that the risk engineering surveys "do not provide any specifics that would support classifying the work performed under code 3724," must also be rejected.

Conclusion

Based on the record and as indicated above, the PDO fails to place the appropriate legal burden and standard of proof on CES, misconstrues or ignores certain credible evidence in the record, makes findings based on arguments and issues not raised, and misapplies the law. As such, the Commissioner should reject the HO's Findings of Fact and Legal Analysis as outlined above. The Commissioner should also reject the HO's ultimate recommendation and uphold the decision of the NCCI Board.

Respectfully submitted this 28th day of June, 2021.

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CERTIFICATE OF SERVICE

I CERTIFY that this Respondent's Exceptions to Proposed Decision and Order was electronically filed with the New Hampshire Insurance Department on June 28, 2021, and that a copy was provided by e-mail to the following:

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Exhibit A

Difference in CES New Hampshire Field Service Technicians hours worked between ADP Hours and Astea Data Hours
(Data Source: Exhibits 2 and 3 of CES Exhibit 66, CES Exhibits 61 and 67)

2015-2016 Policy Year $ 159,521.51 Total ADP Payroll

Employee Name	Employee #	Summary Payroll ADP Hours	Astea Data Hours	Hours difference	Percentage difference	Difference in Earnings Based on Hours Difference and Hourly Wage	
Arthur Graber	600169	2053.25	1736.56	316.69	15.42%	$7,020.07	
Michael Meixsell	600306	84.5	21.75	62.75	74.26%	$1,734.41	
Laurent Liberge	601050	2104.75	1993.98	110.77	5.26%	$1,944.01	
Anthony Graber	601102	1880.15	775.65	1104.5	58.75%	$16,898.85	
Jerald Sullivan	601162	1940.48	871.2	1069.28	55.10%	$16,274.44	
Paul Hatch	601281	966	609.27	356.73	36.93%	$6,064.41	
	Total Hours	9029.13	6008.41	**3020.72**	33.46%	$49,936.19	Total difference in earnings between ADP and Astea hours

2016-2017 Policy Year $ 209,769.79 Total ADP Payroll

Employee Name	Employee $	Summary Payroll ADP Hours	Astea Data Hours	Hours difference	Percentage difference	Difference in Earnings Based on Hours Difference and Hourly Wage	
Arthur Graber	600169	2005.5	1774.08	231.42	11.54%	$5,206.95	
Laurent Liberge	601050	2164	1928.07	235.93	10.90%	$4,270.33	
Anthony Graber	601102	1978.5	1503.49	475.01	24.01%	$7,338.90	
Jerald Sullivan	601162	1921.25	1603.01	318.24	16.56%	$4,916.81	
Paul Hatch	601281	2011.75	1726.62	285.13	14.17%	$4,847.21	
Loomis, Robert	601404	1206.4	1206.04	0.36	0.03%	$9.26	
	Total Hours	11287.4	9741.31	**1546.09**	13.70%	$26,589.46	Total difference in earnings between ADP and Astea hours

2017-2018 Policy Year $ 237,781.65 Total ADP Payroll

Employee Name	Employee $	Summary Payroll ADP Hours	Astea Data Hours	Hours difference	Percentage difference	Difference in Earnings Based on Hours Difference and Hourly Wage	
Arthur Graber	600169	1838.25	1812.97	25.28	1.38%	$578.41	
Laurent Liberge	601050	2078	1670.41	407.59	19.61%	$7,581.17	
Anthony Graber	601102	1570.75	1539.45	31.3	1.99%	$483.58	
Jerald Sullivan	601162	2023	2016.35	6.65	0.33%	$102.74	
Paul Hatch	601281	1798.5	1798.51	-0.01	0.00%	-$0.17	
Loomis, Robert	601404	1806.75	1140.89	665.86	36.85%	$26,154.98	
	Total Hours	11115.25	9978.58	**1136.67**	10.23%	$34,900.72	Total difference in earnings between ADP and Astea hours

2018-2019 Policy Year $ 216,235.71 Total ADP Payroll

Employee Name	Employee $	Summary Payroll ADP Hours	Astea Data Hours	Hours difference	Percentage difference	Difference in Earnings Based on Hours Difference and Hourly Wage	
Arthur Graber	600169	1837.75	1590.41	247.34	13.46%	$5,659.14	
Laurent Liberge	601050	2173.75	2004.98	168.77	7.76%	$3,139.12	
Anthony Graber	601102	1808.25	1804.28	3.97	0.22%	$61.34	
Jerald Sullivan	601162	1936.25	1918.15	18.1	0.93%	$279.64	
Loomis, Robert	601404	1932.25	1550.19	382.06	19.77%	$15,007.32	
	Total Hours	9688.25	8868.01	**820.24**	8.47%	$24,146.56	Total difference in earnings between ADP and Astea hours

Sum ADP Hours	**Sum Astea Hours**	**Sum hours difference between ADP Hours and Astea records**	**Sum Percentage Difference**
41120.03	**34596.31**	**6523.72**	**15.87%**

$823,308.66 Total ADP Payroll for 4 policy periods

$135,572.94 Sum of difference in payroll between ADP and Astea based on difference in earnings above