

**REPORT AND RECOMMENDATIONS OF
THE INSPECTOR GENERAL**

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RE:: The Chicago Fire Department's Payment of Overtime and Other Contract
 Benefits to Exempt Employees

Date: June 21, 2011

The Inspector General's Office has concluded a review of all overtime and holiday premium payments to "exempt" members of the Chicago Fire Department (CFD), who are not covered by the Chicago Fire Fighters Union Local 2 Agreement with the City of Chicago. The IGO's review of all such payments made from 2005 through 2010 revealed that of the 44 exempt titles within the department, the CFD pays deputy district chiefs (DDCs) and assistant deputy chief paramedics (ADCPs) overtime and holiday premium payments and, for much of the past 6 years, has paid 1.5 overtime to an additional 5 titles within the personnel and internal affairs departments. Collectively, these payments have dramatically risen since 2006 and have remained at significantly high levels for the past 4 years. Moreover, for each of the past six years, the collective payment of overtime and holiday premium pay to employees bearing those seven exempt titles negated all furlough savings for those employees.

Most troubling, however, is the fact that the CFD paid and continues to pay overtime and holiday premiums, along with other cash benefits guaranteed by the Local 2 Agreement, to a significant number of employees not entitled to such benefits under the contract. Although the CFD does not authorize overtime or holiday premiums for the vast majority of its exempt titles, the department has provided these benefits to seven non-union titles—most significantly to DDCs and ADCPs—at its discretion and at a significant expense to taxpayers. The IGO views the payment of these benefits to salaried, mostly high-ranking, supervisory/managerial employees as unnecessary and a substantial drain on limited public resources. The IGO strongly recommends they be discontinued. Several other related findings and recommendations also are detailed in the accompanying report.

This report does not reveal the identities of any specific individuals involved in this investigation either as subjects or witnesses and provides only that level of detail deemed necessary to inform ongoing concerns. Similarly, this report is not intended and should not be construed as a finding of misconduct against any individual. However, we will enclose for the CFD Commissioner the relevant supporting documents from our investigative file. These supporting documents are confidential and may not be distributed without prior approval of the Inspector General.

**INSPECTOR GENERAL'S OFFICE REPORT AND RECOMMENDATIONS
REGARDING THE CHICAGO FIRE DEPARTMENT'S PAYMENT OF OVERTIME & OTHER CONTRACT
BENEFITS TO EXEMPT EMPLOYEES**

I. INTRODUCTION

The IGO initiated an investigation to review time-and-a-half overtime (“1.5 overtime”) and straight-time overtime (“straight overtime”) monetary payments to “exempt”¹ members of the Chicago Fire Department (CFD), who are not included in the Chicago Fire Fighters Union Local 2 Agreement with the City of Chicago.² On June 30, 2010, the IGO issued an Interim Report based on a preliminary review of all overtime and holiday premium payments to exempt CFD employees for the years 2008, 2009, and the first quarter of 2010.³ The preliminary review revealed that, at the same time that the City instituted budget cutbacks and increased the number of unpaid furlough days, the CFD’s overtime and holiday premium payments to a significant number of exempt employees, most particularly deputy district chiefs (DDCs) and assistant deputy chief paramedics (ADCPs), greatly increased.

Based on the initial findings, the IGO provided a number of recommendations to the CFD for ways to address what in early 2010 appeared to be an unabated increase in overtime and holiday premium costs for exempt members. In March 2011, the CFD accepted the IGO’s invitation to provide an update and further response to these recommendations. The CFD’s response is attached. The IGO appreciates the dialog that has ensued and commends the CFD’s initial efforts to address rising overtime costs as well as the department’s stated desire for help and support to become better fiduciaries of public resources.

The IGO has now concluded its review of overtime and holiday premium payments to exempt CFD employees for the entire 2010 calendar year. In the course of doing so, the IGO expanded its review to encompass payments to all CFD exempts for the past 6 full calendar years, from 2005 through 2010. Consistent with the Interim Report, the IGO’s expanded review revealed that of the 44 exempt titles within the department, the CFD pays overtime, holiday premium payments, or both, to 7 exempt titles held by 55 individuals in 2010. Specifically, the CFD pays DDCs and ADCPs overtime and holiday premium payments and, for much of the past 6 years, has paid 1.5 overtime to an additional 5 titles within the personnel and internal affairs departments. Collectively, these

¹ “Exempt” is the term commonly used by CFD personnel to refer to employees who are not represented under the Chicago Fire Fighters Union Local 2 Agreement with the City of Chicago. The term “exempt” as used in this context bears no relation to the term “exempt” as used in Fair Labor Standards Act of 1938, 29 U.S.C. § 201, *et seq.*

² For purposes of this report, the relevant contract is the Local 2 Agreement of July 1, 2003 through June 30, 2007. The new contract for the period July 1, 2007 through June 30, 2012 was not adopted until January 2011. The positions covered under the terms of the contract remained the same. Some CFD exempt employees still pay union dues so as to, for example, remain in good standing with credit union loans or to demonstrate camaraderie with fellow firefighters, but they are not covered by the Local 2 Agreement by virtue of these dues.

³ The full text of the IGO’s Interim Report and Recommendations Regarding the Chicago Fire Department’s Payment of 1.5 Overtime and Straight Overtime to Exempt Employees, dated June 30, 2010, and the initial CFD response, dated June 21, 2010, may be found on the IGO website at <http://www.chicagoinspectorgeneral.org/pdf/cfd-ot-report.pdf>.

payments have dramatically risen since 2006 and have remained at significantly high levels for the past 4 years. Moreover, for each of the past six years, the collective payment of overtime and holiday premium pay to employees bearing those seven exempt titles negated all furlough savings for those employees.

Most troubling, however, is the fact that the CFD paid and continues to pay overtime and holiday premiums, along with other cash benefits guaranteed by the Local 2 Agreement, to a significant number of employees not entitled to such benefits under the contract. Although the CFD does not authorize overtime or holiday premiums for most of its exempt titles, the department has provided these benefits to seven non-union titles—most significantly to DDCs and ADCPs—at its discretion and at a significant expense to taxpayers. The IGO views the payment of these benefits to salaried, mostly high-ranking, supervisory/managerial employees as unnecessary and a substantial drain on limited public resources. The IGO strongly recommends they be discontinued.

II. IGO INTERIM REPORT OF JUNE 30, 2010

The IGO Interim Report reviewed straight overtime, 1.5 overtime, and holiday premium payments to all exempt CFD employees for 2008, 2009, and the first quarter of 2010. To conduct this review, IGO investigators extracted payroll data from the Chicago Integrated Personnel and Payroll Systems (CHIPPS). The IGO based its review on a list received from the Office of Budget and Management (OBM) of all members of the CFD not covered by the Local 2 Agreement. As of February 2010, the OBM list included 44 separate titles ranging from fire commissioner to staff assistant. Of those 44 exempt titles, IGO investigators determined that the CFD paid 7 titles overtime, holiday premium pay, or both. Those titles are DDC, ADCP, CFD internal affairs division (IAD) supervising investigator, IAD investigator specialist, IAD investigator, staff assistant, and administrative services officer I.

The Interim Report began with an overview of the CFD's unpaid furlough days, unpaid holidays, and City shutdown days from 2008 through 2010. As a result of the City's furlough program, the number of unpaid days for exempt CFD employees increased from as many as 6 in 2008, to as many as 15 in 2009, to a total of 24 unpaid days in 2010.

The IGO's review of overtime payments for CFD exempt employees during this same period showed a significant increase, which directly correlated to the increase in the number of unpaid days. Holiday premium pay to exempts saw similar increases. The IGO reported that under the terms of the Local 2 Agreement, covered members who work on a holiday are paid for the time worked (usually a 24-hour shift) plus an additional 1.5 payment, for a total of two and a half time (2.5) holiday pay (60 hours of pay for a 24-hour shift). In its June 2010 response to the Interim Report, the CFD explained that unlike covered members, an exempt employee at DDC-rank who works on a holiday receives a maximum of 24-hours of straight-time plus a holiday premium of 24-hours of straight-time, meaning 2.0 holiday pay (48 hours of pay for 24 hours worked). The IGO confirmed that the CFD's statement was correct: the exempt titles of DDC and ADCP receive holiday pay at the 2.0 rate. These exempt

employees receive holiday premium if they 1) work on a holiday, 2) work on a holiday that falls on their “Daley Day” (a paid day off), or 3) trade workdays with another employee to work on a holiday.⁴

In the Interim Report, the IGO identified 50 exempt employees who had received straight overtime and holiday premium payments during the relevant period.⁵ In both categories, payments to exempt members saw significant increases between 2008 and 2009 and were on track to continue increasing in the first quarter of 2010.

With respect to 1.5 overtime payments, the IGO identified 19 exempt employees who received 1.5 overtime in 2008 and 2009. In 2008 these individuals collectively received \$54,149.09 in 1.5 overtime, while the same employees received \$42,314.11 in 2009. In the first quarter of 2010, 3 DDCs initially received a combined total of \$11,497.17 in 1.5 overtime but were required to pay it back in payroll deductions that same quarter. These deductions occurred shortly after the IGO’s questioning of such payments in interviews with CFD personnel in early 2010.

The IGO investigation determined that the CFD maintains no general written policy regarding overtime or holiday premium payments for exempt employees. The one exception is the IAD Policy and Procedures Manual section on Overtime and Compensation, which provides that “[o]vertime is structured so that each investigator receives a proportionate amount of overtime,” with approval on a case-by-case basis. The manual specifically addresses overtime compensation only for IAD investigators assigned to the 24/7 drug-testing component, stating that compensation will be compensatory time unless the investigator is dispatched for a call, in which case the investigator may choose between paid overtime or compensatory time at a rate of time and a half. IAD investigators assigned to the drug testing component dispatched on a holiday may choose between paid overtime or compensatory time at a rate of double time.

Interviews with CFD officials indicated that the unwritten policy for exempts other than IAD investigators is to provide straight overtime to those as high ranking as DDCs and ADCPs. District chiefs (DCs), the next highest rank, are not permitted paid overtime. CFD officials reported that DDCs and ADCPs, although exempt, also receive holiday premium pay. Finally, all CFD personnel reported that 1.5 overtime is not permitted for DDCs or ADCPs, and any such payments were the result of a clerical error. With respect to IAD and personnel employees, however, a senior CFD official stated that those employees were permitted 1.5 overtime at the discretion of past CFD commissioners.

In analyzing potential causes underlying the surge in overtime within the department, the IGO noted the retirement of two DDCs in November 2009 and a reportedly high number of DDCs out on paid medical leave (“lay-up”) throughout 2009. Additionally, the IGO learned that a significant amount of DDC overtime payments in 2009 was the result of DDC participation in the 2009

⁴ A “Daley Day” is a term used by the CFD to describe a 24-hour platoon employee’s scheduled, paid day off.

⁵ In the course of the IGO’s expanded review, investigators identified five additional exempt employees who had received overtime or holiday premium pay during this time frame. Accordingly, the total amounts of overtime and holiday premium pay reported in the updated findings below have increased.

lieutenant oral boards—interview examinations of firefighters and those holding the rank of engineer who are seeking promotion.⁶ The IGO also noted the possibility that the application of the City’s furlough program to CFD was a precipitating factor in the increase in overtime pay. The investigation revealed that the spike in overtime payments to CFD exempts in 2008 and 2009 had resulted in overtime payments outstripping deductions for unpaid furlough days, a concern recognized by a senior OBM official who acknowledged to the IGO that the City had “lost money” on the CFD with respect to the furlough program. Finally, a senior CFD official informed the IGO that overtime is paid to DDCs to ensure their salaries remain higher than those of the lower ranking (but union-covered) battalion chiefs (BCs), and a CFD finance official stated that exempt employees receive certain Local 2 Agreement benefits such as holiday premium pay to maintain a good exempt workforce.

The IGO further noted that of the two DDCs who retired in 2009, one had scheduled all of his mandatory furlough days in December 2009, but was permitted to retire at the end of November without taking any furlough days for the year. This loophole existed in 2009 due to the lack of a rule requiring individuals to take a set amount of furlough days for each three or six month period of the year and resulted in inequities in the application of furlough days. The City’s recent furlough resolutions for 2010 and 2011 have largely mitigated this problem—in 2011 employees are required to take 3 furlough days per quarter. Without any required prorating upon retirement, however, these resolutions do not eliminate the possibility that an employee may retire within a quarter without taking the full number of furlough days for that quarter.⁷

Based on these preliminary findings and analysis, the IGO made a number of recommendations designed to assist the CFD in addressing its rising overtime and holiday premium costs. The IGO recommended that the CFD conduct an audit of overtime payments, conduct an analysis of the various causes of significant overtime and the legal obligations for overtime payments under the Fair Labor Standards Act (FLSA), and establish written policies regarding payment of contract benefits to exempt employees.

In June 2010, the CFD stated that it would conduct a global audit of all DDC overtime and recoup monies paid due to clerical errors, seek feedback from the Department of Law regarding straight-time overtime for the exempt employees working the platoon shift, research alternatives to IAD overtime, develop a policy for exempts regarding staffing and overtime, review CFD policy of paying DDCs holiday pay, review the payment of overtime for DDC participation in the oral boards, and review the most efficient means to use existing personnel in circumstances where CFD faces shortages.

In February 2011, the IGO invited the CFD to provide an update and further response to these recommendations. The CFD reported that it had conducted a global audit of all overtime payments

⁶ In the Interim Report the IGO reported that firefighters participated in the oral boards. The CFD, in its March 2011 response, clarified that individuals holding the career service rank of engineer were also eligible to participate.

⁷ Updated CFD payroll records show that 2 DDCs retired in 2010. These two retirees each appear to have taken the appropriate number of furlough days in relation to the portion of the year that they worked.

for 2008 through the first quarter of 2010, analyzed holiday premium pay for exempt employees, analyzed suggested changes to DC and DDC staffing, and begun the process of reviewing alternatives to IAD drug-testing duties. The CFD stated that it would review payment of overtime for DDC participation in the lieutenant oral boards when the next test is considered.

The CFD's response, however, provided no update on its earlier commitment to recoup monies paid due to clerical errors, seek feedback from the Department of Law regarding straight-time overtime for exempt employees working the platoon shift, or develop a policy for exempts regarding staffing and overtime. The IGO appreciates the CFD's efforts to date and is confident that the updated findings provided in this report should assist the CFD in its continued efforts to address these remaining issues and improve operations within the department.

III. UPDATED FINDINGS & ANALYSIS

The IGO has completed an expanded review of all overtime, holiday premium, and other contract benefits paid to CFD exempt employees as well as all CFD unpaid furlough deductions imposed from 2005 through 2010. To conduct this review, IGO investigators used CHIPPS to pull year-end payroll data for all individuals holding the 7 CFD titles identified as receiving overtime (straight-time and 1.5 time), holiday premium pay, or both, throughout the entire 2005 through 2010 period. IGO investigators accounted for mid-year employee promotions and other transfers in or out of exempt titles to eliminate any over-counting during a given year. In addition, as referenced in the Interim Report, IGO investigators interviewed a number of CFD and OBM employees. Because this investigation did not reveal any misconduct, the identities of specific individuals interviewed have been withheld from this public report.

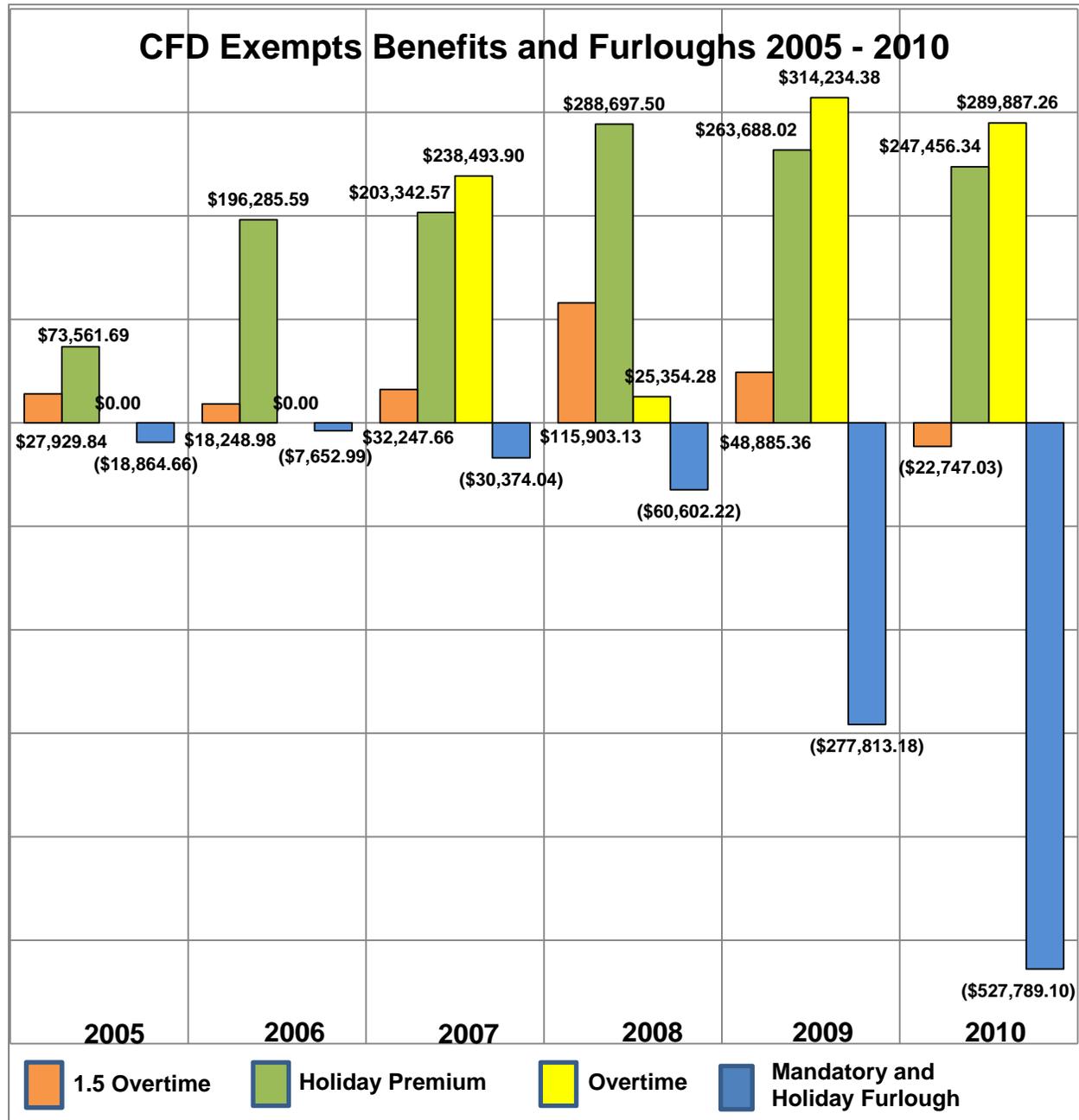
The IGO identified 81 individuals who held the 7 relevant exempt CFD titles from 2005 through 2010. For the entire 6-year period, DDCs in the Fire Suppression and Rescue (FSR) Section comprised the majority of this list with 48 individuals. The remainder of the list includes 18 ADCPs, 13 IAD investigators, and 2 personnel employees.

The IGO's investigation revealed that the CFD provides DDCs and ADCPs—who comprise approximately one-third of all exempt employees in a given year—significant cash benefits, most significantly, overtime and holiday premium pay. During the past six years, IAD and personnel department employees also received overtime payments. The cash payment of overtime and holiday premium pay to CFD exempts has dramatically increased over the past six years in direct correlation with the institution of the furlough program. The CFD is under no obligation to pay these benefits to exempt employees not subject to the Local 2 Agreement, and yet the payment of these benefits has negated all savings from the City's furlough program for these employees. Although the CFD will routinely experience fluctuations in staffing and the furlough program presents an additional staffing challenge, the direct correlation between increased overtime and increased furlough days calls into question the overall efficacy of the furlough program as applied to the CFD's exempt employees.

Ultimately, given that the CFD is under no obligation to pay exempt members cash overtime or holiday premiums negotiated only for covered Local 2 members, the IGO recommends that the CFD discontinue these payments. The CFD should further reevaluate the payment to exempt

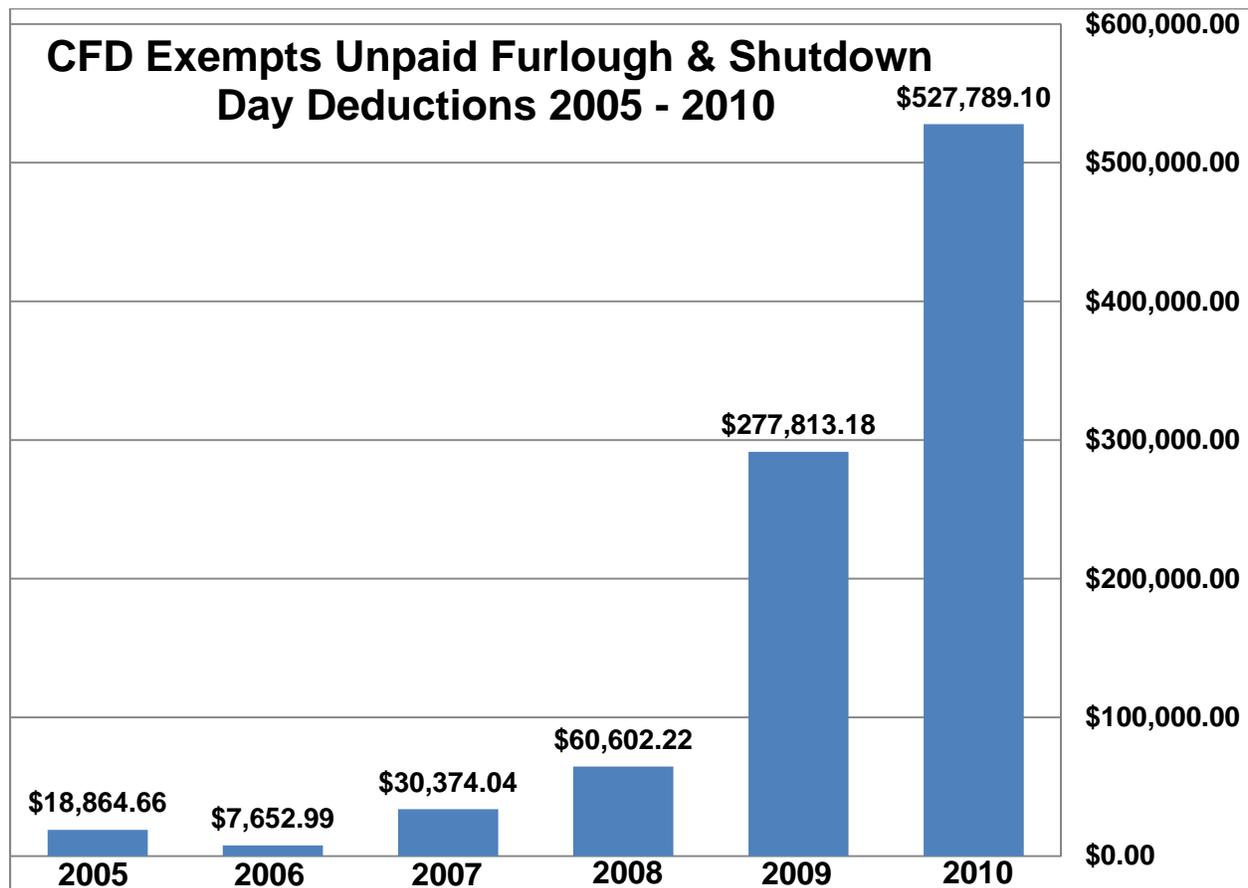
employees of other cash-based contract benefits—specifically duty availability pay and the protective gear and uniform allowance. Finally, as long as the CFD continues to pay overtime and holiday premiums to DDCs and ADCPs, the IGO recommends that OBM, in conjunction with the CFD, evaluate the cost effectiveness of the furlough program with respect to these two titles.

The graph below shows all combined totals of straight overtime, 1.5 overtime, holiday premium pay, and furlough deductions for the 7 relevant CFD exempt titles from 2005 through 2010.



A. Unpaid Furlough Days, Unpaid Holidays, and City Shutdown Days (2005 - 2010)

The IGO examined the number of all unpaid furlough, unpaid holiday, and City shutdown days imposed on CFD exempt employees for 2005 through 2010.⁸ From 2005 through 2007, the City had minimal furlough deductions. In 2005, CFD exempt employees were subject to 2 furlough days. In 2006, CFD exempts were subject to 3 unpaid Reduced City Service (“City shutdown”) days, and in 2007, CFD exempts were subject to one furlough day. As described in the Interim Report, the City’s furlough program began to grow in significance in 2008 with 3 furlough days and 3 City shutdown days, for a total of 6 unpaid days. The number of unpaid days greatly increased in 2009 and 2010, reaching a total of 15 unpaid days in 2009, and 24 unpaid days in 2010.⁹



⁸ CFD employees covered by the Local 2 Agreement were not subject to any of these unpaid days.

⁹ The terms of the City’s furlough resolutions adopted by the City Council vary each year and in some years impose varying numbers of unpaid days for non-represented employees based on annual salary. The numbers presented here represent the maximum number of unpaid days (both unpaid holidays and mandatory furlough days) authorized for each year. With respect to Reduced City Service days, some positions were exempt from participation based on operational necessity.

B. Overtime and Holiday Premium Payments to Chicago Police Department Exempt Employees

As a point of comparison, the IGO conducted a review of 2010 overtime and holiday premium payments to those members of the Chicago Police Department (CPD) who are exempt from the applicable CPD collective bargaining agreements.¹⁰ Although the contract terms vary somewhat from those in the CFD Local 2 Agreement, CPD members covered under the agreements are eligible to receive 1.5 overtime and holiday premium pay.¹¹ Within CPD, exempt ranks not covered under the CPD collective bargaining agreements include the commander rank and higher. CPD exempt titles receive base salaries comparable to those paid to CFD exempts. CPD commanders receive a base salary of approximately \$139,248, which is relatively comparable to the salary of a DDC with significant tenure, or an entry level DC.¹² Additionally, CPD exempts have been subject to the same number of furlough deductions as other non-union City employees, including CFD exempts. Although CPD commanders may not be subject to the same staffing requirements as DDCs or DCs with respect to holidays, it is worth noting that none of the CPD exempts received any straight overtime, 1.5 time overtime, or holiday premium pay in 2010.

¹⁰ The relevant CPD bargaining agreements are the Agreement Between the Fraternal Order of Police, Chicago Lodge No. 7 and the City of Chicago; Agreement Between the City of Chicago and the Policemen's Benevolent & Protective Association of Illinois, Unit 156-Sergeants; Agreement Between the City of Chicago and the Policemen's Benevolent & Protective Association of Illinois, Unit 156-Lieutenants; and the Agreement Between the City of Chicago and the Policemen's Benevolent & Protective Association of Illinois, Unit 156-Captains.

¹¹ It should be noted that the CFD Local 2 Agreement, Section 5.1, includes a "Wage and Insurance Protection" clause. That clause provides that if the City extends to the CPD bargaining unit any lump sum payments, percentage salary or wage increases, or improvements in insurance coverage, in excess of those contained in the CFD Local 2 Agreement, the City must also extend those benefits to CFD Local 2 members within comparable classifications and ranks. Thus, for covered members of both bargaining units, the Local 2 Agreement has sought to ensure "no less than historical parity between the two (2) groups of sworn employees." The CPD bargaining agreements for sergeants, lieutenants, and captains contain reciprocal provisions.

¹² Base salary ranges for CFD exempt and non-exempt employees increase with the employee's rank and seniority. The highest ranking non-exempt position covered under the Local 2 Agreement is that of BC. BCs and other uniformed CFD exempts are paid in accordance with the Municipal Pay Schedules, F Salary Schedule. The BC annual base salary is found at Grade 6 of the F Salary Schedule and ranges from \$80,190, the Step 1 entrance rate, to \$114,486, the Step 10 maximum rate (with the exception of BCs with 30 years of service as of January 1, 2006, who receive a Step 11 maximum rate of \$116,802). DDCs and ADCPs—the lowest-ranking positions exempt from the Local 2 Agreement—are found at Grade 7 on the F Salary Schedule and receive a base annual salary ranging from \$101,352, the Step 1 entrance rate, to \$134,868, the Step 7 maximum rate. DCs, the next highest rank, are paid a "Special Rate" starting at \$134,868, the Step 7 maximum rate of Grade 7 on the F Salary Schedule, and receive increases based only on cost of living adjustments. IAD and personnel department employees are paid in accordance with the BX Salary Schedule for Non-Represented Employees. IAD supervising investigators are found at Grade 16 and receive a base annual salary ranging from \$59,796 at Step 1 to \$97,416 at Step 12. IAD investigator specialists, Grade 15, receive a base annual salary ranging from \$54,492 at Step 1 to \$88,812 at Step 12. IAD investigators, Grade 14, receive a base annual salary ranging from \$49,668 at Step 1 to \$80,916 at Step 12. Within personnel, staff assistants and administrative service officers are both Grade 13 and receive a base salary ranging from \$45,240 at Step 1 to \$73,752 at Step 12.

The absence of any overtime or holiday premium compensation for exempt CPD members is consistent with the CPD's written departmental policies. The CPD directives, "Payroll and Timekeeping—Overtime/Compensatory Time" and "Holiday/Personal Days," provide detailed departmental policies regarding the provision of overtime and holiday compensation for those employees covered by the CPD collective bargaining agreements, as well as those exempt from the agreements.¹³ With respect to overtime, the directive states "[c]ommand staff members (sworn and civilian) are not compensated for overtime worked. Such members are eligible for administrative leave which will be granted at the discretion of the bureau or division head as appropriate."¹⁴ With respect to holiday compensation, the directive provides for the provision of administrative leave or compensatory time only:

A member not covered by a collective bargaining unit agreement and exempt from FLSA will be compensated for an established holiday in the following manner: (1) A member who is a Grade 12 or higher or G-4 or higher will not receive additional compensation for working on a holiday. These members are eligible for administrative leave which will be granted at the discretion of the member's immediate unit command staff officer. (2) A member who is below a Grade 12 or G-4 who is scheduled to work a regular tour of duty on an established holiday will be credited with 7 hours of compensatory time.¹⁵

Finally, the directives state that compensatory time off for all CPD members may be requested in one-hour segments only and do not provide for the pay-out of compensatory time or administrative leave in cash.¹⁶

C. Overtime and Holiday Premium Payments to CFD Exempt Employees

1. Straight Overtime

The IGO's expanded and updated review of straight overtime paid to CFD exempt employees revealed significant fluctuations in the total overtime paid throughout the past six years. The department paid no straight overtime in 2005 or 2006, but for the past two calendar years, straight overtime payments to exempt employees have been particularly high, reaching approximately \$300,000.¹⁷ DDCs and ADCPs were the only exempt titles to receive straight overtime. IAD and personnel employees did not receive straight overtime.

¹³ CPD Directives, Employee Resource E02-02-02, "Payroll and Timekeeping- Overtime/Compensatory Time" and Employee Resource E02-02-03, "Payroll and Timekeeping – Holidays/Personal Days."

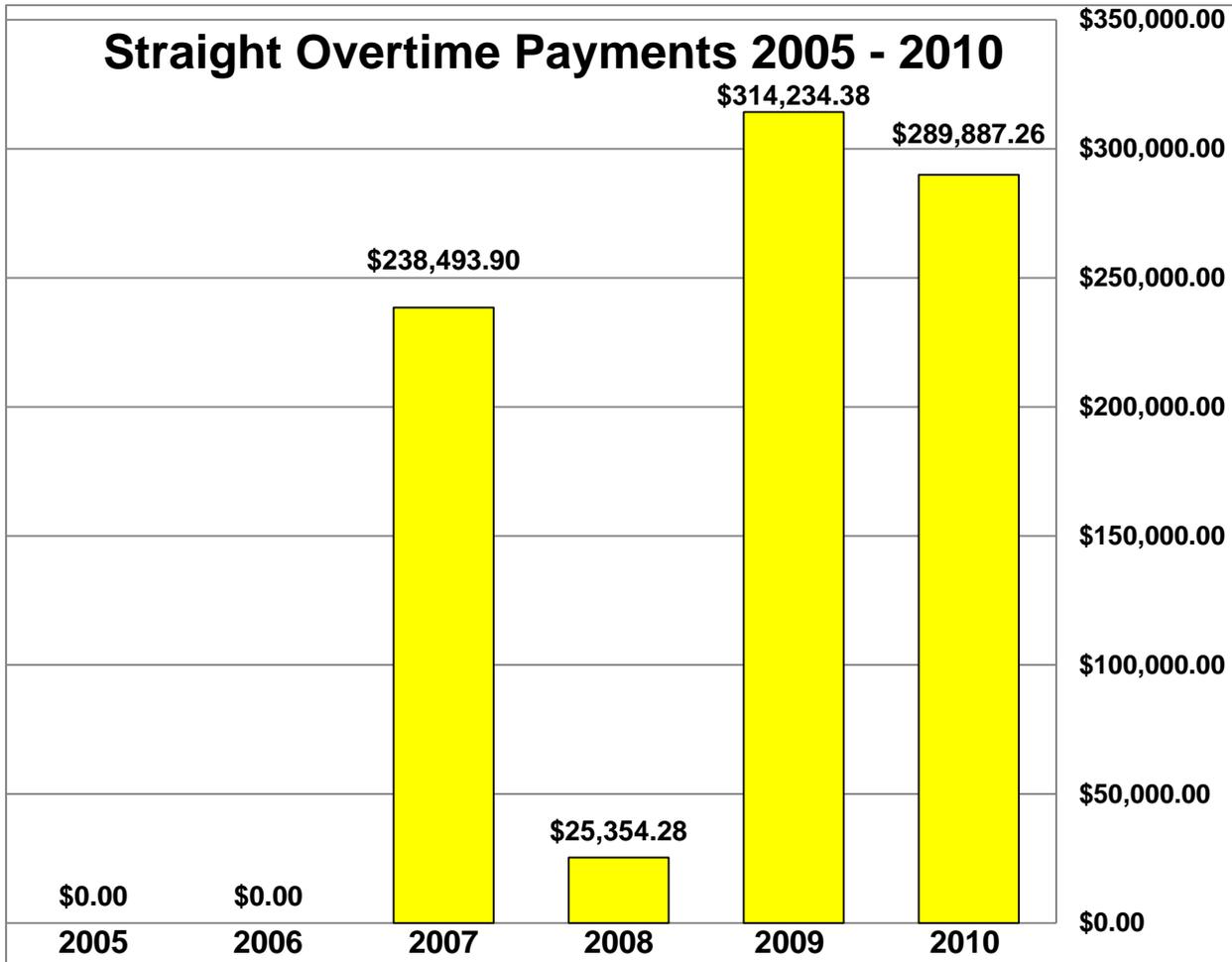
¹⁴ CPD Employee Resource E02-02-02, Section VI, Paragraph H.

¹⁵ CPD Employee Resource E02-02-03, Section III, Paragraph B(3)(e).

¹⁶ CPD Employee Resource E02-02-02, Section VII, Paragraph A.

¹⁷ To the IGO's knowledge, the department has never authorized exempts to earn compensatory time in lieu of cash overtime. In an April 2010 interview, a senior CFD official informed the IGO that the CFD does not provide compensatory time to exempt employees.

The CFD appears to have taken some intermediate steps to stem what in early 2010 appeared to be fast increasing overtime costs. At the time of the Interim Report, CFD exempt overtime appeared on track to outstrip 2009. Instead, 2010 totals fell approximately \$24,000 short of 2009 straight overtime. As addressed in greater detail below, the causes of increased overtime for exempt employees included increased furlough days, the lieutenant oral board exams in 2009, members out on medical leave, and retirements. These causes notwithstanding, the CFD is under no contractual obligation to provide straight overtime to DDCs or ADCPs.



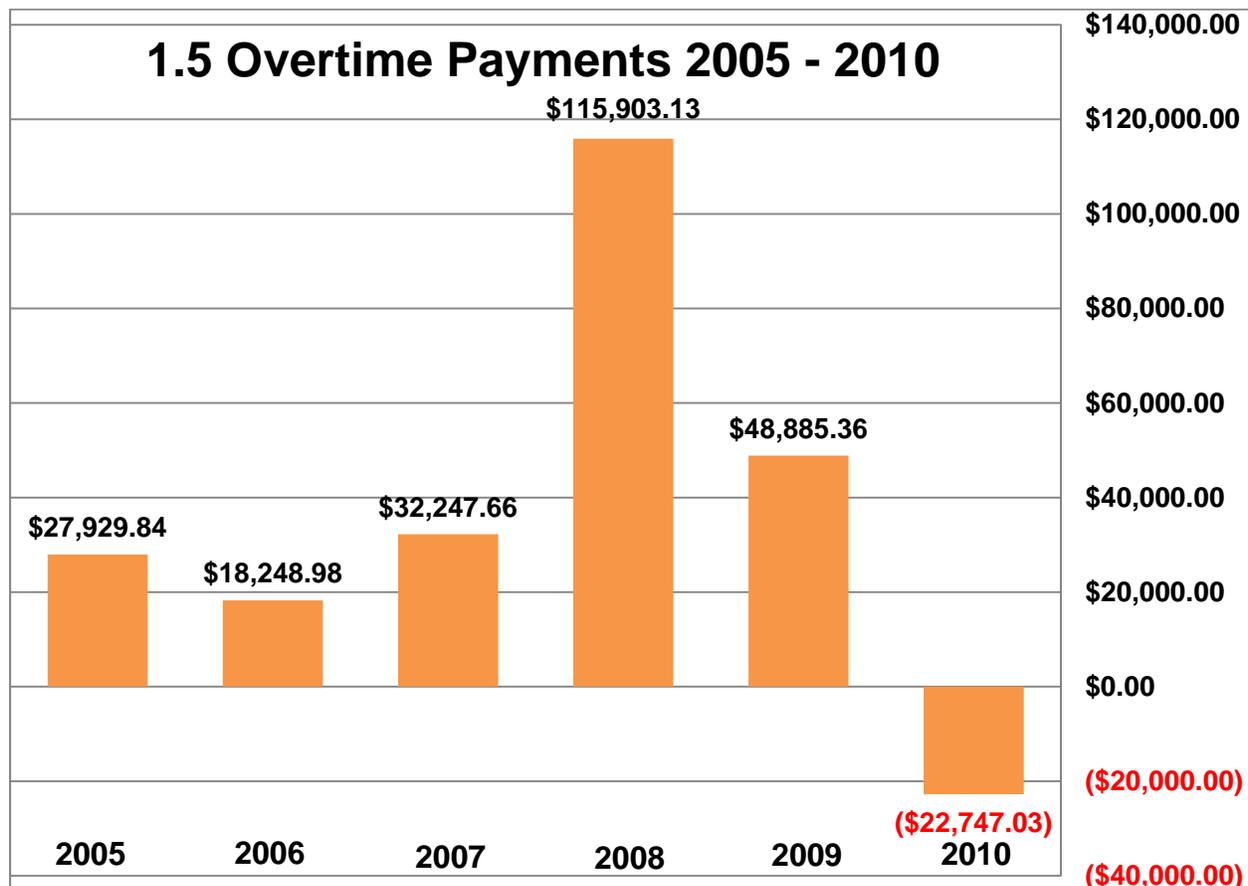
2. 1.5 Overtime

The CFD informed the IGO that, with the exception of IAD and, in some past instances, personnel employees, all other exempt employees are prohibited from receiving 1.5 overtime and that any 1.5 overtime payments to those exempt employees would have been the result of clerical errors. Although the CFD’s responses to the Interim Report focused on 7 DDCs who erroneously received 1.5 payments in 2009, the IGO’s investigation revealed that throughout the relevant period, 1.5 overtime payments were made every year between 2005 through mid-2010 to employees in each of the relevant 7 exempt titles. Moreover, excluding IAD investigators and personnel staff, clerical

errors accounted for the payment of 1.5 overtime to 10 individuals in 2005, 14 individuals in 2006, 11 individuals in 2007, 14 individuals in 2008, and 8 individuals in 2009.

The annual totals of 1.5 overtime paid to all exempt employees—including IAD and personnel employees—remained fairly steady in 2005 through 2007, but spiked dramatically in 2008. The IGO notes that personnel employees received a significant portion of these funds in 2008, with a combined total of \$17,381.73 for just 2 individuals. In 2009, ADCPs did not receive any 1.5 overtime, but DDCs, IAD, and personnel staff continued to receive occasional 1.5 overtime payments.

In 2010, after the IGO issued its Interim Report, the CFD discontinued the payment of 1.5 overtime to all exempts and appears to have recouped some of the 1.5 overtime payments erroneously issued in 2009 and 2008. In early 2010, the CFD paid 3 individuals a total of \$11,497.17 in 1.5 overtime but immediately recouped the entire 1.5 overtime amounts (not just the additional half-time) from those individuals in subsequent payroll deductions. The CFD also appears to have recouped from 10 individuals the additional half-time (the difference between 1.5 and straight time overtime) erroneously paid to them in 2008 and 2009. But excluding IAD and personnel staff, another 6 individuals received significant 1.5 overtime in 2008 and 2009, and the CFD did not recoup any portion of the 1.5 overtime paid.



The IGO commends the CFD for ceasing the payment of 1.5 overtime to personnel staff, putting a stop to costly clerical errors in 2010, and for recouping some of the monies paid in error. Based on the IGO's analysis, however, it is unclear why money was recouped from some exempt members and not others. The IGO further notes that the one written overtime policy within the CFD, governing IAD investigators, provides various overtime compensation options for investigators in the drug-testing unit but does not explain whether overtime must be paid at straight or 1.5 time, nor does it provide a clear rule regarding when and under what conditions investigators may be assigned overtime. Given the lack of clarity and, thus, predictability for IAD Investigator overtime payments, the IGO recommends that this policy be amended to provide clearer standards for overtime and to prohibit the payment of cash overtime benefits. The IGO further supports the CFD's stated commitment to exploring the possibility of contracting out the investigators' 24/7 drug-testing duties and encourages the CFD to complete this review as quickly as possible.

3. Holiday Premium Pay

The IGO's investigation revealed that as a matter of unwritten policy, DDCs and ADCPs are paid double-time for hours worked on any of the 13 CFD holidays. These exempt CFD employees receive a holiday premium equal to 100% of the day's wages, for a total payment of 2.0 time. The CFD consistently paid holiday premiums to DDCs and ADCPs throughout the relevant period.

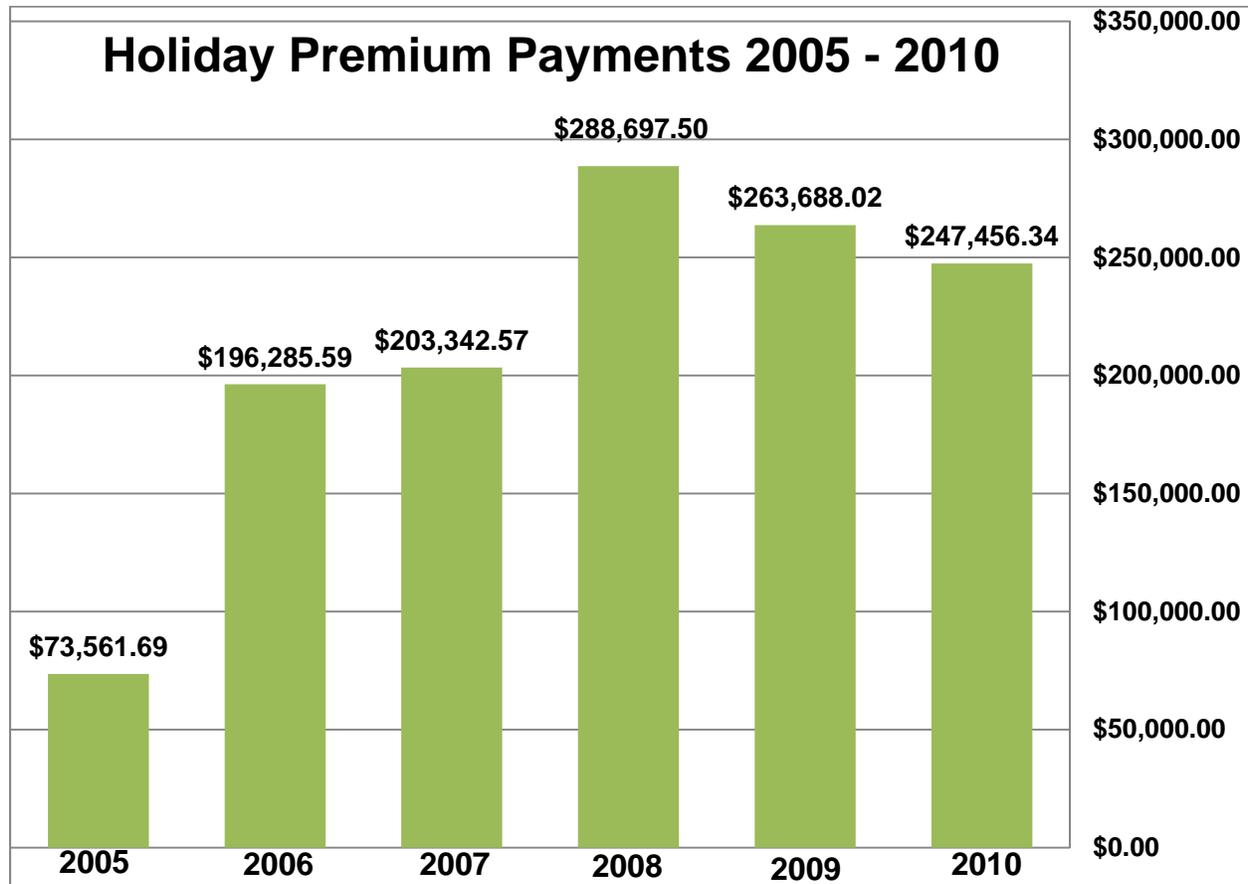
Holiday premium pay to DDCs and ADCPs steadily increased over the past 6-year period and then leveled off at \$247,456 in 2010.¹⁸ This trend contrasts with that of straight overtime, which has fluctuated over the past six years with variations in staffing and other events. In 2008, for example, straight overtime had fallen from its first spike in 2007, but holiday premium pay continued to rise from \$203,342 in 2007 to \$288,697 in 2008.

Additionally, the IGO notes that the CFD's extension of the full list of 13 holidays under the Local 2 Agreement to exempt members further increases the cost of providing holiday premium pay to those employees.¹⁹ Although the CPD also observes 13 holidays with the inclusion of "Community/Police Partnership Day," most other salaried, non-union City employees observe, at most, 12 paid holidays and receive 1 personal day which must be used during the calendar year in which it is earned.²⁰ Because the CFD has designated 13 days as holidays, rather than the City's standard 12, all CFD covered union employees—and those exempt employees extended contract benefits—receive an additional opportunity to receive holiday premium pay.

¹⁸ This data represents only the holiday premium paid over and above the employees' straight-time salary for the day.

¹⁹ The CFD extends to its exempt employees the full list of 13 holidays provided under the Local 2 Agreement along with 4 administrative days, which must be used during the calendar year in which they are earned. Local 2 Agreement Section 7.2.

²⁰ See 2009 City of Chicago Classification and Pay Plan Salary Resolutions, Schedule A.



The CFD has not provided any explanation for the steady increase in holiday pay or for its decision to pay such a significant cash benefit to exempt employees. In its March 2010 response, the CFD stated that it “has analyzed the holiday pay issue and determined that employees working a holiday should be compensated with holiday pay.” The department did not provide any basis for this decision.

There is no contractual right to holiday premium pay for exempts, and the CFD pays these benefits as a matter of discretion. DDCs and ADCPs are paid increased salaries for their increased responsibilities, which may include working holidays to maintain full coverage. While covered employees earn holiday premium pay at an even higher rate than the exempts, their base salaries, subject to the Local 2 Agreement, are lower. Moreover, within the Chicago Police Department, which maintains employee ranks, salaries, and benefits comparable to those within the CFD, exempt members do not receive holiday premiums and instead receive administrative leave or compensatory time. In these challenging fiscal and budgetary times, the discretionary payment of double-time for holidays worked—with no compelling reason from the department—is fairly described as excessive and a waste of taxpayer resources.

C. Possible Causes of Increased Overtime for CFD Exempt Employees

As discussed in the Interim Report, the IGO noted several causes of increased overtime for DDCs and ADCPs, including increased furlough days, the lieutenant oral boards in 2009, members out on medical leave, and retirements. Given the CFD's mandated staffing levels for these titles, the department has not been able to absorb these various reductions in available staff. Specifically, the CFD has repeatedly asserted that in order to maintain proper span of control, risk assessment, accountability, and incident command, the department requires an on-duty DDC in every district on a daily basis. The department has reported that when a DDC is unavailable, DCs are asked to work the shift for the DDC ("act down"), and, occasionally, BCs are assigned to "act up" to the rank of DDC. These accommodations, however, do not appear sufficient to alleviate the need for overtime and holiday work assignments in light of recent reductions in available staff.²¹

1. Lay-ups, Retirements, and Promotions

In interviews with the IGO, CFD officials stated that in 2009 the department experienced an unusually high number of medical absences in the DDC ranks, with as many as 5 of the department's 26 DDCs out on paid medical leave ("lay-up") at one time. In its June 2010 and March 2011 responses to the Interim Report, the CFD reported that 5 DDCs were on lay-up in 2008 for a total of 395 days, and, in 2009, 10 DDCs were on lay-up for a total of 1,159 days, with as many as 6 on leave at the same time. The CFD reported that 6 DDCs out of all 28 DDCs remained out on lay-up at the beginning of 2010.

A review of the number of lay-ups among the DDC and ADCP ranks confirms that these ranks have experienced increased medical absences over the past six years, including significant increases in 2009 and 2010. In 2005, 4 DDCs and 4 ADCPs were out on lay-up for a total of 622 days. In 2006, 6 DDCs and 9 ADCPs were out a total of 995 days. In 2007, 8 DDCs and 4 ADCPs were out for a total of 1,073 days. Lay-ups returned to 2006 levels in 2008, with 5 DDCs and 7 ADCPs absent for a total of 996 days. But lay-ups were dramatically higher in 2009 and 2010: in 2009, 8 DDCs and 2 ADCPs were absent for 1,550 days, and in 2010, 10 DDCs and 4 ADCPs were out on lay-up for a total of 1,501 days.

Regarding retirements and promotions, the IGO's review of payroll data established that CFD exempt ranks experienced steady retirements and promotions throughout the past six years. In 2005, just 2 DDCs retired from the exempt ranks, while the department promoted approximately 5 into the DDC rank and 1 to ADCP. There appears to have been a brief lag in promotions in 2006 when the CFD experienced a net loss of 1 ADCP due to retirement, but an increase in promotions in 2007

²¹ In the Interim Report, the IGO recommended that the CFD consider having DDCs cover two districts rather than one. The department responded that such an adjustment would hinder the CFD's ability to effectively manage its resources and personnel. Specifically, the CFD stated that "span of control would drastically increase from 5 to 1, to 10 to 1" and noted that "geography would limit the ability to conduct day to day responsibilities and responses while providing direct supervision." The department further stated that "DDCs covering more than one District would result [in] no available DDCs, on days with multiple special events, days with one high rise fire and a Still and Box Alarm simultaneously."

resulted in a net gain in the ranks of DDCs and ADCPs for the following year. In 2008, retirements and promotions again resulted in a net gain of 5 DDCs and 1 ADCP, coinciding with a decrease in straight overtime. In 2009 and 2010, however, cash overtime payments spiked to approximately \$300,000 each year, despite no net loss of DDCs or ADCPs due to retirements and promotions.

2. Oral Boards

In 2009 the CFD held oral boards, the test required for promotion to the lieutenant rank. In the Interim Report, the IGO reported that 18 DDCs participated in administering the examinations during off-duty hours and appeared to have been paid a total of \$117,590.56 in straight overtime for their participation.

In its March 2011 response, the CFD reported that 21 DDCs were utilized, resulting in \$146,097 in overtime, representing 46% of all straight overtime paid to exempts in 2009. The department further noted that this test is held just once every ten years.

In an interview with the IGO, a senior CFD official stated that the payment of overtime for the 2009 oral boards was unplanned and disorganized. Based on the IGO's review of these overtime payments, it appears that DDCs were retroactively paid large lump sums of straight overtime for their participation in the oral boards.²²

Given the high costs of the recent oral boards and the department's admitted difficulties in administering the exam, the IGO recommends that the CFD analyze the operation of past oral boards and develop a plan to effectively conduct future oral boards in a way that will eliminate the need for significant overtime or overtime payments. Having a plan in place before the next testing sequence should eliminate confusion and overtime costs in the future.

3. Furlough Program

The CFD is correct that there have been multiple causes for the increased overtime and holiday premium costs, but the increase in these costs has coincided with the sharp increase in the number of furlough days in 2009 and 2010. The lieutenant oral boards accounted for nearly half of the overtime for 2009. Nevertheless, year-end overtime and holiday premium pay figures for 2010, during which no oral boards occurred, remained significantly high. Even accounting for the admitted \$146,097 in overtime paid for oral boards, the CFD paid \$168,137.38 in 2009 for straight overtime not attributed to the oral boards. Thus, disregarding the costs of oral boards in 2009, straight overtime increased by \$121,749.88 in 2010 (2010 straight overtime of \$289,887.26 minus adjusted 2009 straight overtime of \$168,137.38), resulting in a 72% increase over 2009. At the same time, CFD exempts saw a 60% increase in the number of furlough days required in 2010 over 2009.

²² The IGO notes that the need for the 2009 lieutenant oral boards remains unclear (e.g., nearly half of all members of the 99-employee Fire Prevention Bureau are lieutenants), particularly at a time when the cost of conducting the interviews was cost prohibitive.

The dramatic increase in overtime for DDCs and ADCPs largely coincides with the significant increase in furlough days. And given the CFD's staffing requirements for these titles and the number of active employees in these ranks, it appears that the CFD has not been able to accommodate the recent number of furlough days without significant overtime hours. The IGO encourages the CFD to continue, and where possible expand, its practice of acting down DCs and acting up BCs to cover for absent DDCs or ADCPs. Ultimately, however, the number of days off required of CFD exempts by the 2010 furlough program has clearly resulted in a significant increase in overtime and holiday premium payments to DDCs and other exempt employees in order to maintain these staffing levels.²³ Accordingly, as long the CFD continues to pay exempt members overtime and holiday premium benefits, the IGO recommends that the OBM reconsider the applicability of the furlough program to the titles of DDC and ADCP.

D. Duty Availability Pay and Protective Gear and Clothing Allowances

In addition to higher base salaries, overtime, and holiday premium payments, the IGO's investigation revealed that high ranking, exempt CFD employees receive most if not all contract benefits under the Local 2 Agreement. Of particular note are the automatic cash benefits, including duty availability pay and protective gear and clothing allowances. These two benefits became the subject of some focus in 2009 during the renegotiation of the Local 2 Agreement with respect to covered members. At that time, the total annual cost of these two benefits for the entire department was estimated at nearly \$80 million.²⁴ The IGO's investigation established that in 2010 exempt members collectively received \$208,174 in duty availability pay and protective gear and clothing allowances.

Duty availability pay is compensation intended to cover the fact that CFD members remain on-call 24/7 (including off-duty hours) in case of an emergency. Under Section 5.7 of the Local 2 Agreement, duty availability pay is a flat, quarterly amount paid unconditionally in monthly installments to all covered employees. With the exception of EMS employees who are paid at a lower rate, covered employees—and based on the IGO's review, exempt DDCs and ADCPs—each received \$680 quarterly in 2005 (\$2,720 per year), and \$730 quarterly as of January 2006 (\$2,920 per year). CFD members are automatically paid duty availability pay in addition to any applicable overtime if they are recalled during off-duty hours. The IGO's review shows that DDCs and ADCPs continued to receive this contract benefit, which for 2010, totaled \$113,024 for these two exempt ranks.

The protective gear and clothing allowance provision found in Section 16.9 of the Local 2 Agreement, states that the City shall provide all uniformed members with dress uniforms, work clothes, and protective clothing and gear and shall replace them at no charge when worn out or damaged. Additionally, all platoon and 40-hour employees receive, in two installments per year, a fixed amount of money for cleaning and maintenance of their uniforms. In 2005, platoon employees

²³ The IGO did not investigate or analyze the efficacy or efficiency of CFD's staffing requirements with respect to emergency response, span of control, or incident command.

²⁴ See e.g., Goudie, Chuck. "I-Team Report: A Buried Treasure." *WLS, ABC7 Chicago.com*. <http://abclocal.go.com/wls/story?section=news/iteam&id=6740943>.

each received a total of \$1,050, and 40-hour employees each received \$1,250. These amounts increased annually, and as of 2007, platoon employees each received \$1,250 and 40-hour employees each received \$1,500 annually for clothing maintenance. The IGO's review of CHIPPS payroll information for 2005 through 2010 established that exempt, uniformed employees also received these sums. In 2010, protective gear and clothing allowances to exempt members totaled \$95,150.

Although the CFD remains obligated under the Local 2 Agreement to pay these benefits to all covered members, the CFD has no obligation to extend either of these cash benefits to exempt employees. The IGO recommends that the department analyze whether either cash benefit continues to make sense within the context of the specific job responsibilities and salary structure of each exempt title and eliminate the benefit where appropriate.

E. Extension of Contract Benefits to Exempt Employees

Putting aside the causes for the recent spike in overtime, the CFD has provided few reasons supporting its decision to pay those in exempt CFD titles cash overtime or holiday premium pay. The CFD makes these payments to exempt employees purely as a matter of departmental discretion. In addition, the CFD's overtime and holiday premium policies distinctly contrast with those of the CPD, which provide only for administrative leave or compensatory time. In interviews with the IGO and in its responses to the Interim Report, the CFD has cited two reasons for the payment of straight overtime compensation: 1) inequities in departmental salary structure for exempts as compared to union employees and 2) the possibility that overtime is required for members working the platoon shift under the FLSA.

First, with respect to departmental salary structure, a high-ranking CFD official in an April 2010 interview with the IGO opined that no one should have to work for free and that without overtime, DDCs would earn less than the lower-ranking BCs. But DDCs and all other high-ranking exempts receive increased base salaries (DDCs and ADCPs receive approximately \$15,804 more than BCs) in consideration for their increased responsibilities. And the CFD has provided no basis for distinguishing between exempt DDC and ADCP titles receiving contract benefits and the higher-ranking exempt titles, ranging from DC, assistant deputy fire commissioner, and on up to commissioner, none of which receive contract benefits.

Moreover, salary and overtime figures for BCs and DDCs do not support the CFD's stated justification for paying DDCs overtime. The 2010 Overtime Payments List produced by the OBM reveals that in 2010 91 BCs—the highest ranking employees covered by the Local 2 Agreement—were paid overtime, receiving an annual total of \$5,656.45 on average. By contrast, in 2010 23 DDCs were paid overtime, receiving an average of \$11,431.84 for the year, and 9 ADCPs received an average of \$4,213.07. Thus, DDCs in particular have earned significantly more overtime than BCs, and in 2010, the overtime that BCs earned (\$5,656 on average) did not come close to exceeding the difference in base salary of the DDCs (\$15,804).

Nevertheless, if the CFD believes that DDC and ADCP salaries have not adequately kept pace with those of covered members, the department is free to take the necessary steps to address inequities in its salary structure. The base salaries for exempts are not governed by the union agreement or

bargaining schedule and may be adjusted by the department, in conjunction with OBM. Overtime is an unpredictable expense, and as such, the department should take steps to ensure adequate staffing or appropriate base salaries for its exempt employees.

Second, in the CFD's June 2010 response, the department stated that it would seek feedback from the Department of Law regarding FLSA requirements with respect to overtime for the exempt employees working the platoon shift. In its March 2011 response, the CFD again noted the potential penalty for "being wrong about FLSA application." But the department provided no update as to whether the Department of Law has been contacted or if any legal analysis has been undertaken to determine whether the FLSA in fact requires the payment of overtime to CFD exempt employees. Based on the CFD's responses to date, the IGO remains concerned that these payments are being made simply out of an over-abundance of caution and not on the basis of any *fact-specific* legal analysis.

Finally, the CFD lacks any written policy regarding the payment of overtime—or any other contract benefit—to exempt employees. Although the CFD describes its policy as one established by past practice, unwritten policies dealing with issues as significant as compensation present a significant risk of abuse. Unwritten policies such as this lack transparency, cause confusion, and are often subject to mismanagement. The IGO therefore strongly recommends that the CFD immediately draft a general order or other written directive, similar in form to those used by the CPD, expressly addressing overtime and holiday compensation for all exempt employees.

IV. CONCLUSION AND RECOMMENDATIONS

Based on these findings and analysis, the IGO recommends that the CFD consider eliminating the payment of contract-based cash benefits to members not covered by the contract (a.k.a. "exempt members"). Regardless of whether the CFD discontinues these discretionary benefits or chooses to continue these payments, the IGO strongly recommends that the CFD draft a written policy, similar to the CPD directives, clearly and expressly detailing the compensation provided to exempt CFD members. Such a policy would ensure consistent and transparent application of the department's compensation for exempts. Finally, the CFD should conduct an analysis to determine how the large increase in cash overtime and holiday premium payments can be curtailed or altogether eliminated, while maintaining operationally-necessary staffing.

In summary the IGO makes the following recommendations:

- The City's Department of Law conduct a detailed analysis of which, if any, CFD exempt employees are entitled to receive cash overtime as a matter of any applicable laws, including the FLSA.
- The CFD draft, clearly communicate, and disseminate written policies concerning compensation for exempt members, including eligibility for and payment of 1.5 and straight overtime, holiday premium pay, and other cash-based contract benefits. The IGO recommends that the practice of paying cash overtime and holiday premium pay to CFD

exempts be ceased in its entirety and that the CFD consider the use of administrative leave or compensatory time in lieu of overtime or holiday premium payments.

- The CFD analyze whether the current cash-based contract benefits of duty availability pay and the protective gear and uniform allowance continue to make sense within the context of the specific job responsibilities and salary structure of each exempt title and eliminate the benefits where appropriate.
- The CFD undertake an analysis to evaluate whether any of the remaining 1.5 overtime paid to exempt members in 2008 and 2009 should be recouped by the City.
- The CFD conduct an analysis to determine how overtime and holiday premiums can be curtailed or altogether eliminated, while maintaining operationally-necessary staffing.
- The CFD analyze the operation of past oral boards and develop a plan to effectively conduct future oral boards in a way that will eliminate the need for significant overtime or overtime payments. The IGO believes that having a plan in place before the next testing sequence should eliminate confusion and overtime costs in the future.
- OBM, in conjunction with the CFD, evaluate the applicability of furloughs to CFD exempts—DDCs and ADCPs in particular—given the surge of overtime since requiring CFD exempts to take mandatory furloughs.