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**REPORT AND RECOMMENDATIONS OF
THE INSPECTOR GENERAL**

TO: Richard M. Daley
Mayor

Eugene L. Munin
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Office of Budget and Management

Robert S. Hoff
Commissioner
Chicago Fire Department

Steven J. Lux
City Comptroller
Comptroller's Office

FROM: Joseph M. Ferguson
Inspector General

DATE: June 30, 2010

SUBJECT: IGO Interim Program Report Regarding Overtime Payments for
Exempt Employees of the Chicago Fire Department

Enclosed is a Report and Recommendation detailing findings to date from an ongoing IGO investigation into straight time and 1.5 overtime payments for the years 2008, 2009, and first quarter 2010 for exempt members of the Chicago Fire Department (CFD) who are not included in the Fire Fighters Local 2 Agreement with the City of Chicago. As is set forth in the enclosed Report, the investigation has revealed that CFD exempt employees have earned considerable straight time and 1.5 overtime, in the midst of dire economic times while the City is implementing sweeping budget cutbacks, including City-wide unpaid mandatory furlough days and holidays. Several other related findings and issues are detailed in the accompanying Report.

Our objective in issuing this interim public report is to enable the City to take whatever immediate steps it may deem appropriate to stem any unwarranted or unnecessary overtime payment practices while the IGO investigation continues. In issuing this Interim Program Report, the IGO is mindful of and expresses its full appreciation of the critical public safety role of the CFD, and that certain of the recent overtime practices detailed herein may be necessary to the performance of that function. However, the coincidence of a spike in certain forms of CFD exempt overtime payouts with the onset of the City's expanded furlough program is a matter that we regard as warranting your scrutiny and consideration. Similarly, certain categories of overtime, notably overtime for participation in the Lieutenant Oral Boards, appear excessive regardless of the budgetary environment.

On June 8, 2010, the IGO provided the CFD, the OBM, and the Comptroller's Office with a draft report captioned "IGO Draft Report and Recommendations Regarding the Chicago Fire Department's Payment of 1.5 Overtime and Straight Overtime to Exempt Employees." The IGO afforded each department the opportunity to comment prior to public issuance of this Interim Report. The CFD issued a response dated June 21, 2010. This response is included with the IGO report. (OBM and the Comptroller's Office did not respond.)

We appreciate the CFD's response, and recognize that the response was advanced amidst a transition in the leadership for CFD; the Mayor's June 23, 2010 nomination of Robert Hoff as CFD Commissioner was confirmed by the City Council on June 30, 2010. However, we note that in most respects the CFD report is general. The Interim Report recommends that the CFD conduct a global audit and assessment of overtime payments; seek to recoup any funds improperly paid; and seek to limit future overtime disbursements. While some of the 1.5 overtime payments discussed in the interim report may have been attributable to error, these errors were costly to the City and likely would have stood uncorrected but for the IGO inquiry. The CFD's response also offers concerns about the scope of the Fair Labor Standards Act ("FLSA") as a partial justification for some of its overtime practices. However, senior level CFD officials never once offered this as a concern or justification during any of the IGO interviews conducted as part of the inquiry. The IGO does agree, however, as stated in its Interim Report, that a reasoned analysis of FLSA applicability be undertaken by the City's Corporation Counsel so that costly overtime practices extend no further than the law actually requires. Finally, as stated in the Interim Report, we believe that the practice of paying holiday premium pay to CFD exempt staff currently in effect is an extravagance that should be discontinued. We regard the CFD's response to this issue as less than compelling and hope it will be considered further.

Because the information and findings arise out of an ongoing investigation, the enclosed Interim Report does not reveal the identities of any specific individuals involved either as subjects or witnesses and provides only that level of detail deemed necessary to inform ongoing program level concerns while the investigation is brought to a conclusion. Similarly, because of its investigative origin, it bears particular noting that this Interim Report is not intended and should not be construed as a finding of misconduct against any individual.

Our contact person for this draft report and recommendations is Assistant Inspector General Lisa Seilheimer. Please contact her at 773-478-3654 if you would like to discuss this matter.

INSPECTOR GENERAL'S OFFICE INTERIM REPORT AND RECOMMENDATIONS REGARDING THE CHICAGO FIRE DEPARTMENT'S PAYMENT OF 1.5 OVERTIME AND STRAIGHT OVERTIME TO EXEMPT EMPLOYEES

I. INTRODUCTION

The IGO initiated an investigation to review 1.5 overtime and straight time overtime (straight overtime) monetary payments to "exempt"¹ members of the Chicago Fire Department (CFD) that are not included in the Fire Fighters Local 2 Agreement (Local 2 Agreement) with the City of Chicago.²

The IGO conducted a preliminary review of all straight overtime payments and 1.5 overtime payments for exempt CFD employees for the years 2008, 2009, and first quarter 2010. The IGO received from the Office of Budget and Management (OBM) a list of all exempt members of the CFD not covered by the Local 2 Agreement (OBM list).³ Included on the OBM list are: Seventeen Chiefs (also known as District Chiefs (DCs)), twenty-seven Deputy District Chiefs (DDCs), eleven Assistant Deputy Chief Paramedics (ADCPs), two CFD Internal Affairs Division (IAD) Supervising Investigators; two IAD Investigator Specialists; four IAD Investigators; seven Staff Assistants; and two Administrative Services Officers I.

This preliminary review has revealed that CFD exempt employees have earned considerable 1.5 overtime and straight overtime, in dire economic times with the City implementing sweeping budget cutbacks, including unpaid mandatory furlough days and holidays. The preliminary review also revealed a lack of any consistent policy concerning straight overtime and 1.5 overtime. The disbursement of straight overtime payments to certain CFD exempt employees skyrocketed in 2009 – the same year in which they became subject to the City's expanded unpaid furlough and wage and salary cost-saving initiatives. The disbursement of straight overtime continued at an accelerated pace in the first quarter of 2010. The IGO has also learned that these CFD exempt employees are afforded certain benefits conferred on CFD employees covered by the Local 2 Agreement, such as holiday premium pay. Finally, the IGO has learned that the CFD allowed at least one DDC to retire in November 2009 without having deducted any of the 2009 mandatory unpaid furlough days or mandatory unpaid holidays, including unpaid holidays occurring prior to his retirement. We issue these preliminary findings at this time, as the investigation continues, to enable CFD, OBM, and the Department of Finance to consider our preliminary findings and recommendations and take immediate steps to correct the payment of unwarranted overtime payments as appropriate.

¹ "Exempt" is the term commonly used by CFD personnel to refer to CFD employees that are not represented under the 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 Certain 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, however they are not covered by the Local 2 Agreement by virtue of such payments.

³ This list was current as of July 1, 2009.

An overview of the preliminary findings and the IGO's recommendations concerning these practices is summarized below.

II. PRELIMINARY FINDINGS AND ANALYSIS

A. Requirements relating to unpaid furlough days, unpaid holidays, and City shutdown days (2008 - 2010)

1. 2008

On July 30, 2008, the City, through OBM, directed that CFD exempt personnel making in excess of \$75,000 annual salary take three mandatory unpaid furlough days in 2008. Exempt employees making under \$75,000 annually were required to take two mandatory unpaid furlough days in 2008. These requirements were mandated by a City Council resolution. Additionally, the resolution includes directives that (1) under no circumstances may an employee work for the City on his or her unpaid furlough days; and (2) supervisors are required to monitor the work hours of employees taking unpaid furlough to insure that no employee exceeds forty hours of work during the week a furlough day is taken.

The CFD exempt employees were also directed via a November 12, 2008 memorandum from OBM to take three 2008 unpaid Reduction in Force ("City shutdown") days on November 28, 2008, December 24, 2008, and January 2, 2009. These days were required by Executive Order No. 2008-2 dated November 12, 2008.⁴ In turn, on November 6, 2008, the CFD submitted a letter to OBM stating the CFD would need to keep certain positions on-duty for the City shutdown days, citing operational necessity.⁵ Both the 2008 mandatory furlough and City shutdown measures were implemented due to City budget requirements.

2. 2009

On June 30, 2009, the City, through OBM, directed the CFD that all non-union employees (exempts) would be subject to mandatory unpaid furlough days and unpaid holidays, beginning in July of 2009. Specifically, all these employees making greater than \$35,000 per year were directed to take six mandatory unpaid furlough days prior to December 31, 2009. The June 30, 2009 Amended Salary Resolution included directives that (1) under no circumstances may an employee work for the City on his or her unpaid furlough days; and (2) that supervisors are required to monitor the work

⁴ According to a November 12, 2008 memorandum from OBM to all Department Heads and City Officials, for all employees paid on the 1st of the month January 2, 2009 was to be the City shutdown day in lieu of December 31, 2008.

⁵ The positions include: Marine Pilot (Fire Boat), Machinist (Helicopters), Senior Air Mask Technician, Supervising Air Mask Technician, Assistant Deputy Fire Commissioner, District Chief/District Chief Paramedic, Deputy District Chief, Assistant Deputy Chief Paramedic, Assistant Commissioner of the Internal Affairs Division, and Director of Media Affairs.

hours of employees taking unpaid furlough to insure that no employee exceeds forty hours of work during the week a furlough day is taken.

Additionally, the six then-remaining City holidays for fiscal 2009 (July 3, September 7, October 12, November 11, 26, and December 25) were to be unpaid holidays. Non-union employees who worked and were paid for those days were required to take an additional unpaid furlough day.

OBM further directed that the three City shutdown days identified in the November 12, 2008 Executive Order 2008-2 of November 27, December 24, and 31, 2009 remained in effect. The December 31, 2009 City shutdown day was subsequently moved to August 17, 2009. The IGO's preliminary investigation suggests that the same titles referred to in the CFD's 2008 letter to Budget were also excused from taking the City shutdown days in 2009.

3. 2010

On December 22, 2009, OBM implemented a November 25, 2009 Resolution through a memorandum to all Department Heads requiring all non-union employees making \$35,000 or more per year to take twelve unpaid furlough days in 2010. Employees are required to take at least six of these days prior to July 1, 2010 and the remainder prior to January 1, 2011. The November 25, 2009 Resolution includes directives that (1) under no circumstances may an employee work for the City on his or her unpaid furlough days; and (2) supervisors are required to monitor the work hours of employees taking unpaid furlough to insure that no employee exceeds forty hours of work during the week a furlough day is taken.

Additionally, all holidays for all non-union employees are unpaid in 2010. Employees required to work an unpaid holiday are to be paid for that day, but are required to take another furlough day at a later date. The OBM memo further specifies that there are no City shutdown days in 2010.

B. IGO preliminary investigation of straight overtime payments to CFD exempt employees

1. Preliminary findings regarding straight overtime

a. Straight overtime paid

Preliminary investigation has revealed that CFD exempt employees collect a considerable amount of straight overtime. The IGO evaluated straight overtime paid to certain CFD exempt employees by extracting data from the City's Financial Management & Purchasing System ("FMPS"). Specifically, the IGO examined five DCs, twenty-five DDCs, ten ADCPs, eight IAD employees, and two CFD Personnel employees (a Staff Assistant and an Administrative Services Officer I) (collectively "Examined Straight Overtime Exempts"). Based on information presently available to this office, the IGO analysis excludes earnings while these individuals were in positions

covered by the Local 2 Agreement.⁶ That analysis has yielded the preliminary findings concerning the accumulation of straight overtime dating back to 2008:

- In 2008, the Examined Straight Overtime Exempts were paid \$18,516.71 in straight overtime, while in 2009 the same employees were paid \$311,180.08 in straight overtime.
- For the period from January 1, 2010 to April 2, 2010, straight overtime payments to 48 CFD exempts (the original 50 Examined Straight Overtime Exempts excluding two employees who retired in November 2009) are \$191,293.63. If this accrual of overtime were to continue at the same pace for the duration of 2010, the CFD will have expended approximately \$765,174.52 for 2010, or approximately 245% more than the inflated 2009 total.

b. Policy

Senior CFD Official I⁷ stated that there is no written policy concerning overtime payments for any exempt employees at CFD. Similarly, a CFD supervisor with responsibility for payroll ("CFD Payroll Supervisor") stated there is no written policy or rule specifying how a DDC or any other CFD exempts are paid overtime. Senior CFD Official II told the IGO that he did not know of any written policies in the CFD that would regulate overtime payments to DDCs. This official stated that the unwritten practice of paying straight time overtime payments originated with a former CFD Commissioner, but he could not recall which one for certain.

Concerning payment of overtime to District Chiefs, a CFD auditor with responsibility for payroll ("CFD Payroll Auditor") stated that the DDCs are the highest ranks to receive any overtime pay, and the District Chiefs do not receive overtime. One DDC the IGO interviewed also stated he did not believe that a DC or ranks above a DC receive any overtime.

The IGO preliminary investigation revealed no written policy concerning payment of straight overtime to CFD exempts, other than the IAD Policy and Procedures Manual section on Overtime and Compensation, which provides as follows:

Overtime is structured so that each investigator receives a proportionate amount of overtime. The Assistant Commissioner of Internal Affairs or their designee

⁶ Preliminary analysis reflects that there is at least one exempt employee who received significant payments of straight overtime in 2008 and 2009, but was promoted from a position covered by the Local 2 Agreement to an exempt position during the time period under consideration. The IGO has learned that there may be a significant lag time for payment of overtime. Due to this difficulty in discerning whether overtime was earned under exempt or Local 2 status, the IGO adopted a conservative approach and excluded these overtime earnings from this analysis.

⁷ Due to the fact the IGO's investigation is ongoing, in this public report the IGO is withholding identities of specific individuals interviewed. The pronoun "he" is used for both genders throughout this report.

shall determine and approve overtime to those individuals with specific investigative skills needed to carry out the tasks efficiently and effectively, on a case-by-case basis.

Overtime compensation for investigators assigned to the Department's 24/7 drug testing component will be compensated as follows:

- A. Compensation will be two (2) hours per day without a call, compensation time only, including holidays. If you are dispatched for a call, excluding holidays, you will have your choice of compensation, i.e., paid overtime or compensation time at a rate of time and a half.
- B. If you are dispatched on a holiday, you will have your choice of compensation time, i.e., paid overtime or compensation time at a rate of double time.

c. Potential causes underlying surge in overtime

Concerning potential causes for the 2009 surge in overtime, the IGO learned during its preliminary investigation that two DDCs retired late in 2009. Senior CFD Official II stated that in 2009 there were an unusually high number of "lay-ups" (medical leave)⁸ in the DDC ranks. This means the remaining DDCs are often required to cover the shifts of the DDCs that are out on lay up. This official explained as many as five DDCs at a time were on "lay up" in 2009. When asked why DDCs are paid overtime when they are no longer covered by the Local 2 Agreement, which mandates payment of overtime, Senior CFD Official I said that it was only fair, because if the CFD did not pay DDCs overtime then a lower ranking Battalion Chief would actually earn more than a higher-ranking DDC.

Additionally, the IGO learned that DDCs were paid a significant amount of overtime based on their participation in the 2009 Lieutenant Oral Boards (Oral Boards).⁹ These Oral Boards were interview examinations of Firefighters seeking promotion to the position of Lieutenant. The IGO's preliminary investigation of this matter suggests that certain DDCs were authorized to receive paid overtime for at least part of their time spent participating in these examinations. The IGO preliminarily estimates the total amount of straight overtime attributable to DDC participation in the 2009 Oral Boards accrued by eighteen DDCs is \$117,590.56. The CFD Payroll Supervisor could not say to a certainty who authorized the DDCs to receive straight time overtime for sitting in on the Oral Boards, but stated that it would not be unusual for a certain Deputy Fire Commissioner to authorize overtime payments for the DDCs. A June 23, 2009 email from this Deputy Fire Commissioner to the majority of DDCs and high-ranking CFD command staff directs certain DDCs to provide him with their overtime sheets for Oral Boards participation.

⁸ "Lay up" is the term used by the CFD to describe when an individual is out on paid medical leave.

⁹ As of May 12, 2010 there have been no Oral Boards in 2010.

Finally, one possible precipitating factor underlying the increase in overtime is the applicability of the unpaid furlough days to the CFD. A Senior OBM Official I told the IGO that *the City lost money on the CFD regarding the furlough program, because the overtime payments exceeded the savings.*

The IGO preliminary investigation revealed the following concerning 2008 and 2009 deductions for mandatory unpaid furlough days and holiday furlough pay:

- In 2008, the Examined Straight Overtime Exempts had deducted from their pay a total of \$54,442.17 in mandatory unpaid furlough days, while in 2009 the same employees were deducted \$203,195.73 in mandatory unpaid furlough days.¹⁰
- In 2008, the Examined Straight Overtime Exempts had deducted from their pay a total of \$0.00 in holiday furlough pay, while in 2009 the same employees had deducted from their pay \$63,530.09 in holiday furlough pay.

2. Analysis regarding straight overtime

The City appears to be hemorrhaging funds due to the liberal and comparatively standardless award of this CFD exempt overtime pay. Moreover, there is a direct correlation between the 2009 spike in payment of overtime and the imposition of increased furlough days for exempt CFD employees. The trend toward increasing overtime from 2008 to 2009, and the continuing disbursement in 2010 of exorbitant amounts of straight overtime as compared to recent historical norms is clear from the numerical data analyzed. The payment of overtime to certain CFD exempts has skyrocketed since the July 2009 resolution that subjected the CFD to a significant increase in mandatory unpaid furlough days and unpaid holidays. In particular, in the first quarter of 2010, the disbursement of straight overtime spiked dramatically, especially given that there have been no Oral Boards in 2010.¹¹

The IGO is presently unable to ascertain whether the surge in overtime is attributable to some or all of the following: a shortage of manpower due to lack of personnel or numerous people on medical leave; rank abuse of overtime; an attempt to circumvent the unpaid furlough mandate; complexities in scheduling; Local 2 Agreement limitations regarding number of Battalion Chiefs that can act up to DDCs; increase in staffing need; retirement; inability to promote; payments such as for DDCs sitting in on the Oral Boards; a policy of ensuring that DDCs do not earn less than Battalion Chiefs; or other reasons. As such, the IGO is presently unable based on current information received to ascertain whether this overtime is justified and necessary. The IGO notes, however, it is concerned that Senior OBM Official I acknowledged that he knew the City was losing money on the CFD

¹⁰ It is unclear from a review of the deductions as reported in FMPS and CFD Payroll whether the mandatory unpaid furlough days include any deductions resulting from City shutdown days.

¹¹ Excluding Oral Boards, overtime from the 2009 aggregate total leaves approximately \$194,000 straight overtime for all of 2009. To date, for 2010, non-Oral Boards overtime already exceeds the total for all of 2010.

regarding the furlough program. The IGO is also concerned about Senior CFD Official I's statement that overtime is being paid to the DDCs to ensure their salaries remained higher than those of the lower ranking (but union-covered) Battalion Chiefs. Additionally, the payment of in excess of \$100,000 in overtime to DDCs for their participation in the Oral Boards is facially disconcerting. The IGO is also concerned about the lack of any coherent policy concerning payment of overtime, and also notes as troubling the level of confusion reflected in interviews surrounding payment of overtime. A coherent written policy concerning payment of overtime to CFD exempt positions would help ensure consistency, transparency, equity, and accountability.

C. IGO preliminary review of CFD exempt employees' receipt of holiday premium pay

1. Preliminary findings regarding holiday premium pay

The IGO preliminary review further revealed many of the CFD exempt employees receive benefits, including holiday premium pay, afforded to CFD employees covered by the Local 2 Agreement. Senior CFD Official I stated that holiday premium pay for DDCs and ADCPs was instituted in light of receipt of such pay by other CFD employees covered by the [Local 2] contract.¹² A CFD official with responsibility for finance ("CFD Finance Official") stated that exempt employees receive holiday premium pay when they work on a holiday, if the holiday falls on their "Daley Day",¹³ or if two people trade workdays to work on a holiday.¹⁴ Senior CFD Official I stated that holiday premium pay for DDCs and ADCPs is "past practice." The CFD Finance Official explained

¹² The Local 2 Collective Bargaining Agreement specifies 13 holidays, including the universally honored federal holidays, Pulaski Day, and, finally, Flag Day, which is not a holiday for any other City workers and, indeed, nationwide appears to be a holiday only in Chicago fire stations and, curiously, the State of Pennsylvania.

¹³ A "Daley Day" is a term used by the CFD to describe a 24-hour platoon employee's scheduled paid day off.

¹⁴ In its draft June 8, 2010 report provided to the CFD, the IGO stated:

Based on its preliminary investigation, the IGO understands if a holiday falls on a Daley Day of an exempt 24-hour platoon employee who does not work on that day, the employee shall be paid for that day as if he worked the holiday. Exempt 24-hour platoon employees rehired (through trading workdays or otherwise) on a Daley Day which is also a holiday receive 24 hours of holiday pay plus 1.5 overtime for all hours worked. Therefore, an exempt employee who works 24 hours shall receive pay for 60 hours in a 24-hour shift.

In its June 21, 2010 response to the IGO's June 8, 2010 draft report, the CFD stated that a rehired employee at DDC-rank will receive a maximum of 24-hours of straight-time for overtime plus 24-hours of straight-time. According to the CFD response, only platoon employees covered by the collective bargaining agreement receive 60 hours of pay for overtime worked on a holiday. The IGO has considered the CFD's response, and for the purposes of this report accepts as accurate the CFD's explanation offered in its June 21, 2010 response that rehired employees at DDC-rank will receive forty-eight hours of pay for twenty-four hours worked.

certain Local 2 Agreement provisions are followed where exempt members are concerned, even though the exempt members are not covered by the Local 2 Agreement. This CFD Finance Official stated this practice exists to maintain a good exempt workforce.

Concerning holiday premium pay, the IGO preliminary investigation revealed as follows:

- In 2008, the fifty Straight Overtime Exempts examined were paid \$212,710.35 in holiday premium pay, while in 2009 the same employees were paid \$258,917.52 in holiday premium pay.
- In first quarter 2010, the fifty Straight Overtime Exempts (minus two DDCs who retired in late 2009) were paid \$109,954.80 in holiday premium pay as of April 2, 2010, for the five holidays that occurred as of that date. Thus, each holiday cost the City \$21,990.96 in overtime disbursements to these individuals (\$109,954.80 / 5). If all thirteen holidays are paid with the CFD (including Flag Day), the total holiday premium payments for 2010 could reach \$285,882.48 (\$263,891.52 for twelve days). The CFD paid \$266,587.48 in 2009.

2. Analysis regarding holiday premium pay

In these challenging fiscal and budgetary times, the payment of holiday premium pay (in some instances for holidays not even worked by CFD employees) is a discretionary extravagance that should not be afforded to CFD exempts. So far as the IGO has been able to ascertain, there is no contractual right to such benefits, and, in the absence of a compelling explanation not proffered to date, should not be provided as a matter of simple discretion.

D. IGO preliminary analysis of 1.5 overtime

1. Preliminary findings regarding 1.5 overtime

a. Overview of findings as to examined exempts

The IGO has conducted a preliminary analysis of 1.5 overtime received by exempt CFD employees.

The IGO examined nineteen exempt CFD personnel who received 1.5 overtime in 2008 or 2009 and who, based on preliminary investigation, appear not to have been covered by a collective bargaining agreement during that time. Specifically, the IGO examined seven DDCs; two Assistant Deputy Chief Paramedics (ADCPs); eight CFD IAD employees (including two Supervising Investigators; two Investigator Specialists; three Investigators; and one Staff Assistant); and two Administrative Personnel employees (including one Staff Assistant and one Administrative Services Officer I) (collectively "Examined 1.5 Exempts"). The information evaluated was extracted from the

City's FMPS database. To the best of its knowledge, the IGO included in its analysis no funds earned while these individuals were in positions covered by the Local 2 Agreement.¹⁵

In summary, based on the IGO's preliminary analysis, the following can be stated regarding the Examined 1.5 Exempts' accumulation of 1.5 overtime in 2008 and 2009:

- In 2008, the Examined 1.5 Exempts were paid \$54,149.09 in 1.5 overtime, while in 2009 the same employees were paid \$42,314.11 in 1.5 overtime.

This total can be broken down into the following subtotals by position:

1. **DDCs:** In 2008, the seven examined DDCs earned \$9,638.70 in 1.5 overtime. In 2009, they earned \$16,035.11 in 1.5 overtime.
2. **ADCPs:** In 2008, the two examined ADCPs earned \$3,436.10 in 1.5 overtime. In 2009, they earned \$0.00 in 1.5 overtime.
3. **IAD:** In 2008, the eight examined IAD employees earned \$23,692.56 in 1.5 overtime. In 2009, they earned \$13,588.36 in 1.5 overtime.
4. **Personnel:** In 2008, the two examined Personnel employees earned \$17,381.73 in 1.5 overtime. In 2009, they earned \$12,690.64 in 1.5 overtime.

Concerning 1.5 overtime payments made to CFD exempts in the first quarter of 2010, the IGO found the following:

- The City's FMPS system indicates one DDC ("DDC A") was paid \$2,334.25 in 1.5 overtime on February 1, 2010 and a second DDC ("DDC B") was paid \$4,581.46 in 1.5 overtime on February 1, 2010. Information obtained from FMPS for the period ending March 15, 2010 reflects that both individuals, DDCs A and B, had these amounts deducted from their March 16, 2010 paychecks.¹⁶

¹⁵ Based on the IGO's preliminary investigation, there are nine exempt employees who received some payment of 1.5 overtime in 2008 and 2009, but were promoted from positions covered by Local 2 Agreement to exempt positions during the time period under consideration. The IGO has learned that there may be a significant lag time for payment of 1.5 overtime. Due to this difficulty in discerning whether 1.5 overtime was earned under exempt or Local 2 status, the IGO adopted a conservative approach and entirely excluded their 1.5 earnings from this analysis. It appears, however, that based on our analysis some of these payments (to DDCs and ADCPs) were improperly made.

¹⁶ The deduction of the 1.5 overtime payments from DDC paychecks followed the IGO's questioning of such payments in numerous interviews during early 2010.

- The City's FMPS system reflected an additional 1.5 overtime payment made to another DDC ("DDC C") for \$4,581.46 on April 1, 2010. On payment date April 16, 2010, DDC C had \$2,290.73 deducted from his paycheck. On May 1, 2010, an additional \$2,290.73 was deducted from DDC C's paycheck.

b. Payment of 1.5 overtime to DDCs and ADCPs in contravention of articulated CFD policy

All top-level CFD personnel interviewed concerning payment of 1.5 overtime to DDCs indicated that DDCs are not permitted as a matter of CFD policy to receive 1.5 overtime. Senior CFD Official I stated that 1.5 overtime paid to DDCs is not authorized by the CFD. The CFD Finance Official stated that no 1.5 overtime payments should be made to the DDCs, and if any such payments were made, it was a mistake made by payroll. This official stated payroll will have to take that money back as soon as it is brought to their attention. This official believes that any error in paying 1.5 overtime to DDCs was made by CFD's Field Payroll Auditors. A CFD Payroll Supervisor stated Payroll was told DDCs were to be paid overtime at a straight time rate, and are not authorized to receive 1.5 overtime.

A CFD Payroll Supervisor further stated that occasionally Field Payroll Auditors make mistakes and credit a 1.5 overtime payment on a time roll sheet in an instance when they should not be doing so, however, he further stated that CFD Headquarters Payroll reviews the time roll sheets and corrects errors. Similarly, Senior CFD Official II stated while he is not involved with 1.5 overtime for the DDCs, if they were paid 1.5 overtime it was attributable to clerical error. He stated: "The DDCs get straight time and straight time alone." He also stated that the DDCs may owe the City money to the extent any erroneous payments were made. A CFD Payroll Auditor also stated DDCs are not paid 1.5 overtime. Additionally, an OBM Director and Budget Analyst ("Budget Analyst") stated that the DDCs were not authorized any 1.5 overtime. This Budget Analyst stated that it was possible an error in the CFD payroll or finance section was made that allowed these payments to occur.¹⁷

¹⁷ The IGO reviewed in FMPS the frequency of 1.5 overtime payments made to Deputy District Chiefs and Assistant Deputy Chief Paramedics in 2008 and 2009. The following is a summary of the frequency of 1.5 overtime payments:

There were seven 1.5 overtime payments made in 2008 in the amount of \$13,074.80. The payments were made in the following CFD Districts:

- 1 – EMS Headquarters
- 2 – District 2
- 2 – District 4
- 1 – District 5
- 1 – Operations Headquarters

Concerning ADCPs, a CFD Payroll Supervisor stated that ADCPs are not permitted to receive 1.5 overtime as a result of an unwritten CFD policy. Senior CFD Official I also stated 1.5 overtime paid to ADCPs is not authorized by the CFD.

Notwithstanding all these assertions, based on the figures as preliminarily calculated by the IGO, DDCs and ADCPs plainly have collected significant amounts of 1.5 overtime, in apparent contravention of the purported CFD policy.

The preliminary review revealed no formal policy of any sort concerning payment of 1.5 overtime to DDCs and ADCPs. Instead, to the extent any policy exists it appears to be a verbal policy subject to the Commissioner's discretion. Senior CFD Official I stated there is no written policy concerning 1.5 overtime payments for any exempt employees at CFD. A CFD Payroll Supervisor also explained there is no written policy or rule at the CFD that explains how a DDC or any other exempt positions are paid specifically with regard to 1.5 overtime. This CFD Payroll Supervisor stated the decision of whether to pay 1.5 overtime rests within the discretion of the Fire Commissioner, and stated that he could not remember who communicated to him the policy of DDCs being paid overtime at straight time only (and not 1.5 overtime). This CFD Payroll Supervisor estimated this communication occurred well over two years ago.¹⁸

c. Discretionary payment of 1.5 overtime to IAD employees permitted by IAD policy

Concerning payment of 1.5 overtime to IAD employees, Senior CFD Official I stated that 1.5 overtime paid to exempt IAD employees is a practice authorized by past CFD Commissioners. A CFD Payroll Supervisor indicated payments of 1.5 overtime to exempt IAD employees are paid at the discretion of the head of the IAD. This CFD Payroll Supervisor explained that if the Assistant Commissioner approves the payment, then the IAD employees are paid 1.5 overtime. The CFD Payroll Supervisor stated there is nothing in writing that permits or bars the IAD employees not subject to the Local 2 Agreement's receipt of 1.5 overtime payments. The IGO, however, located a policy in the CFD IAD Policy and Procedures Manual section on Overtime and Compensation, which is set forth above in conjunction with the discussion regarding payment of straight time overtime.

There were seven 1.5 Overtime Payments made in 2009 in the amount of \$16,035.11. The payments were made in the following Districts:

- 2 – District 2
- 2 – District 4
- 2 – District 5
- 1 – District 6

¹⁸ The IGO is aware that in some situations payment of 1.5 overtime is required by the Fair Labor Standards Act or other applicable law. However, in the course of the investigation to date, not a single CFD or Budget official indicated the existence of such obligations as to DDCs, ADCPs, exempt (non-Local 2) IAD employees or exempt (non-Local 2) Personnel employees.

d. Discretionary Payment of 1.5 overtime to Personnel employees permitted by CFD policy

Concerning payment of 1.5 overtime to exempts in the Personnel section of CFD, Senior CFD Official I stated such payments are a practice authorized by past CFD Commissioners. A CFD Payroll Supervisor stated that individuals who work in CFD's Personnel section are permitted to receive 1.5 overtime pay.

Additionally, while it may exist, the IGO's preliminary investigation has not shown any reasoned awareness of applicable law (such as the federal Fair Labor Standards Act) concerning when 1.5 overtime must be paid as a matter of law.

2. Analysis regarding 1.5 overtime

This preliminary analysis suggests the process by which 1.5 overtime is permitted and paid poses a substantial potential for waste and possible liability for inconsistent and arbitrary application. Inquiry to date has revealed no consistent policy dictating or guiding 1.5 overtime for CFD exempts. The absence of such a policy, especially in an area of labor law which is fraught with the potential for enormous City liability, is deeply troubling. The review has revealed seemingly arbitrary practices and facts suggesting excessive 1.5 overtime may have been paid to CFD exempts in 2008 and 2009. A coherent written policy concerning payment of 1.5 overtime to CFD exempt positions would help ensure consistency, transparency, equity, and accountability.

Preliminary review strongly indicates that the CFD does not correctly apply its own 1.5 overtime policy (to the extent it was articulated in IGO interviews), as both DDCs and ADCPs have been paid 1.5 overtime, in direct contravention of the CFD policy articulated during IGO interviews. In fact, every official interviewed stated 1.5 overtime for DDCs and ADCPs is not allowed, yet clearly those policies are not being effectively applied. CFD personnel were wholly unable to provide an acceptable explanation explaining the payment of 1.5 overtime to DDCs and ADCPs. Attributing such large-scale errors to clerical errors is unacceptable, as even if such clerical errors were made with such frequency, these errors should have been caught at some juncture by supervisors. As a policy matter, the IGO believes 1.5 overtime should not be paid in the current constrained fiscal environment.

a. IAD exempts

Concerning payment of 1.5 overtime to IAD exempts, the existing written policy appears standardless as to payments to investigators. This policy defies accountability and transparency, is prone to inconsistency, and is therefore subject to abuse. Additionally, the IGO questions whether any payment of 1.5 overtime is appropriate in the current constrained fiscal environment.

b. CFD Personnel exempts

As discussed above, there have been significant outlays of overtime to certain exempt CFD Personnel staff – sizeable enough to suggest some analysis should be undertaken to evaluate whether such payments could be reduced.

E. IGO preliminary review of retirement and unpaid furlough**1. Preliminary findings regarding retirement and unpaid furlough**

One former DDC retired effective November 30, 2009 (“retired DDC A”). IGO inquiry to date indicates that when this DDC retired, none of the required 2009 City of Chicago unpaid holidays or mandatory unpaid furlough days were deducted from retired DDC A’s pay. Retired DDC A’s exit interview report is dated September 17, 2009. On the exit interview report, November 28, 2009 is listed as retired DDC A’s last workday and November 29, 2009 is listed as retired DDC A’s last day on the payroll. On October 20, 2009, retired DDC A signed and dated his CFD resignation form. The listed effective date on the resignation form is November 30, 2009. Senior CFD Official II said retired DDC A was scheduled to take all of his mandatory unpaid furlough days in December and then he retired.

The CFD Finance Official stated that a second retired DDC (“retired DDC B”), who retired at the same time as retired DDC A, had all his unpaid furlough days and unpaid holiday furlough days deducted (for holidays that had passed prior to his November 29, 2009 retirement) because he was on sick leave.

The June 30, 2009 Amended Salary Resolution provides that any non-represented employee who was required to work on one of the six remaining 2009 City holidays (July 3, September 7, October 12, November 11, 26, and December 25) would be required to take an additional unpaid furlough day prior to December 31, 2009 for each such holiday. The Amended Salary Resolution also provides that for employees who began their employment with the City after July 15, 2009 the number of unpaid furlough days would be prorated based on the employee’s start date.

Senior OBM Official I told the IGO that there is no requirement when an employee is retiring to have them take all appropriate unpaid furlough days in some prorated fashion. The CFD Finance Official stated that unpaid furlough days are not prorated if someone leaves the payroll, only if someone comes on to the payroll.

The June 30, 2009 Amended Salary Resolution provides the Budget Director is authorized to issue rules for implementation of the furlough days. The IGO’s preliminary investigation has revealed no OBM-issued rule which speaks to a requirement that an individual take a prorated number of mandatory furlough days and unpaid holidays prior to retirement.

A June 30, 2009 OBM memorandum sent to Department Heads indicates that the unpaid furlough days were required to have been scheduled in the Chicago Automated Time and Attendance system "CATA" by November 1, 2009. A second memorandum dated July 2, 2009 from the CFD Finance Official to all Bureau and Division Heads indicates that CFD exempts submit a listing of their unpaid furlough days, holidays, and reduction in service days no later than July 17, 2009.

2. Analysis regarding retirement and unpaid furlough

Inquiry to date has revealed no rule requiring individuals retiring from City employment to take a prorated number of furlough days and unpaid holidays prior to retirement. The IGO recommends OBM consider this issue, as it presents inequities concerning payment, whereby certain employees can circumvent the furlough and unpaid holiday requirements through this loophole. If this practice is occurring City-wide, it could result in a significant amount of anticipated salary savings not being realized.

The IGO notes that the November 25, 2009 resolution (which sets forth the rules for the 2010 furlough days) requires employees to take at least six of these days prior to July 1, 2010 and the remainder prior to January 1, 2011. This requirement was not in effect when retired DDC A retired late in 2009. This requirement which serves to structure the taking of furlough days is helpful toward mitigating the situation of individuals leaving all of their furlough days to the end of the year and then leaving City employment through retirement or otherwise. However, it does not negate the possibility of an employee avoiding the taking of unpaid furlough days by retiring within either of the six-month periods, prior to actually taking their scheduled furlough days.

III. RECOMMENDATIONS

Based on these preliminary findings and analysis, the IGO recommends the following:

- The CFD conduct a global audit and assessment of all 1.5 overtime and straight time overtime payments for 2008, 2009, and the first quarter of 2010 as they apply to the exempt CFD personnel.
- The City's labor lawyers (or other appropriate staff) conduct a detailed analysis of which, if any, CFD exempt employees are entitled to receive 1.5 overtime as a matter of any applicable laws, including the FLSA.
- Following a determination of which, if any, CFD exempt employees are entitled to receive 1.5 overtime as a matter of law, the IGO recommends the CFD conduct an analysis to ascertain what, if any, positions should be permitted as a matter of policy and the City's budget deficit to receive 1.5 overtime. The IGO recommends the practice of paying 1.5 overtime to all CFD exempts be ceased in its entirety.
- The CFD undertake an analysis to evaluate whether any of the 1.5 overtime paid in 2008, 2009, and 2010 may and should be recouped by the City.

- The CFD conduct an analysis to determine how the skyrocketing payment of straight overtime payments can be dramatically curtailed or altogether eliminated, while maintaining operationally-necessary staffing.
- The CFD draft, clearly communicate, and disseminate written policies concerning eligibility for and payment of 1.5 and straight overtime to exempts. The IGO recommends the CFD develop detailed protocols and implement policy and procedure changes as appropriate, so as to maintain the CFD's operational manpower needs while substantially reducing the flow of overtime payments to the minimal amount operationally necessary.
- The CFD evaluate the practice of paying CFD exempt employees holiday premium pay. In the view of the IGO, this practice should be discontinued.
- The CFD evaluate payment of overtime for DDC participation in the Oral Boards and prospectively eliminate future payments by scheduling the Boards at a time when sufficient on-duty DDCs are available to participate.
- The CFD study the use of acting down (having DCs work shifts for DDCs) when there are insufficient DDCs on staff. The CFD further consider having DDCs cover two districts rather than one.
- OBM, in conjunction with the CFD, evaluate the applicability of furloughs to CFD exempts, given the surge of overtime since requiring CFD exempts to take mandatory furloughs.
- OBM evaluate allowing an employee to effectively circumvent furlough by failing to take a prorated number of unpaid furlough and unpaid holiday days prior to retirement. This practice undermines the cost-saving purpose of the unpaid furlough day and holiday requirement.



City of Chicago
Richard M. Daley, Mayor

Chicago Fire Department

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OFFICE OF THE 1ST DEPUTY FIRE COMMISSIONER

June 21, 2010

Joseph M. Ferguson, Inspector General
Inspector General's Office
180 North Michigan Avenue, Suite 2000
Chicago, Illinois 60601

Re: IGO Draft Report and Recommendations Regarding the Chicago Fire Department's payment of 1.5 and Straight overtime to Exempt Employees

Dear Mr. Ferguson,

We have carefully reviewed the above referenced report relating to the Chicago Fire Department's (CFD) payment of overtime to exempt CFD personnel. While we respect the work of the Inspector General's Office and appreciate the time and effort taken to compile this report, the analysis conducted within this report fails to give an appropriate amount of credit to CFD's reasons for allowing the payment of overtime to exempt CFD personnel, as well as the manpower shortages that contributed to the overtime payments. Details relating to both of these matters are outlined below.

First, the question whether the "exempt" should be paid overtime at all is a question the CFD has not been able to obtain a clear and final position on. As noted in footnote 1 of the IGO report, there is a difference between the definition of "exempt" employees from a collective bargaining standpoint, and that as defined by the Federal Labor Standards Act (FLSA). With this in mind, it has been the position of the CFD to take a conservative approach in determining which employees met the extremely restrictive definition of an exempt employee as defined by FLSA. The CFD takes this position because it is familiar with the high costs associated with losing a FLSA lawsuit.

The CFD previously lost a FLSA lawsuit brought fourth by employees who worked a platoon shift. Thus, in order for the analysis contained in this report to be entirely accurate, it must account for the potential costs that the CFD would face in discontinuing its practice of overtime payments to certain employees. A more aggressive approach must consider the potential lawsuit damages that could include back wages, liquidated damages, attorney fees and court costs. Any conclusions reached without this analysis fail to portray the CFD's motivations in their entirety.

Additionally, the CFD is clear that the DDC-rank is not eligible for overtime paid at 1.5 times the hourly rate, but there are occurrences when an entry is keyed into the system under the 1.5 rate instead of the 1.0 rate.



We have two steps of internal controls to check data-entry errors and correct these as quickly as possible, but it must be put in perspective that we manually process up to 1,000 data-entries each payroll period or 24,000 entries annually. This report points out that we made seven such errors in one year, which were since corrected.

Secondly, by analyzing overtime for less than three years, the report appears to make the assumption that the low overtime in 2008 is reflective of other previous years where the city did not implement similar unpaid days, when in fact, the total straight-time overtime paid to DDCs cost \$193,138 in 2007. The overtime has been relatively high in the past, dropped sharply in 2008, and has now increased again because of manpower shortages.

There were five (5) DDC-rank employees on lay-up in 2008 for a total of 395 days (excluding the DDC assigned to the Records Division who did not work in the field). In 2009, there were 10 DDC-rank employees on lay-up for a total of 1,159 days. The report introduction links the "skyrocketed" overtime to the same year as the City's cost-savings measures, but ignores the impact of the manpower shortages.

Finally, we appreciate the IGO's specific recommendations and have the following specific responses as outlined below.

- *The CFD conduct a global audit and assessment of overtime payments.*

Response: The CFD audits overtime entry reports as part of the payroll workflow. We also run overtime reports for budgetary tracking purposes that will catch errors after the payroll processes.

- *The City's labor lawyers conduct a detailed analysis of which, if any, CFD exempt employees are entitled to receive 1.5 overtime.*

Response: We do not pay 1.5 overtime for exempt employees, except in IAD. We would like feedback from Law regarding straight-time overtime for the exempt employees working the platoon shift.

- *The IGO recommends the practice of paying 1.5 overtime to all CFD exempts be ceased in its entirety.*

Response: With the exception of the IAD investigators, we do not pay 1.5 overtime to exempt employees. Furthermore, we are researching other options to the IAD overtime, such as outsourcing the drug-testing requirements which is the driving factor for their overtime.

- *The CFD undertake an analysis to evaluate whether any of the 1.5 overtime paid in 2008, 2009, 2010 should be recouped by the City.*

Response: We agree and have done this. It is already our practice to immediately correct any payroll error whether an over or underpayment.

- *The CFD conduct an analysis to determine how the skyrocketing payment of straight overtime payments can be dramatically curtailed.*

Response: The CFD aggressively works to return laid-up personnel back to work as quickly as possible and we also try to keep rehires as low as possible.

- *The CFD draft, clearly communicate, and disseminate written policies concerning eligibility for and payment of overtime.*

Response: The CFD will develop a policy for exempts with regards to staffing and overtime. However, CFD, Law and OBM must evaluate the applicability, as it relates to the safety of our citizens, responders, FLSA and exempt platoon members.

- *The CFD evaluate the practice of paying CFD exempt employees holiday premium.*

Response: We do not currently pay CFD exempt employees 1.5 times their hourly rate for overtime on a holiday. This is incorrectly stated in the report. A rehired employee at DDC-rank will at most receive 24-hours of straight-time for their overtime plus 24-hours of straight-time for working on a holiday. They cannot correctly be paid 60-hours. This may have gotten confused with the platoon employees covered by the collective bargaining agreement. In addition, we will review our policy of paying the DDC-rank holiday pay.

- *The CFD evaluate payment of overtime for DDC participation in the Oral Boards.*

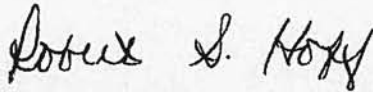
Response: This will be reviewed in conjunction with the question of FLSA rules for our exempt platoon-shift employees. The CFD will continually look at all means to lower overtime and use our manpower efficiently.

- *The CFD study the use of acting down when there are insufficient DDCs on staff.*

Response: In circumstances where CFD faces manpower shortages, we will look at issues, such as operational span of control, credible threats to the City or large planned events to determine the safest, most efficient means to use our existing manpower.

The last two recommendations address issues that are citywide in scope and are not exclusive to the CFD. Thank you for your consideration of our feedback to this draft report. Please let us know if we can provide any further information.

Sincerely,

A handwritten signature in dark ink, appearing to read "Robert S. Hoff". The signature is fluid and cursive, with the first name "Robert" being more prominent than the last name "Hoff".

Robert S. Hoff
1st Deputy Fire Commissioner

C: Raymond Orozco, Chief of Staff
 Eugene Munin, Budget Director
 Steve Lux, Comptroller