



# Memorandum

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To: The Honorable Carlos Alvarez, Mayor, Miami-Dade County

From: Christopher Mazzella, Inspector General

Date: October 10, 2008

Subject: *OIG Final Report Re: Miami-Dade Fire-Rescue Department's Inability To Control Consecutive Hours Worked by Firefighters in Accordance with Departmental Policy, Ref. IG07-57*

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Attached please find the Office of the Inspector General's (OIG) final report regarding the above-captioned matter. This report is a prime case study of Miami-Dade Fire-Rescue's (MDFR) failure to monitor excessive overtime earned often through working consecutive shifts upwards of 60-plus hours or more. In one year, an individual worked 2,643 hours of overtime and, thus, received \$167,266 in overtime compensation above that person's base salary.

The OIG had deferred issuing this report until there was a final decision in the arbitration that was directly challenging the consecutive hours policy. The Arbitrator found the department's policy on limiting the number of consecutive hours that a firefighter may work violated the unions' collective bargaining agreement with the County. As this was binding arbitration, MDFR has had to rescind that policy. In our case example, however, the person was able to garner so much overtime often because the existing policy at the time was not enforced. However, as our report also illustrates, MDFR has a separate departmental policy addressing the hiring (filling) of overtime assignments. The overtime policy is not impacted by the arbitration ruling against limiting consecutive hours, nor is management's ability to properly staff assignments, fill vacancies, etc., which should be aimed at minimizing the need for individuals to work in excess of 48 consecutive hours in a 60-hour period, i.e., to minimize the need for overtime.

We provided the report to MDFR as a draft for comment. MDFR provided a very thorough response, which we have included as Appendix A to the report. At the conclusion of the report, we request, in accordance with Section 2-1076(d)(2) of the Code of Miami-Dade County, that MDFR provide us with a status report addressing areas relating to safety, overtime, and other staffing concerns. The OIG requests that we receive this report in 60 days, on or before December 12, 2008.

cc: Hon. Bruno A. Barreiro, Chairperson, Miami-Dade Board of County Commissioners  
Hon. Dennis C. Moss, Chairperson, BCC Health & Public Safety Committee  
George M. Burgess, County Manager  
Alina Hudak, Assistant County Manager  
Chief Herminio Lorenzo, Director, Miami-Dade Fire Rescue  
Charles Anderson, Commission Auditor  
Denis Morales, Chief of Staff, Mayor's Office  
Clerk of the Board (copy filed)

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**SYNOPSIS**

In August 2007, the Miami-Dade County Office of the Inspector General (OIG) received an anonymous complaint that a Miami-Dade County Fire Rescue Department (MDFR) employee<sup>1</sup> worked an excessive amount of overtime hours and may have violated MDFR policy during the years 2005, 2006 and 2007.

While this investigation began with a review of an employee's attendance records during 2005, 2006, and 2007, the focus became whether MDFR complied with its own policies relating to overtime and use of sick leave in place at the time, and if management was effectively able to monitor and control the amount of consecutive hours worked by firefighters. As such, this particular investigation became a case study of MDFR's enforcement and monitoring of its own overtime policies.

In our review of attendance records, we found that, while the employee did work the overtime hours during the time period in question, MDFR management disregarded key policy safeguards instituted to monitor the amount of consecutive hours employees are permitted to work. This policy was implemented to limit fatigue, which could endanger both the firefighters and the community. In addition, MDFR failed to take action and institute progressive discipline to control excessive use of sick leave at the same time it permitted thousands of hours of overtime during 2005 and 2006. As noted in the conclusion to this report, a recent order issued in a binding arbitration involving the policy on limiting consecutive hours that an individual may work now prevents MDFR from enforcing that policy. In light of the Arbitrator's order of relief, MDFR must review and address the staffing issues that created the need for such an excessive amount of overtime in the first place, and attempt to find a solution to this problem through negotiation with IAFF Local 1403.

**RELEVANT MDFR POLICIES AND PROCEDURES**

The following MDFR policies were reviewed as relevant to this investigation:

- Volume 1, Chapter B, Subject 24, *Limit on Consecutive Hours Worked for Sworn Personnel*, issued on September 7, 2006. (Exhibit 1)
- Volume 1, Chapter M, Subject 29, *Overtime* issued on August 31, 2001. (Exhibit 2)
- Volume 1, Chapter N, Subject 25, *Abuse of Sick Leave* issued on July 10, 1995. (Exhibit 3)

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<sup>1</sup> The employee's name has been intentionally omitted.

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**OIG INVESTIGATION**

The OIG conducted an investigation to determine if the overtime hours as compensated were actually worked and, if so, whether MDRF policy was violated in the process. The physical examination of documents covered the time period from January 2005 through August 2007. The investigation included a detailed review of Miami-Dade County payroll records and MDRF records utilized to document employee attendance. These records included Payroll and Attendance Records (PARs), Overtime Authorization Forms, Battalion View Reports, and Station Log Books.

Table 1 below shows the annual salary the employee in this case earned and the overtime hours worked for calendar years 2005 through 2007. The annual compensation amounts for each of the three years exceed the Fire Chief's annual gross salary for the same three years.

**Table 1: Annual Salary for Employee for 2005, 2006, and 2007**

Calendar Year	Adjusted Base Salary	Overtime Hours	Overtime Salary	Total Compensation	Fire Chief Gross Salary
2005	\$110,348	1,518	\$93,281	\$203,629	\$190,417
2006	\$113,906	2,643	\$167,266	\$281,172	\$217,470
2007	\$138,096	1,527	\$99,892	\$237,988	\$225,000

\*Source: Miami-Dade County Human Resources Department Payroll Records

After an extensive review of all available documents, the investigation uncovered sufficient documentation to conclude that the overtime shifts in question were worked; however, the investigation also found that MDRF did not adequately enforce its policy limiting the number of consecutive hours worked.<sup>2</sup> Moreover, with regard to this particular case, MDRF did not monitor the overtime hours and excessive use of sick leave. MDRF's failure to enforce these policies allowed the employee to work an excessive amount of hours, in violation of department policy. The following is a synopsis of each of these policies along with the findings of our investigation.

**MDRF Policy 1-B-24; Consecutive Hours Policy**

MDRF Policy 1-B-24, *Limit on Consecutive Hours Worked for Sworn Personnel*, issued on September 7, 2006, with the stated purpose "to ensure the safety of firefighters and residents

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<sup>2</sup> MDRF's enforcement of Policy 1-B-24 was the subject of a labor grievance filed by an IAFF Local 1403 member. The Arbitrator's decision, dated June 20, 2008, is discussed by the OIG in the Postscript section of this report. The grievant in the arbitration case is not the same employee whose overtime is the example used in this report.

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of Miami-Dade County, [MDFR] will limit the number of consecutive hours sworn personnel can work to ensure they remain alert." (1-B-24.01)

Policy 1-B-24.06 states that no sworn personnel will work more than forty-eight (48) consecutive hours in any sixty-hour (60) period unless authorized under extraordinary situations. Sworn personnel who have worked 48 consecutive hours cannot accept overtime, off-duty assignments, or work exchange time for another sworn employee without at least twelve (12) hours in an off-duty status. The policy also states that sworn personnel who have worked a partial shift preceding a twenty-four (24) hour tour of duty will not accept any overtime, off-duty assignment, or exchange time that would cause the employee to exceed 48 hours in a 60 hour period.

There are only three approved exceptions described in the policy:

- A. In any state of emergency affecting MDFR, as determined by the Fire Chief or designee.
- B. To allow for emergency overtime for up to twelve (12) hours.
- C. To allow for special events which terminate no later than midnight the evening preceding a sworn employees' regular shift.

Policy 1-B-24 also states that it is the responsibility of all sworn personnel to ensure they are not in violation of the policy, and holds all supervisors responsible for monitoring their personnel's compliance with the policy. While the policy does allow for exceptions, it describes how these exceptions are to be documented:

All approved exceptions to this policy for sworn personnel working in Operations will be documented in the station logbook and followed up with a memo to the Fire Chief detailing the circumstances.

In this particular case, this did not occur.

The investigation revealed that on November 8, 2006, MDFR prepared a Disciplinary Action Report (DAR), which stated that the involved employee had violated Policy 1-B-24 on two occasions. MDFR documented that from October 27 – 29, 2006, the employee worked a total of 72 consecutive hours. Additionally, from November 4 – 6, 2006, the employee worked 60.5 consecutive hours. According to information provided by MDFR, the employee received a 48-hour suspension for these two violations. The DAR was signed

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by a supervisor on November 29, 2006, and by the employee on December 5, 2006. The suspension for this violation was served on February 9 and February 15, 2007. A second DAR involving the employee was written on November 14, 2006. The report alleged that the employee violated Policy 1-B-24 from November 10 through 12, 2006 by working 60 consecutive hours. According to a memorandum written by an MDRF Division Chief on January 23, 2007, this particular DAR was rescinded when MDRF determined that in this instance, the employee did not violate the rule on consecutive hours.

During the course of the investigation, the OIG identified nine additional instances where MDRF permitted excessive consecutive hours beyond the limit imposed by Policy 1-B-24. The below identified violations were not addressed by MDRF, and this oversight by management allowed the continuation of an excessive amount of hours.

**Table 2: Additional Violations of 1-B-24 (Policy issued on September 7, 2006)**

Instance Number	Date Worked	Number of Hours Worked
1	29-Sep-06	24 Hours Overtime
	30-Sep-06	24 Hours Regular
	1-Oct-06	24 Hours Overtime
	2-Oct-06	12 Hours Overtime
	Total:	84 Consecutive Hours Worked
2	5-Oct-06	24 Hours Overtime
	6-Oct-06	24 Hours Regular
	7-Oct-06	24 Hours Overtime
	8-Oct-06	24 Hours Overtime
Total:	96 Consecutive Hours Worked	
3	13-Oct-06	24 Hours Overtime
	14-Oct-06	24 Hours Overtime
	15-Oct-06	24 Hours Regular
	16-Oct-06	13 Hours Overtime
Total:	85 Consecutive Hours Worked	
4	20-Oct-06	24 Hours Overtime
	21-Oct-06	24 Hours Regular
	22-Oct-06	24 Hours Overtime
	23-Oct-06	24 Hours Overtime
Total:	96 Consecutive Hours Worked	
5	16-Mar-07	24 Hours Overtime
	17-Mar-07	24 Hours Regular
	18-Mar-07	12 Hours Overtime
Total:	60 Consecutive Hours Worked	

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Instance Number	Date Worked	Number of Hours Worked
6	19-Mar-07	24 Hours Overtime
	20-Mar-07	24 Hours Regular
	21-Mar-07	6 Hours Overtime
	Total: 54 Consecutive Hours Worked	
7	3-Apr-07	24 Hours Overtime
	4-Apr-07	24 Hours Regular
	5-Apr-07	10 Hours Overtime
	Total: 58 Consecutive Hours Worked	
8	6-Apr-07	24 Hours Overtime
	7-Apr-07	24 Hours Regular
	8-Apr-07	12.5 Hours Overtime
	Total: 60.5 Consecutive Hours Worked	
9	25-May-07	24 Hours Regular
	26-May-07	24 Hours Overtime
	27-May-07	12 Hours Overtime
	Total: 60 Consecutive Hours Worked	

\*Source: HRD and MDFR Attendance Records

In the event that any of the nine above-identified instances were approved exceptions to Policy 1-B-24, each instance would have required a memorandum to the Fire Chief and a notation in the appropriate station logbook. During the course of this investigation, the OIG reviewed station logbooks and did not observe any notations documenting that the overtime worked in this particular case was an approved exception to the policy. Moreover, the OIG requested copies of all memorandums to the Fire Chief for the period September 2006 to October 2007 requesting an exception to the limitation on consecutive hours policy. While MDFR policy clearly requires the preparation of these documents (MDFR Policy 1-B-24.06 (VII)(C)), MDFR advised the OIG that they could not locate any such memoranda.

Based upon the lack of any notations in the station logbooks and MDFR's inability to produce any memoranda requesting exceptions to the policy, it appears that the department failed to comply with its own policy. These requirements ensure that management is aware of such exceptions and that such exceptions are approved.

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**MDFR Policy 1-M-29; Overtime<sup>3</sup>**

MDFR Policy 1-M-29 was issued on August 31, 2001, "to provide a process for hiring [filling] overtime in an effective and consistent manner." The policy defines overtime as time in addition to that of the established regular work schedule and describes three types of overtime:

**Unanticipated (Emergency) Overtime** - Usually the first 12 hours of a shift, when the need for overtime is first established at the beginning of the employee's regularly assigned shift.

**Anticipated Overtime** - Usually the second 12 hours of a shift immediately following an unanticipated (emergency) overtime, or when the need for advanced overtime is recognized.

**Extended Overtime** - Long term overtime greater than 24 hours, usually involving extraordinary operations, which may or may not involve travel. This will include but may not be limited to approved overtime for wildfires and mutual aid.

The process to staff each of these types of overtime varies. Policy 1-M-29 details an exacting process to hire/fill for each required overtime assignment. Additionally, MDFR staffing includes an Overtime Operator (a position located within the Fire Communications Office) to coordinate the hiring/filling of overtime assignments vis-à-vis the Battalion command staff, e.g., Battalion Leadworker and Battalion Chief.

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<sup>3</sup> MDFR Overtime Hiring Procedures were revised via interim memorandum number 08-07-585 on August 14, 2007 while the Policy 1-M-29 was under revision. Policy 1-M-29 was amended on January 17, 2008. This report cites to the previous policy in place at the time in question. However, while the revised policy is significantly amended, the spirit of the policy remains the same. The amendments to the policy appear to make the overtime hiring process uniform by requiring that the overtime opportunities go to the employees with the fewest overtime hours in the previous two years, whether the overtime is hired by the Battalion Chief or by the Staffing Office. The premise of offering overtime assignments to personnel with the least number of hours applies to Anticipated Overtime (Regular Overtime). More significantly, the premise of priority hiring of personnel with the least number of hours applies to Unanticipated Overtime, whether it be Off-going Overtime, On-coming Overtime, or Emergency Overtime. The enforcement and supervision mechanisms in the revised policy, however, remain substantially unchanged. The only mechanism for accounting for the actual distribution of the overtime is the Authorization Form. The only form of tracking the overtime mentioned in the policy is the Overtime Database, which is reconciled quarterly and is discussed later in this report, thus, the findings in this report remain relevant as they address possible deficiencies in the area of supervision and control of overtime distribution.

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***Unanticipated (Emergency) Overtime***

This type of overtime is generally hired/filled by the Battalion Chief in the following order:

- a. Off-going personnel in the position requiring relief as indicated by the placement of names listed on the current Battalion Daily Roster. Employees who refuse overtime may be required to hold over until properly relieved.
- b. Off-going personnel with required qualifications on the unit where the vacancy occurred.
- c. Off-going personnel with required qualifications at the station where the vacancy occurred.
- d. Off-going personnel with required qualifications in the Battalion where the vacancy occurred.
- e. Any uniformed employee with the required qualifications.

Unanticipated (emergency) overtime not filled by 11:00 am or vacancies that occur between 11:00 am and 5:00 pm are then to be hired by the Overtime Operator.

***Anticipated Overtime***

In accordance with Policy 1-M-29, Battalion Leadworkers will notify the Overtime Operator of any anticipated overtime by 9:00 am, or as soon as the need is established. The Overtime Operator will then hire for the anticipated overtime position and notify the appropriate Battalion Chief of the personnel hired. This type of overtime is generally hired/filled by the Overtime Operator utilizing the overtime computer system. "The Overtime Operator will call persons with the least number of hours as selected by the overtime computer until [5:00 pm] or until all vacancies are filled for the same day." The hiring/filling of overtime positions reverts to the Battalion Chief after 5:00 pm for positions not filled.

***Extended Overtime***

The policy for hiring personnel for extended overtime via the overtime computer system states, in part: that all available overtime will be offered to all personnel possessing the required certifications/qualifications for the available vacancies, and that the Overtime Operator will call persons with the least number of hours, as selected by the overtime computer, until 5:00 pm or until all vacancies are filled for the same day.



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not provided with any clear answer, nor were we provided with any documentation to support the overtime assignment selection process.

The OIG recognizes that the above annual overtime hours in Table 3 does not match the hours shown in Table 1.<sup>5</sup> The source data for Table 3 (and Table 4) is the aforementioned *Personal Roster Detail Report*, whereas the source data for Table 1 is the official Human Resources Department Payroll Records. MDFR, in providing the *Personal Roster Detail Report*, explained that the report may be incomplete as this system's implementation was relatively new and its utilization was not uniform throughout the department. Nevertheless, the discrepancies between the two data sources are of concern, as inaccuracies as to an employee's overtime total hours affect his/her prioritization in being hired for new assignments.

Policy 1-M-29 requires the quarterly reconciliation of overtime hours to "verify the total O.T. hours worked by each employee." The reconciliation should be between the "department's list of the total number of O.T. hours each employee either earned in compensatory time or received payment for, with the total number of O.T. hours that are listed in the overtime computer." (Policy 1-M-29 (III)(D)(4)(b))<sup>6</sup>

Again, as part of our request for information from management concerning overtime in the present case, we requested documentation evidencing quarterly reconciliations. We did not receive anything to this effect. As previously mentioned, the discrepancies between the department's personal roster detail (which, by the way, does not count hours when overtime is refused) and the official payroll records are of concern to the OIG. We question management's effectiveness in tracking overtime, especially when "anticipated" overtime assignments should be hired/filled based upon those with the least number of overtime hours.<sup>7</sup>

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<sup>5</sup> While this is true for 2006 and 2007, the OIG acknowledges that Table 1 reports the full year for 2005 and Table 3 only reports 11 months for 2005; however, the difference between 12 months to 11 months is 3.5 hours, which suggests still that there is a discrepancy between the two reporting systems.

<sup>6</sup> The cited policy subsection goes on to note that "The total number of hours listed in the overtime computer consists of the sum of the O.T. hours worked, hours charged for refusals, plus the average in hours as indicated in Section V of this policy." (Policy 1-M-29.06(III)(D)(4)(b))

<sup>7</sup> Revised Policy 1-M-29 expands upon the requirement of assigning overtime to personnel with the fewest hours of overtime. The revised policy now requires the Battalion Chief to hire/fill unanticipated/emergency overtime assignments based upon an overtime list, using a criteria of least/fewest number of overtime hours receiving priority assignment of overtime. Additionally, Battalion Chiefs must now also consult the computer database and hire personnel with the fewest hours of overtime work. Therefore, addressing the deficiencies in management's execution of the policy in the past is made more urgent by the new policy.

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**MDFR Policy 1-N-25; Abuse of Sick Leave Policy**

MDFR Policy 1-N-25, issued on July 10, 1995, was written “[t]o establish guidelines for the use, monitoring and review of sick leave.” The policy defines “excused sick leave” as “sick leave that is documented by proof of a visit to a physician and a release to return to duty, or sick leave used when an employee becomes ill after having reported to work.” It defines “unexcused sick leave” as leave that is not excused as described above.

The policy states that sick leave may be used for the following reasons:

- Personal illness or injury.
- Personal medical or dental appointments with the prior approval from their immediate supervisor.
- Death or life threatening illness in the immediate family.
- Disability as a result of pregnancy.

With regard to the monitoring of sick leave, the policy requires that sick leave be monitored from the beginning to the end of an employee leave year. Moreover, “[i]t will be the responsibility of each supervisor to monitor and review each employee’s use of sick leave on a quarterly basis during the year.” (Policy 1-N-3.06(II)) Employees assigned to work a 24-hour shift schedule, (such as the employee involved in this investigation) will be informally counseled when unexcused sick leave exceeds 96 hours during a leave year.

The policy also addresses abuses of sick leave. It states that if patterns of abuse are detected, the employee will be informally counseled. Thereafter, continued abuse will result in progressive discipline. Excused leave will not be considered in determining leave abuse.

As a part of this individualized review, the OIG analyzed the amount of sick leave taken in the present case in relation to the amount of overtime hours worked for the same period. For calendar years 2005 and 2006, we found the following:

**Table 5: Comparison of Sick Time Usage, Sick Instances, and Overtime Salary for 2005 and 2006**

Calendar Year	Total Number of Sick Leave Hours Used	Number of Sick Instances	Overtime Hours Worked	Overtime Salary
2005	636 Hours	28	1,518	\$93,281
2006	217 Hours	11	2,643	\$167,266

\*Source: Miami-Dade County Yearly Leave Reports

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In 2005, the employee in question used a total of 636 hours of sick leave on twenty-eight (28) separate dates. The employee's annual evaluation covering the period January 31, 2005 through January 29, 2006 (comprising of 11 months for calendar year 2005) revealed a "Needs Improvement" rating in the category of "Administrative Policy and Procedure." The supervisor wrote: "During this rating period, [the employee's] adherence to County leave guidelines was unacceptable and needs significant improvement. [The employee] used in excess of 650 hours of unexcused sick leave." The employee received an overall rating of "Satisfactory" on this evaluation. While the employee was undependable when it came to working his regular assigned shift, the employee was highly dependable when it came to working overtime, working 1,518 hours of overtime, while earning \$93,281 in overtime salary.

The following year, the annual performance evaluation again noted poor performance in the category of Administrative Policy and Procedure. In the evaluation covering the period January 31, 2006 to January 28, 2007, the employee's rating went from "Needs Improvement" to "Unsatisfactory." The supervisor wrote the following:

[The employee] has been disciplined twice in this rating period. [The employee] received a DAR for failure to follow a lawful order and another for not complying with departmental policies and procedures. [The employee] also used 156 hours of sick leave in the first 9 months of this rating period. [The employee] has not used any sick leave in the past three months.

The employee received an overall rating of "Needs Improvement" on this evaluation. And while the supervisor's comments note the curbing of the employee's sick leave usage during the year, in 2006 the total number of overtime hours earned—2,643—exceeds the regular annual hours total of a full time employee (2,080 hours).

### **Suspensions and Overtime**

The OIG investigation also revealed that the employee was allowed to work overtime even after receiving numerous suspensions for violating a variety of MDFR policies, including Policy 1-B-24 regarding the number of consecutive hours worked. In some instances the MDFR permitted overtime on the dates prior to and just after the suspension date, as illustrated below:

- On October 24, 2006, the employee served a 24-hour suspension, but was allowed to work 24 hours overtime on the preceding day, October 23, 2006.

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- On February 9, 2007, the employee served a 24-hour suspension, as earlier mentioned, for violating the policy on consecutive hours worked, yet was allowed to work 48 consecutive hours of overtime on the next two days, February 10 and February 11, 2007.
- On February 15, 2007, the employee served a 24-hour suspension, as earlier mentioned, for violating the consecutive hours policy, yet was allowed to work 24 hours overtime on February 14, 2007, and 21 hours of overtime over February 16-17, 2007.
- On May 1, 2007, the employee served a 24-hour suspension, but was allowed to work 12.75 hours overtime on April 29, 2007 and 12 hours overtime on April 30, 2007.
- On May 4, 2007, the employee served a 24-hour suspension, but was allowed to work 21.5 hours overtime on May 5, 2007, and 24 hours overtime on May 6, 2007.

After reviewing the former Overtime Policy 1-M-29, we acknowledge that there may not have been a specific work rule prohibiting overtime contiguous to a suspension period. We believe, however, that it would seem appropriate that an employee's ability to work overtime should be restricted when that employee has just received discipline. Based upon our reading of the revised overtime policy 1-M-29, this matter has been positively addressed.<sup>8</sup>

### **CONCLUSION & POSTSCRIPT**

The OIG's investigation of the complaint received alleging an excessive amount of overtime and possible violations of departmental policy was found to be substantiated as to violations of Policy 1-B-24 *Limit on Consecutive Hours Worked for Sworn Personnel*. However, as a postscript to this report, we note that such policy was rescinded on June 30, 2008. The rescission was a result of a grievance filed challenging the enforcement limiting the number of consecutive hours worked.<sup>9</sup> The binding order in the arbitration between the Metro-Dade Fire Fighters International Association of Fire Fighters (IAFF) Local 1403 and the Miami-Dade Fire-Rescue Department found that "the issuance and enforcement of the limitation on

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<sup>8</sup> Under the revised policy, only OT Active employees are eligible to sign up for OT opportunities. By definition, an employee who is in a restricted work status, either by suspension, administrative leave due to investigations, medical restricted duty, or leave of absence, is classified "Overtime Inactive." Individuals are reinstated to OT active status after three months. It thus follows that an employee is ineligible for overtime opportunities for a period of three months after a suspension.

<sup>9</sup> The grievant is not the same individual referenced in this report.

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consecutive hours worked imposed by 1-B-24 is a violation of the CBA...and coincidentally may be asserted to be an unfair labor practice..." (Written order attached as Exhibit 4.) The Arbitrator ordered MDFR to cease and desist from implementing or enforcing the limitation on consecutive hours worked as contained in Policy 1-B-24.<sup>10</sup>

As to the first part of the complaint about an excessive amount of overtime, there is no legal test of what is "excessive" in the absence of any departmental policy or standard. The OIG can objectively report that the employee in this case—according to official payroll records—received overtime compensation in excess of 1500 hours per year for 2005 and 2007. In 2006, this individual worked over 2600 hours of overtime. As previously mentioned, the OIG found no evidence to suggest that the individual did not work the overtime hours as reported. However, this finding is in itself significant in light of the department's stated purpose for limiting the consecutive hours that an individual may work—safety of the employee and the public.<sup>11</sup>

In light of the Arbitrator's relief that was ordered in the award, which in effect, removed management's ability to place any limit on the number of consecutive hours worked by its employees, MDFR must review and address the staffing issues that created the need for such an excessive amount of overtime in the first place, and attempt to find a solution to this problem through the negotiation process with IAFF Local 1403.

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<sup>10</sup> The Arbitrator's rationale for the finding was that firefighters had been permitted to work unlimited consecutive hours in the past, thus earning substantial overtime, and that the agreement protected past practices that benefited employees. The Arbitrator felt that MDFR did not provide sufficient evidence to support its argument that the policy was adopted for the safety of the public and the firefighters themselves. The Arbitrator agreed with the Union that the firefighters themselves would know when they had worked too many hours. On the contrary, we believe that this leaves the safety of the public and other firefighters in the hands of each individual firefighter who must set aside personal concerns and make an objective determination of his/her own condition even if it is apparent to others that the firefighter has been too extended.

<sup>11</sup> Our research indicates that there is unbiased, objective support for the limitation on consecutive hours. The National Institute for Occupational Safety and Health (NIOSH), Fire Fighter Fatality Investigation and Prevention Program, in a report dated March 2008 titled *Fatality Assessment and Control Evaluation Investigative Report #F2007-22* recommended that the number of consecutive hours that a firefighter can work should be limited. In support of its recommendation, the report cites that "[o]vertime was associated with poorer perceived general health, increased injury rates, more illnesses, or increased mortality in 16 of 22 studies reviewed. Extended work shifts were associated with decreased alertness, increased fatigue, lower cognitive function, declines in vigilance, and increased injuries. . . Studies among physicians who worked very long shifts (>24 hours) reported deteriorating cognitive performance, more frequent patient errors, and more frequent motor vehicle accidents after their shift [NIOSH 2004; Barger 2005, Barger 2006]." NIOSH, *Fatality Assessment and Control Evaluation Investigative Report #F2007-22*, available at <http://www.cdc.gov/niosh/fire/pdfs/face200722.pdf>.

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Failure to address spiraling overtime, thereby allowing employees to work an unlimited amount of hours—either throughout the department or, as in this case, isolated to one individual—puts the safety of our citizens and firefighters at risk and greatly restricts the ability of management to control the cost of overtime within the department.

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**MDFR'S RESPONSE TO THE DRAFT REPORT**

This report as a draft was provided to MDFR management for its comment. A copy was also provided to the subject—albeit unidentified—firefighter for his/her discretionary response. The OIG received a response from MDFR, which is attached as Appendix A.

We appreciate MDFR's thorough response explaining the special circumstances relating to this case study. MDFR also explains the obstacles that it faces in its implementation of policy and subsequent enforcement of policy. MDFR states that it "has made a concerted effort to address administrative deficiencies in the department," however, it notes that "the department must proceed with caution as unilateral changes in policy can and will be challenged through the arbitration process." In line with the OIG's above noted recommendation that MDFR attempt to find a solution to this problem through the negotiation process with IAFF Local 1403, the department notes that it has "seized the opportunity to address this and other efficiency measures through the Collective Bargaining process as [it] is currently negotiating the Collective Bargaining Agreement between Miami Dade County and IAFF Local 1403."

MDFR positively states that in FY07-08 overtime salary expenditures were actually less than the previous fiscal year. Moreover, "[t]he \$14.9 million in overtime salaries in the Fire District during FY 2007-08 was less than each of the previous four fiscal years, and was the lowest since FY 2002-2003, which was \$14.4 million, while at the same time adding new service and personnel."

MDFR ends its response by stating that it "considers the work done by the OIG and specifically this investigation to be beneficial for the County and our organization. We appreciate the OIG conducting this investigation and hope it, as well, is able to recognize improvements that have been made over a short time."

**OIG REQUESTED FOLLOW-UP**

The OIG recognizes that MDFR is positively addressing the issues brought out in our report, and as beneficial as our report is, we recognize that timely follow-up is a key

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component to any review. As such, pursuant to our authority under Section 2-1076(d)(2), the OIG requests MDFR to submit a status report within 60 days, on or before December 12, 2008, addressing the following outstanding areas of concern:

1. Given the Arbitrator's recent decision that MDFR cease and desist enforcement of its policy regarding the number of consecutive hours that a firefighter may work, what action(s) is management taking to ensure that the safety of fire personnel and the public are not placed at risk (MDFR's stated policy justification) by sworn personnel working an unreasonable number of consecutive hours?
2. What other actions related to the hiring of overtime assignments is MDFR taking to limit the number of occasions that a firefighter would be working an unreasonable number of consecutive hours?
3. How often has sworn personnel, since July 1, 2008, worked in excess of 48 consecutive hours in a 60-hour period? Please provide summary data showing the number of instances that this has occurred since July 1, 2008.