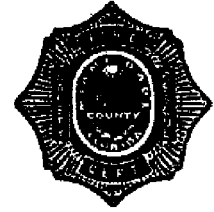


IG07-57 EXHIBIT LIST

<u>Exhibit No.</u>	<u>Description of Exhibit</u>
1.	MDFR Policy 1-B-24 (Limit on Consecutive Hours Worked)
2.	MDFR Policy 1-M-29 (Overtime)
3.	MDFR Policy 1-N-25 (Abuse of Sick Leave)
4.	Arbitrator's Opinion and Award (Dated June 20, 2008)



MIAMI-DADE FIRE RESCUE DEPARTMENT Policy & Procedure Manual



Volume: 1	ADMINISTRATIVE PRACTICES
Chapter: B	COUNTY GOVERNMENT/FIRE DEPARTMENT TABLE OF ORGANIZATION AND STAFFING
Originated By:	OPERATIONS
Subject: 24	LIMIT ON CONSECUTIVE HOURS WORKED FOR SWORN PERSONNEL
Date: 09/07/06	Herminio Lorenzo, Fire Chief

- 24.01** **PURPOSE:**
To ensure the safety of firefighters and residents of Miami-Dade County, Miami-Dade Fire Rescue (MDFR) will limit the number of consecutive hours sworn personnel can work to ensure that they remain alert.
- 24.02** **POLICY:**
No sworn personnel will work more than forty-eight (48) consecutive hours in any sixty (60) hour period unless authorized under extraordinary situations.
- 24.03** **AUTHORITY:**
The authority vested in the Fire Chief by Florida Statute 125.01; Sections 4.01 and 4.02 of the Miami-Dade County Charter; and Section 2-181 of the Code of Miami-Dade County.
- 24.04** **RESPONSIBILITY:**
It is the responsibility of the Assistant Fire Chief for Operations to review and update this policy.
- 24.05** **DEFINITION(S):**
N/A
- 24.06** **PROCEDURE:**
- I. Sworn personnel who have worked 48-hours consecutively will not accept overtime, off-duty assignments, or work exchange time for another sworn personnel without at least twelve (12) hours in an off-duty status.
 - II. 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 him or her to exceed 48-hours in a 60-hour period.
 - III. Sworn personnel are prohibited from working any off-duty assignments 12-hours immediately prior to a scheduled operations shift providing the operations tour of duty begins at 0700 hours.
 - IV. Sworn personnel will not work in excess of 12-hours of off-duty assignments immediately following a 24-hour operations tour of duty.

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V. No consecutive off-duty assignments will be worked. A minimum of one 12-hour off-duty rest period is required between off-duty assignments and as stipulated in Section III above.

VI. Exceptions

This policy may be waived:

- 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 duty shift.

VII. Sworn Personnel Responsibility

- A. It is the responsibility of all sworn personnel to ensure they are not in violation of this policy.
- B. It is the responsibility of all supervisors to monitor their personnel's compliance with this policy.
- C. 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.

24.07

REVOCATION:

Any and all parts of previous Orders, Rules and Regulations, Operations Memos and Administrative Orders in conflict with this Policy and Procedure are revoked.

24.08

REVISION:

New Policy



MIAMI-DADE FIRE RESCUE DEPARTMENT Policy and Procedure Manual



Volume: I	ADMINISTRATIVE PRACTICES
Chapter: M	EMPLOYMENT JOB BENEFITS
Originated By:	DEPUTY DIRECTOR FOR OPERATIONS
Subject: 29	OVERTIME
Date: 08/31/01	R. D. Paulison, Fire Chief

- 29.01 **PURPOSE:**
To provide a process for hiring overtime (O.T.) in an effective and consistent manner.
- 29.02 **POLICY:**
The Department will maintain sufficient staffing levels. During the times when a sufficient number of personnel are not available to fill all positions, overtime will be offered to personnel in accordance with this procedure.
- 29.03 **AUTHORITY:**
The authority vested in the Fire Chief by Florida Statute 125.01; Sections 4.01 and 4.02 of Miami-Dade County Charter; Section 2-181 of the Code of Miami-Dade County, and the applicable Collective Bargaining Agreement.
- 29.04 **RESPONSIBILITY:**
It is the responsibility of the Deputy Director for Operations to review and update this policy.
- 29.05 **DEFINITION(S):**
Overtime (O.T.) - Time in addition to that of the established regular work schedule. Overtime can be considered anticipated O.T., unanticipated O.T., or extended O.T.
- Unanticipated (Emergency) O.T. - 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. Unanticipated O.T. includes instances when an on-duty person is relieved of duty.
- Anticipated O.T. - Usually the second 12 hours of a shift immediately following an unanticipated (emergency) O.T., or when the need for advanced O.T. is recognized.
- Extended O.T. - Long term O.T. 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.
- 29.06 **PROCEDURE:**
Overtime will only be assigned in situations where a Supervisor in charge is convinced that the work is essential in meeting established schedules, deadlines, standards, or minimum staffing requirements.

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Chapter:	M	EMPLOYMENT JOB BENEFITS
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I. OPERATIONS

- A. Battalion Leadworkers will notify the Overtime Operator of any anticipated O.T. by 0900 each morning, or as soon as the need is established. The Overtime Operator will then hire the anticipated O.T. and notify the appropriate Battalion Chief of the personnel hired.

NOTE:

Battalion 5 will also advise the Overtime Operator of anticipated vacancies for Battalion 6 in accordance with paragraph A above.

- B. Battalion Chiefs, when filling positions, will consider only the required rank and certifications needed in accordance with the Collective Bargaining Agreement.

NOTE:

Rescue personnel will be considered for suppression unit positions.

1. Unanticipated (Emergency) O.T. for vacancies known by 0730, will be hired 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 O.T., may be required to holdover 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 has occurred.
 - e. Any uniformed employee with required qualifications.
2. Unanticipated (Emergency) O.T. for vacancies which occur after 0700 and before 1100 hours, which result from on-duty personnel being relieved of duty due to an unanticipated need, will be hired by the Battalion Chief. The Battalion Chief Leadworker will advise the Overtime Operator to hire personnel for the second 12 hours of anticipated O.T.

NOTE:

The Battalion Chief may request assistance from the Overtime Operator in hiring for vacancies that occur before 1100.

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3. Unanticipated (Emergency) O.T. for vacancies not filled by 1100 hours, or for vacancies that occur between 1100 and 1700 hours, will be hired by the Overtime Operator. The Overtime Operator will hire one person to fill the vacancy for the remainder of the shift.
4. Unanticipated (Emergency) O.T. for vacancies which occur after 1700 hours, or for vacancies not filled by the Overtime Operator after four (4) hours of a unit riding short of personnel, will be hired by the Battalion Chief.

NOTE:

The Battalion Chief will also hire for anticipated O.T. not hired by the Overtime Operator by 1700 hours.

- a. The Battalion Chief will select personnel in the following order:
 - (1). On-coming relief person for the vacant position as indicated by the placement of names listed on the Battalion Daily Roster.
 - (2). On-coming relief person with required qualifications from that unit.
 - (3). On-coming relief person from that station with required qualifications.
 - (4). Any sworn uniformed employee with required qualifications.
- b. Immediately after the Battalion Chief or supervisor has hired personnel to work overtime, the Battalion Leadworker will provide the Overtime Operator with the following information on each person hired:
 - (1). Name and Rank
 - (2). S.S. Number
 - (3). Position worked
 - (4). Date
 - (5). Total hours worked
5. For record keeping purposes, the Battalion Chief will notify the Overtime Operator of overtime cancellations. The Overtime Operator will then notify employees whose overtime has been canceled.

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II. BUREAUS

- A. Each Bureau must have an established overtime hiring procedure approved by their Division Chief that complies with department policy and fulfills the Bureau's operational needs. In addition, the hiring procedures for each Bureau must be consistent with the applicable Collective Bargaining Agreement.
- B. Each Bureau OIC/Supervisor will hire needed overtime in accordance with their Bureau's established hiring procedures.
- C. Immediately after the Bureau OIC/Supervisor has hired personnel for overtime, he or she will provide the Overtime Operator at Fire Communications with the following information for each person hired:
 1. Name and Rank
 2. S.S. Number
 3. Position worked
 4. Date
 5. Total hours worked
- D. For record keeping purposes, the Bureau OIC/Supervisor will notify the Overtime Operator of overtime cancellations. The Bureau OIC/Supervisor is also responsible for notifying employees whose overtime has been cancelled.

III. FIRE COMMUNICATIONS OFFICE

- A. Overtime Operator Responsibilities
 1. Hire all anticipated overtime in Operations.
 2. Notify the appropriate Battalion Chief of the names and social security numbers of personnel hired.
 3. Notify employees in Operations whose overtime has been cancelled.
 4. Notify the appropriate Battalion Chief of any vacancies that have not been filled by 1700 hours.
 5. Hire overtime for major alarms, hurricanes, injuries, in-kind services, anticipated or unanticipated emergencies, etc.

NOTE:

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Personnel hired by the Overtime Operator for anticipated overtime, but who are not needed upon reporting to their duty assignment, may be reassigned to work a different overtime assignment that is available. Personnel who refuse to work the available overtime assignment, will not be paid the four-hour minimum, but will only be paid for the hours that they actually work.

B. Hiring anticipated overtime via overtime computer system

1. Suppression vacancies will be filled using the firefighter and paramedic computer mode until the positions are filled.
2. The paramedic-only computer mode will only be used after all suppression positions are filled.
3. All available overtime will be offered to all personnel possessing the required certifications/qualifications for the available vacancies.
4. The Overtime Operator will call persons with the least number of hours as selected by the overtime computer until 1700 hours or until all vacancies are filled for the same day.
5. Advanced or anticipated overtime for the next day, etc., will be called until all overtime vacancies are filled.
6. Employees who refuse to work overtime when contacted, will automatically have up to 12 hours added to their total overtime hours. Once a refusal by an employee to work overtime is recorded in the overtime computer, no changes will be allowed.
7. Employees unable to work overtime who are on scheduled annual vacation leave, military leave, exchange time, funeral leave, authorized sick injured, working on county business, or working fire or rescue watch, will be entered as skipped with no hours charged.

C. Extended O.T. hired for periods greater than 24 hours

1. Personnel hired by the Overtime Operator to work extended overtime will be hired from the extended O.T. hiring list.
2. Probationary firefighters will not be hired to work extended O.T.
3. Personnel hired to work extended O.T. must notify their PAR Supervisor of all prior commitments to the department (firewatch, exchange time, etc.).
4. Employees who have prior department commitments within 48 hours of deployment to work extended O.T., will not be eligible to be hired to work extended O.T.

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NOTE:

An employee's regularly assigned shift is not considered as a prior commitment that will exclude the employee from being eligible to be hired to work extended O.T.

D. Overtime computer calling list maintenance and eligibility

1. Employees with eight (8) consecutive "unavailables" will have 12 hours added to their overtime total. In addition, eight (8) consecutive "unavailables" will count as one refusal.
2. Three (3) consecutive refusals by an employee to work overtime requires that the employee's name be removed from the overtime calling list for a period of at least three (3) months. Three (3) consecutive refusals may consist of 24 consecutive "unavailables" or any combination of refusals and "unavailables" that total three (3) consecutive refusals.
3. Employees who want their names to be returned to the overtime calling list, must submit a written request to the Overtime Operator. Employees are responsible for confirming that the Overtime Operator at Fire Communications has received their request.
4. Quarterly Reconciliation
 - a. At the end of each quarter of the current calendar year (March 31, June 30, September 30, and December 31), the department will verify the total number of O.T. hours worked by each employee.
 - b. The Overtime Operator will reconcile 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.

NOTE:

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.

- c. Each employee's overtime balance will be based on an evolving two to three-year total. At the end of the third year, the earliest year's total for the three-year balance is dropped. All new hours

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accumulated during the current year are then added to the remaining two-year balance.

Example:

	<u>Year</u>	<u>Name</u>	<u>Hours</u>	<u>Total</u>
(1)	Jan. 01, 2001	F.F. Doe	0	0
	Dec. 31, 2001	F.F. Doe	240	240
(2)	Jan. 01, 2002	F.F. Doe	240	240
	Dec. 31, 2002	F.F. Doe	200	440
(3)	Jan. 01, 2003	F.F. Doe	440	440
	Dec. 31, 2003	F.F. Doe	160	600
(4)	Jan. 01, 2004	F.F. Doe	360	360
	Dec. 31, 2004	F.F. Doe	100	460

NOTE:

- As illustrated in the example above, at the end of F.F. Doe's three (3) year period (Dec. 31, 2003), the hours from Jan. 1, 2001 through Dec. 31, 2001 are dropped on Jan. 1, 2004. This follows the rule that at the end of the third year of each person's running balance, the hours accumulated during each person's earliest year of their three year total is dropped.

The example above also illustrates that after the earliest year's total number of hours are dropped, all hours worked by each person during the current year are added to their remaining two-year total. This cycle then continues to be repeated each year thereafter.

IV. EMPLOYEE RESPONSIBILITIES

- A. Except for III C (Extended O.T.) in this policy, employees may not cancel fire or rescue watch to work overtime.
- B. Employees who are on light duty status will not be eligible to work overtime on emergency response units assigned to Operations. However, a Division Chief/Manager may elect to assign a Light Duty employee to work overtime in a staff position within his or her Division if the assignment does not adversely affect the employee's sickness or injury.
- C. Employees must personally accept overtime before a vacancy is considered officially filled.

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- D. Employees who work overtime are responsible for signing their completed overtime authorization form.
- E. Employees who elect to remove their name from the O.T. list must remain off the list for a minimum of three months.

V. UPDATING PERSONAL OVERTIME INFORMATION

- A. Employees requesting overtime information regarding their overtime availability status must do so in writing.
- B. Employees requesting to change their personal information for overtime must do so in writing on the personal change of information/address form.
- C. Employees who are newly promoted or certified will maintain their current balance of O.T. hours for their new rank or classification.
- D. Probationary firefighters who are placed on the overtime calling list will be positioned two-thirds from the top of the list for their certification.
- E. Employees voluntarily removed from the O.T. list and employees involuntarily removed from the O.T. list, who later change their status back to desiring to work overtime, will be either reassigned their previous O.T. balance or positioned two-thirds from the top of the list for their current rank and classification, whichever is higher.
- F. Employees returning to full duty from an authorized light duty status which resulted from an on the job injury, will be reassigned their current O.T. balance.
- G. Employees returning to full duty from an authorized light duty status which resulted from an off the job injury, will be reassigned their current O.T. balance or positioned two-thirds from the top of the list for their current rank and classification, whichever is higher.

VI. OVERTIME AUTHORIZATION FORM

- A. Compensation for working overtime will only be paid when accompanied by a properly completed overtime authorization form.
- B. No PAR Supervisor will enter overtime hours on a PAR sheet or PAR change form without having first confirmed that the appropriate documentation of overtime worked has been made on a properly completed and signed overtime authorization form.

NOTE:

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The form must include the reason for the overtime, the place where the overtime was worked, the signature of the supervisor where the overtime was worked, and the signature of the employee who worked the overtime.

- C. The immediate supervisor in charge of the unit or area where the overtime is worked is responsible for initiating the overtime authorization form. The immediate supervisor is also responsible for both verifying that the overtime is needed and documenting the reason for the overtime on the overtime authorization form.
- D. The following information **must not** be included on the overtime authorization form:
 1. Overtime that has been worked in more than one pay-period.
 2. Overtime that has been worked at more than one site.
 3. Overtime that has been worked on more than one shift.
 4. Signatures of multiple immediate supervisors.
- E. The supervisor of the unit or area where the overtime is worked is responsible for immediately forwarding the completed overtime authorization form to the employee's PAR Holder. The employee will be provided only a copy of the completed overtime authorization form for his or her records.

NOTE:

Detailed instructions for processing the overtime authorization form can be found in the Overtime Form Standard Operating Procedure.

- F. A completed and properly signed overtime authorization form must be attached to the PAR sheet for each overtime entry made on the PAR sheet during the current pay period. A completed and properly signed overtime authorization form must also be attached to the Payroll Attendance Record Change Form for each overtime entry recorded on the form.

29.06

REVOCATION:

Policy and Procedure I-M-29 dated 08/31/01 and all parts of previous orders, rules and regulations, operations memos and administrative orders in conflict with this policy, and procedure are revoked.

29.07

REVISION:

Section-Header: Fire Chief's signature and date
 Section-29.01
 Section-29.02
 Section-29.03
 Section-29.04
 Section-29.05

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Section-29.06
Section-29.07
Section-Footer:Rev. Date



MIAMI-DADE FIRE RESCUE DEPARTMENT

Policy & Procedure Manual



Volume: I	ADMINISTRATIVE PRACTICES
Chapter: N	LEAVE ACCUMULATION AND USAGE
Originated By:	ADMINISTRATIVE SERVICES DIVISION
Subject 25	SICK LEAVE, ABUSE OF
Date: 07/10/95	R. D. Paulison, Fire Chief

- 25.01 **PURPOSE:**
To establish guidelines for the use, monitoring and review of sick leave.
- 25.02 **POLICY:**
Employees will use sick leave according to established guidelines set forth by this policy and Section 02. 01. 00 of the Metro-Dade County Leave Manual.
- 25.03 **AUTHORITY:**
The authority vested in the Fire Chief by Florida Statute 125.01, Section 4.01 and 4.02 of the Metro-Dade County Charter, Section 2-181 of the Code of Metro-Dade County, and Section 02. 01. 00 Metro-Dade County Leave Manual.
- 25.04 **RESPONSIBILITY:**
It is the responsibility of the appropriate Assistant Chief/Director to review and update this policy.
- 25.05 **DEFINITION:**
Excused Sick Leave: 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.

Unexcused Sick Leave: Sick Leave that is not excused as described above.

Leave Year: The period for maintaining an employee leave record which beginning with the leave conversion date and covering 26 pay periods.
- 3.06 **PROCEDURE:**
 - I. Use of Sick Leave:
 - A. Sick Leave may be used for:
 1. Personal illness or injury.
 2. Personal medical or dental appointment with prior approval from immediate supervisor.
 3. Death or life threatening illness in the immediate family.

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Subject	25	SICK LEAVE, ABUSE OF

2. The supervisor will make notation as to receiving the original document of proof and forward it to the Personnel Bureau for filing.

B. When employees are required to provide written proof of the reason for sick leave, the documentation will be of a general nature and will not disclose a specific diagnosis or other private medical information. The documentation must be signed by the treating physician and include:

1. Treating physician's name, address, and telephone number.
2. Date of examination.
3. Period of absence attributable to the medical condition.

C. If at anytime the supervisor determines that the employee's absence is not properly chargeable to sick leave, the employee may be placed in non-pay status or other accrued leave may be charged.

25.07

REVOCATION:

A. O. 4-87 and all parts of previous orders, rules and regulations, operations memos, and administrative orders in conflict with this policy and procedure are revoked.

25.08

REVISION:

New Policy



In the Matter of the Arbitration	American Arbitration Association
Between	
Metro-Dade Fire Fighters	
IAFF Local 1403	AAA Case No. 32 390 00479 07
And	OPINION AND AWARD
Miami-Dade Fire Rescue Department	
(06-10-32 Captain Paul Sloane Re Overtime)	

Before: Jerome J. LaPenna, Arbitrator

Appearances: Matthew J. Mierzwa Jr., Esq., Atty. For
Metro-Dade Fire Fighters, IAFF Local 1403

William X Candela, Esq., Asst. Cty. Atty. For
Miami-Dade Fire Rescue Dept.

Dated: JUNE 20, 2008


Jerome J. LaPenna

There is essentially no dispute as to the facts of this case.

On September 7, 2006, the Miami-Dade Fire Rescue Department, ("Department" or "County") issued an additional provision to its Policy and Procedural Manual referred to as Volume 1, Chapter B, Subject 24 (1-B-24) and titled "Limit on Consecutive Hours Worked by Sworn Personnel". The policy manual provision 1-B-24 states as its "Policy" (24.02):

"No sworn personnel will work more than forty-eight consecutive hours in any sixty hour period unless authorized under extraordinary situations."

Under its stated "Procedure" 1-B-24 (24.06) it also states:

- I Sworn personnel who have worked 48 hours consecutively will not accept overtime, off-duty assignments or work exchange time for another sworn personnel without at least twelve hours in an off-duty status.
- II Sworn personnel who have worked a partial shift preceding a twenty-four hour tour of duty will not accept any overtime, off-duty assignment or

exchange time that would cause him or her to exceed 48 hours in a 60 hour period.

III Sworn personnel are prohibited from working any 12 hours immediately prior to a scheduled operations shift providing the operations tour of duty begins at 0700 hours.

IV Sworn personnel will not work in excess of 12 hours of off-duty assignments immediately following a 24 hour operations tour of duty.

V No consecutive off-duty assignments will be worked. A minimum of one 12 hour off-duty rest period is required between off-duty assignments and as stipulated in Section III above."

The 1-B-24 policy lists certain exceptions to the limitation in consecutive hours worked in Section VI, "Exceptions" (24.06):

"This Policy May Be Waived:

- 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 hours.
- C. To allow for special events which terminate no

later than midnight the evening proceeding a
sworn employees regular duty shift.”

As to the “responsibility” of sworn personnel, 1-B-24 (24.06) at
Section VII with respect to its policy states:

- “A It is the responsibility of all sworn personnel to
ensure that they are not in violation of this policy.
- B. It is the responsibility of all supervisors to monitor
their personnel’s compliance with this policy.
- C. All approved exceptions to the policy for sworn
personnel working in operations will be documented
in the station logbook to the fire chief detailing the
circumstances.”

The Policy provides under “Revocation” (24.07) that:

“Any and all previous orders, rules and regulations,
operational memos and administrative orders in
conflict with the Policy and Procedures are revoked.”

The grievant, Captain Paul E. Sloane, (and Union), contend in the
grievance that Policy Manual 1-B-24 violates several articles of the
Collective Bargaining Agreement (CBA).

The CBA articles alleged by the grievant to be violated by this Policy

1-B-24 in pertinent part are:

"ARTICLE 7 - OVERTIME

- 7.1 All classified employees of the Miami-Dade Fire Rescue Department set forth in Articles 2 up to and including fire captain shall have the right to request and be paid at the rate of one and one half times their normal rate of pay for all duty hours performed in excess of their normal work day or week. Normal work day shall mean twenty-four hours for all employees working twenty-four hours of duty.
- 7.2 The opportunity to work overtime shall be offered to all employees covered by the Article . . .
- 7.3 Voluntary overtime shall not be refused whenever the need exists except for personal emergency or substantial inconvenience of the employee.

"ARTICLE 29

SHIFT EXCHANGE

- 29.1 Employees may exchange shifts with personnel

of the same classification subject to the following conditions:

- A. Requests may be denied if an exchange will interfere with the efficient operation of the Department.
- B. Exchange of time shall be in increments of 24 hours or less as required by the employee being relieved.
- C. Exchange requests must be made 48 hours in advance.
- D. Exchange requests shall be subject to advance approval by the immediate supervisor.
- E. Exchanges will be limited to 26 shifts per year per employee and may not be for more than five consecutive shifts. This provision may be extended upon the written authorization and approval from the Department Fire Chief.
- F. Any exchange for Union business shall not be covered by this Article.

29.2 The employee agreeing to work the shift exchange

for the employee requesting the shift exchange shall be held accountable to report for duty or have an excused absence. Any associated out of class pay will be awarded to the employee agreeing to work. No exchange of time will result in added cost to the County.

ARTICLE 30

SAVINGS CLAUSE

- 30.1 All job benefits authorized by the County and heretofore enjoyed by the employees which are not specifically provided for or abridged by this agreement shall continue under conditions upon which they had previously been granted.
- 30.2 Nothing in this Article shall prevent the County from making reasonable changes in work rules or methods provided that such changes do not reduce the benefits referred to above.
- 30.3 This agreement shall not deprive any employee of of the protections granted by:
 - 1. Federal Law
 - 2. The Laws of Florida

3. Ordinances of Miami-Dade County excluding Budget Ordinances.
4. The Miami-Dade County Personnel Rules and Regulations.”

Further, with respect to applicable CBA provisions, the Department relies primarily on “Article 3, MANAGEMENT RIGHTS AND SCOPE OF THE AGREEMENT”, which provides:

- “3.1 The Union recognizes that the County possesses the sole right to operate and manage the MDFRD and direct the work force and that the rights, powers, authority and discretion which the County and the Department deem necessary to carry out its responsibilities and missions shall be limited only to the specific and express terms of this Agreement and not by implied obligations.
- 3.2 These rights and powers include but are not limited to the authority to:
 - a) Determine the missions and objectives of the Department;
 - b) Set standards of service to be offered to the public;
 - c) Determine the methods, means and number of personnel

necessary to carry out Department responsibilities.

- d) Exercise control and discretion over its organization and operations;
- e) Take such actions as may be necessary to carry out services during emergencies declared by the County Manager;
- f) Discipline or discharge employees for just cause;
- g) Schedule operations and shifts. The parties agree that it is their intention to treat the existing 24 hour tour of duty shift as a job benefit under Article 27 and in accordance with Article 30;
- h) Introduce new or improved methods, operations or facilities.
- i) Hire, promote, transfer or assign employees;
- j) Lay off employees in accordance with County procedural guidelines for County layoffs or reduce hours of work in lieu of layoff;
- k) Schedule overtime work as required.

The parties acknowledge that during the negotiations which preceded this Agreement, each had the unlimited right and

opportunity to make demands and proposals with respect to any subject or matter and that the understandings and agreements arrived at by the parties after the exercise of that right and opportunity are set forth in this agreement.

This agreement including its supplement and exhibits attached hereto concludes all collective bargaining between the parties during the term hereof, and constitutes the sole, entire and existing agreement between the parties hereto and supercedes all prior agreements and undertakings, oral and written, express or implied, or practices, between the County and the Union or its employees and expresses all obligations and restrictions imposed on each of the respective parties during the term.”

The evidence adduced in testimony clearly established without dispute, that there existed for an extraordinarily long period of time, at least thirty years, a past practice with respect to no limitation on the number of consecutive hours that a Fire and Rescue employee can work without an off-duty period. Indeed, there was testimony by the grievant's witnesses that they commonly worked three consecutive twenty-four hour workdays or seventy-two consecutive hours and even longer periods consecutively in the

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absence of a declared or undeclared emergency. The testimony implied that some or all of this excess time worked, beyond the regular twenty-four hour regular work day, was overtime work while perhaps in some case, the excess time or part of it may have been at straight time rather than premium overtime pay. In either event, the testimony as to long consecutive work periods was virtually uniform and undisputed and involved loss of income to the employee.

The grievant's witnesses also testified that much of the excess overtime or time was occasioned by the shift exchange policy and contract provision whereby one employee on a twenty-four hour on and forty-eight hour off tour of duty can request to exchange a work day or work days with another similarly toured employee who agrees to the exchange and will work the exchanged twenty-four hour workday for the requesting employee which would immediately precede or succeed the agreeing employees own regular twenty-four hour workday.

This exchange of shifts might involve two or more requesting employees in a short time period requesting a shift exchange or shift exchanges and result in an agreeing employee working immediately after and immediately before his own regular twenty-four hour workday and

possibly resulting in four consecutive work days worked or ninety-six hours of consecutive work.

In one case of emergency, one witness testified that he worked fourteen consecutive twenty-four hour work days without being relieved for presumably a total of three hundred thirty-six consecutive hours. Of course, emergencies are excepted from the challenged policy change and the limitation of forty-eight consecutive hours is not or may not be applicable.

Article 29 covers the exchange shift policy and it limits each employee to twenty-six shift exchanges in one year but no more than five consecutive shift exchanges. The implication is clear from the testimony that by accepting shift exchanges a fire and rescue employee could work and did work any number of consecutive work days of twenty-four hours each and many more than forty-eight consecutive hours prior to the limitation imposed by Policy 1B24.

The Department provided evidence in the form of the testimony of Assistant Fire Chief Paul-Noel that asserted that the limitation of consecutive hours worked set out in Policy 1-B-24 was lawful, proper and reasonable in light of the safety factor fostered by the limitation.

It was the witnesses opinion and the opinion of the Department that it was unsafe for an employee to work more than two consecutive twenty-four

hour workdays or forty-eight consecutive hours in a different configuration without off-duty relief with respect to the employee himself or herself; as to his or her fellow employees who work with him or her, and to the public who rely upon the fire and rescue employee for life-saving or health-saving services.

The Department's sole witness provided no evidence nor did the Department as to the basis for his or its opinion nor did the witness give evidence of any harms or injuries caused by or suffered by an employee who was working more than forty-eight consecutive hours at the time of his or her service which might have caused the harm or injury due to fatigue or over-exertion ostensibly over too long a period of time resulting in non-awareness or responsiveness or related physical shortcomings.

With respect to the safety issue raised by the Department, the testimonial evidence produced by the grievant's witness, consisted of an opinion by an experienced fire rescue employee who had frequently and currently worked for longer than forty-eight consecutive hours, that it was the employee who worked the long hours who knew when he had worked too long a period and refused to continue working at that point but forty-eight hours was much too short a period to reach the state of excessive consecutive work causing fatigue or exhaustion and was an arbitrary

limitation since different employees could work different periods of consecutive hours.

The undisputed evidence describing an average twenty-four hour workday was illuminating. The workday included work drills, preparation and placement of equipment on vehicles and general maintenance of the station, together with periods of rest and relaxation at breakfast, lunch, dinner and after dinner, ending with a normal and substantial sleeping period at nightfall. The responses to call outs which if they occur, are not regular or timely but may occur at any time during the twenty-four hour workday period. Additionally, the description of daily workday events does not fully apply during periods of emergency conditions which requires apparently a sharply different protocol.

This case primarily involves the matter of the existence of a past practice which in this case would be protected by a provision of the CBA. Article 30 of the CBA is without question a contractual protection of past practices beneficial to employees.

Ordinarily a binding past practice with or without a covering contractual protection to be binding upon the parties to the CBA must be, "(1) unequivocal, (2) clearly enunciated and acted upon, (3) readily ascertainable over a reasonable period of time as a fixed and established

practice accepted by both Parties.” Elkouri and Elkouri, HOW
ARBITRATION WORKS, (6th Ed.) Ch. 12.2, p. 608.

Additionally of course, and in this case, it must be beneficial to the employee but must not be an unwritten past practice which restricts the employer's methods of operation or its direction of the work force. Initially, it must be stated that the arbitrator finds that the non-limitation of consecutive hours worked by sworn personnel is a long established past practice which meets the criteria of a binding past practice because the practice is unequivocal, clearly evident and followed by the parties and accepted as a past practice by the parties. Additionally, the arbitrator finds that the practice constitutes a benefit to the employees as it also relates to other benefits provided for explicitly in the Agreement, such as Overtime and Shift Exchanges, as set out in Articles 7 (Overtime), 25 (Night Differential), 29 (Shift Exchange), 36 (Long Service Pay Premiums), 44 (Wages) and perhaps other CBA benefits to employees as well.

As to whether the practice restricts Management in its methods of operation or direction of the work force, the arbitrator finds that the practice does not substantially restrict the Department in its methods of operations or its direction of the work force and to whatever amount it limits exercise of Management rights, if at all, the restriction is one of form and not substance

and in any event *de minimis* when the entire CBA is examined and most particularly Article 29, Shift Exchange. Article 29 permits each employee 26 shift exchanges each year and up to 5 exchanges on consecutive workdays and this provision may be extended by the Department's Fire Chief. Without even carrying this entitlement to its mathematical extreme, it is obvious that the limitation on consecutive hours worked established by 1-B-24 may not even be practically possible or feasible without an extraordinary increase of rejections for shift exchanges and a most severe restriction on overtime grants.

The liberal shift exchange policy set out in Article 29 indicates quite clearly and unequivocally that it was not the intention of the Department and the Union to limit consecutive hours worked in the CBA. Indeed, the imposition of the limitation may very well seriously, restrict and impede the employer in its operations and work force utilization. Additionally, it is evident from the extensively liberal shift exchange provisions, that it was the intention of the parties at the time of the execution of the CBA not to attempt to restrict both the Shift Exchange Policy nor the practice of non-limitation of consecutive hours.

It might be argued that there should be some way to restrict unreasonable extensions of consecutive hours worked for safety or other

reasons. The evidence in this case reflects quite clearly, that there is already, in place, a system to avoid unhealthy and unsafe extensions of consecutive hours to be worked.

The grievant's witnesses testified that the employees themselves, know when they are fatigued or otherwise incapable of continuing working longer consecutive hours and this has apparently been a successful mode of appropriate limitation for at least 30 years without negative effect. There is, as can be seen by 1-B-24, no limitation of consecutive hours worked in cases of emergency or at times when the Department deems that such limitation should not apply apparently, at its own discretion and in such case, may not be a factor at all.

The issue of safety and the effects of fatigue due to working long consecutive hours must be analyzed from the constituent parts of the fire-rescue workday of twenty-four hours. The testimony was undisputed that except in cases of call-outs from 6 p.m., to 6 a.m., there is ample time to recover from physical fatigue by recreation, relaxation and sleep during that roughly twelve hour period of the workday.

The arbitrator finds that the issuance and enforcement of the limitation on consecutive hours worked imposed by 1-B-24 is a violation of the CBA in evidence as Joint Exhibit 1 and coincidentally may be asserted to be an

unfair labor practice since it might be argued that it constitutes a refusal to bargain collectively on terms and conditions of employment which in this case, includes the contractually protected past practice of Article 30 of the CBA; by unilaterally changing a term or condition of employment *i.e.*, the non-limitation of consecutive hours worked.

There remains the issue raised by the Department of the absence of a damage, harm or loss personally to the grievant. This issue was labeled as a no case or controversy defense to the grievance as a consequence of the lack of damage or harm to the grievant.

There is no requirement that the grievant, a person, have suffered specific past damage in order for the grievance to be valid under the CBA in this case thus no such requirement for the arbitration of that grievance.

The CBA in Article 4, Section 4.2 defines a grievance by stating:

"A grievance shall be defined as any dispute involving the interpretation or application of the terms of this Agreement."

There is no question that the grievance in this matter involves a dispute involving both the interpretation and the application of the CBA.

The Department argues that the Policy enunciated in Policy Manual, Section 1-B-24 is simply an implementation of one of its Management rights under Article 3 of the CBA and the grievant counter argues that the

provisions if 1-B-24 are in direct violation of a past practice protected in the CBA by Article 30 and of Article 29 by extension. The question is whether the provisions of 1-B-24 and its implementation violate the CBA as interpreted and applied in a contractually protected past practice, "Savings Clause". The answer as found herein is that the provisions of 1-B-24 violates the CBA.

There is no doubt that arbitral remedies include non-monetary or non-benefit remedies and in particular injunctive relief or quasi-injunctive relief where the harm or damage is prospective as it is and has been proved to be in this case. Although the grievant claims that he has been harmed by loss of overtime pay the claim is general and speculative. Past damage, if any, would be difficult if not impossible to prove considering that the control of the distribution of overtime and the grant of shift exchanges is completely within the hands of the Department and a grievant in a case such as this has no direct knowledge of past but unfulfilled overtime or excess requirements of the Department or future specific detailed assignment of overtime requirements.

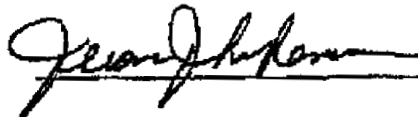
For all of the above reasons, the arbitrator makes his award as follows:

1. The Department shall rescind its Policy Manual provision

limiting the number of consecutive hours an employee may work as set forth in Section 1-B-24 of the Miami-Dade Fire Rescue Department Policy and Procedures Manual.

2. The Department shall forthwith cease and desist from implementing or enforcing the limitation on consecutive hours worked contained in Section 1-B-24 of the Miami-Fire Rescue Department Policy and Procedures Manual.
3. The arbitrator shall retain jurisdiction as to any matters relating to the relief ordered in this Award.

Dated: June 20, 2008



Jerome J. LaPenna