

Office of the Inspector General

Miami-Dade County

FINAL REPORT

Miami-Dade Fire Rescue Department

Union Activity Leave

A review conducted by the Office of the Inspector General of the Miami-Dade Fire Rescue Department's administration and tracking of Union Activity Leave in accordance with its Collective Bargaining Agreement entered into between the Miami-Dade County and the Dade County Association of Fire Fighters, Local 1403, International Association of Fire Fighters.

April 1, 2002

Office of the Inspector General

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I. EXECUTIVE SUMMARY

Based upon allegations that the Miami-Dade Fire Rescue Department (MDFR) was tolerating abusive practices involving the use of union activity leave, the Office of the Inspector General (OIG) initiated a review of union activity leave as authorized by and in accordance with MDFR's Collective Bargaining Agreement (CBA) with the Dade County Association of Fire Fighters Local 1403. Our review concluded that abusive practices had occurred, that the county-funded union activities exceeded \$640,000 in a 21-month period, and that there were no adequate oversight tools in place to monitor the propriety or justification for such expenditures. At present, there are still no adequate tools in place to track the union activity leave.

By way of background, fire fighters may take union activity leave, commonly referred to as "Y-time," in accordance with various articles of the CBA. Employees must have prior approval to take Y-time. According to the CBA, approval shall not be withheld. Y-time usage is recorded by the Employee Relations Department, however, the actual CBA articles authorizing its use is only recorded on each employee's Payroll Attendance Report (PAR), **if recorded at all**. The Fire Rescue Department does not internally track Y-time usage. Relying on data provided by the Employee Relations Department, for a total 21-month review period, the OIG calculated that \$642,665.91 was directly expended on Y-time payroll costs. This expenditure **does not** include other relief and overtime costs associated with replacing the individuals out on union activity leave. **Of the \$642,665 figure, 83.2% or \$534,855 is attributed to only ten (10) individuals.**

In a department as vital to the County's emergency services needs as is the Fire Department, it is operationally necessary to insure adequate levels of staffing for the various rescue units. The OIG's review of this matter revealed that, in some instances, excessive Y-time usage by individual firefighters necessitated replacement by other qualified personnel, thus affecting departmental budgets.

In other examples, the OIG found instances where certain individuals used so much Y-time that they have not worked in their assigned operational unit for over 21 months. During our review, OIG Special Agents were told that these individuals were detached to the Union, however, the CBA does not provide for "detachment." The CBA lays out six (6) specific activities for authorized Union Activity Leave. The CBA also includes a seventh catch-all provision that allows for up to an extra 296 hours of Y-time per month. Our review demonstrated that collectively, union members quite often exceeded that amount.

Overall, this OIG review found that the absence of an internal tracking system allowed for abusive practices to remain undetected. We also question whether it was the intent of the Miami-Dade County Commission, Fire-Board, and County Manager's Office in approving the CBA, to allocate such high expenditures to union related activities, particularly in this instance where only a relatively small number of fire department personnel received the bulk of these expenditures.

II. BACKGROUND

The Miami-Dade Fire Rescue Department (MDFR) provides fire rescue service to all of unincorporated Miami-Dade County (the “County”) and to 25 municipalities within the County. The Department is made up of ten (10) divisions and has an annual budget of over 200 million dollars. The MDFR employs approximately 1,600 uniform officers. The International Association of Fire Fighters (IAFF) Local 1403 (hereinafter the Union) is the collective bargaining agent representing Miami-Dade fire fighters. The present Collective Bargaining Agreement between the County and the Union runs for a three (3) year period from October 1, 2000 through September 30, 2003. Terms of the agreement are managed and coordinated through the County’s Employee Relations Department (ERD), Labor Management and Employee Appeals Division.

III. SCOPE OF REVIEW

The Office of the Inspector General (OIG) initiated a review of union activity leave as authorized by and in accordance with MDFR’s collective bargaining agreement with the Union. Our review spanned a 21-month period (46 consecutive pay periods) from 12/27/99 through 9/30/01. In short, the review period consisted of calendar year 2000 and the first nine (9) months of 2001.

IV. GOVERNING AUTHORITIES

The general authority for Union Activity Leave is found in the County’s Employee Leave Manual, Section 19. In general, “Union Activity Leave provides authorized employees time off with pay to participate in union activities.” (Section 19.01.01) Eligibility and authorization for its use is governed by the specific collective bargaining agreement. “Employees may use Union Activity Leave only with prior approval of their supervisor.” (Section 19.03.03)

With regard to the IAFF Local 1403, Union Activity Leave is governed by Article 22 of the Collective Bargaining Agreement.¹ Article 22 sets forth seven (7) situations where union members are authorized to take paid Union Activity Leave. Article 22.1 states the general departmental guidelines for Union Activity Leave:

¹ The cited provisions, Article 22.1 thru Article 22.8 have remained unchanged in the last nine (9) collective bargaining agreements. The OIG examined the relevant articles for collective bargaining agreements for years: 2000-2003, 1999-2000, 1996-1999, 1994-1996, 1992-1994, 1990-1992, 1988-1990, and 1986-1988. Earlier agreements, predating 1986, were not reviewed.

“The Union shall designate in writing to the Director of the Fire-Rescue Department Union members who shall serve as Union representatives and Grievance representatives. Said representatives may be allowed time off with pay for the following activities subject to prior approval of the Department. Approval shall not be withheld.”

The following activities are set forth in Articles 22.2 through Article 22.8, with Article 22.8 serving as a “catch-all” authorization. Specifically the seven activities are:

Article 22.2: “Six (6) members shall be designated as Union representatives for attendance at labor-management committee meetings and for renegotiation of this collective bargaining agreement. Three (3) representatives shall be allowed time off with pay for attendance at the Department Health and Safety Committee meetings.”

Article 22.3: “The Union shall designate nine (9) employees (no more than three (3) per shift), including a grievance committee chairman, to act as grievance representatives. Grievance representatives may investigate and process grievances during working hours. One (1) grievance representative may be allowed time off with pay to attend each grievance hearing. The Union President and two (2) grievance representatives will be allowed time off with pay to attend arbitration hearings conducted pursuant to Article 5.”

Article 22.4: “Two (2) members of the Union’s Executive Board shall be given time off with pay to attend the Dade County Association of Firefighters meetings in Miami-Dade County, the South Florida AFL-CIO meetings in Miami-Dade County, the South Florida Council of Firefighters meetings in Miami-Dade County, and any regularly scheduled Miami-Dade County Commission meeting.”

Article 22.5: “Nine (9) members of the Union shall be allowed time off with pay to attend the bi-annual convention of the International Association of Firefighters, AFL-CIO, C.L.C. (Not to exceed forty-eight (48) hours per employee.)”

Article 22.6: “Nine (9) members of the Union shall be allowed time off with pay to attend the Annual Professional Firefighters of Florida Convention and the Florida AFL/CIO Annual convention (not to exceed twenty-four (24) hours per employee).”

Article 22.7: “The President of the Union shall be given time off with pay, up to five (5) shifts per month, to conduct Union business.”

Article 22.8: “In addition to the sections above, association representatives may receive up to 296 hours of administrative leave per month to be used at the mutual agreement of the Association President and the Department Director for the benefit of the County and Fire-Rescue Department personnel.”

V. RECORDING & TRACKING UNION ACTIVITY LEAVE a.k.a. “Y-time”

Union Activity Leave is commonly referred to as “Y-time,” as “Y” is the designated code recorded on an employee’s Payroll Attendance Report (PAR). According to the ERD Administrative Services Division, Personnel/Payroll System Coding manual, Y is defined as “Union Activity – Time off with pay to participate in union activities. Use governed by various contracts.”

According to payroll data captured by the Administrative Services Division, the code “Y” is used regardless of the specific department and/or collective bargaining agreement authorizing its use. As captured, the data itself does not delineate under what article of the collective bargaining agreement the time off is being used for. For example, if John Doe, a MDFR employee, took 8 hours of Y-time in a given pay period, one could not determine under which article (e.g. attending a grievance hearing, Article 22.3, or attending the national convention, Article 22.5), it was authorized. This information, if captured, would have to come from the Department itself, either in some tracking method or from the actual PAR sheets themselves. The OIG’s review revealed that MDFR has no effective tracking system to determine who is using Y-time.

Through the course of our review, OIG representatives interviewed members of MDFR’s command staff regarding the use and tracking of Y-time. Specifically, OIG Special Agents asked former Deputy Director (present Director) Charles Phillips, what measures, if any, were used to track the use of Y-time by MDFR employees. Director Phillips explained that there is no tracking system for the usage of Y-time, except for Article 22.8 usage, which is tracked by Assistant Fire Chief of Operations, Carlos J. Castillo. Director Phillips stated that currently there is no way of knowing who is “out” on Y-time. OIG Special Agents also met with Deputy Director Antonio Bared regarding Y-time usage. Deputy Director Bared confirmed that the Department does not track Y-usage on a department wide basis. Deputy Director Bared also questioned the need for firefighter personnel to be assigned to the Union on a full-time basis. OIG Special Agents also attempted to interview former Director David Paulison regarding Y-time. Director Paulison did not respond to several requests by the OIG for a meeting prior to his departure from county service.

Overall, except for Assistant Chief Castillo's own tracking of Article 22.8 usage (the catch-all provision), which, as it turns out, was based on incomplete information provided by the Union, and will be explained in further detail below, MDFR management had no mechanism in place to track Y-time usage.

In a follow-up interview with the OIG, Assistant Chief Castillo was asked whether he was aware of any list provided by the Union designating union members to serve as "Union representatives and Grievance representatives" for Union Activity Leave purposes, as required by Article 22.1. Assistant Chief Castillo stated that he is unaware of any official list that the Union has provided to MDFR. In fact, he stated that he usually refers to the Union Local 1403 newsletter for the current list of the Union's officers and executive board members. Assistant Chief Castillo went on to say that he recalls receiving a list of names back in 1994, but that list pertained to Article 22.2 (attendees participating at labor-management meetings regarding negotiation and re-negotiation of the CBA). As for attendance at the national and Florida conventions, as provided in Articles 22.5 and 22.6, respectively, Assistant Chief Castillo explained that his understanding is that prospective attendees are chosen by the Union and it is the responsibility of each battalion chief to insure minimum staffing at the fire stations per shift to accommodate absences. But again, there is no central mechanism to track all those out on Y-time for attending the conference(s).

The OIG concludes that the department's inability to track Y-time usage impacts both management and the Union's accountability. Consequently, as will be discussed below, the OIG's review, in the worst-case abuses, revealed instances of individual firefighters who have not worked a regularly scheduled shift for over a year, but have still been paid their full salary.

VI. ANALYSIS OF Y-TIME DATA PROVIDED BY PAYROLL/ITD

In light of MDFR's lack of a department-wide tracking system for Y-time usage, the OIG requested from ERD's Payroll Processing Division the stored data capturing Y-time usage by MDFR. The OIG was provided by the County's Information Technology Department (ITD) all payroll processing data capturing Y-time usage for calendar year 2000 and for the period January 1 – September 30, 2001.² The data provided by ITD included each employee's name, the beginning and ending leave date(s), corresponding pay period, number of Y code hours, the employee's hourly rate of pay, and a calculation of the dollar amount expended by each employee's use of Y-time.

² The data provided by ITD captured whole pay periods. Therefore, our review was actually for the period 12/27/99 – 12/24/00 (26 pay periods) and 12/25/00 – 9/30/01 (20 pay periods).

The OIG, for year 2000 and for the first nine (9) months of 2001, sorted the data and ranked the employees by the number of Y hours taken. Our analysis revealed that in calendar year 2000, a total of 62 individuals took Y-time. The total amount of hours taken by each employee **ranged from three and a half (3.5) hours to 2,256³ hours.** The second highest ranked firefighter took 2,105 Y-hours. For 2000, in total there were three (3) individuals who exceeded 1,000 Y-hours. **The majority of employees, 34 out of 62, took 24 hours or less of Y-time.** According to the data provided by ERD/ITD, the total cost associated with Y-time usage for year 2000 was \$385,579.31. (Exhibit A)

For the 9-month period, January 1 – September 30, 2001, 49 MDFR employees were recorded as having taken Y-time. **The spectrum of individual usage ranged from four (4) hours to 1,590 Y-hours.** For this 9-month period, three (3) individuals recorded over 1,000 hours of Y-time, and on the opposite spectrum, **22 employees logged 24 hours or less of Y-time usage.** The payroll cost associated with this 9-month period totaled \$257,087.32. (Exhibit B)

Our review and ranking of the employees demonstrated that the vast majority of Y-hours and associated payroll costs were consumed by a small group of individuals. The following charts demonstrate this comparison.

³ Based on an 80-hour bi-weekly pay period, the normal employee, without overtime, sick leave, or annual leave works 2,080 hours per year. Even though firefighters' work schedules vary from a regular 8-hour day, 10-hour day, or 24-hour shift, firefighters receive CR days to compensate them for hours over a standard work week. CR refers to the PAR Code specific to Fire Department Bargaining Unit C employees only. It is paid time used to cover the extra shift in a pay period. A CR day is a "24-hour shift off during each 3 week CR cycle to accommodate a 48-hour work week." (Section 27.05 of the Administrative Practices manual, MDFR).

Year 2000
26 Consecutive Pay Periods [12/27/99 – 12/24/00]

Number of individuals	62 employees in total took Y-time	Top ten (10) ranked individuals by total Y-hours used	Percentage used by the top ten (10) ranked employees
Total number of Y- hours	11,353 hours	9,546.5 hours	84.1%
Total associated payroll costs	\$385,579.31	\$333,450.32	86.5%

First Nine (9) Months of 2001
20 Consecutive Pay Periods [12/25/00 – 09/30/01]

Number of individuals	49 employees in total took Y-time	Top ten (10) ranked individuals by total Y-hours used	Percentage used by the top ten (10) ranked employees
Total number of Y- hours	7,505.5 hours	6,009 hours	80.1%
Total associated payroll costs	\$257,087.32	\$213,777.96	83.1%

A combination of the two periods revealed the following statistics:

21 – Month Combined Period
46 Consecutive Pay Periods [12//27/99 – 09/30/01]

		Top ten (10) ranked individuals by total Y-hours used ⁴	Percentage used by the top ten (10) ranked employees
Total number of Y- hours	18,850.5 hours	15,144 hours	80.3%
Total associated payroll costs	\$642,665.91	\$534,855.02	83.2%

⁴ The top ten (10) individuals for the combined 21-month period are not the exact same set of ten (10) individuals for the two periods of review. As such, the figures from 2000 and 2001 do not add up to the totals listed in this column. (See Exhibit C for a detail).

A comparison between the two lists also revealed that nine (9) out of ten (10) of the top ranked individuals were the same individuals for both periods.⁵ By combining both periods into one 21-month period, the OIG was able to conclusively rank the top ten (10) individuals by number of Y hours taken. The following chart identifies the top ten Y-users by the number of Y-hours taken in the 21-month period.

Top Ten MDFR users of Y-time
21-month period January 1, 2000 – September 30, 2001
Source: Payroll data captured by ERD and provided by ITD

Employee Ranking	"Y" Code Hours	Percentage of Top 10	Total Amount Compensated⁶	Percentage of \$ for Top Ten Employees
1	Hours 3,695.00	24.4%	\$ 137,677.90	25.7%
2	2,782.00	18.4%	110,643.60	20.7%
3	2,580.00	17.0%	87,982.62	16.4%
4	1,209.00	8.0%	44,923.30	8.4%
5	1,141.00	7.5%	34,777.12	6.5%
6	1,030.00	6.8%	31,549.21	5.9%
7	975.00	6.4%	31,015.92	5.8%
8	773.00	5.1%	29,504.01	5.5%
9	509.00	3.4%	12,989.81	2.4%
10	450.00	3.0%	13,791.53	2.6%
	Hours 15,144.00	100%	\$ 534,855.02	99.7%⁷

⁵ See Exhibit C, previously referenced, for comparative tables showing the top ten (10) Y-users for each period, and each person's ranking for the combined 21-month period.

⁶ Compensation figures were provided as part of the payroll/ITD query and are based on each individual's rate of pay at the time each Y-hour was taken.

⁷ Figures were rounded to the nearest tenth decimal. As such, the totaled amount does not exactly equal 100%.

VII. PAR REVIEW OF THE TOP TEN Y-TIME USERS

This combined list for the full 21-month period, based on data provided by payroll/ITD, establishes the top ten (10) Y-users in the Fire Department. Based on this list, the OIG further expanded its initial inquiry to provide a more in-depth and focused review of Y-time usage. For this second step, the OIG analyzed the original PARs for the top-ten (10) ranked individuals. In this second level of analysis, we gathered our data directly from the PAR sheets and compared it to the data captured by the ERD Payroll Processing/ITD query. Hereafter, and throughout the remainder of the report, anecdotal analysis will refer to each individual by his/her ranking from the list.

The OIG secured the original PARs of the top ten (10) ranked employees for the 21-month period⁸ (46 consecutive pay periods). Our comparison between the original PARs and the County's payroll data showed that the county's payroll data was incorrect because fewer Y-hours than used were actually recorded. OIG representatives met with ERD personnel and brought this discrepancy to their attention. It was explained by the Administrative Services Division Director that the hand written notation of "Y" was not entered onto the PAR sheet in the proper place (wrong column) and that the origin of the mistake lay with the originating Department and not payroll processing. Given the data entry error, the leave hours were not charged off and entered into the system as Y-hours. (See Exhibit E for samples of PARs where the Y was written in the wrong column). Consequently, the Y-hours were under stated in the ITD data.

While it is technically true that the code "Y" was written in the wrong column, Exhibit E makes clear that the notation of Y-hours was conspicuous and readily visible. ERD payroll personnel should have followed common sense and entered the Y-hours used. Thus, in actuality, more Y-hours were used among these top ten (10) ranked individuals than what was actually recorded in the County's official payroll system.

⁸ In a few isolated cases, original PARs were not retrievable by OIG Special Agents, as they were either lost or misplaced. For calendar year 2000, we were unable to obtain PARs for the month of March for one individual, resulting in an over discrepancy of 101 hours. We were also unable to account for 38 Y-hours for a second individual due to missing PARs for the month of June 2000. For a third individual, OIG Special Agents were unable to obtain PAR sheets for pay periods 5/28/01 thru 7/22/01. In these instances, the hours were "over reported" in comparison to the payroll/ITD data, but without the actual PARs themselves, the OIG is unable to conclude that the Department over paid for these Y-hours. See Exhibit D for a detailed spreadsheet.

For year 2000, our comparative analysis demonstrated that 538 Y-hours were under recorded in the payroll system. By calculating the number of actual Y-hours used by each person that were not recorded into the payroll processing system with each individual's lowest rate of pay in this evaluation period, the OIG conservatively estimates that **Y-time usage among the top ten (10) added an additional \$26,757.85** to the final true cost.

For the first nine (9) months of 2001, and only among the top ten (10) individuals whose PARs were pulled, there were 1,523 Y-hours that went unrecorded in the payroll processing system. A calculation based on the hours against that individual's lowest rate of pay reveals **an additional \$58,410.07 in salary costs associated with unrecorded Y-time usage.**

Top Ten (10) Comparative Analysis for Year 2000
Pay Periods 12/27/99 – 12/24/00
Payroll Processing/ITD Data versus Actual PAR sheets

Total hours used by top ten (10) individuals as recorded by payroll processing/ITD	Total Amount Compensated as recorded by payroll processing/ITD	Under recorded hours when assessed against the actual PAR sheets	Understated reported expense
9,546 Y-hours	\$333,450.32	538 additional Y-hours	\$26,757.85

Top Ten (10) Comparative Analysis for First Nine (9) Months 2001
Pay Periods 12/25/00 – 09/30/01
Payroll Processing/ITD Data versus Actual PAR sheets

Total hours used by top ten (10) individuals as recorded by payroll processing/ITD	Total Amount Compensated as recorded by payroll processing/ITD	Under recorded hours when assessed against the actual PAR sheets	Understated reported expense
6,009 Y-hours	\$213,777.96	1,523 additional Y- hours	\$58,410.07

For the total 21-month combined period, the OIG conservatively calculates a total of **\$85,167.92 in understated Y-time costs** for the top ten individuals reviewed. Combined with the initial cost of \$534,855 attributed to these ten individuals, **the total real costs associated with union activity leave amounts to roughly \$620,022 for ten people.**

VIII. Y-USAGE ATTRIBUTED TO A CBA ARTICLE PER PARs

Through our review of the PARs, we were able to determine each individual's regularly scheduled workday and each person's use of leave time. This included use of annual leave, sick leave, administrative leave, CR days, and Y-time. On the PARs reviewed by the OIG were hand written notations indicating under which collective bargaining article the Y-time was attributed. For instance, there were hand written notations that the Y-time fell under the auspices of Article 22.3 (grievance representative) or Article 22.8 (catch-all provision). For the PARs physically reviewed, there were a high percentage of instances where "Y" was marked without any indication as to what CBA article the time was chargeable to. The OIG compiled all the information gathered from the original PARs for the ten (10) specified individuals. The following table is a breakdown of Y-hours, as noted on the original PARs of the top ten (10) Y-users.

**Summary of Top Ten (10) Y-Users
Y-Hours as Noted on Original PAR Sheets**

	01/01/2000 – 12/31/2000	01/01/2001 – 09/30/2001	Combined 21 month period
% of Y-hours attributed to Article 22.3 (grievance representative)	36.0%	45.1%	39.9%
% of Y-hours attributed to Article 22.8 ("catch-all" provision)	24.7%	36.1%	29.9%
% of Y-hours attributed to other articles	4.8%	3.6%	4.3%
% of Y-hours not attributed to any CBA article	34.5%	15.2%	26.2%

Individual analysis of each person's designation of their Y-time usage provides more revealing statistics. For example, Employee #1 from the top ten list used 2,105 Y-hours in year 2000. 93.3% of his/her hours (1,963 hours) were marked as Article 22.8, the catch-all provision, 5.6% (118 hours) lacked any notation, and 1.1% (24 hours) were marked as Article 22.3. In another example, in year 2000 [12/27/99 – 12/24/00] and according to the actual PARs, Employee #2 from our top ten list took 2,208 Y-hours. 100% of those hours, i.e. all 2,208 hours, had no contract article notated as authorizing its use. In other words, for the whole year of 2000, there is no article number written on his/her PAR sheet to justify Y-time usage. Employee #10 also never had a CBA article attributed to his/her Y-usage. Employee #10 took 283 Y-hours during the first period of

review and 167 Y-hours during the first nine months of 2001. Employee #10's combined use of 450 Y-hours was never attributed to any CBA article. Conversely, Employee #6 took 1030 Y-hours from April 2001 to the end of our review period [9/30/01]. All 1030 hours are attributed to 22.8, the catch-all article.

In another instance, the OIG found that even the notations written on the PARs did not match the justification written on the individual fire fighter's duty roster. Employee #3 from the top ten list took 1,370 Y-hours in calendar year 2000. As noted on the PARs, 1,061 hours or 77.4% of his/her Y-time usage is attributed to Article 22.3 (union and grievance representation). The remaining 309 Y-hours (22.62%) did not list a contract article. According to his/her duty roster kept at the individual's assigned fire station, Employee #3's overwhelming usage of Y-time was attributed to Article 22.8 (the catch-all provision). The following table demonstrates the discrepancies between the actual PARs and duty roster of Employee #3.

Comparison between PARs and Duty Roster⁹
Year 2000 – Employee #3

Source Document	# of hours attributed to Article 22.3 (grievance representative)	# of hours attributed to Article 22.8 (catch-all provision)	# of hours attributed to Article 22.4 (misc. county meetings)	# of hours not attributed to any CBA article	Total "Y" Hours
Per PAR Sheets	1061	0	0	309	1,370
Per Duty Roster	24	956	12	218	1,210
Discrepancy¹⁰					160

⁹ For PARs, the OIG examined the period 12/27/99 – 12-25/00. For the duty roster, the OIG reviewed calendar year 2000. There is a one scheduled work day, 12/28/99 that was not included in the duty roster. On this day, Employee #3 took 12 Y-hours, not attributed to any CBA article. Thus the Y-hour total in this table is 12 hours less (1,370 vs. 1,382) than as documented in other parts of this report. If we were to include 12/28/99, the total figure would be 321 Y-hours (not attributed) and 1,382 Y-hours (total).

¹⁰ Analysis reveals that in 30 instances the PAR sheet Y-hours exceeded the Duty roster Y-hours for a total of 221 hours. Analysis further revealed that in 12 instances the Duty roster Y-hours exceeded the PAR sheet Y-hours for a total of 61 hours. Net result is Y-hours per PAR sheet exceeds Y-hours per duty roster for a total of 160 hours.

Again, these examples illustrate MDFR's deficient accounting of Y-time usage as governed by Article 22 of the Collective Bargaining Agreement and raise concerns about the integrity of the recorded data.

IX. MDFR's TRACKING OF ARTICLE 22.8 (CATCH-ALL PROVISION)

As previously mentioned, Article 22.8 is the only contract article that management kept a record of, although the OIG determined that this record was inaccurate because numerous hours attributed to 22.8 went unaccounted. Under the auspices of Article 22.8, union representatives, in addition to the other articles authorizing union activity leave "**may receive up to 296 hours** of administrative leave per month to be used at the mutual agreement of the Association President and the Department Director for the benefit of the County and Fire-Rescue Department personnel." There is current disagreement relative to the interpretation of how Article 22.8 is administered.

On October 24, 2001, OIG Special Agents spoke with Dominick Barbera, President, and Stan Hills, Vice-President of Local 1403, regarding the administration of Article 22.8. According to these Union officials, the Union is entitled to 296 Y-hours every month, regardless of whether the full 296 hours are used. Should less than 296 hours be used, the unused portion carries over and, as such, the Union runs a balance of Article 22.8 hours. According to the Local 1403 officials, the Union may use more than 296 Article 22.8 Y-hours in any given month, the difference being deducted from the running balance. According to MDFR management, it has been applying the Union's interpretation. OIG Special Agents asked both the Union and MDFR management for a copy of any written memorandum governing this interpretation. None could be produced. According to the Union, this has been the continuing past practice and that the County's Labor Management Division had given their oral approval of this interpretation.

OIG Special Agents also spoke with officials in the County's Labor Management Division of ERD regarding the Union's interpretation of a running balance. OIG Special Agents interviewed Messrs. Donald Allen, Deputy Director, Geoff Martin, Labor Management and Employee Appeals Division Director, and Richard Fischer, Labor Management and Employee Appeals Coordinator, all of ERD, regarding the Union's claim that ERD had given its permission for continuing this practice. These ERD officials denied ever giving permission, oral or otherwise, to the practice of carrying a continuing balance. They stated to the OIG Special Agents that it was never the CBA's intent for Article 22.8 to create a carry over balance of unused Y-hours. When asked if anything had been memorialized one way or the other regarding the Union's past practice, they stated that they were unaware of any written memorandum.

Article 22.8 hours were tracked by Carlos J. Castillo, Assistant Fire Chief, Operations Division. By memorandum and the use of a running log to be filled out by union representatives, the Union provided Assistant Chief Castillo, on a monthly basis, a list of union members who were approved for Y-time usage under Article 22.8. (See Exhibit F).

Through compilation of these notification lists, Assistant Chief Castillo was able to account for the monthly usage of Article 22.8 Y-hours. For each month, a spreadsheet was created listing each individual by name, reason, and number of hours. Each sheet had a column calculating the total monthly usage, running balance, and carry over hours to the next month. According to Castillo's logs, **beginning January 2000, there was a balance of 6,330 available Article 22.8 hours. By the end of September 2001, the balance had grown to 7,878 available Y-hours.**

The problem with Assistant Chief Castillo's log is that it is inaccurate – not all Y-time that was attributed to Article 22.8 was recorded by union representatives and, thus, not brought to Assistant Chief Castillo's attention. Comparisons of the Article 22.8 log against the actual PARs for the ten individuals demonstrate some significant discrepancies.

In two stark examples, Employee #6, according to his/her actual PARs, took 1,030 Article 22.8 hours from 04/01/2001- 09/30/01. Article 22.8 represents 100% of all Y-hours taken by this individual – no other contract article was noted on the PARs. **This individual is not listed anywhere on Assistant Chief Castillo's log, as his/her name was never included on the list provided by the Union.** Employee #1 from the list is marked in Castillo's log as having only taken 40 Article 22.8 Y-hours during the whole 21-month review period. In comparison to Employee #1's PARs, he/she is documented for 3,393 Article 22.8 hours (1,963 hours in 2000 and 1,430 hours from 01/01/01 – 09/30/01). **This amounts to a difference of 3,353 unrecorded Article 22.8 Y-hours.** These two individuals, Employees #1 and #3, on a monthly basis, consistently used large portions of the available Article 22.8 hours. In fact, these two individuals pretty much served "full-time" at the Union, yet union officials did not include their usage on the monthly lists forwarded to Assistant Chief Castillo. In several months, **their two Y-usages alone exceeded the available 296 hours per Article 22.8** of the collective bargaining agreement. Surely, had these Article 22.8 Y-hours been properly included, it would have effected the available monthly Y-hour pool. Under the Union's interpretation, it would have had a net negative effect on the carry over/running balance. Under ERD's interpretation, Article 22.8 Y-hour usage exceeded the maximum allowable number of hours.

Conversely, Employee #2 was documented on Assistant Chief Castillo's log for having taken 318 Article 22.8 hours during the 21-month review period. However, a review of Employee #2's actual PARs do not attribute any Y-hours to Article 22.8. In fact, all of Employee #2's Y-hours (totaling 2,734 for the whole review period) lack any CBA authorization on the PARs. Given the complete lack of any attribution to a CBA article, Employee #2's usage perhaps should have been attributed to Article 22.8 as was the 318 Y-hours.

X. EXCESSIVE Y-USAGE IMPACTS STAFFING

A more in-depth analysis of Y-time usage by the employees ranked as the top ten (10) users reveals the impact that excessive Y usage has had on the operations of the MDFR. As a Fire-Rescue Department that provides essential life-safety services, minimum staffing requirements cannot be understated.

MDFR uses an Assignment Preference (Bid System) to fill its vacant fire rescue positions. Vacancies are posted twice a year and fire fighters submit "bids" on open positions. Bid positions are filled based on rank and seniority, and where applicable, certification status accompanied by seniority. Once obtained, individual fire fighters acquire certain rights with respect to their bid position under the CBA and other Administrative Practices. In other words, once acquired it is difficult for management to remove an individual from their bid position.

Two (2) of the top ten (10) employees hold bid positions in the Emergency Medical Services (EMS) Division [Employees #4 and #8]. Per the terms of the collective bargaining agreement, collective bargaining members assigned to the EMS receive a pay supplement of 5% above their regular rate of pay. Both of these individuals are also officers of the Union. An analysis of their PAR sheets reveals that these two individuals took 1,289 and 953 Y-hours, respectively, in calendar year 2000. For the first nine months of 2001, they took 1,381 and 667 Y-hours, respectively. While their actual PARs also demonstrate that a significant number of hours were marked as being "on duty," "on duty" in this case meant training and other administrative matters, and not actually working in their bid position.

OIG Special Agents interviewed EMS Division Chief, Levi Thomas, who stated that both individuals have not actually worked "on duty" in these positions for the past several years. Division Chief Thomas stated that because of the Y-time usage of these two employees, he has had to replace these two individuals with personnel outside his division, **thereby causing his budget to fund four (4) individuals for two (2) positions.** Furthermore, the two replacements also receive the EMS pay supplement, further impacting his Division's budget. This staffing arrangement is not permanent, as the two union officials still hold these bid positions. However temporary, the EMS Division's Table of Organization reflects this on-going arrangement. (Exhibit G)

OIG Special Agents spoke with these two union officials. The first individual acknowledged that he/she has really never worked his/her Bid position, and that he/she is at the Union full time. The second person also acknowledged that he/she too spends a majority of his/her time at the Union. The second employee, however, did cite examples of being "on duty." For instance, according to this individual, being on duty included attending EMS Advisory meetings, attending United Way Campaign meetings, and traveling to Tallahassee while the Legislature is in session, as the legislative liaison for both the Department and the Union. However, in the last example, this individual acknowledged that his/her travel was paid for by the Union.

The OIG noted another example of Y-time usage affecting staffing requirements. Employee # 1 currently holds the Bid position of Officer in Charge of the Training Bureau. Prior to this recent change, Employee #1 was a Captain in Training Relief. The person in this bid position is supposed to relieve other Fire Captains when they are attending training. For the entire period of this review, 21 consecutive months, January 1, 2000 – September 20, 2001, this individual took Y-time for every workday. **In other words, his PARs do not reflect a single hour of being on duty.** This individual logged 2,105 Article 22.8 Y-hours in 2000. And for the first nine (9) months of 2001, this individual used 1,590 Y-hours. For the total review period, 21 months, this individual received over \$130,000 in salary from Miami-Dade County. While in the previous position of Training Relief, another person at the rank of Fire Captain had to cover for Employee #1's absence.

Another union member ranking #6 in the top ten list holds a bid position of Training Relief Firefighter. From April 3, 2001 to September 28, 2001, this individual has taken Y-time for every hour that he/she was scheduled to work. For this period alone, approximately six (6) months, Employee #6 has received over \$31,000 in salary. Again, it is important to highlight the continued absence of members assigned to a training relief squad. The absence of relief personnel necessitates that other same-ranked personnel must provide the operational relief in order to insure minimum staffing requirements, and thus increases the cost by double.

Employee #2 on the list holds the Bid position of a Battalion C-Shift Lead Worker. This position is the rank of Chief Fire Officer (CFO). As the lead worker, this position requires a 5% increase in pay. According to Employee #2's actual PARs, this individual logged 2,208 Y-hours for the period 12/27/99 – 12/24/00. None of these hours are attributed to any CBA article. This pattern of Y-hour usage continued through February 2001, when the Union informed MDFR management that this individual would not be using any more Y-time. In other words, Employee #2 was being redirected back to work in his/her bid position. By official memorandum dated February 15, 2001, Employee #2 was directed by his/her commanding officer, Division Chief A.L. Holmes, to report back to his/her assigned lead worker bid position. According to an interview with Division Chief Holmes, Employee #2 told him that he/she was injured from a

previous on-duty injury.¹¹ On April 25, 2001 the Occupational Health and Safety Office received a doctor's report, dated a month previous, stating that Employee #2 was unfit to return to active duty. Since that time, Employee #2's PARs reflect a combination of sick leave, annual leave, administrative leave, and Y-time. By July 2001, it was determined by Division Chief Holmes that without having filed a formal claim of an "on the job injury," Employee #2 was only authorized to use his/her "sick leave" and that his/her sick leave had to be expended prior to using any annual leave.

During this whole period, Employee #2 has been receiving the 5% supplement for the lead worker position. Moreover, the actual lead worker position was filled by another CFO who also received the 5% pay increase. At the present time, due to a reassignment of the first replacement to a "Special Project," another CFO has been brought in for that particular Bid assignment. This third CFO, fulfilling the lead worker position, also receives the 5% pay supplement. In other words, **three (3) individuals are receiving 5% pay supplements for one (1) lead worker bid position.**

The MDFR employee who holds the #3 position in the top ten (10) list is a Fire Captain assigned to a 24-hour-on, 48-hour-off C-shift Relief Squad. Y-time usage by this individual is attributed to Article 22.3.¹² As noted in a previous table detailing the 21-month review period, Employee #3 used 2,580¹³ Y-hours, for which he/she was compensated over \$87,000. This individual explained to OIG Special Agents that his/her use of Y-time is for conducting official union business and processing grievances. Employee #3 also explained that he/she has an unwritten agreement with his/her commanding officer that if there was union business to be conducted the next morning from one of his/her scheduled shifts, Employee #3 could use a full 24 hours of Y-time to go home and sleep, in order to be fresh the next morning for union business.

A review of Employee #3's actual PARs reveals a pattern wherein practically every weekday shift, the individual takes 12 hours of Y-time and works 12 hours (or in other instances has a 14 hour/10 hour split). On those scheduled workdays falling on a Saturday or Sunday, 24 hours of Y-time is taken a majority of the time. The remaining bulk of scheduled weekend days are a Y/work split. In a 21-month period, we counted 60 occasions that a scheduled work-day fell on a Saturday or Sunday. The following two charts illustrate the pattern.

¹¹ It is curious how Employee #2 suffered from an on-duty injury where he/she had been continually out of his/her bid assignment for the preceding year.

¹² Employee #3 is the individual whose CBA article per the PARs does not match the CBA article on the duty roster.

¹³ See Table on page 8. Data source is payroll/ITD. Compilations derived from PAR data shows total of 2489 hours. The difference of 91 hours is attributed to an "over" recording of 101 hours as original PARs were lost or misplaced and thus unavailable for inspection. There was also a data input error of negative ten (10) hours.

Employee #3
21-month period of review
January 2000 – September 2001

Shifts falling on a Saturday or Sunday	60 shifts
24 Y-hours taken ¹⁴	33 shifts
Split time either 12-Y/12 worked or 14/10	15 shifts
24 hour shift per PAR – no leave taken	6 shifts
24 hours Annual Leave ¹⁵ taken	5 shifts
Other (split of worked hours and Administrative Leave)	1 shift

If one were to take into account Employee #3's stated justification for taking a full 24 hour Y-day, i.e. sleeping in order to be fully rested when conducting union business the next day, then the pattern of Employee #3's Y-usage appears even more abusive. For the same 21- month period of review, Employee #3 had 30 shifts scheduled on a Saturday. Employee #3 used a full 24-hour Y-day 25 times. This would mean that Employee #3 is resting on Saturdays in order to be fresh to conduct union business on Sundays.

Employee #3
21-month period of review
January 2000 – September 2001

Shifts falling on a Saturday	30 shifts
24 Y-hours taken ¹⁶	25 shifts
24 hour shift per PAR – no leave taken	1 shifts
24 hours Annual Leave taken	3 shifts
Other (24 hours of leave split as Birthday Holiday/Floating Holiday)	1 shift

¹⁴ Where the actual PAR was not available for inspection, Payroll/ITD data was used to determine Y-usage.

¹⁵ In one (1) of the five (5) shifts, this employee used Birthday Holiday and Floating Holiday for the full 24- hour shift.

¹⁶ Where the actual PAR was not available for inspection, Payroll/ITD data was used to determine Y-usage.

OIG Special Agents spoke with Employee #3's commanding officer. The Battalion Chief told OIG Special Agents that he was unaware of any written or unwritten agreement that allows Employee #3 to go home and sleep, even if union business was to be conducted the next morning. The Battalion Chief also explained that Employee #3's PAR sheets are filled out each month based upon a Projected Work Schedule that the employee provides at the beginning of each month. And that unless otherwise stated, the Battalion Chief usually marks down 12 or 14 hours of Y-time charged to Article 22.3. As for what hours are truly worked, the Battalion Chief does not know, as Employee #3 does not notify him when he/she actually reports to the fire station after using Y-time.

Furthermore, the Battalion Chief explained that based on Employee #3's Projected Work Schedule, he must schedule a replacement for Employee #3's position of Fire Captain for all the time that Employee #3 is out. As Employee #3 is assigned to the Relief Squad, the secondary relief person must be drawn from another source, thus probably necessitating the use of overtime by other personnel. This secondary relief person must also hold the rank of Fire Captain in order to serve as Employee #3's relief person.

XI. OTHER INSTANCES OF NON-COMPLIANCE WITH CBA PROVISIONS

CBA Article 22.5 and 22.6 allows time off with pay to attend fire fighters conventions. Article 22.5 is designated for attendance at the International Association of Fire Fighters convention, where Y-hours are not to exceed 48 hours per employee. Article 22.6 governs attendance at related Florida fire fighter conventions, where Y-hours are not to exceed 24 hours per employee. In our review of the top ten employees, we noted several instances where Y-usage exceeded the CBA provisions.

Employee #9 took three (3) days (24 Y-hours per day) under Article 22.5 Y-time. These three (3) days were for three consecutive shifts: July 29, August 1 and August 4, 2000, totaling 72 hours of Y-time, in contravention of the CBA. This exceeds the CBA allowable provision by 24 hours.

Employee # 8 took four (4) consecutive days, August 1 – August 4, 2000, of Article 22.6 Y-time, totaling 40 hours. This exceeds the CBA allowable provision by 16 hours. In 2001, this employee also had taken three (3) consecutive days of Article 22.6 Y-time, totaling 30 hours. Again this exceeds the allowable number of hours according to this CBA Article.

Employee # 4 took eight (8) consecutive workdays of Y-time attributed to 22.6. This amounted to 80 hours, exceeding the allowable number of Y-hours to be used per individual by 56 hours. The Y-usage occurred from July 25 – August 6, 2000.

In each one of these instances, the employees could have charged their Y-time, in excess of the allowable hours, to another CBA article. For example, in Employee #9's situation, the third day of Y-usage could have been attributed to the "catch-all" article -- Article 22.8. In any event, these discrepancies, however minor, demonstrate the Department and Union's overall non-compliance with specific CBA provisions governing Union Activity Leave.

XII. CONCLUSION & RECOMMENDATIONS

The OIG is in receipt of the responses provided by ERD, MDFR, the Union and the Fire Board to the Draft Report. Their responses are attached as Appendix A through D, respectively. After thorough review and consideration, the OIG believes that the responses do not change the OIG's initial findings. The OIG conducted this review with solid data provided by ITD of the county's payroll time and leave system. This information was cross-checked against the actual PARs. Most problematic in the Union's response is its own acknowledgment that current interpretations are based on verbal agreements modifying the terms of the Collective Bargaining Agreement. Yet ERD, in its response and throughout our review, unequivocally rejects the Union's claims of verbal agreements. The Union also acknowledges that in some instances Y-time usage was not recorded properly. This only further demonstrates a need for a centralized tracking system for Y-hour usage.

Initially two steps must be taken to correct and resolve the deficiencies and conflicts noted in this report. First, ERD's Labor Management Division and the Union must resolve the conflict of interpretation over the administration of Article 22.8 hours. This resolution must be done in writing and memorialized to avoid further abusive practices. Purported verbal agreements made many years ago are unacceptable and promote inefficiencies and deficiencies in accountability.

Second, MDFR must implement an effective department-wide tracking mechanism to document which employees are out on Y-time, i.e., not working their regular shift, and for how many hours at a time. Any tracking mechanism must include the CBA Article provision that the employee's Y-time is authorized under. The current ad hoc procedure of sometimes writing this information on the PARs is simply inadequate. There is no uniformity and no central depository for any accumulated information. There should be no question that the MDFR, not the Union, is responsible for expending taxpayer funds. The lack of information affects the Department's ability to account for monetary expenditures and inhibits its responsibility to justify the use of county taxpayer dollars to subsidize union activity.

Additionally, once an accounting system is in place, MDFR should, on a periodic basis, either quarterly or bi-annually, compound the data accumulated through this central tracking mechanism/depository, so as to account for the Y-hours expended per CBA Article. Statistics should be generated from that data to determine the overall salary costs of Y-time. Management may also need to account for overtime costs, where the use of Y-time affects the department's minimum staffing requirements. Such information concerning salary costs should be provided to the Board of County Commissioners (BCC) at appropriate times so that it can decide whether certain salary expenditures to support union activities are in the best interests of the County. In fact, the BCC may want to consider utilizing the same process devised to promote union activities of other bargaining units. For example, the Transport Workers Union (TWU) actually reimburses Miami-Dade County for county salaries expended by county employees on union activities. This process places increased fiscal responsibilities on the union.

MDFR, in its response, raises several issues which require interpretation. These questions have been to ERD, and the OIG requests that these questions are answered as expeditiously as possible.

Again, it must be stressed that county government must be held to the highest standards of accountability. To this end, the current MDFR administration must reinforce the concept that ultimately the Department is responsible for the actions of its employees and the expenditures of its funds. The authority and responsibility of the employees under each manager's supervision rests with MDFR's command staff. Fire fighter personnel must be held accountable to their command. Commanders and chiefs must be given the authority to carry out the polices of the department.

As for the recommendations set forth above, the OIG requests that MDFR and ERD report back to the Inspector General, by April 30, 2002 regarding the implementation of the OIG's recommendations.

The OIG appreciates the cooperation and courtesies extended by all county personnel and Dade County Association of Firefighters, Local 1403 officials, who were involved in our review of MDFR and Union Activity Leave.

APPENDIX

- A. Response received from the Employee Relations Department.
- B. Response received from the Miami-Dade Fire Rescue Department.
- C. Response received from the Dade County Association of Fire Fighters, IAFF Local 1403.
- D. Response received from the Miami-Dade Fire Board.

EXHIBIT LIST

- A. MDFR “Y” Code Analysis for Year 2000. Employees ranked by total hours used. Data source ITD/Payroll.
- B. MDFR “Y” Code Analysis for January 1 – September 30, 2001. Employees ranked by total hours used. Data source ITD/Payroll.
- C. Top ten employees for each period reviewed, 2000 and first nine months of 2001. Final ranking for full 21-month period.
- D. Analysis for pay periods 12/27/99 thru 09/30/2001. Comparison of “Y” Hours per ITD to Actual PAR sheets. Employees ranked by total “Y” code hours.
- E. Samples of actual PAR sheets noting Y-usage.
- F. Memorandum and blank log sheet regarding Assistant Fire Chief Castillo’s Article 22.8 log.
- G. Emergency Medical Services Division, Division Chief’s Staff, Organizational Chart.