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This report documents the widespread abuse of the shift-trading practice and procedure within the Cleveland Division of FIRE. During the course of this investigation, the Cuyahoga County Prosecutor's Office learned that firefighters routinely paid other firefighters to work shifts for them, and to do so without any intention of working a shift in return to make up the trade, as permitted under their collective bargaining agreement with the city. Meanwhile, the firefighters who did not work continued to collect a base salary of more than \$53,000 a year and \$27,000 a year in benefits. This illegal practice allowed those firefighters to miss extensive periods of training, which undermined unit cohesion and thus endangered public safety in a profession where a minute wasted could cost a life. This scheme unlawfully deprived the taxpayers of the City of Cleveland of many thousands of dollars each year in salaries and benefits paid to employees who did not work. It also dangerously impacted the working firefighters who worked more shifts than prudently called for.

1. Acknowledgements.

The Cuyahoga County Prosecutor's Office would like to acknowledge the work done on this case by Lieutenant Dan Ross with the Cleveland Division of Police, Internal Affairs Unit. This investigation was made more difficult by the poor record-keeping practices of the

City of Cleveland and the near-total absence of any oversight by the City, particularly former Fire Chief Paul Stubbs. Evidence showed that chief and other top Division of Fire managers purposely chose to ignore a problem that they knew existed. The subject was off-limits for discussion at management meetings.

The problem was compounded by the fact that firefighters and key managers are all members of the same union. It appears the union greatly influenced management's decision to cast a blind eye to these improper practices.

This profound lack of oversight was a colossal error that further exacerbated the problem of excessive and ultimately illegal shift-trading. Because of the Division of FIRE's poor record-keeping and management failures, the State was required to recreate the history of this case day-by-day and hour-by-hour to obtain an accurate record of how and how often this system was abused. The Cleveland Division of Police and Lt. Ross in particular worked tirelessly to reassemble thousands of pages of attendance records for each and every firefighter, spending over two years investigating this matter. This successful prosecution could not have been possible without the determined efforts of Lt. Ross and the Internal Affairs Unit to uncover the true facts despite an almost total lack of recordkeeping within the Division of Fire.

The Prosecutor's Office would also like to acknowledge the overwhelming majority of firefighters who risk their lives every day protecting the people of Cleveland. It is important to note that the criminal wrongdoing found in this case involved only a minute percentage of Cleveland firefighters. Out of the 875 firefighters who traded shifts between 2006 and 2010, an overwhelming 98.4 percent of them had an outstanding balance of less than one year. Fourteen firefighters were absent from their posts for a combined 51,762 hours – or

22 years worth of shifts – while continuing to collect full salary and benefits. (See Exhibit 1). The 14 individuals who criminally abused this system betrayed those 98.4 percent of firemen who dedicated themselves to their duty and who took on even higher risks by carrying the extra weight of those who chose not to work.

These 14 were not firemen – they were simply being paid as firemen. They took advantage of management’s negligence and disgraced their department and their honorable profession.

2. Introduction: The Collective Bargaining Agreement Permits Firefighters to Trade Shifts Only if the Exchange of Time Is Repaid Within One Year.

Article XI of the Collective Bargaining Agreement Between the City of Cleveland and Cleveland Fire Fighters, Local 93, entitled “Trades,” provides as follows:

The officer in charge of a Company, Battalion or Bureau shall grant the request of any two (2) members of the Company, Battalion or Bureau to exchange time, as long as the two (2) employees are of the same rank and as long as the time block is at least four (4) hours, except for hold over trades. For purposes of this article, Lieutenants and Captains shall be considered equal and apprentice fire fighters, regardless of pay scale, shall be considered equal. The Chief may approve trades between members of different ranks and shall not unduly restrict trading time unless there is disparity in ability between the parties to the trade, which means inability to perform the required tasks. Any disapproval shall be subject to the Grievance Procedure. The officer in charge of the company or unit shall be advised in writing of the trade prior to the start of the shift and a record of the exchange shall be kept in the company or unit files. **The exchange of time shall be repaid within one (1) year of the date of the trade.** If the time period for the repayment elapses, the officer in charge of the Battalion or Bureau shall assign a date for repayment of the exchange within sixty (60) days, provided that the repayment date is acceptable to the member who is owed repayment.

(See Exhibit 7, at pp. 24-25, emphasis added). The CBA thus permits firefighters to exchange time, provided that the exchange is repaid within one year. For example, if Firefighter A is unable to work on Tuesday, he may ask Firefighter B to work the Tuesday shift in his place. Firefighter A must then work a shift for Firefighter B within one year, thereby completing

the trade. The language of the CBA – “shall be repaid” – is mandatory and not optional. There is no provision in the CBA allowing Firefighter A to pay Firefighter B to work his shift; the CBA requires Firefighters A and B “to exchange time,” not to exchange time for cash.

3. The Division of FIRE Was Required to Document Daily Shift Trades in a Form 305.

On October 27, 1999, then-Chief of the Division of FIRE Kevin Gerrity issued General Order #3-7, establishing the procedure Division of FIRE employees were to follow when trading shifts. (See Exhibit 2). That order required firefighters to record all of their time trades on a Form 305, in duplicate, signed by both parties to the trade. The firefighters were not required to specify the date that Firefighter B would work a shift for Firefighter A to complete the exchange. Every day the Battalion Chief should have signed the Form 305, indicating his review and approval as to which employees are working on a trade that day. The original Form 305 for that day was forwarded to the Battalion, with a copy retained in the company files for the Company in which the trade is being worked. When the shift exchange was repaid, the Company copy was forwarded to the Battalion, where both copies could then be destroyed.

4. The November 18, 2011 Division of Internal Audit Report Documented Uneven Trade Imbalances, Undocumented Trades, and Incomplete Record-Keeping.

On May 30, 2011, the City of Cleveland conducted a layoff of employees, including 49 firefighters. The decrease in the number of firefighters resulted in the closing of several fire houses. As a result of the reduction in personnel and fire houses, the City anticipated that the overtime use within the Department of FIRE (Fire, Inspections, Rescue and Emergency Services) would decline. Instead, the City saw an increase in the amount of overtime used

by the Division of FIRE. Despite inquiries, there was no logical and acceptable reason for the drastic increase in overtime.

In July 2011, Cleveland Mayor Frank Jackson ordered the Division of Internal Audit (DIA) to conduct an audit into the payroll practices of the Division of FIRE. On November 18, 2011, the DIA issued Phase I of its report based on a review of 22 pay periods from December 13, 2010 to October 16, 2011. (See Exhibit 3). That report made seven General Audit Findings:

- 1) Employees called in sick but their benefit balances were not adjusted to reflect the time taken,
- 2) FIRE's funeral leave policy does not follow the City-wide policy,
- 3) FIRE's Payroll paperwork is inconsistent throughout the process,
- 4) Trades are uneven, undocumented and incomplete,
- 5) FIRE is not submitting employee changes to the Department of Personnel and Human Resources timely,
- 6) The manual entry and recording of payroll should be automated and accessible to management at all work locations,
- 7) General Orders and Special Orders should be reorganized and approved by both the Chief of Fire as well as the Safety Director when they have a fiscal impact on the city.

In support of Finding #4 regarding the practice of shift-trading, the DIA reviewed the amount of traded hours recorded in the KRONOS computer system used by the Division of FIRE. The system tracks traded hours in two categories: "Traded Hours - Taken" and "Traded Hours - Worked." Ideally, these two categories should be identical because every hour traded away by Firefighter A should be worked by Firefighter B. But for the time period between January 1, 2010 and September 4, 2011, the system reflected an inexplicable shortfall of 2,392.75 hours: 229,343.50 hours taken compared to 226,950.75 hours worked.

The DIA's Phase I report also noted inconsistencies and poor-record keeping practices regarding the shift trades. During its review of the completed Form 305s tracking which employees worked on a trade each day, the DIA discovered that 35 percent of the Form 305s (369 out of 1,045) were not signed by the Battalion Chief or his designee. The number of trades reflected on the Form 305s also did not match up with the number of trades reflected in the KRONOS computer system.

During the DIA's review of the number of hours traded by FIRE employees, auditors noticed several cases of extreme imbalances. A typical firefighter should work 2,352 hours a year (45.23 hours x 52 weeks). Calvin Robinson, however, worked only 120 hours in 2009, 144 hours in 2010, and 393.5 hours in 2011. Robinson's trade imbalance was as follows:

- 2009: "Traded Hours - Taken": 2,064 / "Traded Hours - Worked": 0
- 2010: "Traded Hours - Taken": 1,896 / "Traded Hours - Worked": 0
- 2011: "Traded Hours - Taken": 1,384 / "Traded Hours - Worked": 48.

Robinson was out of balance by a total of 5,344 hours over that time period. The report further noted that, "Robinson was physically present on the job 120, 144[,] and 393 hours in payroll years 2009, 2010, and 2011 (thru pay period 22) respectively. Robinson was physically at work for only 5 days in 2009, 6 days in 2010[,] and 16.4 days in 2011, while collecting a base salary of \$53,890 each year." (See Exhibit 3, at p. 18). In addition to Robinson, the report further identified firefighters Michael Milano, Timothy Debarr, and Gary McNamara as having the largest imbalances of hours traded vs. hours worked.

5. The DIA's Audit Documented a Substantial and Unjustifiable Risk to the Safety of Both Firefighters and Civilians Caused by Excessive Shift Trading.

Finally, the DIA's report concluded that the dramatic imbalance in trades created an unjustifiable risk to public safety:

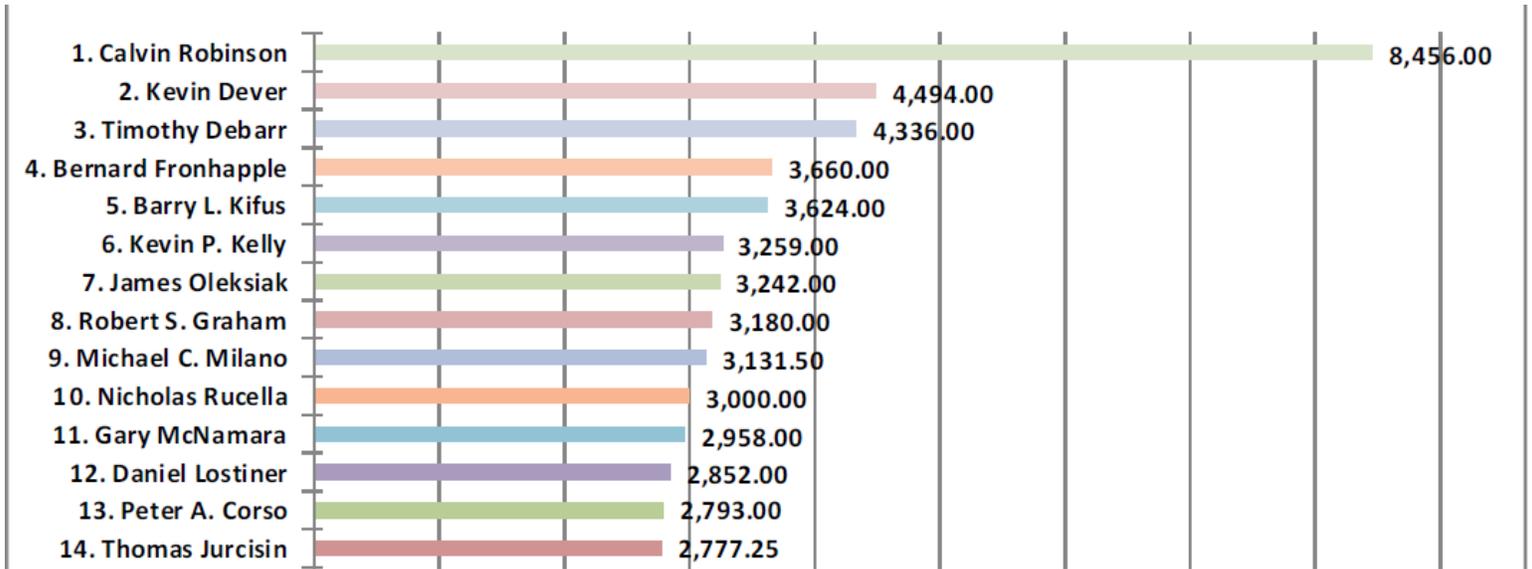
“In a typical month, a firefighter working a 24-hour shift schedule works 9 shifts. It is to the benefit of the City and to the benefit of the employee that there is a recuperation time between shifts. Normally it will not be a problem for a firefighter to pick up an extra shift every once in a while. During our review of trades, we noted Andrew Kovacic worked 18 days in a 21 day period in August 2011; a combination of Regular hours and Traded Hours Worked. This amount of time on duty is a liability because the employee may become tired when needed to be at his peak. If he is called out to multiple fires over the consecutive work days, he may not be able to do his duty to the best of his ability, therefore putting his co-workers at risk. The employee may also put himself at risk by not relaxing and letting his body recuperate between shifts.”

(Exhibit 3, at p. 19). The DIA’s report further recommended: “For the safety of personnel, as well as protection of the City’s liability, FIRE should consider limiting the number of consecutive days a firefighter can work.” (Id., at p. 20).

6. Phase II of the DIA’s Audit Revealed Even Greater Abuse of the Shift Trade System Between 2006 and 2010.

On March 13, 2012, the DIA issued Phase II of its audit. (See Exhibit 4). The Phase II reported noted that, “The initial Phase I audit identified a shift trade policy and practice that was unacceptable and not in the best interest of the citizens of the City of Cleveland.” (Id., at p. 44). Whereas Phase I of the audit examined only 20 months between January 1, 2010 and September 4, 2011, Phase II of the audit expanded on this and reviewed a five-year period between January 1, 2006 and December 31, 2010. The audit revealed a shortfall of 63,914 hours (714,013.75 hours taken, compared to 650,099.75 hours worked). Of the 875 Cleveland firefighters who traded shifts between 2006 and 2010, 518 had more “Traded Hours – Taken” than “Traded Hours – Worked.” Out of those 518 firefighters, only 65 owed more than 600 hours in trades, which was more than 25 percent of their total annual hours worked. By contrast, 300 firefighters had more hours worked than hours taken. Only 57 firefighters had an even balance.

Phase II of the DIA’s audit also identified 14 firefighters whose “Traded Hours – Taken” exceeded their “Traded Hours – Worked” by more than 2,352 hours, or one year of work:



In other words, these 14 individuals were out of balance by more than an entire year.

7. A Report Issued by Former Assistant United States Attorney Ronald Bakeman Recommended That the Cuyahoga County Prosecutor’s Office Refer the Matter to the Grand Jury.

Based on the findings in Phase I of the DIA’s report, the Cleveland Division of Police, Internal Affairs Unit initiated an investigation into the shift trade practices in the Division of FIRE. At the request of then-Police Chief Michael McGrath, the City engaged former Assistant United States Attorney Ronald Bakeman to work together with Lt. Daniel Ross of the Internal Affairs Unit to determine whether any criminal acts had been committed by individual employees.

During that investigation, Captain Luis Cumba, Officer-in-Charge of the Integrity Control Section, Cleveland Division of Police, advised Bakeman that Cumba had received anonymous information that Calvin Robinson paid other firefighters to cover his shifts and

that it was never Robinson's intention to work a shift in exchange to complete a trade. Bakeman received similar information from firefighters in other cities in northern Ohio. According to Bakeman's report, "many fire fighters and their attorneys advised us that paying for shift coverage was part of the culture and tradition of the Fire Department." (Exhibit 5, at p. 9-10).

The Bakeman Report, released on June 19, 2012, concluded that firefighters who paid their co-workers to work shifts for them, without any intention of making up the time in a trade, violated two different areas of Ohio law. First, under the Ohio Revised Code provision for Soliciting or Accepting Improper Compensation (R.C. 2921.43), "it is illegal for a fire fighter to 'give' 'compensation' (money) to a fire fighter to cover one's shift as well as it is illegal for a fire fighter to 'accept compensation' (money) to cover another's shift." (Exhibit 5, at p. 6). Second, under the provision for Theft in Office (R.C. 2921.41), the firefighters in question "received compensation (salary and benefits) from the City for work they never performed. Stated differently, by trading and paying for shifts and not repaying said trades with work, the City never received the firefighting services[.]" (Exhibit 5, at p. 30).

Bakeman received no voluntary cooperation from any individual firefighters involved in the practice of shift trading: "When we initially approached various fire fighters for their voluntary cooperation in the investigation, all refused to cooperate and many retained attorneys." (Id., at p. 12). It was only through compelled *Garrity* statements, in which the employer orders the employee to submit to the interview, that "the fire fighters admitted that they were paid to cover shifts for one or more Cleveland fire fighters." (Id., at p. 4). The Bakeman Report further noted a culture of silence and indifference within the Division of FIRE regarding the abuse of the shift-trade system.

“The simple and inescapable conclusion is that there was little to no attempt made by Division of Fire management team and/or supervisors to enforce Fire’s General Order #3-8 by having shift trades fully recorded and consummated (repaid) within one (1) year. When fire fighters and attorneys advised us that paying for shift coverage was part of the Fire culture and tradition, the real culture and tradition was one of silence and indifference regarding how shift trades were conducted. They knew it was in violation of the CBA, and at least some may have questioned the legality of paying for shift trades period.”

(Id., at pp. 29-30).

8. All 14 Firefighters Charged in the Case Pleaded Guilty.

On May 15, 2013, the Cuyahoga County Grand Jury indicted 13 Cleveland Firefighters in CR-574379 on charges of Theft in Office and Soliciting or Receiving Improper Compensation. During the pretrial discovery process, the State reviewed and provided more than 100,000 pages of documentation to the defense demonstrating the systematic abuse of shift-trading within the Cleveland Fire Department. On February 10, 2014, after extensive pretrial and plea negotiations, 12 of the 13 defendants pleaded guilty to Complicity to Receiving Unauthorized Compensation under R.C. 102.04(C). The last defendant has also agreed to enter an identical plea on April 10, 2014. A 14th defendant, Timothy Debarr, pleaded guilty in 2012 to Soliciting or Receiving Improper Compensation in violation of R.C. 2941.43(A)(2). All 14 defendants whose trade totals were out of balance by more than one year have thereby admitted both that they engaged in the practice of selling shifts without making up the time, and that doing so was illegal.

9. Following the Investigation, the City of Cleveland Amended Its Shift Trade Policy to Prohibit Further Abuse.

After the DIA released its Phase I report on November 18, 2011, the City of Cleveland held a series of meetings with the Cleveland Firefighters Union, Local 93. As a result of those

meetings, on February 8 and 9, 2012, union membership voted to amend their Shift Trade Policy as follows:

- Shift trades are now limited to exchanges between two employees; three-way trades are prohibited;
- Shift trades must be submitted to the Executive officer at least 48 hours prior to the start of the shift, and the trade partner and a repay date must be submitted;
- Employees shall not owe or be owed more than 144 hours at any time, exclusive of back-to-back trades;
- Employees shall not be permitted or scheduled to work more than 40 consecutive hours;
- Employees have one year to repay the trade. If the year expires, the Executive Officer shall contact the employee and determine a date within the next 60 days. If no date is acceptable, the Executive officer will identify a date within the next 30 days. In no instance shall shift trade time not be repaid.

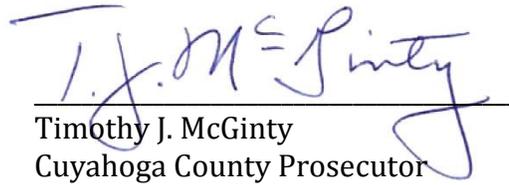
(Exhibit 4, at p. 44). The Division of FIRE also created a new Form 305 to document all shift trades. The new form requires the firefighters to provide a “Scheduled Repayment Date” and further provides that, “We agree that traded time must be repaid within one (1) year and in accordance with the General Orders of the Division of Fire.” (See Exhibit 6).

10. Conclusion.

In 2009 and 2010, the Cleveland Division of FIRE responded to 120,382 alarms. In every case, seconds means lives. Every firefighter must be at 100 percent, 100 percent of the time. When called out to a blaze, these heroes must be prepared to enter burning buildings carrying heavy equipment and possibly to break down doors and carry innocent lives. A firefighter who has to work back-to-back shifts to cover another firefighter who stays home or spends his days working secondary employment may lose a few steps on the ladder that makes the difference between a successful rescue and a tragedy. It is simply impossible for the City of Cleveland to maintain a cohesive, trained, and ready group of more than 800

firefighters if members of the fire department are able to pay their way out of work and training, appearing only intermittently at their fire houses at their own discretion. The work done by the Cleveland Fire Department is too valuable to this community to allow it to be endangered through shoddy record-keeping and employees who cannot carry their own weight at work.

Respectfully,



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Cuyahoga County Prosecutor

Index of Exhibits

- 1) Analysis of Financial Impacts of Shift-Selling Within the Cleveland Division of FIRE
- 2) Division of FIRE General Order #3-7, and Form 305A
- 3) Phase I of the Division of Internal Audit Report, issued November 18, 2011
- 4) Phase II of the Division of Internal Audit Report, issued March 13, 2012
- 5) Ronald Bakeman's Report of Investigation, issued June 19, 2012
- 6) New Form 305, revised July 2, 2012
- 7) Collective Bargaining Agreement Between the City of Cleveland and Cleveland Firefighters, Local 93, effective April 1, 2007 through March 31, 2010.
- 8) Arbitrator's Decision re: Canton Professional Firefighter's Association Local 249, July 11, 2012