

Time Trading

Kansas City Kansas Fire Department

Office of the
Legislative
Auditor

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My office has conducted an audit of the time trading practice of the Kansas City Kansas Fire Department based on a request made by the County Administrator after the recent release of the Fire Department study. The focus of the audit was to review the practice of trading time between Fire Department employees.

For the most part, it appears that the time trading practice is being conducted in accordance with Fair Labor Standards Act regulations and Memorandum of Agreement between the Unified Government and the International Association of Firefighters Local 64 Union. However, it appears that the provisions allowed in the Union Memorandum of Agreement should be strengthened in a number of areas. The audit report contains four findings and recommendations. We also present two Auditor's Notes to bring attention to the impacts of trading time. Fire Department administration has reviewed the report and provided a response that can be found in the Appendix of this audit report.

We recognize the employees of the Kansas City Kansas Fire Department for their dedication and hard work in providing emergency services to the citizens. I would like to take this opportunity to thank the Fire Department administration and staff for their cooperation and assistance during this audit.

Thomas L. Wiss
Legislative Auditor

cc: Deputy Chief John Peterson, Kansas City Kansas Fire Department

Legislative Auditor’s Office: Time Trading Kansas City Kansas Fire Department

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EXECUTIVE SUMMARY

The County Administrator requested our office review the issue of the trading time practice among Kansas City Kansas Fire Department personnel. This audit encompasses all time traded among those personnel in calendar year 2015.

The time trading practice is covered under Department of Labor Fair Labor Standards Act ("FLSA") and by the Memorandum of Agreement ("MOA") between the Unified Government and the International Association of Firefighters Local 64 Union. The trading time practice is prevalent among fire departments throughout the country and is not unique to the Kansas City Kansas Fire Department.

For 2015, there 3154 instances of time traded off to another employee to work. The MOA sets a 24-time trade limit. Most employees traded time off ten times or less as shown in the table below, however there is one instance of greater than 50 times. This table only shows time traded off and not traded time worked.

2015 Distribution of Firefighters of Time Traded Off	
Time Traded Off	Employees
1 to 10 Trades	279
11 to 20 Trades	79
21 to 30 Trades *	24
31 to 40 Trades	0
41 to 50 Trades	0
Greater than 50 Trades	1

* Only 1 employee identified above the 24 trade limit after trades excused
Source: Unified Government Payroll Records

For the most part, it appears that the time trading practice is being conducted within FLSA regulations as far as time trade authorization forms and time trades not affecting the overtime calculation. However, it appears that the provisions allowed in the MOA should be strengthened in a number of areas. In particular, time traded for union business, terminology of "time worked", and those absences considered as excused toward the 24-time trade limit.

In summary, the audit report contains four findings and recommendations regarding the following:

- The existing controls for tracking employee time trading should be enhanced.
- Align daily shift reports and trade time authorization forms more effectively to ensure the 24-time trade limit is not exceeded. Ensure that authorization forms are properly signed and approved as stated in the MOA.
- Trade time authorization forms should document emergency situations.
- The Unified Government should formally establish criteria for year-end payouts of excess accrued paid leave.

We also present two Auditor's Notes to bring attention to the following:

- The practice of trading time off for overtime and out-of-class pay, and even though the employee does not work the overtime shift or the out-of-class position, still earns the pay. There were 1116 instances of time traded off in these situations. Allowing overtime trades is documented in the KCKFD Letter of Understanding on overtime policies and KCKFD General Order No. 98.
- Trading time has no impact on the accrual of sick, vacation, holiday, Kelly day, and sick leave, another consequence different from what one might expect. Employees who trade time accrue leave time at the same rate as those who do not trade time. Further, whether an employee returns the favor and works on behalf of another employee is not a consideration when calculating leave time accrued. For example, if during the year an employee trades a majority of their time, and never trades back, they continue to earn leave time at the same rate as other employees.

BACKGROUND

Recently a study¹ of the fire and emergency medical services of the Kansas City, Kansas Fire Department (“KCKFD”) was conducted by FACETS Consulting. As a result of the study, questions arose on issues within the KCKFD that are being addressed by Unified Government (“UG”) management. Although not mentioned in the FACETS report, the County Administrator requested our office review one of the issues: the practice of trading time among KCKFD personnel.

The Unified Government “2015 Amended/2016 Proposed Budget” provides for staffing the KCKFD with 468 personnel in 2015 and 476 personnel in 2016. Budgeted KCKFD personnel staffing by Division is as follows:

2015 Amended and 2016 Operating Budget approved July 30, 2015

Division	2015 Original	2015 Amended	2016 Budget
Emergency Medical	145	83	83
Administration	8	8	8
Communications	16	18	18
Equipment/Supplies	2	2	2
Prevention	6	6	6
Suppression	287	340	340
Training	9	8	16
Vehicles Replacement/Repair	3	3	3
Total Fire Department Personnel	476	468	476

The KCKFD operates 22 fire companies and 9 ambulances on a daily basis. Employees are assigned to one of three shifts working 24 hours on and 48 hours off (“24/48”). Minimum staffing levels² per shift were presented in the FACETS report and are shown in Exhibit 1.

Exhibit 1, Minimum staffing levels as reported in FACETS Consulting Report

Current KCKFD On-Duty Staffing												
Station	Pumper	Pumper Staff	Aerial	Aerial Staff	Quint	Quint Staff	EMS	EMS Staff	Car	Car Staff	Car Description	On-Duty Staffing
1	Pumper 1	3	Aerial 1	4					Car 32	1	Operations Chief	8
2					Quint 2	4	EMS 2	2	Car 41	1	EMS Supervisor	7
3					Quint 3	4	EMS 3	2				6
4	Pumper 4	3					EMS 4	2				5
5	Pumper 5	3					EMS 5	2				5
6					Quint 6	4	EMS 6	2	Car 64	1	Safety Officer	7
7	Pumper 7	3	Aerial 7	4					Car 62	1	Safety Officer	8
8	Pumper 8	4										4
9	Pumper 9	3					EMS 9	2	Car 61	1	Safety Officer	6
10	Pumper 10	3			Quint 10	4			Car 22	1	Battalion Chief	8
11	Pumper 11	3										3
14	Pumper 14	3	Aerial 14	4								7
15	Pumper 15	3										3
16	Pumper 16	3										3
17	Pumper 17	3					EMS 17	2				5
18	Pumper 18	3					EMS 18	2				5
19	Pumper 19	3							Car 24	1	Battalion Chief	4
20	Pumper 20	3					EMS 20	2				5
										1	Fire Investigator	1
Total	15	46	3	12	4	16	9	18	1	8		100

¹ FACETS Consulting, “Municipal Services Review – Fire Suppression and Fire-Based EMS Services” Report draft – October 13, 2015

² FACETS Consulting Report, page 39.

Information provided in the FACETS report explains the process used by KCKFD of “constant staffing”³ where a constant number of 24/7 field position employees are assigned to each shift. If one of the assigned employees is not at work on a particular shift, that employee’s vacancy is filled with another employee. To maintain a constant staffing of 100 positions on duty as shown in Exhibit 1, for each of the three shifts, approximately 410 employees are needed to constant staff these positions. FACETS analysis of leave use maintains that “... the staffing factor for every fire department is unique and reflects contractual requirements such as leave accrual and Kelly days as well as operational leave impacts such as sick leave use, FMLA, and other types of leave.”

When a vacancy occurs, fill-in employees are utilized or employees are called back to duty, often incurring overtime expense. In order to accommodate for some of these vacancies, some employees voluntarily trade time with other employees to cover whatever time they will be away from their assigned position. Time trading is basically where one employee volunteers to work for another person for an agreed-upon amount of time. Time trading appears to be a common practice among fire department personnel across the nation and is not a practice utilized only by KCKFD employees.

The Department of Labor Fair Labor Standards Act (“FLSA”) speaks to the practice of time trading, which they refer to as “substitution”, under 29 CFR 553.31 section 7(p)(3). This section discusses time trading among employees of the same public agency in any occupation and is not limited to fire department employees.

The International Association of Firefighters Local 64 (“Union”) is the bargaining agent for all sworn employees of the Fire Department of the rank of captain and below, with a few exceptions. The Memorandum of Agreement (“MOA”) between the UG and Union currently being utilized was executed in September 2012 for the period ending December 31, 2013. Negotiations for a new agreement are in process. The MOA identifies agreed-upon standards for wages, work hours, leave time and other conditions of employment. Article 26 of the MOA pertains specifically to the allowable practice of shift exchange and trading time. The practice of trading overtime shifts is covered in a KCKFD Letter of Understanding on overtime policy dated September 15, 1993 and KCKFD General Order No. 98 dated August 22, 1996. There are no other internal KCKFD policies pertaining to the time trading practice.

The UG personnel policy, identified in the Human Resources Guide, does not address the practice of trading time. Since sworn employees of the Fire Department are represented by the Union, the MOA generally defines the benefits applicable to those employees.

This audit encompasses all time traded among KCKFD personnel in calendar year 2015 in order to determine the following audit objectives:

- Is the time trading practice conducted in accordance with federal, state and local regulations; and Memorandum of Agreement with Local IAFF #64?
- Is the time trading practice monitored by Fire Department Administration or designated management?
- The Memorandum of Agreement (Article 26) highlights the agreed-upon procedures for time trading. This Article states that, with a few exceptions, trading time more than 24 times per year is considered an abuse of the practice. Is this practice being abused by Fire Department personnel?
- When Fire Department personnel trade time, if and when they are paid back, is it through working another shift, cash payment or other services?
- Do Fire Department personnel trade time with personnel of equal experience and grade?
- The Memorandum of Agreement (Article 21) speaks to the issue of overtime with regard to trading time. Does trading time give rise to Fire Department personnel earning overtime or compensatory time?

³ FACETS Consulting Report, page 37-38.

AUDIT RESULTS

KCKFD employees assigned to fire suppression and ambulance positions are generally assigned to 24/48 work schedules. The standard work period for 24/48 personnel is 144 hours of work in a 19-day work period, or six shifts. There are three rotating 24-hour shifts, working from 8am – 8am. Time trading practices within fire departments are to permit employees flexibility with their work schedule. Time trades are only allowed as long as the trade does not jeopardize safety, reduce effectiveness or violate policy.

Various forms of leave affect work schedules including leave time planned in advance, such as vacation days, holidays, and Kelly days, and unforeseen leave time such as illness. The MOA details allowable leave benefits that could affect work schedules. KCKFD 24/48 personnel are granted 5 ½ shifts off as holidays and 6 ½ shifts off as Kelly days annually. Vacation earned is based on years of continuous service ranging from 4 shifts off for 1-2 years of service to 12 shifts off for 12 or more years of service.

Selection of vacation days, holidays and Kelly days is done in December of the prior year within assigned vacation groups and shifts. The MOA Article 24 states that “not more than one employee per vacation group, per shift, per day shall be allowed off.” Holidays and Kelly days are scheduled within a work period to avoid overtime when an employee is scheduled for seven days in a work period and no other leave time has been scheduled during that work period. The MOA also allows for “unspecified paid leave”⁴ of ten 24-hour shifts that can be used in lieu of vacation at any point of their employment.

Overview –

For audit testing, we reviewed the daily timesheets prepared and signed by the Shift Commander and submitted to the UG Payroll Department. The timesheets document all personnel on duty for that shift, station location, position they are assigned, hours worked and any special notations such as working out of class. The timesheets include overtime details for employees due overtime or earned comp time, employees who have traded time – both the employee that traded time off and the employee working the time trade – and the number of hours traded. We also reviewed the time trade authorization forms and annual attendance calendars maintained by KCKFD timekeeping staff.

We used the daily timesheets as our principal document for audit testing and considered individual authorization forms and attendance calendars as supporting documents. Overall, there were 3154 trades made in 2015 by 383 employees. Table 1 indicates the distribution of the number of times an employee traded time off in 2015. The majority of the employees traded time off 10 or fewer times.

Table 1, Distribution of Time Traded Off

2015 Distribution of Firefighters of Time Traded Off	
Time Traded Off	Employees
1 to 10 Trades	279
11 to 20 Trades	79
21 to 30 Trades *	24
31 to 40 Trades	0
41 to 50 Trades	0
Greater than 50 Trades	1

* Only 1 employee identified above the 24 trade limit after trades excused
Source: Unified Government Payroll Records

⁴ Memorandum of Agreement between Unified Government and IAFF Local No. 64 for the period ending December 31, 2013. See Article 24 (13), page 31.

Federal Regulations –

The Department of Labor FLSA regulations pertaining to trading time are shown below under the “substitution” heading. This regulation is not specific to firefighters, but includes firefighters.

PART 553—APPLICATION OF THE FAIR LABOR STANDARDS ACT TO EMPLOYEES OF STATE AND LOCAL GOVERNMENTS

§553.31 Substitution—section 7(p)(3).

(a) Section 7(p)(3) of the FLSA provides that two individuals employed in any occupation by the same public agency may agree, solely at their option and with the approval of the public agency, to substitute for one another during scheduled work hours in performance of work in the same capacity. The hours worked shall be excluded by the employer in the calculation of the hours for which the substituting employee would otherwise be entitled to overtime compensation under the Act. Where one employee substitutes for another, each employee will be credited as if he or she had worked his or her normal work schedule for that shift.

(b) The provisions of section 7(p)(3) apply only if employees' decisions to substitute for one another are made freely and without coercion, direct or implied. An employer may suggest that an employee substitute or “trade time” with another employee working in the same capacity during regularly scheduled hours, but each employee must be free to refuse to perform such work without sanction and without being required to explain or justify the decision. An employee's decision to substitute will be considered to have been made at his/her sole option when it has been made (i) without fear of reprisal or promise of reward by the employer, and (ii) exclusively for the employee's own convenience.

(c) A public agency which employs individuals who substitute or “trade time” under this subsection is not required to keep a record of the hours of the substitute work.

(d) In order to qualify under section 7(p)(3), an agreement between individuals employed by a public agency to substitute for one another at their own option must be approved by the agency. This requires that the agency be aware of the arrangement prior to the work being done, i.e., the employer must know what work is being done, by whom it is being done, and where and when it is being done. Approval is manifest when the employer is aware of the substitution and indicates approval in whatever manner is customary.

In summary, when trading time both employees must agree to trade voluntarily. The agreement must be approved by the employer. Both employees' time will be unaffected and will be credited to each as if they worked their normal schedule. The pay for both employees will be unaffected. The hours worked by the substituting employee is not to be considered in the calculation of overtime.

Prior opinion letters issued by the Department of Labor, Wage and Hour Division⁵, state there is no provision in section 7(p)(3) that requires repayment of the traded time. This is a matter left for the parties to resolve. This section also does not limit the number of substitutions between employees.

⁵ As referenced by the US Department of Labor, Wage and Hour Division, FLSA 2004-23, dated November 23, 2004.

Memorandum of Agreement –

The MOA contains language detailing the process for time trades and their effect on overtime. Article 26 pertains to time trades, whereas Article 21 speaks to the effects on overtime. Both Articles are shown below.

Article 26 – SHIFT EXCHANGE, TRADING TIME

S 26.1 Employees may trade time within the Division only. In case of emergency, the Shift Commander may permit trading time across Divisions.

S 26.2 Employees shall have the right to exchange shifts with other employees of at least equal experience and/or grade, provided the exchange does not interfere with the efficient operation of the Fire Department. The qualifications of employee to assume the additional duties shall be determined by the Department. Reasonable exchange of shifts will be allowed. However, the Department may limit the right to exchange shifts in the case of abuse. The Department will only allow Firefighters/MICT's to work for Firefighters/MICT's. Firefighters/MICT's may work for other Firefighters who are not Firefighters/MICT's.

All requests for trading shifts or time with another employee must be presented to the appropriate Division Chief by at least the shift period prior to the requested shift or time to be traded (e.g., if employees desire to trade on Friday, the request must be in by Tuesday). In cases of emergency the Division Chief may, within his discretion, waive this requirement.

The employee responsible for the completion of a trading time agreement will be the party agreeing to work for another employee on a given shift. If the party agreeing to work is placed on any approved leave prior to the commencement of the shift of the trade, it shall be his responsibility to find a replacement to work the shift he has traded for. Such employee shall receive as discipline for not completing the trade the loss of one and one-half (1 ½) shift days from his wages, which discipline is non-grievable. However, the employee may grieve UG's decision that he did not fulfill his responsibility under this section. Additionally, the Department will have the authority in such a case to require an off-duty employee assigned to the same shift and of the same classification as the absent employee, to work for the absent employee.

All trades of time must be paid back in accordance with applicable law at the time. Any trading of time for more than twenty-four (24) times per year will be considered an abuse of trading time. Trading of time for the purpose of duty related education or legitimate union business will not be considered an abuse and shall be granted in accordance with this article.

Employees on Sick, Injury or Family Medical Leaves shall not be allowed to work for other employees.

In summary, Article 26 of the MOA allows for trading time within the employee's appropriate Division with employees of, at least, equal experience and/or grade. Reasonable exchange of shifts is allowed, however, the KCKFD has the right to limit shift exchanges in the case of abuse. All trading time requests are to be approved by the Division Chief, at a minimum, by the shift period prior to the requested shift exchange. All time trades are to be paid back in accordance with applicable law at the time. More than 24 trades in a year will be considered an abuse. Trading time for duty-related education or legitimate union business will not be considered an abuse.

Discussion with KCKFD administration stated that 24 trades in a year are interpreted to mean 24 different shift trades. It is considered one trade when an employee trades one employee for his whole shift or part of his shift. It is also considered one trade when an employee trades his 24-hour shift with two or more employees where, for example, one employee works for 10 hours and another employee works the remaining 14 hours of his shift. Limits for trading time are only identified on behalf of the employee trading time off and not the employee working the time traded.

Article 21 of the MOA addresses the issue of trading time and its affect on overtime. This portion of the Article pertains to the employee who actually works the time trade and not to the employee trading time off. Excerpts from Article 21 state the following:

Article 21 – OVERTIME

“When an employee voluntarily requests and receives a requested change of shift and station assignment or trades time with another employee and works hours in excess of the standard work period or standard work week, the employee shall not be entitled to overtime pay for such work.”

KCKFD administration state that overtime is based on the person scheduled to work and time trades are not a factor in overtime calculations.

Time Trade Authorization –

Per Article 26 of the MOA, all requests to trade time off are to be presented to the KCKFD Division Chief by at least the shift period prior to the requested shift of the time trade. There are variations of the authorization form, “Trading Time Request”, but the timeframe for submission is noted at the bottom of each form. A new form is to be completed for each time trade. The form generally requires the following:

- Signature of employee requesting the time trade
- Signature of employee working the time trade
- Captain approval
- Battalion Chief approval
- Shift Commander approval

The MOA does allow for the Division Chief, at his discretion, to waive the authorization timeframe requirement in case of emergency. The Shift Commander acts as the control for the trade by ensuring the resulting trade does not jeopardize safety, reduce effectiveness or violate policy.

Our audit testing found these forms are not always completed in the required timeframe nor are they always authorized appropriately. As an example, when an employee is called for overtime and immediately trades that time off to another employee, the authorization form is often completed and dated the same day of the overtime, however that is in compliance with the KCKFD General Order No. 98.

Employees are to trade time with other employees of at least equal experience or grade. Whether the employee is qualified to perform those duties is ultimately determined by the Shift Commander. An employee who agrees to work for an employee of a higher grade does not receive out-of-class pay since all time trades are based on the employee scheduled and not the employee that works.

Monitoring –

As stated in Article 26, time trading is limited to 24 times per year before being considered abusive. Time traded for duty-related education and legitimate union business are not considered toward this limit.

KCKFD administration state that time trading is monitored. Daily timesheets prepared by the Shift Commander lists the employee who traded time off and the employee who is working the time trade, along with the number of hours traded. The daily timesheets are turned into KCKFD timekeeping staff and then forward to the UG Payroll Department. The KCKFD timekeeping staff maintains annual attendance calendars for each employee that indicates

their attendance at work, leave time used, or time traded. A letter is sent to the employee whenever they are close to exceeding the 24-time trade limit. There is not an assigned payroll code for "time traded off" or "time traded worked" on the UG payroll system, so any tracking done is on a manual basis by KCKFD timekeeping staff.

Time traded for education and union business are tracked although not counted toward the 24-time trade limit. We found that time traded for overtime, Fire Relief Association business and military leave are also tracked and not counted toward the 24-time trade limit. Although the MOA does not specifically list overtime, Fire Relief Association business and military leave as being exempt from the 24-time trade limit, KCKFD administration considers these exempt for trade limit purposes.

Payback of time worked is not monitored. Any payback of time is considered to be between the employee trading time off and the employee working the time trade. Table 2 presents the total number of shifts traded during 2015 as well as those designated for union business, duty-related education, military leave, overtime, and Fire Relief Association business.

Table 2, Total Time Traded Off by Category

2015 Time Traded Off Categories						
Total Time Traded Off	Union Business	Education	Military	Fire Relief Association	Overtime	General Time Traded Off
3154	97	83	30	30	290	2624

Source: Unified Government Payroll Records

Uses of Time Traded –

The Time Trade Request authorization form does not require an explanation for trading time off. However, there are notations made on some of the forms and on the daily timesheet prepared by the Shift Commander. An example of some of the explanations provided: union business, education, military, Fire Relief Association, and overtime.

- Union Business** – As stated in Article 4 of the MOA, designated members of the Union shall be granted time off without loss of pay to attend certain conventions, conferences, seminars and symposiums, with consent of the KCKFD Chief. The MOA states specific events, the number of Union members that can attend, and how often they can attend. As far as local meetings, the MOA states that the President, Secretary and Treasurer of the Union shall be allowed reasonable time off to attend a maximum of two regular meetings and one special meeting per month. Written notice is to be provided to the KCKFD Chief at least seven days in advance. The MOA also allows for three Local Executive Board members time off with pay for time actually spent in collective bargaining sessions with the UG.

With regard to local union business, the MOA Article 4 states the following *"...nothing contained within this Memorandum of Agreement shall alter the existing past practice between the Parties which allows Local Executive Board Members to conduct authorized Local Union business during their regular work hours, provided that the Chief and the appropriate supervisor are given notice that such representative of the Local will be so engaged and consent thereto. Time spent in handling Union Business outside of the Local Executive Board Members normal work hours shall not be considered time spent in the employ of UG. Subject to the approval of the Chief or his designated representative, the Local Union President shall be allowed time off without loss of pay to engage in activities that benefit the UG, the Department or Department employees."*

Based on Article 4 statements, it appears that designated union business is an allowable absence from work as long as approved by the KCKFD Chief. Outside of the designated timeframes for attending events and the number of monthly local meetings, there is not a stated maximum amount of time that Union officers and Executive Board members are allowed paid time off for union business. There also does not appear to be any requirement for documented validation of union business being performed.

It appears that union business leave for those specific instances of conferences, conventions, seminars and symposiums outlined in the MOA are documented as earnings to the employee through a Union Business earnings code instead of regular earnings code. The other instances of union business appear to be utilized through the time trade practice. Union business is an allowable absence that is exempt from the 24-time trade limit. KCKFD administration understands the MOA to mean that any member of the Union, not just Union officers and Executive Board members, is allowed to trade time to conduct union business.

Our data analysis indicates there is apparently little intent to pay back time traded for union business through working arrangements. Although one-for-one time trade paybacks are not documented, it is reasonable to assume there were few time trades paid back by working for those employees who had traded time for union business. It is unclear if the person working the time trade is being compensated in some manner or the employee is simply working to accommodate the time trade request.

One employee of the KCKFD, who is the Business Manager of the local firefighters Union, is also President of the Kansas State Council of Firefighters. The MOA does not speak to whether attendance at State functions is considered as union business and exempt from the 24-time trade limit or as an excused absence that is being paid by the KCKFD. Table 3 presents the number of instances that Union Officers and Executive Board members traded time off for union business as compared to total time traded off and total traded time worked. The chart does not include all Union Officers and Executive Board members, only those who traded time off for union business.

Table 3, Time Traded Off by Union Officers and Executive Board Members

2015 Time Traded Off For Union Business			
Title	Total Time Traded Off	Union Business Time Traded Off	Total Traded Time Worked
Master Fire Captain / Union President	18	6	0
Master Fire Captain / Business Manager	94	84	0
Senior Fire Captain / Executive Board Member	13	6	3
Senior Fire Captain / Union Member	14	1	10

Source: Unified Government Payroll Records

- **Education** – The only mention of education in the MOA is under Article 26 where it states that time traded for purposes of duty related education are not considered toward the 24-time trade limit. The MOA does not include specifics on education, for example, what types of education and/or training are considered duty related or how many hours are required over a period of time, etc. It appears that education and training leave not utilized through a time trade is documented as earnings to the employee through the Schooling earnings code instead of regular earnings code.

The Time Trade Request authorization forms do not require that the type of education be provided so it is not clear if the education is really duty related and exempt from the 24-time trade limit. Our audit found there were 83 instances of time traded off throughout the year that were noted as education related. Twenty-one of these trades were for the entire 24-hour shift.

- **Military** – Article 8, Section 8.3 of the MOA speaks to the subject of military leave and appears to state that military leave can be an acceptable leave of absence which may be unpaid. As the MOA states *“...any employee who voluntarily or involuntarily enters active duty in any branch of the military service, including all Guard and Reserve units of the Armed Forces of the United States, may be placed on military leave of absence without pay. Any employee who is a member of the National Guard or any other component of the Military Reserve may be granted a leave of absence without pay to meet his military obligation. Military obligation means required summer camps and meetings, and may or may not, in accordance with Federal Law, include camps and training sessions voluntarily. In either case, such employee shall comply with UG procedures in requesting such leave and upon his separation from the service he shall be entitled to such benefits accruing to him under existing Federal laws and regulations and agreement then in effect.”*

Although employees covered by the MOA are generally not covered by the UG Human Resources Guide, it does state that under Section 5.7 Military Leave, military leave is unpaid leave unless the employee chooses to utilize accumulated vacation or compensatory leave.

The MOA does not make any mention of military leave being exempt from the 24-time trade limit although KCKFD administration considers trades for military leave to be exempt from the trade limit. Our audit found there were four employees who traded time off for military leave. There were a total of 30 time trades throughout the year with most of the trades for the entire 24-hour shift.

- **Fire Relief Association** – The MOA does not make any mention of attending to Fire Relief Association business as being exempt from the 24-time trade limit, although KCKFD administration considers this similar to union business and exempt from the 24-time trade limit. Our audit found there were 30 instances of time traded off and most were for the entire 24-hour shift.

- **Overtime and Out-of Class Pay** – Time trades during normal shift schedules do not affect overtime payments since the overtime basis is the scheduled employee and not the employee that is working the time trade. Since the employees schedules are done on an annual basis, they are scheduled initially so that no overtime will be incurred. The MOA, the KCKFD Letter of Understanding and the KCKFD General Order No. 98 does not mention overtime trades being exempt from the 24-time trade limit although KCKFD administration considers overtime trades to be exempt from the trade limit.

However, in instances where overtime is required, employees are called back to work voluntarily. They are paid overtime in accordance with Article 7, Call Back Pay section of the MOA. This states that *“...employees who are called back to work after leaving their normal shift shall be compensated for all time actually so worked at the overtime rate. Employees shall receive a minimum of four hours pay at their regular straight time rate or the actual time worked at the overtime rate, whichever is greater.”*

There are a number of instances where employees are trading away their overtime shift. The situation appears to arise when an employee is called back to work, apparently states they will work, and then makes a request to another employee to trade time with them so they do not have to work. It appears this may be an allowable practice, since FLSA regulations state that trading time practices are based on the employee scheduled to work. The employee that accepted the overtime work assignment becomes the scheduled employee. The scheduled employee receives the overtime earnings and not the employee that actually worked. Again it is not evident as to how the employee who actually worked is repaid. One way or another, an employee is going to have to work overtime that shift and receive overtime earnings, however, it appears contradictory that an employee accepts an overtime shift knowing he will get paid at the overtime rate with no intention of working the shift. Trading of overtime shifts is covered in the KCKFD Letter of Understanding and KCKFD General Order No. 98.

With that in mind, a similar situation arises for out-of-class pay. Sometimes employees are assigned to an out-of-class position to fill vacant shift positions. Out-of-class positions are generally at a higher pay level than the employee's regularly assigned position, for which they receive an out-of-class pay adjustment. When the employee trades time for his out-of-class position, he receives pay at the out-of-class pay rate even though he did not work that position. We did not research whether the employee trading time had been assigned to the out-of-class position for an extended period of time or whether it was a one-time shift assignment that was subsequently traded away. Trading away the one-time shift assignment would appear to be similar to the overtime situation, where it would appear to be contradictory to accept an out-of-class position for a higher rate of pay with no intention of working the shift. See Auditor's Note #1 for additional information regarding year-end payouts.

- **Other** – Trading time gives firefighters the flexibility to change their schedule without using paid leave. In the overall picture, there may be a savings of overtime expense by trading time since another employee would have to be called in to cover his shift. But also, by trading time the employee does not use any paid leave and his leave bank remains unchanged. As a result, trading time has the potential to increase the liabilities associated with firefighters paid leave banks.

Repayment of Time Traded –

As stated earlier, prior opinion letters issued by the Department of Labor find there is no provision that requires the repayment of the time traded. KCKFD administration does not monitor whether a time trade was repaid.

Article 26 of the MOA states that all time traded is to be paid back in accordance with applicable law at the time. It is unclear as to what "applicable law" this statement represents and KCKFD administration were unaware of what it meant unless it referred to FLSA regulations. Current FLSA regulations do not require that the time be repaid. We reviewed fire department labor agreements for other organizations throughout the country and some made stipulations as to a timeframe that the trade is to be repaid. However the KCKFD MOA does not make any stipulations. Table 4 on the following page provides data on those employees with a trade imbalance of 40 or more times when comparing time traded off with traded time worked.

Table 4, Trade Imbalances Greater than 40

Title	Trade Imbalance		
	Total Time Traded Off	Total Traded Time Worked	Imbalance
Master Firefighter	5	156	151
Senior Firefighter	5	148	143
Master Fire Captain	94	0	94
Firefighter / MICT II	9	91	82
Firefighter / MICT IIA	8	68	60
Firefighter I	30	84	54
Senior Fire Captain	9	59	50
Senior Firefighter MICT	5	51	46
Firefighter II	19	61	42

Source: Unified Government Payroll Records

As discussed in a prior section on “union business” and shown in Table 3, it is fairly evident that time traded for union business is generally not repaid through a working arrangement. However, it is not known if the employees working the time trade are compensated by the Union with cash payments and, if so, if there is an agreed-upon amount for working the time trade. KCKFD administration was not aware of such an arrangement if it exists.

As for time trade paybacks for all other trades, it is not known what arrangements are made between firefighters to repay the trade. KCKFD administration states those arrangements are between the firefighters. They are aware that cash payments may be made in some instances but there is no authorization or documentation for this method of repayment. Such an arrangement is outside of the MOA or any existing policies.

If cash payments are being made, questions arise such as 1) at what rate are these employees being paid, 2) are the payments documented and, 3) are the individuals compliant with IRS regulations?

Affects of Time Trade Practice –

A full-time employee working a 24/48 shift would have a approximately 121 shifts scheduled to work in a calendar year. This schedule is affected throughout the year by use of leave time for vacation, holidays, sick days and Kelly days, along with any overtime. Actual time worked is further affected by trading time off and time trades worked.

- **Abuse of 24 Trade Limit** – The MOA states that trading time for more than 24 times per year will be considered an abuse of trading time. The MOA considers trading time for duty related education and legitimate union business as exempt from this stipulation. KCKFD administration also considers overtime, military leave and Fire Relief Association business as exempt from the 24-time trade limit.

The MOA does not state a maximum number of trades allowed for a given period, for example, 20 trades in a year or one trade per month. Although there is not a stated timeframe or maximum number of trades stated in the MOA, there are some instances that could be perceived as abusive. Table 5 on the following page presents those employees who traded time off more than 24 times during 2015. The table includes those types of trades exempt from the 24-time trade limit as well as other time traded off. The table also shows the number of instances the

employee worked on behalf of another employee. Allowing for exempt trades there was one employee over the 24-time trade limit.

Table 5, Time Trade Limits
2015 24-Trade Limit

Title	Total Time Traded Off	Union Business	Education	Military	Fire Relief Association	Overtime Traded Off	General Time Traded Off	Traded Time Worked
Master Fire Captain	94	84	0	0	0	7	3	0
Firefighter I	30	0	15	0	1	1	13	84
Master Fire Driver	29	0	0	0	0	5	24	2
Fire Captain	26	0	5	0	0	6	15	0
Firefighter/MICT I	26	0	0	0	0	1	25	2
Firefighter/MICT I	25	0	0	3	0	1	21	11

Source: Unified Government Payroll Records

As discussed under "Uses of Time Traded - Other" it appears that the practice of trading time off in lieu of using a banked sick day is utilized. The authorization forms did not generally state if the trade was due to an illness or emergency so we could not collect data on this type of trade. We did not review leave banks for KCKFD employees. Utilizing a time trade instead of using a banked sick day is not against MOA guidelines, and we are not aware of how prevalent the situation is. However, it does not seem proper to trade time off due to illness and not utilize banked sick days which continue to accumulate and can be paid out upon retirement.

- **Overtime** – Time trades seem to indirectly affect overtime. As stated previously, KCKFD administration state that overtime is based on the person scheduled to work and time trades are not a factor in overtime calculations. This practice agrees with FLSA regulations.

Theoretically, at the beginning of the year all employees are scheduled so that no overtime should be incurred. However, since that schedule is made a year in advance, it is assumed that situations will arise to affect that schedule. KCKFD administration states that Shift Commanders and Battalion Chiefs spend a great amount of time calling employees for overtime each shift. Article 21 of the MOA states that overtime or compensatory time will only be paid for time actually worked and approved. The standard work period is 144 hours in a 19-day work period. Kelly days, holidays and vacation are used as a scheduling mechanism when the work period is seven days instead of the standard six days. We did not review the overall aspect of overtime and whether it is paid appropriately for each work period.

The main issue we saw with overtime and time trades is when the employee is called for overtime, accepts the overtime shift and then trades the shift away to another employee. We reviewed those KCKFD employees with highest overtime earnings in 2015 with those who traded away overtime shifts. Table 6 on the following page provides details of the top ten KCKFD overtime earners and the number of overtime trades they each made in 2015. The overtime earnings include both overtime worked and overtime traded off.

Table 6, Overtime Traded Off

2015 Overtime Traded Off			
Title	Total Time Traded Off	Overtime Traded Off	Total Overtime Earnings*
Master Fire Captain	14	9	\$ 10,491.68
Master Fire Captain	94	7	9,999.56
Senior Fire Driver	22	7	9,236.32
Master Fire Captain	21	7	8,164.10
Fire Driver	24	6	3,170.42
Fire Captain	26	6	5,783.40
Fire Driver	13	6	5,599.38
Master Fire Driver	29	5	8,386.23
Master Fire Captain	24	5	6,638.47
Senior Fire Driver	5	5	3,725.30

* Total Overtime Earnings includes both overtime worked and traded

Source: Unified Government Payroll Records

• **Year-end Payouts** – This is another area that may be indirectly affected by time trades. KCKFD administration state it is common practice to pay employees at year-end for Kelly days, holidays and vacation days that employees were unable to use during the year. UG Payroll management and Human Resources management state these practices have been going on for years and are not sure of the purpose or authorization of the practice. Approximately \$191,388 was paid out to KCKFD employees for 2015. Table 7 presents the ten largest year-end payouts and time traded off, if any, during 2015. We did not review each employee's schedule or leave use to determine if these payout amounts were accurate. See Finding #4 for additional information regarding year-end payouts.

Table 7, Year-end Payouts and Time Traded Off

2015 Year-end Payouts					
Employee	Total Time Traded Off	Vacation	Holiday	Kelly	Total
Master Fire Captain	24	\$ 7,709	\$ 3,533	\$ 2,249	\$ 13,491
Senior Firefighter	-	6,392	2,324	3,487	12,203
Master Fire Driver	-	5,446	1,513	2,118	9,077
Firefighter / MICT I	-	4,967	824	3,023	8,814
Firefighter I	-	5,546	545	2,178	8,269
Senior Firefighter	3	5,320	-	2,364	7,684
Fire Captain	11	4,277	306	917	5,499
Senior Firefighter	1	3,359	560	1,120	5,039
Firefighter / MICT I	1	2,735	1,094	547	4,375
Master Firefighter / MICT	3	3,500	-	583	4,083

Source: Unified Government Payroll Records

- **Union Business** – Union business seems to require a number of time trades, particularly on behalf of the firefighter/Union Business Manager, in addition to excused time off for union business. See Table 3 for more details.

- **Safety issues** – Firefighter safety is of utmost importance in conjunction with performing their duties. The FACETS study makes recommendations⁶ to “assure safety, effectiveness, efficiency, clarity of purpose, and to assure procedural understanding.” Their interviews with firefighters found: 1) differences in operations and approaches among the three shifts and 2) absence of some firefighter safety-related procedures, and inconsistencies between shifts in their risk management approach and standard fire fighting operations. One of the recommendations includes the ultimate attainment of having 4-person crews on all engine, ladder and quint trucks to comply with NFPA Standard 1710.⁷

Although not specifically mentioned in the FACETS study, it would be reasonable to assume that time trades could have an indirect effect on safety issues, especially if numerous time trades are done by any employee. Firefighters are assigned to specific trucks and stations on each shift. Being assigned to the same truck and station and working with the same team provides for cohesiveness and stability. It provides a sense of security to firefighters knowing how each member of the team operates, reacts in situations and responsibilities of each member. Having a different firefighter(s) working on different shifts, stations, and trucks can break up the stability of the team members.

As shown in the first point above where firefighters noted differences in operations and approaches among the three shifts, time trading could easily be seen as affecting this, especially when firefighters work a number of trades on different shifts. Time trading could also be seen as having an effect on the second point as well which speaks to absence of safety-related procedures and inconsistencies between shifts in their risk management approach and firefighting operations. Working a different shift than normally assigned and not knowing the routines or expectations of the shift can create stressful situations.

Another contributor to safety issues could arise when a firefighter is working his shift and other shifts sequentially. We found instances of employees working multiple shifts in a row due to time trading. The MOA does not state a maximum number of hours or shifts that a firefighter can work in a row.

Table 8 provides information on how shifts were affected by time traded off. All shifts were affected with the 3rd shift having the most instances of time traded off.

Table 8, Time Traded Off by Shift

2015 Time Traded Off by Shift	
	<u>Trades</u>
1st Shift	963
2nd Shift	1015
3rd Shift	1176
Source: Unified Government Payroll Records	

⁶ FACETS Consulting Report, page 12.

Table 9 provides information on the instances of time traded off by station and vehicle identification number. For example, P01 would refer to the pumper truck vehicle located at station #1. The Rover is an employee not assigned to a particular station. Those station and vehicles with the highest instances of time traded off are highlighted.

Table 9, Time Traded Off by Station and Vehicle

2015 Time Traded Off by Station and Vehicle					
<u>Supervisor</u> <u>Vehicles</u>		<u>EMS Vehicles</u>		<u>Fire Apparatus Vehicles</u>	
	# of Trades		# of Trades	# of Trades	# of Trades
C22	3	E02	69	P01	73
C24	15	E03	65	P04	108
C32	9	E05	46	P05	78
C41	8	E06	51	P07	129
C61	28	E09	43	P08	134
C62	29	E10	43	P09	95
C64	15	E17	67	P10	100
C82	2	E18	52	P11	96
C83	4	E19	53	P14	115
				P15	149
				P16	86
				P17	97
				P18	90
				P19	84
				P20	106
				Q02	125
				Q03	155
				Q06	134
				Q10	129
				T01	141
				T07	141
				T14	178
				Rover	9

Source: Unified Government Payroll Records

Conclusion –

1. Is the time trading practice conducted in accordance with federal, state and local regulations; and Memorandum of Agreement with Local IAFF #64?

For the most part it appears that the time trading practice is being conducted within FLSA regulations as far as time trade authorization forms and time trades not affecting the overtime calculation. However, it appears that the provisions allowed in the MOA should be strengthened in a number of areas but in particular time traded for union business, terminology of “time worked”, and those absences considered as excused toward 24-time trade limit.

2. Is the time trading practice monitored by Fire Department Administration or designated management?

The time trading practice is monitored from the standpoint of the employee requesting the trade. The KCKFD timekeeper tracks the time trades from the daily time sheets and the authorization forms. Notices are sent to those employees that are approaching the 24-time trade limit. There is no monitoring of whether traded time off is repaid. See Finding #1 for additional information.

⁷ NFPA stands for National Fire Protection Association. NFPA 1710 is not an enforceable law but rather an industry best practice and standard that can be used as a tool for structuring fire department resources and deployment models.

3. The Memorandum of Agreement (Article 26) highlights the agreed-upon procedures for time trading. This Article states that, with a few exceptions, trading time more than 24 times per year is considered an abuse of the practice. Is this practice being abused by Fire Department personnel?

There was only one instance where an employee traded time off more than 24 times, but other instances exist where the MOA contract language could be strengthened, particularly regarding union business. The International Association of Fire Fighters publication, "Model Contract Language Manual" provides suggestions for developing and adapting language suitable for a local union's needs. Their discussion enlists "... using a variety of methods such as Union Officers being placed on full-time administrative leave or being given a pool of hours to be utilized at the discretion of the union representatives." Perhaps guidelines such as these could be utilized in developing future agreements that are advantageous to both parties. See Finding #1 for additional information.

4. When Fire Department personnel trade time, if and when they are paid back, is it through working another shift, cash payment, or other services?

Payback for trading time is not monitored. KCKFD administration states those arrangements are between the firefighters. As shown in the report chart of trade imbalances, there are a number of trades that are not repaid – at least through working arrangements. KCKFD administration is aware there may be cash payments made in some instances but there is no authorization or documentation that KCKFD maintains for this method of repayment. Such an arrangement is outside of the MOA or any existing policies.

5. Do Fire Department personnel trade time with personnel of equal experience and grade?

There are a number of instances of trading time among personnel who appeared to have different position assignments. Article 26 of the MOA speaks to the issue of the employees having the right to trade time with employees of at least equal experience and/or grade. Ultimate determination of the qualification of the employees to work in the traded position resides with the KCKFD. Article 9 of the MOA speaks to the issue of working out of class and rate of pay.

6. The Memorandum of Agreement (Article 21) speaks to the issue of overtime with regard to trading time. Does trading time give rise to Fire Department personnel earning overtime or compensatory time?

Employees working time trade requests did not appear to earn overtime or compensatory time. This agrees with discussions with KCKFD administration and aligns with FLSA regulations.

The issue we encountered with overtime involved situations where employees accepted an overtime shift through the call-back process and then traded off that overtime shift. Essentially, the employee was paid for an overtime shift that the employee traded off and did not work. Trading of overtime shifts is covered in the KCKFD Letter of Understanding and KCKFD General Order No. 98.

AUDIT FINDINGS AND RECOMMENDATIONS

Finding #1

The Memorandum of Agreement (MOA) between the Unified Government of Wyandotte County/Kansas City, Kansas (UG), and the International Association of Firefighters Local No. 64 (Union) allows employees to trade time up to 24 times per year. The MOA notes that any trading of time for more than 24 times per year is considered abuse. Depending on the circumstances some time trades do not count against the 24-time trade limit. For example, the MOA explains trading time for “the purpose of duty related education or legitimate union business will not be considered an abuse.” In addition, although not discussed in the MOA, it is the practice of the KCK Fire Department to exclude time trades related to overtime, military service and Firefighter Relief Association business.

As reported previously, the MOA explains trading time for duty related education or legitimate union business does not count towards the 24-time trade limit. The Fire Department does not count overtime, military service or trades related to Firefighter Relief Association business against the 24-time trade limit as well. Therefore we adjusted our results by excluding trades for duty related education, legitimate union business, overtime, military service and Firefighter Relief Association business and identified one employee who traded more than 24 times during 2015. The table below presents all employees with more than 24 instances of time traded off during 2015 as well as those trades excluded from the 24-time trade limit. The table also shows the number of instances the employee worked on behalf of another employee.

2015 24-Trade Limit								
Title	Total Time Traded Off	Union Business	Education	Military	Fire Relief Association	Overtime Traded Off	General Time Traded Off	Traded Time Worked
Master Fire Captain	94	84	0	0	0	7	3	0
Firefighter I	30	0	15	0	1	1	13	84
Master Fire Driver	29	0	0	0	0	5	24	2
Fire Captain	26	0	5	0	0	6	15	0
Firefighter/MICT I	26	0	0	0	0	1	25	2
Firefighter/MICT I	25	0	0	3	0	1	21	11

Source: Unified Government Payroll Records

Recommendation

We recommend the KCK Fire Department enhance existing controls to more effectively track the number of time trades by employees in an effort to identify those employees approaching the upper limit established by the MOA. See the related recommendation outlined in Finding #2.

Although not discussed in the MOA it is the practice of the Fire Department to exclude trades related to overtime, military service and Firefighter Relief Association business from the 24-time trade limit. We recommend the language in the MOA regarding circumstances when time traded does not count towards the established limit is aligned with the practice of the Fire Department.

Finding #2

The KCK Fire Department has internal controls over time trading. The controls are designed to monitor the number of trades by employees and to ensure the trades are authorized by management. We tested those internal controls to determine their effectiveness as it pertains to tracking the number of trades and proper authorization. Our testing included two steps. First, we reviewed the trading time request forms of 64 employees to determine if they were properly authorized. Secondly, we traced the daily shift reports to the Fire Administration's system for monitoring trading. Of the 644 request forms reviewed, we identified 44 where the supervisory approval was incomplete or where the person involved in the time trade also approved the request form. Finally, we found 17 instances where the Shift Commander's daily report did not align with the tracking system. Inconsistencies between the two systems were due to routine clerical errors or because reasons for excused trades were not documented on the Shift Commander's daily report.

Recommendation

The KCK Fire Department should take steps to ensure the time trade request forms are properly authorized and the daily shift reports are aligned with the system used to monitor trades. In addition, the Fire Department and Finance Department should consider the feasibility of establishing earnings codes and using the UG payroll system to better track time traded.

Finding #3

The MOA between the UG and the Union establishes that all requests for time trading must be presented to the appropriate Division Chief by at "least the shift period prior to the requested shift." The MOA goes on to provide an example explaining that a request for a trade on Friday would need to be turned in by Tuesday. Additionally, the MOA explains that in "cases of emergency the Division Chief may, within his discretion, waive this requirement." The MOA does not define what constitutes an emergency in terms of trading time.

We tested a sample of the time trade request forms used to document trades to determine if the requests were made in the time frame outlined in the MOA. Our testing included comparing the date of the request with the date of the trade. Additionally, it is Fire Department Policy to exempt overtime trades from the requirements pertaining to advance notice described above. As a result we found of the 644 requests tested, 62 were not made by the shift period prior to the requested shift. Further, we found the request forms do not generally document cases of emergency so we were unable to determine if the requirement for advance notice was waived.

Recommendation

The Fire Department should modify the forms used to request time trades to prompt the employee or Division Chief to document emergency or overtime situations.

Finding #4

Like other UG employees, employees are limited by the number hours of paid time off, such as vacation, they can accrue. At year-end many UG employees are faced with a “use it or lose it” scenario when their accrued time off exceeds limits set by policy or contract. However, unlike most departments, it is the practice of the KCK Fire Department to make year-end payouts of excess accrued paid leave. Further, based on our inquiries we concluded this practice is not authorized by UG policy or the MOA. The table below summarizes year-end payouts to Fire Department employees for vacation, Kelly Days and holiday leave from 2011 through 2015.

<u>Payout</u>	<u>2011</u>	<u>2012</u>	<u>2013</u>	<u>2014</u>	<u>2015</u>
Vacation	58,185	115,769	272,270	327,268	144,444
Kelly Day	21,685	18,416	21,694	19,285	28,341
Holiday	18,828	117,689	14,544	19,706	18,603
Total	\$ 98,698	\$ 251,874	\$ 308,507	\$ 366,258	\$ 191,388

Provided by UG Payroll Department and Financial System
Differences Due to Rounding

The reasoning behind the decision to pay out accrued vacation and other paid time off stems from staffing requirements. Staffing requirements create circumstances where the Fire Department is faced with the choice of allowing vacation or other paid time off which triggers overtime or year-end payouts of excess accrued paid leave. The Fire Department administration explained year-end payouts are preferable to overtime costs.

Recommendation

Generally, we found this practice predates most UG management’s time and has simply always been done. We recommend the UG formally establish criteria for year-end payouts of accrued vacation, holiday, and Kelly days. Those criteria should include when and how payouts are authorized and how they should be calculated.

Auditor’s Note #1

During this audit we identified trading of time under various circumstances. Two circumstances that appeared noteworthy occur when an employee trades time after being scheduled for overtime or out-of-class pay.

During our audit we noted several instances where employees agreed to work overtime, then traded out of that overtime shift but still received overtime pay.

Similarly, employees are sometimes required to accept responsibilities and carry out duties of a position or rank above the rank they normally hold. Under those circumstances the employee receives the pay entitled to that position or rank and commonly referred to as out-of-class pay. Again, during our audit we noted several instances where employees were scheduled for out-of-class pay positions, then traded out of that shift but still received out-of-class pay. See the table below for the number of instances where employees traded out of overtime and out-of-class pay shifts.

All Trades -2015	3154
Traded Out of Overtime	290
Traded Out of Out-of-Class Pay	826

Although it appears counterintuitive to some, trading out of an overtime shift or an out-of-class pay shift but still receiving overtime pay or out-of-class pay for a shift not worked is not contrary to labor law and is common among fire departments. Specifically, labor law reads that with approval, an employee of local government may substitute work hours for another individual in the same capacity⁸. Further, court rulings⁹ concluded the law does not intend to deny employee overtime wages when another worker voluntarily substitutes for him or her with the employer’s permission. Finally, allowing overtime trades is documented in a KCKFD Letter of Understanding dated September 15, 1993 and KCKFD General Order No. 98 dated August 22, 1996.

Auditor’s Note #2

Trading time has no impact on the accrual of sick, vacation, holiday, Kelly day, and sick leave, another consequence different from what one might expect. Employees who trade time accrue leave time at the same rate as those who do not trade time. Further, whether an employee returns the favor and works on behalf of another employee is not a consideration when calculating leave time accrued. For example, if during the year an employee trades a majority of their time, and never trades back, they continue to earn leave time at the same rate as other employees. Finally, the ability to accrue paid leave for time traded has potential to increase year-end payouts of leave time as outlined in Finding #4.

⁸ 29 U.S. Code § 207(p)(3)

⁹ Senger v. City of Aberdeen, S.D., 8th Cir., No. 053803 (Sept. 29, 2006).

SCOPE AND METHODOLOGY

We conducted this audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the review to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

The primary focus of this audit was to determine the extent and effect of the trading time practice among Kansas City Kansas Fire Department employees and whether the practice is done in accordance with applicable federal, state or local regulations. The audit period is January 1, 2015 through December 31, 2015. This audit included the following procedures:

- Interview relevant staff as necessary including Fire Department Administration and timekeepers, Unified Government staff in Payroll, Human Resources and Legal Department.
- Review timekeeping documents.
- Compile and analyze 2015 data relevant to time trading.
- Review federal, state and local regulations; Memorandum of Agreement with Local IAFF #64 dated 9/20/12, and FACETS Fire Study dated 10/13/15.
- Research time trading practices at other Fire Departments across the nation.

PURPOSE AND AUTHORITY FOR THE AUDIT

This audit of the time trading practice at Kansas City Kansas Fire Department was conducted pursuant to the Unified Government of Wyandotte County / Kansas City, Kansas Charter which establishes the Office of the Legislative Auditor.

AUDIT OBJECTIVES

The objective of the audit was to answer the following questions:

- Is the time trading practice conducted in accordance with federal, state and local regulations; and Memorandum of Agreement with Local IAFF #64?
- Is the time trading practice monitored by Fire Department Administration or designated management?
- The Memorandum of Agreement (Article 26) highlights the agreed-upon procedures for time trading. This Article states that, with a few exceptions, trading time more than 24 times per year is considered an abuse of the practice. Is this practice being abused by Fire Department personnel?
- When Fire Department personnel trade time, if and when they are paid back, is it through working another shift, cash payment or other services?
- Do Fire Department personnel trade time with personnel of equal experience and grade?
- The Memorandum of Agreement (Article 21) speaks to the issue of overtime with regard to trading time. Does trading time give rise to Fire Department personnel earning overtime or compensatory time?

AUDIT TEAM

The audit was performed by staff of the Legislative Auditor's Office.

APPENDIX – Management Response



John Paul Jones
Fire Chief

KANSAS CITY, KANSAS FIRE DEPARTMENT

DIVISION OF ADMINISTRATION
Fire Headquarters Building
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Kansas City, Kansas 66101



Phone: 573-5550
Fax: 342-9610

TO: Thomas L. Wiss, Legislative Auditor
FROM: John Paul Jones, Fire Chief *JPJ*
DATE: March 9, 2016
SUBJECT: **Response to Auditor's Draft Report, Trading Time**

The Fire Department appreciates the opportunity to respond to the draft report prepared by your office in regard to the established practice of trading time. "Trading Time" is a very common practice in the Fire Service in the United States. Trading time gives a measure of adaptability and reasonable flexibility within a 24/7 work schedule that is unique and quite different than that of most others within the public sector.

For the Kansas City Kansas Fire Department, it has been a working practice that has been in existence and utilized for more than three decades. The current and past practice of trading time complies with all applicable laws and is established by contractual agreement. It is governed by established policies and procedures in conjunction with the contractual agreements.

I believe the practice of trading time has worked well for the Fire Department. Ultimately, it serves a vital role in giving flexibility that provides a benefit to the employer as well as the employee and is considered a best practice. There is also a definite benefit to the Fire Department in allowing for the trading of time for union officials. Participatory union business is essential to the labor-management relationship and the solving of problems within the individual membership by union officials can save time and effort that Fire Administration would otherwise have to spend sorting out work place issues.

In regard to the report recommendations, any matter of clarification regarding trading time recommendations may potentially be impacted by the Memorandum of Agreement with Local 64 and should be viewed with an understanding of those parameters and constraints.

As a very busy Metropolitan Fire Department that is very committed to serving the citizens of our community, the Fire Department appreciates your objective analysis and an opportunity for the department to provide clarification and support for these well-established public safety practices.

THIS REPORT IS INTENDED TO PROMOTE THE BEST POSSIBLE
MANAGEMENT OF PUBLIC RESOURCES

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