

SETTLEMENT AGREEMENT

The Parties, Local 36, International Association of Fire Fighters (“Union”) and the District of Columbia and its Fire & Emergency Medical Services Department (collectively, “the District,” and the Union and the District being, collectively, the “Parties”), hereby voluntarily agree to resolve the unfair labor practice charge filed with the District of Columbia Public Employee Relations Board (“PERB”), and docketed as Case No. 15-U-25 (“ULP Charge”). For purposes of this Settlement Agreement, the term “member” or “members” refers generally to current and/or former members of the bargaining unit represented by Local 36. A “current” member shall mean such a person who is on the District’s payroll as of September 19, 2015. A “former” member shall mean such a person who is not on the District’s payroll as of September 19, 2015.

1. The Union hereby acknowledges that the terms of this Settlement Agreement will be completely satisfied upon the District’s compliance with the terms outlined in Section 2 of this Settlement Agreement. In consideration of the District taking the actions described below in Section 2, and following the District’s execution of this Settlement Agreement, the Union in good faith hereby agrees to promptly advise PERB that the Parties have resolved the ULP Charge and to request dismissal of the ULP Charge with prejudice. Further, the Union shall waive, release, and forever discharge the District (including its current and former officers, agents, employees and representatives), from any and all claims, demands, grievances, or causes of action of whatever nature that were asserted or that could have been asserted in connection with the ULP Charge, as well as any claim concerning any award of interest or attorneys’ fees owed in connection with the ULP Charge and/or the McKissick Award (“Released Claims”); provided, however, that the Released Claims shall not include any future claim in respect of the payment of time and one-half for hours worked in excess of 42 hours averaged over a 4-week period.

2. In consideration of the Union taking the actions described in Section 1, the District agrees to the following terms:

(a) Prospective Implementation: Starting with the pay period commencing on October 18, 2015, the District will compensate members of the Local 36 bargaining unit at the rate of time and one-half for each and every overtime hour worked, as defined in Article 18 of the CBA. All overtime hours will be recorded under a single time reporting code (OTFA), and all overtime earnings will appear in the PeopleSoft system under a single earnings code (OTA).

(b) Settlement Payment Calculations: Settlement payments will be calculated for each member (or former member) by taking the following steps for each pay period between October 1, 2001 and October 17, 2015:

(1) Totaling the overtime hours worked by the member/former member during the pay period;

(2) Multiplying those hours by 1.5 times the member's/former member's accurate wage rate (i.e., the wage rate accurately in effect during the pay period in which the hours were worked); and then

(3) Subtracting out any amounts that the member/former member received as compensation for those overtime hours.

(c) Provision of Data and Review of District's Settlement Payment Calculations.

(1) *Provision of Raw Payroll Data:* To the extent that it has not already done so, the District shall promptly provide the Union, through its counsel, with the raw payroll data (in Excel file format, and including all fields and earnings codes) for all members/ former members for the period 10/1/01 through 3/8/15. The raw payroll data (as described above) for the period 3/9/15 through 9/19/15 shall be provided to the Union, through its counsel, on or before September 27, 2015.

(2) *Provision of Settlement Payment Calculations to Union:* On or before October 20, 2015, the District will provide the Union, through counsel, with an Excel spreadsheet containing the District's settlement payment calculations for each member/former member. Such calculations will be contained on four separate spreadsheet tabs: one tab covering the payroll periods for each member/former member from 9/23/2001 through 8/10/2002; a second tab covering the payroll periods for each member/former member from 8/11/2002 through 9/29/2007; a third tab covering the payroll periods for each member/former member from 9/30/2007 through 9/19/15; and a fourth tab containing a total for each member/former member.

(d) Remittance of Payments.

(1) *Payment of Overtime Pay for the Period of September 20, 2015, through October 17, 2015.* The payments to current members for overtime hours worked from September 20, 2015, through October 17, 2015, as calculated pursuant to section 2(b) above, will be paid on October 30, 2015. The amount due will be included alongside each affected member's regular pay, with the gross amount of delinquent overtime pay displayed separately on the member's bi-weekly earnings statement.

(2) *Settlement Payments - Time of Payment:*

The District shall remit all settlement payments (that is, for periods prior to September 20, 2015) according to the following schedule:

Current members: Payment shall be electronically deposited or remitted by paper check (whichever is regularly received by the members) no later than November 27, 2015.

Former members: Payment shall be remitted by paper check, mailed no later than December 11, 2015.

(3) Settlement Payments - Manner of Payment:

Settlement payments for each current member shall be made along with his/her regular paycheck. The gross amount representing the lump-sum settlement payment will be displayed separately on the member's regular bi-weekly earnings statement.

Each former member shall receive his/her settlement payment by check in a single lump-sum payment.

Taxes shall be withheld from the lump-sum amounts paid to all current and former members at the rates required under applicable federal law (i.e., at the supplemental rate provided in IRS Circular E). State taxes shall be withheld from the lump-sum amounts paid as follows: (1) for current members, state taxes shall be withheld only for those members claiming residency in the District, Maryland or Virginia, as applicable; (2) for former members, state taxes shall be withheld only for those members claiming residency in the District, Maryland or Virginia at the time of their most recent payment of salary.

(4) Payments to Former Members:

It is understood and agreed that the District shall undertake all reasonable efforts to ensure that payments owed to former members are made to such former members or to their beneficiaries or estates, as applicable.

No later than October 1, 2015, the District shall obtain from the Retirement Board the last known addresses of all former members due settlement payments pursuant to this Agreement. Settlement payments for these former members shall be sent by the District via first-class United States mail, postage prepaid, to the address for each former member maintained by the Retirement Board.

If a former member is deceased, the monies owed to that former member shall be paid by check to the beneficiary of the former member's pension payments, addressed to the beneficiary at the address maintained by the Retirement Board. If the Retirement Board is not paying a pension benefit on behalf of a deceased former member, payment owed such deceased former member under this Settlement Agreement shall be paid as expeditiously as possible upon identification and verification of next of kin.

No later than October 20, 2015, the District shall furnish the Union with a list of all former members no longer employed by the District due settlement payments pursuant to this Settlement Agreement for whom the Retirement Board does not maintain addresses, together with each former member's date of separation, last known contact information, and Department assignment at the time of separation.

The Parties shall meet on or before November 13, 2015, to determine how to address such payments.

(e) Settlement Payment Calculations and Dispute Procedure Notifications:

The District shall provide each current member with the gross amount of the settlement payment, as well as federal, state, and Medicare tax deductions. The federal, state, and Medicare tax deduction amounts will include amounts normally deducted with the member's regular paychecks.

The District shall provide former members with following information: (1) the amount of his/her settlement payment (including gross amount, federal, state and Medicare tax deductions, and net amount); (2) the calculation of his/her settlement payment (which shall include all of the information described in subsection (c)(2) above); and (3) the procedure for disputing his/her calculation in accordance with subsection (f) of this section.

The information described shall be provided as follows:

(1) Current Members: The information shall be provided by e-mail no later than November 27, 2015.

(2) Former Members: The information shall be included with the mailed remittances (which shall be mailed no later than December 11, 2015).

(f) Calculation Dispute Procedures: The following procedures shall be followed in the case of any member/former member who believes that the calculation of his/her settlement payment is incorrect:

(1) Any member/former member who believes that the calculation of his/her settlement payment calculation is incorrect must, within fourteen (14) calendar days of receiving the calculation and written notice of calculation dispute procedures, advise the Payroll Office at the Office of the Chief Financial Officer via email at payroll.adminbox@dc.gov or via U.S. mail to Payroll Office, OCFO-PSJC, Suite 4106, 4th Floor, 300 Indiana Avenue, Washington, DC 20001, (which shall be postmarked no later than the 14th calendar day following receipt of the calculation and notice of dispute procedures), that the calculation is disputed and describe the nature of such dispute (*e.g.*, which payroll periods the dispute pertains to, the number of disputed hours, the wage rate claimed to be incorrect). Failure of a member/former member to provide timely written notification under this subsection shall result in the settlement payment calculation becoming final and not subject to any further dispute.

(2) The timeline shall begin to run with respect to a member's/former member's dispute of the settlement payment calculation when the member/former member

has received both the calculation itself as well as the written notice of these procedures.

(3) Within fourteen (14) calendar days of the end of the relevant dispute period(s) for current and former members, respectively, the District shall notify the Union of all disputes the District has received.

(4) The District shall conduct a thorough review of any settlement payment calculation disputed under paragraph (1) of this subsection. If in the course of that review the District determines that additional information from the member/former member is necessary, the District shall advise the member/former member in writing of: (A) the data that is being requested; (B) the deadline for the data to be provided; and (C) that failure to timely provide the requested data, without good cause, will result in the settlement payment calculation becoming final and not subject to any further dispute. Deadlines for providing such information shall be reasonable, and shall take into account the nature of the information requested by the District, and the member/former member's individual circumstances.

(5) The District shall notify, in writing, any member/former member raising a dispute as to the member's calculation of the determination of that dispute no later than thirty (30) calendar days following either the District's receipt of the notification under paragraph (2) of this subsection, or its receipt of any additional information provided by the member under paragraph (4) of this subsection, whichever is later. Such written determination shall also advise the member/former member that he/she has the right to grieve the determination pursuant to Article 9 of the CBA. It is understood and agreed by the Parties that the District may, with written notice to the Union, designate any person(s) it chooses as its representative for purposes of receiving and processing grievances that may be filed by members/former members pursuant to this subsection. The written determination shall specify the name, title, address, email address, fax number, and telephone number of the person designated by the District to receive grievances pursuant to this subsection, and shall include a copy of Article 9 of the CBA. A copy of each written determination shall be provided to the Union.

If per its written determination the District determines that an adjustment is necessary, the District shall issue payment (or additional payment, as the case may be) to the member/former member no later than thirty (30) calendar days following its issuance of the written determination required under this subsection. In the event that this deadline is not met, the member/former member shall automatically be entitled to interest, at the rate of 4% per annum, accruing from the 30th calendar day following issuance of the written determination, through the date the payment was actually made.

(6) Any grievance of the District's determination of a calculation dispute raised under paragraph (5) of this subsection must be brought within thirty (30) calendar

days. The timeline shall not, however, begin to run unless and until the member/former member has received the written determination (including notice of his/her right to grieve the determination, as provided in paragraph (5) of this subsection).

(7) Any grievances filed by or on behalf of members/former members under paragraph (6) shall be forwarded to the Union. Such grievances shall be considered Step 3 grievances.

(i) Within thirty (30) calendar days of submission (or within such other period as the parties may mutually agree is reasonable), the Union and the District's designee(s) shall meet to discuss such grievance. The Union shall make reasonable efforts to consolidate or group grievances at each stage to promote efficiency. The District shall render a decision on the grievance within thirty (30) calendar days of the meeting (or within such other time as the parties may mutually agree is reasonable). If the Union is dissatisfied with such decision, it may submit the dispute to arbitration under Article 9(C) of the CBA within thirty (30) calendar days of the date it received such decision (or within such other time as the parties may mutually agree is reasonable), by notifying the District's designee(s).

(ii) A single arbitrator, selected pursuant to the parties' procedures in Article 9(C) of the CBA, shall hear all grievances under paragraph (6) that are advanced to arbitration by the Union. The parties agree that to the following modifications of the Article 9(C) procedures to expedite resolution of such grievances:

(a) the selection of the arbitrator shall take place within five (5) calendar days of the parties' receipt of the panel from FMCS;

(b) to the greatest extent possible, grievances shall be submitted upon a stipulated record;

(c) in the event a hearing is necessary, except for good cause or the arbitrator's unavailability, such hearing shall take place within sixty (60) calendar days of the selection of the arbitrator; and

(d) where a hearing is held, post-hearing briefs shall not be filed except upon request of the arbitrator.

The arbitrator shall have authority to fashion additional rules and procedures designed to expedite the resolution of grievances filed pursuant to paragraph (6).

(iii) In any case in which the arbitrator sustains a grievance, the arbitrator shall have the authority to fashion an appropriate remedy. The District shall comply with the award of the arbitrator, including issuing any payment required by that award, within thirty (30) calendar days of such award, unless the award sets out a different time for compliance. In the event that the deadline for issuing payment is not met, the member/former member shall

automatically be entitled to interest, at the rate of 4% per annum, accruing from the deadline through the date the payment was actually made.

(iv) As to any grievance filed pursuant to paragraph (6), the award of the arbitrator shall be final and binding. The parties expressly waive their respective rights to seek review of the arbitrator's award from the PERB.

(8) Beneficiaries or legal representatives of the estates of deceased former members shall be entitled to exercise all rights to challenge the calculation of a settlement payment as set forth in this subsection that could have been exercised by such former member in his/her stead.

(g) Attorneys' Fees and Costs.

The Union has furnished detailed information concerning hours and costs reasonably and fairly expended by Union counsel on this matter through June 23, 2015. The Union shall furnish the District, through its counsel, with similarly detailed information concerning any hours and costs reasonably and fairly expended on this matter since June 23, 2015, within thirty (30) calendar days after execution of this Agreement by the District. No later than thirty (30) calendar days following receipt of this additional information, the District agrees to pay to the Union the amount of \$193,652.25 (plus any additional amounts documented pursuant to the preceding sentence) for attorneys' fees, and \$14,166.21 (plus any additional amounts documented pursuant to the preceding sentence) for costs. The amount of attorneys' fees represents the hours reasonably and fairly expended by Union counsel on this matter, multiplied by the applicable hourly rate that appears on the United States Attorneys' Office Laffey Matrix. The costs represent the actual out-of-pocket amounts paid.

3. ENFORCEMENT – The terms of this Settlement Agreement shall be enforceable under Article 9 of the Parties' CBA.

The Parties agree, however, that compliance with the following deadlines is a material term of this Settlement Agreement, and that the Union expressly has relied on the District's promises to comply with such deadlines in agreeing to the settlement of this matter:

- The deadline for remittance of the correct amount of overtime pay owed to current members for the period between September 20, 2015 and October 17, 2015 (October 30, 2015, as provided in section 2(d)(1));
- The deadline for provision of the settlement payment calculations to the Union (October 20, 2015, as provided in section 2(c)(2)); and

- The deadlines for remittance of settlement payments to current and former members (November 27, 2015 and December 11, 2015, respectively, as provided in section 2(d)(2)).

If the District fails to substantially comply with any of the deadlines set forth in this section with respect to a member or members (current and/or former), the presumption in any arbitration alleging breach of such deadline(s) shall be that the non-compliance was caused by the District's action, inaction, or omission. The District shall have the right to present evidence to rebut that presumption. Should an arbitrator find that the District has failed to rebut such presumption, however, in addition to any other remedy the arbitrator shall award: (1) to such member(s)/former member(s), an award of interest on the entire principal owed to such member(s)/former member(s) as of January 1, 2015. Such interest shall be calculated at the rate of 4% per annum, and shall be calculated from January 1, 2015, through the date that the District pays to the member/former the entire amount owed (including the interest provided under this section 3); and (2) to the Union, reasonable attorneys' fees and costs in connection with the arbitration proceeding.

4. NON-ADMISSION – This Settlement Agreement does not constitute an admission of any wrongdoing or liability on the part of the District, its current or former officers, agents, servants, or employees.

5. EFFECT OF SIGNATURE – By signing this Settlement Agreement, the Parties hereby represent that they have read and fully understand the entire Settlement Agreement. Furthermore, the Parties represent that they have signed this Settlement Agreement voluntarily, with full knowledge, with advice and counsel of their choice, with ample opportunity to seek additional legal counsel if so desired, and were in no way coerced or promised anything other than what is contained within the written terms herein.

6. TOTALITY OF AGREEMENT – This Settlement Agreement constitutes a fair, full and final resolution of all aspects of these matters and contains the sum of all the terms and conditions of the Settlement Agreement between the Parties and parol evidence shall not be admissible to modify the terms of this Settlement Agreement in any judicial, arbitration, or administrative proceeding. No other conditions or assurances, expressed or implied, are included, but for those included in the four corners of the instant written document.

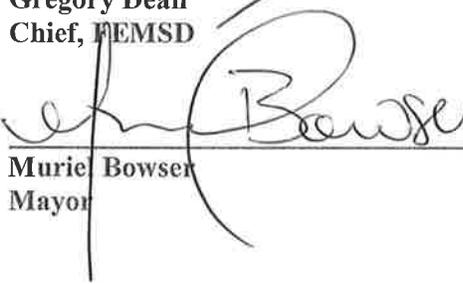
7. JOINT PRODUCT – This Settlement Agreement has been jointly drafted by the Parties and no ambiguity in its terms shall be construed against either Party by virtue of its role in the drafting hereof.

8. SEVERABILITY – If any provision of this Settlement Agreement is held to be illegal, invalid or unenforceable by court of law or administrative tribunal, such provision shall be fully severable and the remaining provisions of this Agreement shall be construed and enforced as if the illegal, invalid or unenforceable provision had not been included therein.

**FOR THE DISTRICT
OF COLUMBIA AND ITS FIRE
AND EMERGENCY MEDICAL
SERVICES DEPARTMENT**



Gregory Dean
Chief, FEMSD
Date 10/24/15

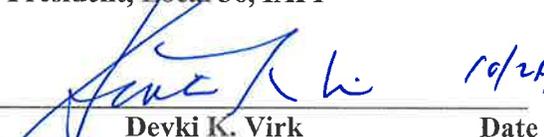


Murie Bowser
Mayor
Date 10/24/15

**FOR THE INTERNATIONAL
ASSOCIATION OF FIREFIGHTERS,
LOCAL 36**



Edward C. Smith
President, Local 36, IAFF
Date 10/24/15



Devki K. Virk
Bredhoff & Kaiser, P.L.L.C.
Date 10/24/15