FEDERAL MEDIATION AND CONCILIATION SERVICE

In the Matter of the Arbitration Between	:	**Grievance**
NATIONAL COUNCIL OF EEOC LOCALS NO 216, AFGE, AFL-CIO	:	Overtime Claims Under the Fair Labor Standards Act
-and-	:	
UNITED STATES EQUAL EMPLOYMENT OPPORTUNITY COMMISSION	:	
CASE NO. 071012-00226-A	:	

RULINGS ON LEGAL ISSUES AND REPORT TO THE PARTIES WITH RESPECT TO CLAIMS MADE PURSUANT TO THE REMEDY PHASE OF THE DISPUTE

SUMMARY BACKGROUND AND CURRENT STATUS OF THE DISPUTE

On March 23, 2009 I issued my Opinion and Award ("2009 Opinion") in the second phase of this dispute. The Union there claimed in its grievance that the Agency violated the parties' collective bargaining agreement ("Agreement") and federal law and regulations by intentionally failing to pay overtime compensation to bargaining unit employees in the positions of Enforcement Investigators GS-1810-9, 11, and 12; the positions of Alternative Dispute Resolution Mediators GS-301-12 and 13; and the positions of Paralegal Specialists GS-950-9 and 11 in the Agency's District, Field, Area and Local Offices, and offering only compensatory time. The Union further claimed that the Agency intentionally suffered or permitted these employees to work excess hours without payment of overtime compensation for these hours worked.

The 2009 Opinion, which is incorporated herein by reference, found that the Agency, by its actions, willfully violated relevant portions of the Agreement, as well as applicable federal law and regulations. I directed the parties to attempt to ascertain what, if any, individual claims of Investigators, Mediators and Paralegal Specialist may qualify for suffered or permitted overtime pay. Having thereafter failed to do so, the parties engaged in extensive and protracted discussions on devising an appropriate electronic claims process by which individual employees who believed they were aggrieved by the Agency's action could submit their claims and set forth the amounts of overtime believed to be owing them, along with appropriate documentation in support of such claims.

I point out that, while the 2009 Opinion surely speaks for itself concerning the Agency's willful FLSA violations, this bears no direct correlation with the extent to which discrete claims arising from the current process are found meritorious. Irrespective of the extent of the monetary relief resulting from the claims process, however, the principal result of the 2009 Opinion is that compensatory time for suffered or permitted overtime may not replace employees' absolute right to overtime payment for qualifying hours worked.

In furtherance of this claims process, the parties engaged Rust Consulting, which devised an electronic database designed to permit eligible employees to submit their overtime claims. All appropriately classified employees were contacted and instructed in the manner by which their claims and their supporting documentation were to be submitted to Rust Consulting. The deadline for timely submission of claims was May 29, 2012 and all appropriately classified employees, current and former, numbering approximately 1100, were so advised. The Claims Period, as set forth on the Claim Form

provided to all claimants, reflects the parties' agreement that eligible claimants are those employed at any time from April 7, 2003 to April 28, 2009.

On May 18, 2012 the Union filed a Motion to extend the claims period, alleging that the Agency had impeded employees' access to requested documents during the claims process, identifying some forty-eight (48) current or former employees so affected. It requested that the May 29, 2012 deadline for filing claims be extended for sixty (60) days. On May 23, 2012 the Agency filed objections. On May 30, 2012, having heard arguments by the parties, I issued my "**RULINGS ON EXTENSION OF CLAIMS PERIOD AND RELATED ISSUES**," directing that an extension of sixty (60) days beyond May 29, 2012 be granted for the filing of claims, such extension to be limited to those individuals identified in the Union's Motion and not to the entire class of potential claimants. This Ruling was extended to apply to four additional individuals identified since the filing of the Union's Motion to have been similarly situated. These additional individuals were granted extensions to October 5, 2012.

The parties are advised in this regard that, both in cases where a claimant alleges that (s)he was hindered in the filing of a complete and/or accurate claim due to the Agency's failure to provide needed or requested records and in those where this is not expressly alleged, I indicate whether such a case involves a claimant that was among those granted 60-day extensions beyond the May 29, 2012 deadline (or, if applicable, until October 5, 2012) for the purpose of supplementing his or her claim. If it does, I deem it appropriate to consider any supplemental information properly submitted on a claimant's behalf, so long as it is received within the 60-day extension period (or, if applicable, by October 5, 2012). The above approach, in my view, must be followed so

that there is meaning to the time constraints the parties themselves have negotiated governing the claims process.

In this respect, the Union referenced certain circumstances, typically identified by the offices at which the Union believes they occurred, where the Union asserted that Agency supervision either withheld documents, did not produce them promptly enough so that claimants could complete their submissions in a timely fashion, or limited the categories of documents it believed were required to be produced. In these cases, the Union has requested that I order that the Agency be prevented from challenging such claims and that the relief requested be granted.

I acknowledge this position. However, when I issued my May 30, 2012 Rulings, this was in response to the very circumstances the Union had identified, and was designed to afford potentially affected claimants the further opportunity to submit claims that reflected their positions more effectively. To direct yet a further remedy at this point is a matter I do not believe I have authority to do. Not all potentially affected claimants were among those who requested and received extensions. Others who did receive extensions did not uniformly avail themselves of the extra time granted.

Ultimately, some 268 individuals filed claims.

On August 6, 2013 the Agency submitted its objections to the above claims, along with legal arguments and documents respecting each claim. The Union responded on October 31, 2013, likewise with legal arguments and documents respecting each claim.

The report which follows is set forth in two principal sections. The first addresses the legal arguments underlying generally the parties' respective positions, both substantive and procedural, on why individual claims should be granted or denied, in

whole or in part. The parties will note that, in so doing, I have found it necessary to revisit, in part, some of the issues first raised in the series of hearings that culminated in the 2009 Opinion. Many are raised repeatedly in the individual cases, and are referenced herein as appropriate. The second section expressly addresses the *bona fides* of each claim. This second section concludes, with respect to each individual claim, that one of three results is to be reached: (1) the claim for overtime payment is granted or denied, in whole or in part, on substantive grounds; (2) the claim is denied on procedural grounds, principally either on the basis of an untimely or defective filing; or (3) the claim cannot, in my view, be resolved based on the existing record, typically owing to material factual disputes, and will require an evidentiary hearing.

The parties are advised that very few claims are granted outright, based on the current record. This is because issues such as supervisory knowledge (actual or constructive) of a claimant's having worked suffered or permitted overtime are contested in virtually every case. This cannot either be established or refuted by the opposing Declarations of supervisors or managers and those of claimants alone. This is equally true with other issues, such as whether a claimant was effectively advised by a supervisor or a manager that he or she was not to remain at work past his or her tour of duty or to refrain from working on weekends. In these cases, as I will have occasion to state again, contested issues of material fact will have to be referred for hearings, since hearsay declarations contained in statement and affidavits, without being subject to cross examination, are ultimately unreliable, irrespective of which party offers them. Therefore, by my citing such statements or Declarations in any given claim, I do not place evidentiary weight on them; I set them forth more as statements of position.

Other circumstances that may create material fact issues include those where compensatory time granted was "formal" or "informal," the latter sometimes referred to as "off the books" compensatory time. "Formal" compensatory time, as I understand it, is compensatory time that found its way into employees' FPPS records because, as noted in the 2009 Opinion, such data would be taken from employee time sheets and passed on by Timekeepers to supervision, who then entered these data into the FPPS. "Informal" compensatory time would arise whenever the proper forms authorizing such time were not furnished to the supervisor or the Timekeeper, the result being that such time is not entered into employees' FPPS records.

The evidentiary problem that arises from this "off the books" compensatory time, as the Union would argue, is that, if a monetary award is to be made to a claimant, where the Agency claims credit for compensatory time used, this credit is less trustworthy if the Agency's own records of the use of such time do not support it. As Agency testimony, reflected in the 2009 Opinion, reveals, entries in the FPPS are uniformly required, and individual offices are not at liberty to decide for themselves what information is entered. As claims are reviewed here, this issue will frequently arise because administration of the FPPS varied among locations, and also within locations at different time periods.

Further, in cases where I find that hearings should be granted, I attempt, when possible, to identify which issue, or issues, will be on the table for decision. Also, the parties will note that, in some cases where I deny the claims, it is on the basis of the claimant's failure to indicate, with any specificity, how claims for extra hours, on a pay-period-by-pay-period basis, are supported. In some such cases, I point out that the Claim

Form Instructions themselves state: "Each pay period in which you worked extra hours is a separate claim."

I set forth below many of the principal issues on which the parties are most frequently at odds. There are also a few that come up less frequently. To the extent possible, I attempt to deal with them first in this section, and to set out the principles that guide what impact that issue will have in a given case. For the most part, the parties themselves have already addressed these issues by way of written argument.

LEGAL ISSUES

WHETHER CLAIMANTS WHO WORKED OVERTIME BUT DID NOT RECEIVE COMPENSATORY TIME MAY BE ELIGIBLE FOR RELIEF

A significant number of employees submitted claims for overtime payment, while indicating on their claim forms that they did not receive any compensatory time, either in all or some pay periods. The Agency takes the position that such employees are not eligible for any monetary relief to the extent that compensatory time was not received.

On December 3, 2012 the Agency, through counsel, advised the Arbitrator that "the Commission presently intends to contest all claims which do not reflect compensatory time used." It renewed this argument in counsel's letter to the Arbitrator of January 29, 2013, asserting therein that "[i]t is clear beyond reasonable dispute that the liability finding in this case is limited to the Agency's practice of permitting employees to work extra hours and then granting them compensatory time off in lieu of overtime pay for such extra work." It relied principally on language in the 2009 Opinion stating that the Agency "violated the FLSA by engaging in a pattern of conduct which, if established, resulted in the creation of suffered and permitted overtime that, in the absence of an

employee's genuine choice, wrongly resulted in the granting of compensatory time instead of the payment of overtime." It went on to assert that the 2009 Opinion "made no finding that Agency employees worked extra hours but were denied compensatory time," and thus concluded that "claimants who contend that they did not receive compensatory time (formal or informal) for the extra time worked are not entitled to relief as they are outside the scope of the [2009 Opinion]." The Agency asserts this defense in a large number of the Union's claims, and it generally references this defense in terms of the claim's being "outside the scope," and I will so reference this objection in my discussion of individual claims. (I note here that I do not see the issue as being whether some Agency employees were "denied" compensatory time; rather, it is that some did not receive it simply because they failed to ask for it.)

The Union contends that the Agency's position directly contravenes the 2009 Opinion, citing the following from the **CONCLUSION**:

> [t]he Agency's actions, in violation of the FLSA, and in a manner reasonably consistent from office to office throughout the country (to the extent represented in this record), failed to provide employees with the choice to have their excess work hours, to the extent they may qualify, compensated by overtime pay rather than by the sole alternative offered, that of compensatory time….This action was not inadvertent, and, both by documents and by supervisory instructions, conveyed to employees that an FLSA entitlement to overtime pay, if excess hours qualified for it, would not be available….Whether others may be similarly situated goes to the extent of the remedy….This is equally the case if such extra hours were approved in advance, so long as no opportunity for overtime pay is available.

It asserts further that its grievance sought payment for unpaid overtime for all excess hours worked, and that such payment is mandated both by the FLSA and by the Agreement. Thus, it contends that a failure of an employee to receive compensatory time is no bar to recovery in these proceedings.

As I understand the Agency's position, it relies on the proposition that a claimant must have suffered the harm for which relief is afforded under the liability phase of the case, citing *International Brotherhood of Teamsters v. United States*, 431 U.S. 324 (1977). Here, the Agency places the rabbit in the hat by first defining that the harm is the receipt of compensatory time in lieu of overtime, instead of properly defining it as the non-receipt of FLSA-mandated overtime. Therefore, it reasons that, since many claimants here did not claim they were given (and, therefore, did not use) compensatory time in lieu of overtime, those claimants are outside the scope of the 2009 Opinion. I find that the Agency's reading of the 2009 Opinion must be rejected.

I turn to the "Notice to Claimants," which sets forth the instructions for submitting a claim. It states, in part:

> Claims may be submitted for the time period April 7, 2003 to April 28, 2009. Claims can only be submitted for work in excess of forty hours per week (or more than 80 hours per pay period if on a compressed work schedule). Employees who used compensatory time for excess work hours will have the compensatory time credited against the overtime pay entitlement when damages are computed.

This language was crafted by the parties themselves. Following the reference to overtime hours (depending on the work schedule) is the above instruction that "[e]mployees who used compensatory time for excess work hours will have the compensatory time credited against the overtime pay entitlement when damages are computed." I find the only reasonable reading of this language to be that (1) the existence of "excess work hours" creates the overtime pay entitlement in the first instance; and (2) that those employees who received and used compensatory time have such time deducted from that overtime pay entitlement.

The 2009 Opinion found the Agency liable "for its regular practice of denying

overtime pay for hours that may be found to be suffered or permitted." Thus, the very existence of the "no overtime" policy creates the liability, irrespective of whether some other non-monetary recompense takes its place. While the Claim Form asks an employee about compensatory hours received and used, it says nothing to the effect that, if they were not, the claim is invalid for any pay periods where that is the case.

From this, in my view, flows the conclusion that those employees who did *not* receive compensatory time do not find their overtime pay entitlement extinguished; rather, there is no compensatory time to cause that entitlement to be diminished.

Furthermore, I refer the parties to the decision of the Federal Labor Relations Authority on the Union's exceptions to the 2009 Opinion. *American Federation of Government Employees National Council of EEOC Locals No. 216 and Equal Employment Opportunity Commission, 65 FLRA 252 (2010)*.

> The FLSA provides that when an employer has not shown that it acted in good faith, the employer shall be liable for "*unpaid* overtime compensation . . . and . . . an additional equal amount [of] liquidated damages." 29 U.S.C. § 216(b) (emphasis and ellipses supplied). Consistent with this wording, Federal courts have awarded or upheld awards of liquidated damages equal to *unpaid* overtime compensation, that is, overtime compensation minus compensatory time already paid….
>
> Consistent with the above precedent, the Arbitrator determined that liquidated damages should equal the actual harm to affected employees, i.e., the overtime compensation owed minus compensatory time already used.

It is clear, in my view, that the FLRA's measure of damages in such cases is the unpaid overtime plus the liquidated damages. If compensatory time is involved, that is applied, as appropriate, to lessen the overall damages and, thus, arrive at a "net" damages figure. Were I to accept the Agency's argument, wherein it seeks to exclude from the claims process employees who did not receive compensatory time, the result would be, in my view, devoid of logic. It would leave me with potentially allowing claims only from employees who received compensatory time (and, therefore, received at least some

recompense, albeit not monetary), and foreclosing the claims of employees who received no compensatory time (and, therefore, received nothing at all for the extra time they worked). If the former have potentially valid claims, then, *a fortiori*, so must the latter. Moreover, such a conclusion is in all respects consistent with 29 U.S.C. §216(b), which identifies an employer's liability as "unpaid overtime compensation" and "an additional equal amount as liquidated damages."

WHETHER CLAIMANTS WHO WORKED ON A FLEXIBLE SCHEDULE MAY BE ELIGIBLE FOR RELIEF

A significant number of claimants have requested overtime payment for hours that, on their Claim Forms, were identified as having been worked on some form of flexible schedule. Still others identified some, or all, of their hours to have been worked on a basic, or some other compressed, non-flexible schedule, whereas, in fact, such hours were worked on a flexible schedule.

As I noted in the 2009 Opinion, the Agreement, at Article 30.00 ("Hours of Work"), Section 30.04(c) sets forth the generally recognized definition of a flexible work schedule program.

> (1) Flexitour which is a flexible schedule containing core time on each work day in which an employee having once selected starting and stopping times within the flexible band, continues to adhere to those times.
> (2) Gliding Schedule which is a flexible schedule in which an employee has a basic work requirement of eight (8) hours in each day and 40 hours in each week, and may select an arrival time each day and may change the arrival time daily as long as it is within the established flexible time band.

As also referenced in the 2009 Opinion, Section 30.04(d) sets forth three variations of compressed work schedules. Such work schedules are contrasted to flexible work schedules, in part, by reference to Section 30.07 ("Credit Hours") of the Agreement, which provides:

> Only employees working under a Flexible Work Schedule who work beyond their eight (8) hour work day may earn credit hours with supervisory approval. An employee may not earn more than eight (8) credit hours in a pay period or accrue or carryover more than eight (8) credit hours. Earned credit hours must be used by the employee with the approval of the supervisor. Earned credit hours must be used before compensatory time or annual leave. Credit hours are limited to eight (8) hours per pay period. Any hours authorized to be worked in excess of the eight (8) hours shall be treated as overtime.
>
> In accordance with 5 U.S.C. §6121(4), employees on Compressed Work Schedule Programs may not earn credit hours.

The Union's reference in Exhibit D of its submission to 5 USC §§6121 *et seq*. does not expand on the Agreement's authority to grant monetary relief to employees on flexible schedules.

In the arbitration proceedings that culminated in the 2009 Opinion, the Agency argued successfully that employees on a flexible schedule (as contrasted with those on basic and compressed work schedules) are not eligible for "suffered or permitted" overtime. In this respect, I noted the following:

> …5 U.S.C. §6121(6) defines "overtime hours" for employees under flexible schedule programs as "all hours in excess of 8 hours in a day or 40 hours in a week which are officially ordered in advance, but does not include credit hours…." Taken together with the provisions of Section 30.07 of the Agreement, the result is that an employee on a Flexible schedule who elects to work beyond eight hours in a day or forty in a week owing to a desire to vary the length of his or her work week or work day, as opposed to supervisory direction, will thereby earn credit hours. By Section 30.07, such hours are limited to eight per pay period. They are not deemed overtime hours for two reasons: (1) they are not officially ordered in advance; and (2) even if beyond the limit of eight per pay period, they are deemed overtime hours only if, under Section 30.07, they are "authorized to be worked."

That credit hours are, by statute, not considered overtime hours was also a finding in *Doe v. United States*, 513 F. 3d 1348 (Fed. Cir. 2008). The court in *Doe* noted, in this regard, that "[t]he only instance in which an agency may provide monetary compensation for credit hours is when an employee ends participation in a flexible work schedule program," citing 5 U.S.C. §6126(b). The Union views the *Doe* case as permitting

employees on a flexible schedule as eligible to "receive overtime money payment, compensatory time, and/or credit hours." As noted above, credit hours are not "monetary compensation."

Furthermore, while overtime, as such, remains available to employees on a flexible schedule, this becomes potentially relevant under the Agreement (see Section 30.07) only after an employee has worked more than eight credit hours in a pay period. Even then, overtime worked must constitute hours "authorized to be worked." These are plainly not "suffered or permitted" hours. There is no denying that the upshot of this entire litigation is the Union's "suffered or permitted" claim. Its grievance alleged that, "[b]eginning on April 1, 2003 and continuing to the present, the EEOC, in violation of the CBA, the law, and regulations, intentionally suffered and permitted bargaining unit employees in the [relevant] positions…to work outside their regularly scheduled tour of duty, to work in excess of 40 hours per week; and to work in excess of eight hours per day without payment of overtime compensation for the hours worked."

In addition, in the "**REMEDY**" section of the 2009 Opinion, I expressly directed that, following its issuance, the parties "meet and earnestly attempt to ascertain what, if any, individual claims of Investigators, Mediators and Paralegal Specialists may qualify for suffered or permitted overtime pay…." This is all the more reason why, without exception in the current claims process, hours worked by employees on a flexible schedule will be ineligible for monetary relief.

The negotiated Claim Form Notice and Instructions form itself explains very plainly to claimants on a flexible work schedule what it is they are not entitled to receive. While not excluding them *per se* from the claims process, they are advised of the

following:

> With respect to employees on a Flexible schedule, the March 23, 2009 arbitration decision concluded that "employees on a Flexible schedule are not eligible for 'suffered or permitted' overtime." However, such employees are not excluded from the claim process, and such claims may be submitted and considered consistent with the "Hours of Work" and "overtime" provisions of the Collective Bargaining Agreement.

I note here that, in assessing the nature of an employee's work schedule in a given pay period, if that employee is on a flexible schedule but may be assigned for a week to Intake and, during that week, may be working the official hours of the office, that does not change the fact that that employee is still deemed to have a flexible work schedule.

THE MATTER OF CREDIT FOR COMPENSATORY TIME USED

While the Union notes in its submission of October 31, 2013 that "[t]he Agency asserts it should receive a credit for compensatory time received," I see no real dispute concerning whether the test to be applied is whether the Agency is to receive credit for compensatory time received, as opposed to compensatory time actually proven to have been used. It is the latter that governs, the only matter relevant to me being whether proof of compensatory time actually used has been established, thereby giving rise to a credit against overtime payment that may otherwise be due a claimant.

This matter is settled in my September 23, 2009 Clarification Award. It plainly found that any monetary award deducts "compensatory time granted and taken by eligible employees." The FLRA, in ruling on the Union's exceptions to the 2009 Opinion, recognized this. See 65 FLRA 252, 255 (2010).

SUPERVISORY KNOWLEDGE OF "SUFFERED OR PERMITTED" HOURS WORKED

The 2009 Opinion spoke at some length on the matter of a supervisor's "actual"

or "imputed" knowledge of employees' working "suffered or permitted" overtime hours, which, under OPM regulations (5 CFR §551.401(a)(2)), constitute "hours of work." Supervisory knowledge is a factual finding. *AFGE, Local 858 and U.S. Department of Agriculture Risk Management Agency, Kansis City, Missouri*, 66 FLRA 152, 154 (2011). The burden of proving such knowledge must be borne initially by the claimant.

The parties are familiar with this concept, as articulated in 5 CFR §551.104, as well as in Section 31.09 of the Agreement and in frequent case law, such as *NFFE, Local 1804 and U.S. Department of Housing and Urban Development Office of Public Housing, Detroit, Michigan*, 66 FLRA 512 (2012) and *AFGE, Council 220 and Social Security Administration, Redding, California,* 65 FLRA 596 (2011). What matters here, in respect to individual claims, is, under the Agreement, whether there is a showing of "work performed by an employee for the benefit of the agency, whether requested or not, provided the employee's supervisor knows or has reason to believe that the work is being performed and has an opportunity to prevent the work from being performed."

The records before me on this issue are, in numerous cases, exhaustive. They typically involve e-mails to supervisors and sometimes lengthy claimant statements as part of the claims submission, offered to prove supervisory knowledge of extra work performed, as well as affidavits (or "Declarations") by supervisors. Sometimes, these supervisor statements reference all claims arising from a given office; others reference individual claimants. In both cases, the supervisory statements attempt to counter claims either of actual or constructive knowledge.

In some such statements, supervisors or managers will assert that the work at issue could have been performed within regular working hours. Indeed, there was

testimony to that effect. For example, Guillermo Zamora, Supervisory Investigator in the San Antonio Field Office, testified, when referencing Intake, that there were no activities of Investigators that *required* them to work beyond regular working hours. True or not, as I noted in the 2009 Opinion, no showing is needed from a claimant that the work at issue could only have been performed outside regular working hours; if a reasonable showing is made that it was performed outside regular working hours, it is that fact that, given supervisory knowledge, potentially qualifies those hours as "suffered or permitted" overtime.

Such declarations, from both parties, are, for the most part, inconclusive as matters of proof. The reason for this is that, from an evidentiary standpoint, they are competing hearsay assertions. Thus, claims of "suffered or permitted" overtime from claimants from a given office typically can neither be reliably proven nor rebutted without resort to actual testimony, including the opportunity for cross-examination.

I am therefore presented in these cases with the issue of supervisory knowledge as a material issue of fact. Resolution of this issue is necessary to determine whether specific claims may be payable. Hearings will, therefore, be required in such cases unless resolved on some other basis.

COMPENSATION FOR TRAVEL TIME

Numerous claimants have included travel time among their requests for overtime, and the rules governing compensation for travel time cover a variety of circumstances. Article 33.00 of the Agreement speaks generally to compensation for travel time, providing, in Section 33.01, that the Agency "shall schedule travel so that, to the maximum extent practicable, the employees perform official travel during normal duty

hours," such travel thus not requiring additional compensation. Section 33.01 goes on to provide that, "[i]f travel must be accomplished during non-duty hours or non-duty days, overtime pay or compensatory time shall be granted in accordance with applicable Federal law and regulations."

Since the "travel time" issue in many of the claims before me deals with whether such time is compensable with money payment, I am required to examine the Federal regulations applicable in such cases. The issue becomes, therefore, whether (1) the relevant travel is compensable in the first instance; (2) the relevant travel is compensable with compensatory time; or (3) the relevant travel is compensable with money payment.

For the most part, the regulations below address the "travel time" issues raised in the claims before me.

5 CFR §551.422 speaks generally to what is deemed "[t]ime spent traveling," and, from a pay standpoint, what is deemed "hours of work." It states, in pertinent part:

> (a) Time spent traveling shall be considered hours of work if:
> (1) An employee is required to travel during regular working hours;
> (2) An employee is required to drive a vehicle or perform other work while traveling;
> (3) An employee is required to travel as a passenger on a one-day assignment away from the official duty station; or
> (4) An employee is required to travel as a passenger on an overnight assignment away from the official duty station during hours on nonworkdays that correspond to the employee's regular working hours.
> (b) An employee who travels from home before the regular workday begins and returns home at the end of the workday is engaged in normal "home to work" travel; such travel is not hours of work. When an employee travels directly from home to a temporary duty station, the time the employee would have spent in normal home to work travel shall be deducted from hours of work as specified in paragraphs (a)(2) and (a)(3) of this section.

The matter of "travel compensatory time," which the Agency frequently references when it takes the position that a claimant does not merit money payment for travel, comes into play when the travel is, under Federal regulations, "not otherwise

compensable." "Not otherwise compensable" means that the travel is not during regular duty hours or otherwise considered "hours of work." This provision is codified in 5 U.S.C. §5550(b). It provides, in part, that "each hour spent by an employee in travel status away from the official duty station of the employee, that is not otherwise compensable, shall be treated as an hour of work or employment for purposes of calculating compensatory time off." OPM regulations implementing the statute are at 5 CFR §§550.1401-1409. "Travel compensatory time" applies whenever one of the four categories under 5 CFR §422(a), above, does not.

Therefore, if a claimant here is not earning money payment by (1) traveling during regular working hours; (2) driving or performing other work while traveling; (3) being required to travel as a passenger on a one-day assignment away from the official duty station; then the only way to earn money payment (as overtime, if the hours qualify) is (4) by being required to travel as a passenger overnight away from the official duty station *and* the official travel occurs on a non-workday during hours that correspond to the claimant's regular working hours. If the travel does not so qualify, the only form of payment authorized is travel compensatory time.

CLAIMANTS SEEKING PAYMENT FOR WORKING THROUGH LUNCH AND BREAKS

Claimants who have asserted an entitlement to pay for working through lunch and breaks should, as the Union argues, receive those monies on the ground that, since these periods are "in addition to their regularly scheduled work hours, the time for lunch and breaks is hours of work." The Agency objects to such claims because break times are included in daily scheduled work hours, and lunch periods are not deemed "time worked." These matters are addressed in the 2009 Opinion and relevant Federal

regulations.

The Union cites the 2009 Opinion to argue that "[e]mployees…who work through lunch and breaks, and complete their scheduled tour of duty are entitled to overtime payment for the lunch and break time…" The 2009 Opinion carefully distinguished between lunch and break times. I accepted the Agency's argument, "for purposes of reckoning 'hours of work' in an administrative workweek, the lunch period is expressly excluded and, thus, may not be counted as time worked for pay purposes." I found that "OPM regulations on this subject are specific and dispositive. 5 CFR §551.411(c) provides: '*Bona fide* meal periods are not considered hours of work…'" However, if a claimant has missed a lunch period by being obliged to work through it, that time is considered "hours worked" for purposes of determining overtime compensation.

In this respect, there are claims, as in the Memphis District Office, where the Agency has argues that, when an employee has worked through lunch, the practice in the office has been for that employee to leave early, thus ultimately generating no extra work hours. The Agency views this as a practice of informally granted compensatory time. In other offices such as Nashville, employees received "No Lunch" credits.

Similarly, the 2009 Opinion speaks to the issue of break periods. Break periods, or "rest periods," as Article 32.00, Section 32.01 of the Agreement references them, are deemed "hours of work" under 5 CFR §551.411(b). The Agency pays for these hours, as they are a part of the regular work day. Therefore, since Federal law considers break periods as compensable work hours, they must be included among hours worked during the pay period. They may thus be considered in determining if overtime was worked (i.e., if the total sum of "hours worked" is greater than 80 in the pay period).

INACCURATE OR MISSING RECORDS OF "HOURS WORKED"

The Agency argues that "[c]laimants who earned compensatory time, whether formal or informal, and then used at least an equal amount of compensatory time in the same pay period did not work 'suffered or permitted' overtime." Correspondingly, the Union argues that "[a]n employer who has failed to keep accurate records of employees' time and attendance is not entitled to a presumption that an employee used compensatory time, which the employee may have received." This argument relies, in part, on 5 CFR §551.402(b), which provides that "[a]n agency shall keep complete and accurate records of all hours worked by its employees." It frequently arises with respect to claimants' FPPS records.

In such cases, the law is clear. If a claimant asserts hours worked and not recognized by the Agency, either by a failure to pay required overtime or mitigated in kind with compensatory time, the Agency may not use its own inadequate records as a defense to a claim that is estimated, rather than specific, by deeming it "uncertain" or "speculative." The standard that both parties recognize is that announced in *Anderson v. Mount Clemens Pottery Co.*, 328 U.S. 680 (1946) ("*Mt. Clemens*"). There, the Court considers a claimant's burden to have been met "if he proves that he has in fact performed work for which he was improperly compensated and if he produces sufficient evidence to show the amount and extent of that work as a matter of just and reasonable inference." *Id.* at 687. The standard of proof for establishing an FLSA violation is not lessened; damages must still be proved. Rather, *Mt. Clemens* gives the claimant an easier way of showing what his or her damages are. Under *Mt. Clemens*, that burden, once met, shifts to the Agency "to come forward with evidence of the precise amount of work

performed or with evidence to negative the reasonableness of the inference to be drawn from the employee's evidence." *Id.* at 687-88. As noted in *Robinson v. Food Service of Belton, Inc.*, 415 F. Supp. 2d 1227 (D. Kan. 2005), the matter boils down to whether the trier of fact views these time records as accurate. If so, as *Robinson* finds, "then any damages owed to plaintiffs will be readily ascertainable by reference to those records," and, if not, "then plaintiffs' evidence concerning their damages is sufficient under *Mount Clemens*."

Thus, the Union argues, citing *Robinson*, which, in turn, cites *Mt. Clemens*, that the Agency "cannot be heard to complain that the damages lack the exactness and precision of measurement that would be possible had he kept records in accordance with the requirements of the [FLSA]."

It is the initial burden under *Mt. Clemens* which the Agency has asserted, in its objection to a substantial number of claims, individual claimants have failed to meet and, therefore, must be denied the requested relief. If a claimant does meet this burden, the burden, under relevant case law, shifts to the Agency to negate a claimant's inferential damage estimate. The initial burden, however, is always the claimant's; the "Notice to Claimants" so states expressly. It is not the obligation of the Agency first to demonstrate that the extra hours at issue were not worked.

WHETHER INDIVIDUAL CLAIMANTS, BY VIRTUE OF WAIVERS EXECUTED WITH THE AGENCY, MAY THUS BE INELIGIBLE FOR RELIEF

Three claimants—Victor Galvan (Dallas), Francine Schlaks (Las Vegas), and Lwanda Okello (Seattle)—are alleged by the Agency to be barred from the current claims process on the ground that they had entered into Settlement Agreements with the Agency covering matters unrelated to their current claims. The Union argues that these

employees' claims may not be so excluded because, apart from all these Settlement Agreements having been executed after the Union filed its grievance in the current case, none was executed with the Union nor did they include the Union as a party. Moreover, it asserts that no effort was made by the Agency to contact the Union for a release of these claims. The Union contends that, as the exclusive bargaining representative of all employees, individual employees may not act contrary to the Union's legal right in this regard. The Agency contends that these previously executed waivers and releases of claims act as a bar to all recovery in the current claims process and these claims must, therefore, be denied on that basis alone.

I conclude that these three claims should not be dismissed on the basis of Settlement Agreements reached between the individual claimants and the Agency on matters unrelated to these proceedings.

Mr. Galvin and Ms. Schlaks entered into their Settlement Agreements with the Agency in 2010. Mr. Okello entered into his Settlement Agreement in 2008. The details of these are not germane. What they have in common is that they are agreements between the individuals and the Agency to resolve certain Title VII or other employment-related claims in exchange for specific consideration. In so doing, the individuals agree to release the Agency from liability for any other matters arising out their employment that occurred prior to the execution of the respective Settlement Agreements.

Based on arguments and authorities submitted by the Union in its October 31, 2013 claims submission, and on Agency arguments in reply on November 20, 2013, I conclude that the current claims of these individuals arise not from filing on his or her own behalf against the Agency. Rather, these claims arise under the auspices of the

Union, which is the moving party in this action, and which initiated its grievance on behalf of all potentially affected non-exempt individuals, acting in its representative capacity as these individuals' exclusive bargaining representative. As such, their rights in this claims process, which arise first from the collective bargaining relationship, are not affected by the unrelated Settlement Agreements reached individually with the Agency.

Accordingly, the claims of Mr. Galvan, Ms. Schlaks and Mr. Okello will be considered without reference to these Settlement Agreements.

PAID LEAVES

The issue arises in many cases where a claimant may be on a paid leave, such as a holiday, annual or sick leave, during all or part of a pay period, and a claim is made for extra hours worked with the expectation that it should be payable as overtime. If, for example, a claimant is on annual leave for 60 hours during a pay period and claims that he or she has performed work for 25 hours during that pay period, the question becomes whether, assuming there is sufficient evidence of such claimed work, any FLSA overtime is generated. Other examples arise where the Agency will oppose all claims of extra hours worked during a given pay period if a claimant is on a paid leave for that entire pay period. The Union takes the position that the use of paid leave, such as annual or sick leave, does not reduce an employee's work hours, and that annual and sick leave are added to the employee's work hours for purposes of calculating the 40-hour work week or the 80-hour biweekly work requirement.

Such hours are, under 5 CFR §551.401(b), considered "hours of work." However, this does not end the matter. These are considered "hours of work" for pay purposes, in that time spent in such paid leave status generates wages. The separate

question is whether such hours of paid leave count toward the calculation of the overtime requirement under the FLSA. For example, if an employee is on annual leave for the entire pay period and establishes that he or she has performed 10 hours of work for the benefit of the Agency while on that leave, the question is whether that 10 hours of work is required to be paid at the overtime rate.

I conclude that the answer to that question is "no." These hours of leave, while recognized as "hours of work" for pay purposes, do not constitute time actually worked and need not be counted among the total hours worked for purposes of determining an entitlement to overtime.

OTHER MISCELLANEOUS ARGUMENTS

Both parties, in their submissions, have raised additional grounds for asserting either that certain claims must be honored or rejected. These will be addressed as the appropriate individual claims are considered. Not every Agency objection to a given claim, nor every Union assertion in favor of granting a claim, is necessarily set out in every case. When a given argument is deemed either not dispositive or particularly relevant to the discussion, it may not be reflected.

ANALYSIS OF INDIVIDUAL CLAIMS (BY CITY)

In general, the below analyses include consideration of the parties' supporting documentation, consisting of Time and Attendance Records, e-mails, FPPS records, and other sources, as appropriate. I will typically reference the principal (although not necessarily all) allegations made by both parties in support of their respective positions, as well as Declarations of both management/supervisory representatives and claimants

themselves. For example, many claims resulted in Agency objections that they are outside the scope of the findings in the 2009 Opinion, that a claimant received and used compensatory time or time off in the same pay period, and/or that supervision could not have known or prevented the challenged work from being performed. If one or more such allegations I have referenced are not necessary to my determination on the *bona fides* of a given claim, I make no formal finding thereon. Furthermore, the Union's claims for relief uniformly include a demand for payment for extra hours worked, minus any compensatory time received and used, and an equal amount of liquidated damages.

In addition, in cases where Declarations of managers and/or supervisors are relied upon by the Agency in most, or all, cases from a particular office, I will typically summarize these Declarations before specific claims for that office are examined. They may be referenced again, as necessary, in the consideration of specific claims when reference is made to the circumstances of individual claimants.

Finally, the parties are advised that, in claims where the Agency has indicated, by way of a monetary offer, how it values the claim, I have proceeded to grant hearings. In such cases, the Union retains the clear option either of accepting the offer or choosing to proceed with a hearing if it believes other bases may exist for additional relief. One reason I do not simply direct that a claim be resolved consistent with such an offer is that the offer surely takes into account resolution of certain issues in the Agency's favor, such as those of supervisory knowledge and reckoning only pay periods in which compensatory time is earned. Nor, on the same evidentiary basis, do I grant the Union's relief as requested. Another reason I do not direct that a claim be resolved on the basis of an Agency monetary offer is that it is for the Union and the claimant, not for me, to

respond to it. Further, I note that, merely because I allow a hearing to determine if other bases may exist such that the proposed Agency remedy should not be directed, this does not invite additional arguments that lack merit. Such bases, to prevail, must still make the case for overtime hours worked along with actual or constructive supervisory knowledge.

However, in cases where the Agency makes a monetary offer, I strongly suggest an attempt be made at resolution of such claims through settlement discussions, rather than a hearing, and so avoid additional time, expense and logistic issues. In some cases, I expressly state that; in others, I do not. Therefore, in those claims where I conclude that a hearing should take place, this is not to be understood to discourage the parties from attempting their own resolution, which I strongly favor. In other cases where hearings are directed absent an Agency offer, the parties should attempt, to the extent practicable, to seek such a resolution as well.

ALBUQUERQUE

Charles Mayfield

Mr. Mayfield, now retired, worked as an Investigator in the Albuquerque Area/Phoenix District Office from before the claims period until about December 31, 2004, principally on a 5/4/9 compressed schedule. He claims 82 hours over 12 pay periods, beginning about April 7, 2003 and ending December 30, 2004. In addition to his duties as an Investigator, he noted that he also worked as a State and Local Coordinator, first in the Albuquerque Area Office, and then in the Phoenix District Office. As he noted further, the State and Local Coordinator position was initially classified as non-exempt, but was later changed. In fact, that is the case, the change having been directed

pursuant to my Opinion and Award of March 23, 2008.

While Mr. Mayfield appeared not to have submitted his claim information on the actual Claim Form, he explained his circumstance in a September 18, 2013 Supplemental Affidavit. In it, he noted:

> …When I submitted my claim, I had difficulty getting records from the Albuquerque Office. My claims forms were damaged by a spill and could not be used. I contacted Madelyn, the Administrative person in Albuquerque and she advised that I just type up the information and submit, what I typed up. I was at a disadvantage because I had such difficulty getting the records I needed, so I had run out of time. My claim is based upon the records I received and to the best of my recollection, extra hours I worked and compensatory time I received. I was not contacted by Rust Consulting and informed that my forms I submitted were not acceptable.

The Union contends that, in light of Mr. Mayfield's circumstance, coupled with the fact that Rust Consulting did not contact him with respect to his claim, and that Union counsel was likewise not notified of claim issues until August 17, 2012, Mr. Mayfield's claim should be honored in the ordinary course.

While Mr. Mayfield's Claim Form data does, in fact, appear to have been submitted in the proper format in his "Enclosure 3," it is not necessary to examine whether there is anything procedurally infirm here, inasmuch as the Agency makes no such allegation concerning Mr. Mayfield's claim, which was otherwise timely filed. I note that the Union was informed on August 17, 2012 that Mr. Mayfield was one of eight identified "possible [claim] amendment requests," but my review does not reveal that Mr. Mayfield's claim is defective or subject to meaningful challenge.

The Agency notes he claims 82 hours over 12 pay periods for which he earned compensatory time instead of overtime. He used compensatory time in many of the same pay periods. It calculated he is owed $524.16, representing 17.5 hours, plus liquidated damages, for a total of $1,048.32.

From the records, it appears that, on each occasion he earned compensatory time, he submitted a Compensatory Time Request form to his Office Director. In addition, he submitted biweekly Time and Attendance Certifications. These are not, as the Agency suggests, entirely consistent with the FPPS records for Mr. Mayfield. They do generally jibe, as, for example, in pay period 200403, where he reported having worked 82 hours with no compensatory time used, his FPPS record for this period noting that he did earn 2 hours of compensatory time (on the Saturday of the first week) but used none. However, the Time and Attendance Certifications are not to be uniformly relied upon, as, for example, in pay period 200314, where he claimed to have earned 4 hours of compensatory time and the FPPS records show him to have earned 10 hours, or in pay period 200324, where his two-week total of work hours should be 62, not 32.

The Agency, in concluding that Mr. Mayfield is entitled to payment of 17.5 hours of overtime, stated that this is higher than Mr. Mayfield's actual claim, inasmuch as Mr. Mayfield was inclined to overstate the amount of compensatory time he used in the same pay period in which he made a claim. My review of Mr. Mayfield's claim, alongside his FPPS records, reveal that (1) the two are reasonably consistent; and (2) there are, in fact, instances where he asserted having used compensatory time when FPPS records reflect either fewer or no such hours used. Examples of the above are seen in pay periods 200314, 200320 and 200322.

The Union believes that, based on the complete and totally documented submission by Mr. Mayfield, and the correct calculation of overtime pay, his claim should be honored. I direct the parties to advise me whether they are able to agree on the Agency's calculation of the monies due to Mr. Mayfield.

Rita Montoya

Ms. Montoya worked as a Mediator in the Albuquerque Area Office, working a 4/10 compressed schedule. She testified during the hearings in Los Angeles, CA. She claims 37.5 hours over 28 pay periods. The Agency argues that all of Ms. Montoya's claims should be denied "because Ms. Montoya specifically requested and desired compensatory time."

The Agency contends, in addition, that her claims are outside the scope, that she received compensatory time for most of her claims, that, for two of her claims, she received and used compensatory time in the same pay period, that she was properly compensated for her travel claims with travel compensatory time, and that, for hours for which she did not receive compensatory time, her supervisor was not aware of such work.

In fact, Ms. Montoya's testimony, for the most part, supports the Agency's assertion. In the 2009 Opinion, as part of my discussion of the FLSA entitlement to overtime pay (in lieu of a forced acceptance of compensatory time), I identified Ms. Montoya as "[one] of those occasional employees who genuinely did request compensatory time for reasons that were clearly expressed." In the case of Ms. Montoya, her testimony was such that, as I found, she "view[ed] compensatory time as a convenient way of countering a low leave balance."

There is a dispute regarding the sufficiency of Ms. Montoya's claim. The Agency has clearly communicated its position that Ms. Montoya's Claim Form revealed nothing specific with respect to "explanation or supporting documentation." Indeed, the Claim Form itself reflects little more than her use, by my reckoning, of 29.75 hours of compensatory time from pay periods 200311 to 200815. The Union, in its response to

the Agency's objections, stated that Ms. Montoya had sent a letter on March 19, 2012 to Agency counsel, stating that the Union had further documents that supported additional hours for her claim, and that the Union did not become aware of this letter until it received the claim database in March 2013 (nearly ten months past the claim filing deadline). The Union asserts that, in light of Ms. Montoya's submission of a Supplemental Affidavit requesting consideration of additional hours, her asserted overtime pay claim should be recalculated to reflect the supplemental hours and compensatory time used.

Ms. Montoya's Supplemental Affidavit, dated September 13, 2013, stated in essence:

> …When I completed my claim forms, because I had been a witness during the hearings, I did not understand that my records, which were in the possession of the Union were not considered a part of the hearing record. I did not know that I had to submit those hours on the claim form submitted in the claim process. I sent my March 19, 2012 letter to Jason Hegy [then Agency co-counsel on this case], because I believed he was aware of my hours worked, which were shown in the Union records. I did not realize and did not know that Mr. Hegy did not contact Ms. Hutchinson about my letter. I first learned of the letter, when Ms. Hutchinson contacted me, in March 2013, when she received the claims database. Ms. Hutchinson told me at that time that she had never received my letter. I informed Ms. Hutchinson that my letter was meant to inform Mr. Hegy that I wanted all the hours which were in the documents in the possession of the Union to be considered a part of my claim.
>
> I wish to have my claim supplemented by the hours contained in the documents in the possession of Ms. Hutchinson. Had I been contacted by Mr. Hegy and/or Ms. Hutchinson, within the claim filing period, I would have supplemented my claim at that time.
>
> I did request records from the EEOC, but I did not receive records for all of the pay periods. The pay code list, which is contained at page 6 of my documents submitted by mail and which I received from the EEOC, did not contain pay codes for travel time, so I was not aware that I could claim overtime for travel. I did not list the travel time on my claim form, because the pay code list provided to me did not contain a code for travel used and earned. I wish to supplement my claim to claim all travel time, earned and used, listed on my FPPS documents, my biweekly time sheets, my biweekly certification sheets, and leave slips.

The Agency further asserts that Ms. Montoya's claims covering pay periods

200311, 200524, 200624 and 200725 should be rejected as being outside the scope of the 2009 Opinion, inasmuch as Ms. Montoya did not receive compensatory time instead of overtime. In addition, it notes Ms. Montoya's receipt of travel compensatory time (rather than overtime) in some pay periods was the correct action. From the FPPS records, I find those pay periods to be 200521, 200523 and 200616.

The Union contends that Ms. Montoya's claim and supplement are fully documented, including the compensatory time used, and her supervisors were aware of her work. It asks that Ms. Montoya's claim be supplemented and her overtime pay entitlement recalculated. It asserts that her error was not intentional and that she should not be penalized for the Agency's failure to advise Union counsel of her letter.

The Agency seeks dismissal of all Ms. Montoya's claims. Short of that, it notes that damages should be based on FPPS compensatory time analysis, which, by its calculations, would result in 13.375 hours, doubled for liquidated damages.

Whether Ms. Montoya's circumstance was a matter of inadvertence, and whether it may have been compounded by a lapse in needed communication between the parties, is uncertain. I am aware of the need to preserve the parties' understanding of the importance of giving full consideration only to timely filed claims. Ms. Montoya's was timely filed, but it is obviously the later-discovered supplemental information that is now at issue. I note further that Ms. Montoya is among those claimants who had been granted a 60-day extension of time to file her claim. I will meet with counsel *in camera* to determine whether, in view of the known facts of Ms. Montoya's case, sufficient basis exists to consider the supplemental information presented by the Union.

Atlanta

The Agency submitted information applicable to Atlanta claims generally. This is replicated in its arguments regarding the numerous Atlanta claimants. It first offered brief excerpts of testimony received during the Atlanta hearings, including testimony from claimants as well as members of management. It dealt principally with the following areas: the contents of sign-in/sign-out sheets and their reflecting actual time worked (as opposed to uniformly setting forth the official hours of the office); instructions to employees that they were to sign out and leave the building by 6:00 P.M., with employees being reprimanded for exceeding their scheduled hours; earning "cuff time" for extra hours worked, which were then used so as not to be counted as overtime; and that work performed outside of a regular schedule usually consisted of weekend Outreach.

It submitted also the Declaration of Bernice Williams-Kimbrough, District Director of the Atlanta District Office. She declared, principally, the following: She regularly reminded all bargaining unit employees that they were not permitted to work beyond their regular hours. She was not aware of any Investigators, except those assigned to Intake, who worked after their scheduled hours to complete their work. Those who stayed after hours performing Intake were to ask their supervisors for time off and to use such time before any other leave, preferably in the same pay period. She knew of no Investigator, Mediator or Paralegal Assistant who worked excess hours at home or early in the morning before scheduled hours. Mediators who stayed late to finish mediations world be given time off if requested of supervision. She noted finally that sign-in/sign-out sheets should reflect actual hours worked.

Several claim files also include the Declaration of Program Analyst, Terrie

Dandy, who was in charge of Outreach activities in the Atlanta District Office. Ms. Dandy declared generally as follows: When employees conduct Outreach events, they are supposed to give her information about the event, so that a record can be created. She attached to her Declaration the Agency's Outreach records. Most high school Outreach is conducted during the day, but a few have occurred after school. If there were to be a six-hour presentation, it would typically occur during regular business hours if it was during the week.

In some cases, additional Declarations are included by the Agency. These will be referenced as appropriate.

Anika Anderson

Ms. Anderson worked as an Investigator in the Atlanta District Office during the entire claims period on a 4/10 compressed schedule. She claims 448 hours over 148 pay periods. The Agency objects to Ms. Anderson's claims on grounds that they are outside the scope, that they are supported by insufficient evidence, that any claims for travel are not compensable with overtime, that working through breaks does not merit overtime, and that her supervisor could not know of or prevent her claimed extra hours.

In support of her timely claim, dated May 28, 2012, Ms. Anderson submitted a statement which sets forth the following:

> I declare the foregoing facts are true to the best of my knowledge and belief. The information provided in my claim is provided based on what I recall due to the lack of records. For the period that I worked in the Atlanta District Office EEOC (2002 to 2009), I was one of the top investigators producing numerous cases per year. In May 2012, I sent a request to Hank Welsoksi at the Atlanta District Office requesting my case processing report for the years 2003-2009, but I have not received the documentation. This documentation would have showed the outstanding work I achieved yearly as an Investigator of the Atlanta District Office. Intake in the Atlanta Office was very heavy, requiring the investigators to work late in the evening, or not taking lunch during our intake rotation week to

> service customers[.] Further, I was Acting Supervisor for an extended period of time (in 2008), and I still had to work on my own cases as well (dual roles). I was also appointed as a Systemic Investigator for the Atlanta District Office in order to get the systemic investigations going in Atlanta. To achieve the above normal case processing, it required me to work many hours beyond my scheduled work hours. We were encouraged not to annotate actual hours worked on our sign in sheets by our supervisors, District Director, and Deputy Director, but were often encouraged to process additional cases. I often found myself working not only after my normal duty hours during the week, but also on the weekends or my regular day off. It was more often than not that investigators worked beyond their scheduled tour of duty to meet the high standards unofficially imposed.

Before assessing the *bona fides* of Ms. Anderson's claim, I point out something that, as necessary, I will have to reference in my response to other claims as well. This is not a performance-based dispute. There is no question that many in the group of claimants before me, as well as others in the eligible class of employees, were high-achieving workers, and were frequently praised on the record by their supervision for the quality of their work and their dedication to their clients. However, this has little to do with whether there is a reasonable showing that they performed suffered or permitted overtime and were not properly compensated therefor.

As in some other claims arising from the Atlanta District Office, the Agency set forth, as part of its claims objections, a summary of what it deemed as probative evidence of both supervisory and Union witnesses that employees were consistently instructed not to perform work outside their assigned work hours. In addition, the Agency asserts that employees were instructed to report extra hours worked to their supervisor, who would later give them time off for the extra time worked. It maintains that, when such hours were approved in advance, supervisors sometimes gave employees official compensatory time for such hours, and that these hours were entered into the FPPS system. It notes, in addition, that, "[u]nless official compensatory time was awarded, the extra hours worked

were not recorded as extra hours in time and attendance records, but were sometimes recorded on sign in/out sheets."

The Union contends that "the Agency failed to respond to her document request," and that, for this reason, "[t]he failure to respond to Ms. Anderson's document request prevented Ms. Anderson from providing more specifics for her claim." It notes that Ms. Anderson, in her statement, described the nature and extent of the work she performed, and that her claim raises a reasonable inference that she performed the work for which she was not paid. The Union states that this is particularly so in light of the testimony of Deputy Director John Fitzgerald, who testified that "cuff time," or "off the books" work (sometimes also referenced as "unofficial compensatory time") was an authorized Agency practice. It argues that, since the Agency alleged that work was not performed, it must produce specific evidence. It states that, while the Agency sought to rely on the testimony of Investigator Rosalyn Williams, it failed to note that she testified that supervisors maintained sign-in/sign-out sheets and that it was mandatory to take a charge if a member of the public traveled more than fifty miles or if the 180-day charge filing deadline was about to expire. It asks, therefore, that the Agency's objections should be dismissed by reason of its failure to provide Ms. Anderson with the documents she requested.

It appears, from Ms. Anderson's own statement, that she made this document request in May 2012. It is unclear from this statement whether this request was made of Mr. Wesloski early enough in May in order for Mr. Wesloski (or someone under his direction) to have a reasonable enough period of time to respond to her well before the May 29, 2012 claim filing deadline. It is also unclear whether Ms. Anderson suggests

here that she did not have sufficient time to incorporate this information, as well as the basis or bases for why it might advance her claim, in time for her claim to be timely.

The fact is that Ms. Anderson is one of the numerous claimants on whose behalf the Union successfully moved for a 60-day extension of the May 29, 2012 claim-filing deadline. Therefore, Ms. Anderson's claim, and any supplemental information relevant thereto, might legitimately be filed as late as July 28, 2012.

However, since this additional 60-day period appeared to yield no additional data in support of Ms. Anderson's claim, I am left with little more than what the Claim Form itself reflects, which, while I have no reason it was not completed in good faith, is so general as to not assert a claim that might give rise to monetary relief based on just and reasonable inference.

Therefore, I am unable to find sufficient basis to grant Ms. Anderson's claims.

Eric Brinson

Mr. Brinson worked as an Investigator in the Atlanta District Office from before the beginning of the claims period to May 14, 2005, reporting on his Claim Form that he worked a basic schedule. He claims 72 hours over 11 pay periods.

Mr. Brinson's claimed hours appear exclusively to involve Outreach and onsite activities. He included in his submission numerous Automated Outreach System ("AOS") Data Entry Forms. In addition, he submitted three requests for compensatory time for Outreach activity, two in September 2003 and one in August 2004 (each requesting eight hours). Also included in his Claim Form is a fiscal 2003 onsite log, listing fifteen entries from October 2003 to September 2003.

Mr. Brinson's Claim Form, while it appeared to confuse his own work hours with

the official hours of the office, reveals that his regular work hours were 7:00 A.M. to 3:30 P. M. for each of the 11 pay periods for which he claims relief. In this case, Mr. Brinson's daily hours are different from the normal 8:30 A.M. to 5:00 P.M. hours for the Atlanta District Office, as referenced in the Declaration of Atlanta District Office Director, Bernice Williams-Kimbrough, which, for these purposes, I am prepared to credit (although her Declaration mistakenly identified these hours as applying to the "Miami District Office").

The Agency contends that Mr. Brinson was on a flexible schedule for every pay period claimed, and that his claim for travel is not compensable with overtime. It asserts also that, since Mr. Brinson advised his supervisor, Charles Mitchell, on September 8, 2004, that he planned to use his eight hours of compensatory time, earned on August 30, on September 9, he would not have been entitled to overtime. Similarly, he would not have been entitled to overtime on other occasions, since, consistent with office practice, he would have been granted time off for extra hours that he reported to his supervisor.

The Union contends that Mr. Brinson's supervisor was aware of his Outreach and onsite work during extra hours, one example of which was his travel on August 30, 2004 to Macon, GA for Outreach, which is 84 miles from Atlanta. It asserts that the Agency has no record that compensatory time was used and Mr. Brinson's Claim Form does not show the time was used.

In fact, as the Agency correctly notes, Mr. Brinson was not on a basic work schedule. His hours were the same each pay period, but, since they do not comport with the normal work hours for the Atlanta District Office, he was actually, in fact, on a flexible schedule for each of the 11 relevant pay periods.

Accordingly, consistent with my general finding concerning employees who worked pay periods on flexible schedules, I conclude that Mr. Brinson is not eligible for "suffered or permitted" overtime, and his claims, therefore, must be denied.

Carolyn Daniel

Ms. Daniel worked as an Investigator in the Atlanta District Office from before the beginning of the claims period until the end of pay period 200615. She claims 427 hours over 118 pay periods, during which she worked a 4/10 compressed schedule. The Agency objects to her claims on grounds that she did not submit sufficient evidence to create a just and reasonable inference that she worked the overtime hours that she claims or that these hours were suffered or permitted by the Agency, and that her claims are outside the scope.

Her Claim Form, in which she did not report having received compensatory time, was supplemented by a handwritten statement that asserts the following:

> I declare that the statements are true and correct to the best of my knowledge.
>
> On July 3, 2006, I retired from the EEOC as a Federal Investigator, GS 12. My regular work schedule was a 4/10. However, during the time I worked Intake, my schedule was changed to a regular 8-hour day.
>
> Working Intake was particularly troublesome because rarely did I take a lunch break. I also had to work each day until the job was completed. In Intake, I usually worked two or three additional hours each day. I remember that I asked management several times if we could stop seeing charging parties around 3:00 pm. This would have given me enough time to complete the interview process and paperwork, within the time designated. I was told "no," with an explanation that our mission was to serve the charging parties. Many days, I was the only Investigator left in the Intake area. This was a very frightening experience. I asked for compensation and was told no.
>
> In order to keep attendance, we had a sign-in/sign-out sheet that we used daily. However these sheets did not adequately reflect how many additional hours I worked because I was told not to sign out at the time I finished or left the office, but the official closing time of the office. It is impossible to show all of the overtime hours worked because records were not kept accurately.

> The Investigators were assigned enormous amount of charges to investigate. We were expected to do a certain number of no causes, causes, settlements, on-sites, and out reaches. I also was assigned the responsibility of acting supervisor, in the absence of the supervisor, on numerous occasions. We were always experiencing hiring freezes which resulted in not having enough Investigators to do the work. All of this…resulted in our having to work overtime hours, which resulted in no additional pay. We had to work these hours just to meet the office requirements.
>
> In order to do onsites and out reaches, I used my personal vehicle most times. Some onsites required that I had to leave from home, which meant I left before my actual shift began. Most of my outreaches were conducted after hours; at civic groups, churches, and so forth. Our unit worked several hours of overtime. Although, I asked to be accommodated (some form of compensation), the answer was the same, no.
>
> Again, the above statements…that I have presented are accurate and true to the best of my recollection. [Ellipses do not indicate text is abridged, and reflect only adjustments in punctuation.]

In a "P.S" to her note, Ms. Daniel wrote: "Thank you for all you have done to correct the overtime injustice."

The Agency contends that Ms. Daniel has not provided sufficient evidence to support most of her claims, noting that her statement is relatively vague. It asserts that Ms. Daniel does not describe the work being performed, when it was performed, or the basis of her claim that she worked varying hours of overtime in some pay periods but not in others. In addition, it argues that Ms. Daniel's references to traveling to onsites does not give rise to a valid claim for pay.

The Agency included here a Declaration from Terrie Dandy, Program Analyst at the Atlanta District Office. In her position, she is responsible for Outreach activities, and for creating a record of those events. She attached extensive Outreach records to her Declaration, asserting further that most Outreach is conducted during the day.

The Union contends that, inasmuch as the Atlanta District Office maintained inaccurate records, it must produce specific evidence to show that the hours claimed were

not worked. In addition, it states that Ms. Williams Kimbrough's Declaration, wherein she informed employees not to stay beyond their work hours, is refuted by Deputy Director John Fitzgerald's testimony, arguing that the Agency may not rely on "vague statements and contradictory declarations" to defeat an employee's claim.

Ms. Daniel's claims, and the contents of her statement, are not necessarily compelling by themselves. The very large number of sign-in/sign-out sheets that are before me are likewise not of themselves sufficient. However, she herself is placing in issue the accuracy of these records when she alleges that she was effectively instructed to cause these documents not to reflect hours worked beyond the official hours of the office.

The result of this is that I am required to balance Ms. Daniel's allegations that she was instructed to limit the hours she was permitted officially to report with the Agency's declarations to the contrary—specifically, those of District Director Williams-Kimbrough, former Supervisory Investigator Sylvia Hall (who spoke principally about another employee while stating that, when she was an Investigator, she earned outstanding performance appraisals while not working extra hours), and, to a lesser extent, Program Analyst Terrie Dandy. None of these is evidence; if there is to be proof of the one or the other, I must receive evidence. Therefore, while I reject the Union's demand that monetary damages must be awarded based on the current state of the record, I likewise reject the Agency's demand that these allegations must be defeated based solely on untested declarations, an evidentiary matter that I referenced earlier in the introductory section of this Report.

Therefore, I conclude that this claim should be referred for hearing, consistent with my ruling on the "outside the scope " issue, with specific reference to the manner in

which sign-in/sign-out sheets were directed to be prepared.

Helen Garrett

Ms. Garrett worked as a Paralegal Specialist in the Atlanta District Office from before the start of the claims period through her retirement in May 2008. Ms. Garrett submitted a Claim Form dated May 24, 2012. However, it was not completed and thus does not identify specific overtime hours for which she claims relief.

Ms. Garrett, who testified at the hearings in Atlanta, GA, submitted the following statement with her Claim Form, asserting that she had worked numerous hours of overtime:

> While employed with EEOC, I worked a flexible work schedule wherein, I worked a fixed five day a week schedule with hours selected by me. Over the period of time from 2003 until 2008, I changed my work schedule a few times wherein I sometimes had a work schedule of 5-4-9. I always worked an addition 1 or 2 hours each day on a daily basis 5 days a week, plus approximately an additional 4 to 6 hours on the weekends. This equates to working on a regular weekly schedule of approximately 50 to 60 + hours a week.
>
> During my employment at EEOC, I worked under three different Regional Attorneys, William Snapp (now deceased), Robert Royal and Robert Dawkins. Both Regional Attorneys Robert Royal and Robert Dawkins were aware of the numerous backlog of Freedom of Information Act Requests that needed to be processed, as well as, paralegal responsibilities, filing court documents, reports and other legal and administrative duties. It was a fact that when the other paralegal, Mrs. Glenda Sims, retired (not sure which year but probably somewhere between 2005 and 2006) that left only one paralegal (me) to handle both my responsibilities and the duties that Mrs. Sims was previously responsible for. I was provided with sporadic assistance occasionally but the workload was such that I was compelled to work additional hours on a daily basis. I would take files home at least 3 weekends a month as well. In addition, I sometimes would even come into the office on Saturdays and would work at least 4 to 6 hours. On several occasions, I came into the office along with another EEOC employee, Pamela George, Esq.
>
> I am not sure of all the exact dates that I worked extra hours but I state under penalty of perjury that I did in fact work extra hours during the time period of April 7, 2003 up until the time period that I retired in May, 2008. I did not keep accurate records of each and every time, days or hours that I worked.
>
> The EEOC office had a sign in and a sign out sheet. The sign out time is not

accurate in that, it was the policy of the office to not sign out after 6:00 p.m. On the days that I came into the office at 8:00 a.m. or 8:30 a.m. I would often work more than 8 hours. I write this statement because I am unable to fill out the forms that were sent to me via U.S. mail for pay period number/dates spanning from 2003 up until 2008, nor am I able to know my schedule for this pay period timeframe of 2003 to 2008. I recently (2012) went to the Office of the EEOC Atlanta District Office but the documents to be reviewed were too numerous (approximately over 500 pages). I believe that the agency (EEOC) has data which consists of e-mails sign-in sheets, cost accounting sheets, etc. that should reflect my hours. None of this data, however, will reflect the true or correct hours that I actually worked since it was a requirement to sign out not later than 6:00 p.m.

The EEOC office had a sign in and a sign out sheet. The sign out time is not accurate in that, it was the policy of the office to not sign out after 6:00 p.m. On the days that I came into the office at 8:00 a.m. or 8:30 a.m. I would often work more than 8 hours. I write this statement because I am unable to fill out the forms that were sent to me via U.S. mail for pay period number/dates spanning from 2003 up until 2008, nor am I able to know my schedule for this pay period timeframe of 2003 to 2008. I recently (2012) went to the Office of the EEOC Atlanta District Office but the documents to be reviewed were too numerous (approximately over 500 pages). I believe that the agency (EEOC) has data which consists of e-mails sign-in sheets, cost accounting sheets, etc. that should reflect my hours. None of this data, however, will reflect the true or correct hours that I actually worked since it was a requirement to sign out not later than 6:00 p.m.

I am attaching documentation I received from EEOC, Atlanta District Office, which somewhat supports my claim. Included in this documentation is a memo that I wrote to the District Director, Mrs. Bernice Williams-Kimbrough explaining my workload. It was precisely because of my heavy workload with little or no help that my workload became unduly burdensome. I was eventually given some help to relieve the situation but the workload required additional assistance which the office was not able to provide without hiring another permanent full time employee. Due to budgetary constraints, hiring additional staff was not an option. The District Director and Regional Attorney provided as much temporary assistance as they could once they realized how serious the backlog was but it had escalated to a degree that was uncontrollable. Therefore, I felt a constant need to work overtime on a continuing basis. I can provide EEOC witnesses and family members who can attest to seeing and knowing that I not only worked extra hours but that I also took work home on the weekends on a regular basis.

She also submitted a significant number of time and attendance records, including sign-in/sign-out sheets.

Along with her documents, Ms. Garrett also submitted the following statement:

…This documentation is not submitted to show my performance but to show that

> because of the backlog and shortage of staff, I felt compelled to work overtime every week that I was employed with EEOC in order to keep up with the work as much as I possibly could. I also brought work home on the weekends at least three weekends a month and also came into the office on Saturdays at least once a month. This became especially critical when the other paralegal, Ms Glenda Sims retired. I think she retired sometime in 2004 or 2005.
>
> My supervisors were aware that I worked extra hours but were not always fully aware of the number of hours that I was working. However, they were aware of the backlog and shortage of staff. I have several EEOC witnesses who can also attest to my working overtime hours.

Further, Ms. Garrett's file includes a notation that, owing to her good performance on the job, she was named "Employee of the Quarter" for the second quarter of Fiscal Year 2007. She added a note stating that "I could not have gotten this award had I not worked a lot of overtime hours to try to keep abreast of the workload." While this is not, as I have indicated elsewhere, a performance-based process, I acknowledge Ms. Garrett's significant contributions.

Ms. Garrett submitted a Supplemental Affidavit, dated October 3, 2013, stating:

> …When I filed my claim, because I did not have accurate records of my hours, I did not fill out the claim form. My affidavit and supporting documents show that I worked overtime hours every pay period, because of the heavy workload. When I was on a flexible work schedule, I did not use the extra hours I worked to vary my arrival and departure time, on a daily basis. I was not permitted to sign in/out at my actual arrival and departure time, so my actual hours of work are not reflected in the Agency records. In April, 2003, I was a grade 11, step 8. I was a grade 11, step 9, when I retired in May 2008.
>
> My FPPS records, provided by Ms. Hutchinson, for pay periods 200308(3/23/2003) through 200412(5/29/2004), I was on a 5/4/9 compressed work schedule. From pay period 200413(5/30/2004) until 200714(6/23/2007) I was on a fixed 8 hour flexible work schedule. From pay period 200715(6/24/2007) until 200810(5/10/2008) I worked a 5/4/9 compressed work schedule.
>
> I make the following claim for my extra hours worked:
>
> For pay periods 200308 to 200412, 11 hours per pay period for a total of 341 hours of overtime. I worked these hours because of my workload. I was not aware that it was illegal to give me credit hours and I was not informed I could be paid money for the extra work hours. If I received compensatory time, it should be reflected in the email records of the agency. If the agency does not

> have emails showing I received compensatory time, then I did not receive compensatory time for the work.
>
> For pay periods 200413 to 200714 I was on a fixed 8 hour flexible work schedule. I worked 11 hours per pay period for a total of 880 hours. The extra work hours were because of the heavy workload, which is supported by my affidavit and supporting documents. I was not working the extra work hours to vary my arrival and departure during my work week. I would receive credit time when I was on a flexible work schedule. The credit time is reflected in agency emails and memos, since I was not permitted to sign in/out with my actual arrival and departure times. If there are no agency emails, then I did not receive credit time. My supervisor was aware of all the extra hours I worked.
>
> For the pay periods of 200715 to 200810, I worked a 5/4/9 compressed work schedule. I worked 11 hours per pay period for a total of 253 hours. I worked these hours because of my workload. I was not aware that it was illegal to give me credit hours and I was not informed I could be paid money for the extra work hours. If I received compensatory time, it should be reflected in the email records of the agency. If the agency does not have emails showing I received compensatory time, then I did not receive compensatory time for the work.
>
> Because of my workload, I worked extra work hours daily and on weekends, with my supervisor's approval. I could not possibly have completed the work I did, without working the extra hours.

The Agency asks that Ms. Garrett's claims be dismissed on the basis of her not having completed a valid Claim Form (as well as numerous others, among these being that Ms. Garrett worked principally on a flexible schedule).

The Union contends that Ms. Garrett was hindered in filing her claim owing to the Agency's failure to maintain accurate records. It points to Ms. Garrett's documentation showing the specific work she performed and the overwhelming FOIA workload which caused her to work a substantial number of extra work hours. It states that, since Ms. Garrett did not submit a Claim Form, Rust Consulting did not calculate her overtime pay, and did not bring Ms. Garrett's claim to the attention of the Union. It was clear, the Union asserts, that Ms. Garrett intended to file a claim, but she was obstructed owing to the Agency's failure to maintain accurate records. It notes that the Agency has no documentation to dispute the significant records Ms. Garrett submitted in support of her

claim, and it should be directed to calculate her overtime monies in accordance with the agreed-upon formula.

Unfortunately, Ms. Garrett's failure to complete her Claim Form, irrespective of the Union's argument (on which I make no judgment) that this was the fault both of the Agency and of Rust Consulting, renders her claim invalid. Any other conclusion simply gives no credence to the very claims process on which the parties, after great effort, agreed. This process clearly requires a claimant to fill out and submit a Claim Form either on line or by mail, and identify applicable pay periods, since each is deemed to be a separate claim. This process was not followed here, and I am not persuaded that, despite the difficulties Ms. Garrett asserts she encountered, she could not have filed a timely claim that could have allowed her evidence to be fully and fairly considered.

Accordingly, for the above reason, this claim must be denied.

Lucille Greene

Ms. Greene worked as an Investigator in the Atlanta District Office throughout the claims period, working principally a 5/4/9 compressed schedule. She claims 316 hours over 114 pay periods. Her Claim Form reflects her assertion that she worked between 1 and 6 hours of overtime in each of those pay periods.

Ms. Greene submitted a statement, in support of her claim, that asserted, among other matters, that

> [d]uring the relevant time period I worked overtime to complete investigations, to conduct out of town on-site visits, outreach activities, and to perform intake duties. I requested documents from the union…and the Commission…but was unable [to] receive documents that were needed to support my overtime hours. However, there are co-workers and former co-workers that can support my overtime claims because we all worked late together to meet the office goals. A few of the employees that I worked overtime with on a regular basis are: Vera Sims, Rosalyn Williams, Joann Morrow, and Patricia Quashie.

In addition to attachments she submitted in support of her claim to overtime hours, including hours performing Intake, Charge Receipt forms and references to documents saved on her computer drive, she wrote:

> I worked overtime in intake because we were instructed to take all walk in Potential Charging Parties up to 5:00 p.m. There were times when the interview was not completed by 5:00 pm. I can recall one intake interview I did not complete until 6:00 p.m. (but cannot remember the date). Also overtime was required to complete the intake files on a daily basis on the next business morning. I worked late on the Friday of intake to complete all my intake files and prepare them for management assessment due to my off day being the Monday after completing my intake rotation. In June 2008 and January 2009 a total of four Investigators assigned to my Team left the agency which left a shortage during the intake rotation period and required the remaining Investigators to work overtime to complete the intake duties. This shortage of staff also required additional work due to case reassignments throughout my assigned Team and the entire Office.
>
> I received one travel documents from EEOC….I worked overtime when I accompanied the 706 Coordinator—Vera Sims to pick up files from the Augusta FEPA office that was closing.
>
> I also worked overtime to meet the goals for each quarter but especially in the 3rd and 4th Quarter to meet the goals for the fiscal year. My overtime claim is definitely limited due to the lack of supporting documentation. I am submitting this claim because I know that I worked overtime during the relevant time period to meet my annual fiscal year goals.

The Agency made numerous objections to her claims, among these that they are outside the scope of the liability finding in the 2009 Opinion, that her evidence was both insufficient and inconsistent, that she did not work the hours of overtime she claims, that the claimed hours were not suffered and permitted by the Agency, and that, if she reported extra hours worked, she received extra hours off which she used in the same pay period and before taking any leave. It further asserts that, owing to Ms. Greene's record of annual and sick leave, as reflected in FPPS records, she rarely worked 80 hours in a pay period.

The Union contends that Ms. Greene's extra work hours were for intake,

performing investigations, and for driving 147 miles to Augusta, GA and returning to pick up files. It argues that the Agency has no specific evidence nor any legal basis to support its objections.

Inasmuch as Ms. Greene herself cited the insufficiency of her supporting documentation, I acknowledge that she did attempt to secure additional information when she wrote to Henry Wesloski, the District Resource Manager, on April 11, 2012. Among the records she sought were bi-weekly time sheets, sign-in and sign-out sheets (including after hours and weekend), leave requests, GSA car log sheets, travel vouchers, work and intake rotation schedules, and intake and onsite log-in sheets. From handwritten notations on this letter to Mr. Wesloski, it appears (although I cannot know for certain) that Mr. Wesloski, or someone in his office, indicated that several categories of information requested was either deemed not relevant or could not be provided. Ms. Greene was not among the claimants granted a 60-day extension beyond May 29, 2012 in which to file her claim.

I note the Agency's argument that "Ms. Greene took some type of leave in almost every pay period and almost never actually worked 80 hours in a pay period….Over the six year period covered by this arbitration (156 pay periods), FPPS records show Ms. Greene only actually worked 80 hours in six pay periods (200407, 200517, 200804, 200806, 200810, 200910). While Ms. Greene is welcome to use her leave as she sees fit, her use of leave is inconsistent with her claim that she worked in excess of 80 hours in a pay period…." In this respect, I reference my discussion of "Paid Leaves" in the "**LEGAL ISSUES**" section of this Report.

First, I do not believe the record supports travel overtime under Federal travel

regulations for Ms. Greene's driving to Augusta, GA on February 25, 2009. However, on the matter of Intake, there is a sharp distinction between Ms. Greene's assertions of her significant intake hours and the Declaration of Ms. Williams-Kimbrough. While there are other claims before me that raise the issue of Intake, I believe that of Ms. Greene clearly raises material issues of fact. I conclude that Ms. Greene should be granted a hearing for the sole and specific purpose of determining the potential overtime impact of Ms. Greene's asserted extra Intake hours.

Anntonia Harris

Ms. Harris worked as an Investigator in the Atlanta District Office from before the start of the claims period until the end of pay period 200602, when she retired. She claims 18 hours of overtime in each of 71 pay periods, for a total of 1,278 hours of overtime. In support of her claims, Ms. Harris submitted a Claim Form and a statement that is set forth below. Ms. Harris noted in her Claim Form that she worked a 5/4/9 compressed schedule. The Agency correctly states that, insofar as her FPPS records reveal, she actually worked a 4/10 schedule. Among the Agency's objections to her claims are that they are beyond the scope of the finding of liability, the overtime was not suffered or permitted by the Agency, and that she did not work the hours in overtime that she claims.

Ms. Harris included with her Claim Form a statement that asserts the following:

> The attached claim forms indicate the hours of overtime worked during each pay period in/out of the ATLANTA DISTRICT OFFICE for the past three (3) years in association with my position/duties as a Federal Investigator.
>
> To the best of my recollection, I kept an unwritten overtime schedule that was conductive to my personal circumstances in order to accomplish the ATDO goals since overtime pay and compensatory time was denied and not used.

In almost every instance, I as an Investigator was expected to dedicate work overtime hours as a benefit to the complainants or charging parties as a courtesy. The administrative pressure to count numbers and mass produce without a thorough investigation made me feel uncomfortable and fearful of retaliation.

The sign in/out sheets does not and will not reflect true overtime hours because the administration and now deceased Assistant Director policed and harassed in a very condescending manner. The following overtime hours were performed as follows:

-- Arriving early/returning late from on-sites ,etc.
-- Outreaches on weekends
-- Conciliations, fact-finding conferences held pass [sic] work hours
-- Performed Intake on non-compressed schedule
-- Staying late in office awaiting complainants to arrive home to conduct telephone interview
-- Staying late in office awaiting witnesses or Respondent witnesses to conduct interview
-- Assisting other units on Intake when needed
-- Duplicating FOIA requests due to Cp's attorney requests (legal had a shortage of Paralegals)
-- When approved to work at home, overtime performed in order to reach Respondent's official Representative in a different time zone to conduct interview

The foregoing is my true recollection and honest assessment of overtime performed year-after-year.

Ms. Harris submitted a Supplemental Affidavit, dated September 22, 2013 that appears to suggest that sign-in/sign-out sheets did not properly reflect hours actually worked, and that her claim for 18 hours for each pay period reflects her having worked 1 to 2 extra hours each day of a pay period.

This Affidavit asserts, in relevant part:

…When I filed my claim, as I stated in my affidavit, the Atlanta District Office did not keep records of the work which we performed and the sign in/out sheets did not reflect the hours we actually worked. I was not required to record each and every Outreach project I conducted in the Automated Outreach system. I coordinated my Outreach projects with my supervisor. When my supervisor approved my Outreach projects, I received credit for the work, even if it was not recorded in the Automated Outreach system. I was not informed that every Outreach project had to be entered into the Automated Outreach system.

I have claimed 18 hours of work for each pay period, on my claim form.

> While employed, on average, I worked 1 to 2 hours each day over my scheduled work hours. The reasons listed in my affidavits are the reasons I performed the extra work hours. My supervisor was aware that I worked the extra hours and I was not encouraged to leave the office at my scheduled departure time. I was instructed not to record my extra work hours on the sign in/out sheets and time and attendance records.

The Agency contends that the records do not support the overtime hours Ms. Harris claims, suggesting that these extra hours as stated could not possibly have been worked. It states that her claimed extra hours by pay period never varied, despite her leave records and her lack of Outreach activity in 2005. In addition, the Agency argues that extra hours were less likely to be needed during a scheduled ten-hour workday.

The Union contends that the Declaration of Terrie Dandy, referenced earlier and offered by the Agency in this case, is not relevant because Ms. Dandy was not in charge of Outreach when Ms. Harris was employed. The Agency's claim, the Union states, that employees who worked extra hours were required to use the time immediately is not supported by testimony. It points also to the Agency's illegal recordkeeping practices, which made it difficult to reflect accurately the extra hours worked. It asserts that the Agency has engaged in speculation and has submitted no evidence to refute Ms. Harris's claims.

I find it unlikely that Ms. Harris's asserted extra hours of work should be so utterly consistent in every one of 71 pay periods. While I do not dismiss it as an outright impossibility (at least in some cases), and while I have expressed caution over total reliance on the accuracy of the FPPS system, the fact remains that, in this case, Ms. Harris's records of annual and sick leave between pay periods 200309 and 200515 do not jibe with this consistent claim of 18 hours of overtime in every pay period. These assertions do not, in my view, suggest that I should accept this as some evidence of a

"just and reasonable inference" that the overtime she claims was actually worked as stated.

Looking more closely at the relevant FPPS records, and keeping in mind that Ms. Harris claimed to have worked 18 hours of overtime in every pay period claimed, it appears highly unlikely that many of these individual claims can be deemed credible. While not citing all cases where it appears that Ms. Harris's claims of 18 hours of overtime in each pay period may seriously be questioned, I start with pay periods 200309 and 200313, where she took 12 hours and 10 hours of annual leave, respectively. In pay period 200315, she took 30 hours of annual leave. In pay periods 200316 and 200317, she took combined annual and sick leave of 16 and 15 hours, respectively. In pay period 200324, she took 12 hours of sick leave. In pay periods 200326 and 200401, she took 40 hours and 60 hours of annual leave, respectively (as well as 20 hours of holiday time in pay period 200401). In pay period 200402, she took 60 hours of sick leave, as well as 10 hours of holiday time. In pay period 200406, she took 15 hours of annual leave. In pay period 200407, she took combined annual and sick leave of 27 hours. In pay period 200409, she took 40 hours of annual leave. In each of pay periods 200411 and 200419, she took 20 hours of sick leave. In each of pay periods 200425 and 200502, she took 20 hours of annual leave. In pay period 200509, she took combined annual and sick leave of 19 hours.

Moreover, not only does Ms. Harris not assert that the Agency possessed any e-mails that might have been supportive of her claim for overtime, but she wrote that she "kept an unwritten overtime schedule that was conductive [sic] to my personal circumstances in order to accomplish the [Atlanta District Office's] goals…." I find the

meaning of this assertion difficult to understand, in respect to any specific allegations of when specific overtime assignments were performed. Also, in this regard, the specific duties she enumerated in her statement, set forth above, assign no time frame or duration, even by way of rough approximation, to the duties she claims she performed.

For these reasons, I conclude that Ms. Harris's claim must be denied.

Felicia Howard

Ms. Howard worked as an Investigator in the Atlanta District Office from before the start of the claims period until the end of pay period 200902, working a 5/4/9 compressed schedule. She claims 566 hours over 154 pay periods. In addition to her Claim Form, she submitted the following statement:

> I declare the foregoing facts are true to the best of my knowledge and belief: The information provided in my claim is provided based on what I recall due to the lack of records. For the period that I worked for the Atlanta District Office EEOC, I was one of EEOC's top investigators. I processed over 120 cases annually, which required me work many hours beyond my scheduled work hours. We were encouraged not to annotate actual hours worked on sign in sheets but was often encouraged to process additional cases. I often found myself working not only after my normal duty hours during the week but also on weekends and holidays. Even though I worked a 5/4/9 compressed work schedule, I often came in on my scheduled off day to process cases. During periods where I was required to work a basic work schedule due to intake duty, which required for investigators to come in at 8:00 am until 5:30 pm, I would often come in at 7:00am and would not leave until 6:30pm or 7:00 pm daily. This had to be done to prepare for intake and because I counseled record number complainants, meant I had numerous cases to prepare during intake week and following intake week. It was more often than not that investigators worked beyond their scheduled tour of duty to meet the high standards unofficially imposed.

I note that Ms. Howard asserted that her data were "based on what I recall due to the lack of records." Nevertheless, her Claim Form was timely filed, although she was among the group of claimants that requested a 60-day extension of the May 29, 2012 deadline. The Union provided a series of e-mails, beginning in late February 2012, in which Ms. Howard, through Union counsel, requested her pay records from 2003 to

2006. Sign-in/sign-out sheets were provided.

The Agency correctly notes that Ms. Howard's overtime claims range from 1 to 10 hours in the pay periods for which she makes claims, but that most of her claims are for 3 hours a pay period (1.5 hours a week). The Agency objects to most of Ms. Howard's claims on numerous grounds—i.e., that they are not supported by evidence sufficient to raise a reasonable inference that she worked the hours claimed, that she did not work the overtime hours she claims, that they were not suffered and permitted by the Agency because her supervisor did not know of them, and that they are outside the scope. More specifically, the Agency contends that Ms. Howard's claims "are generally not credible," in that she asserts having worked overtime in pay periods where she did not work at all (e.g., pay periods 200602 and 200802). It argues that her claims are further contradicted by the large number of sign-in/sign-out sheets in the record. In addition to referencing again the Agency's excerpts from the Atlanta testimony, Ms. Howard's claims relating to intake are addressed by the Agency's references to the Declarations of former Supervisory Investigators Sylvia Hall and Charles Mitchell, and, as referenced in other claims, that of Bernice Williams-Kimbrough.

The Agency goes on to note, however, that "[i]f Ms. Howard is credited with working the 22 hours of overtime which she documented on the sign in/out sheets and she received comp time for the extra hours worked, this part of her claim would be within the scope of the arbitrator's finding on liability and she would be entitled to payment for 11 hours which equals $339.28 plus liquidated damages for a total of $678.57."

I find it appropriate to grant a hearing to Ms. Howard, principally to receive testimony on the two issues of material fact that I here deem relevant – namely, that of

supervisory knowledge of her asserted extra hours and that of "outside the scope," for the purpose of determining whether bases exist such that the proposed Agency remedy should not be directed.

Lenora Martin

Ms. Martin worked as an Investigator in the Atlanta District Office from before the claims period until she was promoted to Supervisory Investigator on November 24, 2008. Her claimed overtime hours are unclear in that she submitted a claim by mail and one online as well, the latter having not been completed. On her mailed handwritten Claim Form, which is postmarked May 29, 2012, she claims 182 hours over 12 pay periods, and in only five of these did she indicate her work schedule (both 5/4/9 compressed and 4/10 compressed). The handwritten mailed Claim Form does not include information for pay period 200824 (namely, the 18 hours claimed on her online Claim Form). On her online Claim Form, which was undated, she claims 200 hours over 13 pay periods, all but two being on a 4/10 compressed schedule (the other two being 5/4/9 compressed).

In addition, Ms. Martin submitted a Declaration, dated May 29, 2012, stating:

> I have attached the documents that were available to support my Claim Form, in the form of payroll records and Memorandum to support that I performed Supervisory duties and continued to perform my responsibilities as an Investigator. Most of my investigator's responsibilities were performed in overtime hours.

These submissions obviously make for some confusion and, as the Agency argues, raise the issue of whether Ms. Martin's claim is timely in the first instance. Ms. Martin was not among those claimants who requested a 60-day extension beyond the May 29, 2012 filing deadline.

The Agency deems Ms. Martin's submissions untimely, in the she failed to indicate her schedule for some pay periods and that the form was unsigned. In addition, it notes that the online Claim Form showed no finalized date. Among its other objections was that she submitted insufficient evidence that the claimed work was performed.

The Union contends that Agency FPPS records reflect that Ms. Martin worked extra hours and was given compensatory time until her promotion. In addition, despite the apparent Claim Form confusion, Ms. Martin submitted a sworn statement with her mailed form, and the Union argues that the Agency offers no specific evidence that she did not perform the work. Further, the Agency submitted nothing to show that Ms. Martin was removed from performing investigative work.

I must point out that, irrespective of whether a claimant believes that, for whatever reason(s), his or her Claim Form may not reflect as much data as might be preferred with respect to the amount, nature and timing of overtime hours worked, the Claim Form must still be submitted as required under the parties' negotiated and well-defined Claim Form submission procedures. This is so irrespective of the work performance of the claimant, which, in this case, appeared outstanding and highly valued, as Ms. Williams-Kimbrough readily attested in writing.

Even going beyond this issue, I cannot conclude that the claim is probative. Unfortunately, in my view, the record as it stands is plainly insufficient on which to make a judgment on the specific nature of her work activities at issue, much less when they may have been performed. For this reason, I must deny Ms. Martin's claim.

JoAnn Morrow

Ms. Morrow worked as an Investigator in the Atlanta District Office during the

entire claims period. She claims 1,689 hours over 147 pay periods. Her actual Claim Form was unsigned, the Union asserting, through a Supplemental Affidavit submitted by Ms. Morrow, that her failure to sign was an oversight. As referenced below, she did submit an "Affidavit Statement," dated May 27, 2012.

Ms. Morrow retired in January 2009. She noted in her Claim Form that, for nearly the entire period of her claim, she worked a 5/4/9 compressed schedule, and that for the final three pay periods, she worked a basic schedule. From pay period 200309 to 200320, she did not indicate her work schedule. The Agency argues that, beginning with pay period 200807, Ms. Morrow actually worked a flexible schedule, inasmuch as her arrival times at work, coupled with the lack of leave requests that would account for these late arrivals, suggest a gliding schedule. It goes on to assert, among other matters, that Ms. Morrow has generally provided insufficient evidence to raise a reasonable inference that she performed the work claimed, that her claims are outside the scope, and that her claims are inconsistent with sign-in/sign-out sheets and leave records.

Ms. Morrow's Claim Form was accompanied by an "Affidavit Statement," dated May 27, 2012, indicating that "[d]uring the relevant time period I worked overtime to complete investigations, to conduct out of town on-site visits, outreach activities, and to perform intake duties." The Union asserts that Ms. Morrow's claim was not more completely documented because "the records she requested did not arrive until near the filing deadline." Ms. Morrow, it states, did not receive any vehicle logs, despite their being available, and these, it argues, would demonstrate her having engaged in compensable travel in two occasions in 2007. It asserts further, generally, that "[t]he Agency's refusal to provide records, which were in the Agency's possession, to

employees, was an effort to obstruct employees from filing claims." Ms. Morrow was not among those claimants granted a 60-day extension beyond the May 29, 2012 claim filing deadline.

Ms. Morrow submitted a Supplemental Affidavit dated September 19, 2013, in which she stated the following:

> …When I submitted my claim, I attempted to fill out the claim form to the best of my ability. I did not realize I had not signed my claim and it was an oversight. I was not contacted by anyone about my claim form not being signed, until Barbara Hutchinson called me on September 17, 2013.
>
> The hours I reported on my claim form were for work I performed in Intake, conducting investigation of cases, Onsites, and Outreach. I was supervised by Q. P. Jones for most of my career. I transferred to the supervision of Sandra Gill and finally William Batts. During the majority of my employment with the Agency, we did not record Outreach assignments in an automated system. Our Outreach work was recorded in a book and the supervisor would then approve it. I do not recall using the automated system, until the last two years of my employment. I was never told that it was mandatory to record all my Outreach assignments in the automated system. There was no requirement that Outreach be conducted during work hours.
>
> I was informed by my supervisors that it was mandatory that I only put my scheduled work hours on the sign in/out sheets. No extra work hours were to be written on the sign in/out sheets, no matter how many extra hours I might work.
>
> In 2008, I did switch to an 8 hour work day with hours of 9:30 a.m. to 6:00 p.m. When I filed my claim, the agency records were received late and were difficult to understand. I wrote to the agency, on March 6, 2012 to request a copy of my records, but I did not receive the records, when I requested them. A copy of the letter I sent to the agency is attached to this affidavit. I based the completion of the claim form on my best recollection.

Ms. Morrow's claim that she worked overtime on investigations, Onsites, Outreach and Intakes invites many questions. These involve principally "what," "where" and "when." There is little in Ms. Morrow's submission that provides real answers. In addition, her claim that she worked 1,689 hours of overtime in 147 pay periods is relatively one of the larger claims before me. I find Ms. Morrow's claim difficult to substantiate, as there must be some showing that her work in completing investigations,

conducting out-of-town Onsites, and performing Outreach and Intake, occurred to a substantial degree outside regular working hours, and also causing her bi-weekly working hours to exceed 80.

Putting aside any technical Claim Form issues, I find it difficult to find any real substantiation of the relatively high number of overtime hours, on average, Ms. Morrow claims in a typical pay period. Of all the pay periods for which she provides overtime hours, 119 are in the double digits. This equates, during these pay periods, roughly to at least one hour of overtime every day. Without some foundation, these numbers are little more than anecdotal.

Furthermore, to the extent FPPS records are informative, Ms. Morrow's use of leave (annual and sick), along with pay periods in which holidays fell, yield her first pure pay period of 80 hours worked (44 hours and 36 hours) being pay period 200612. (For these purposes, I do not take into account, as the Agency would invite me to do, the sign-in/sign-out sheets that, in its view, would likely show she actually worked fewer than 80 hours.) The pay period 200612 pattern is seen again in pay periods 200623, 200705, 200707, 200719, 200724, 200804, 200811 and 200817 (the last two representing 40 hours and 40 hours).

Accordingly, for these reasons, I must deny this claim.

Joyce Pullman

Ms. Pullman worked as an Investigator in the Atlanta District Office on a 4/10 compressed work schedule from before the start of the claims period until the end of pay period 200801. She claims 578 hours over 53 pay periods. Her Claim Form was accompanied by the following handwritten statement:

> As a retired Federal Investigator, I swear that the information that I am submitting is true to the best of my ability.
>
> I can vouch to the fact that we were assigned an enormous amount of cases and were required to produce a high number of closures. Because of a consistent [hiring] freeze, we were always short of Investigators. Almost every investigator had to work overtime just to meet your requirements.
>
> In January 2008, I retired as the no. one (1) Investigator for the year 2007. I received 2 awards for the highest number of monetary benefits and the highest number of settlements. My closures were high as well. I put in a lot of over-time working on my cases. A fair amount of over-time came from just trying to keep up with all of your requirements just to meet your obligations in regards to: # of on-sites, # of n/c [no cause] closures, # of settlements requirement, # of outreach, while trying to do Intake as well as the # of cause cases.
>
> It is impossible to show all of the overtime hours because some of the records were not available & because of the way the records were kept. The requirement was to sign in & out your regular hours, not including hour[s] worked over.
>
> Outreach assignments almost always caused you to work way over in the evening. A lot of participa[n]ts worked during the day.
>
> I am grateful for the opportunity to receive compensation for work previously done without overtime pay.
>
> I swear that the above information is true to the best of my ability.

Before setting forth the Agency's objections, I note, as I have previously, that this claims process generally does not bring into play performance-based matters. Therefore, granting that Ms. Pullman's assertions concerning her top performance as an Investigator and the awards she received attesting to her high output are true, they do not bear on whether she worked overtime hours for which proper compensation was withheld. Actually, the Agency attempts (at least in a limited way) to make such a linkage when it argues that her asserted high output as an Investigator is belied by the high number of hours she was off work for various reasons.

The Agency's objections to Ms. Pullman's claim are numerous. These include Ms. Pullman's alleged failure to explain when she performed the overtime work claimed

or her manner of calculating these hours, thus failing to raise a "just and reasonable inference" that she performed the work at issue. It argues also that Investigators were not required to meet a certain minimum number of closures, settlements, onsites, outreach events, and the like, referencing, in part, the Declaration of Sylvia Hall, Supervisory Investigator in the Atlanta District Office, the Agency noting that, during the years 2005 through 2007, Ms. Pullman did only one Outreach event, which likely took place during regular working hours. In addition, it asserts that Ms. Pullman's overtime claims are materially inconsistent with FPPS records.

Ms. Hall's Declaration asserted the following: She was Ms. Pullman's supervisor from June 2006 to November 2007, during which time Ms. Pullman never asked to work overtime or extra hours. Had she asked, Ms. Hall would not have approved, as Ms. Pullman often arrived to work late, left early or failed to show up, causing Ms. Hall to reassign some of Ms. Pullman's cases to other Investigators and to complete some herself. Ms. Pullman had to use advanced sick leave and leave without pay for some of her absences because she had already used up most of her sick and annual leave when she came under Ms. Hall's supervision. She was also absent without permission. Ms. Hall did not believe Ms. Pullman ever worked overtime hours or more than 80 hours in a pay period. Neither Ms. Pullman nor other Investigators under Ms. Hall's supervision was required to do a certain number of Onsites, closures, settlements, Outreaches or cause cases.

The Union points not only to Ms. Pullman's assertions in her letter, but also to the Agency's defective recordkeeping, as well as the Agency's failure, until challenged by a grievance, to accommodate her medical condition and ensure that all AWOL charges be

removed from her record. The Union contends further that the Agency has relied on an illegal manipulation of time and attendance policies.

There is merit to the Agency's argument that a fair number of Ms. Pullman's overtime claims are inconsistent with FPPS records. I make this observation while keeping in mind, as I have noted earlier, that, in the 2009 Opinion, I found FPPS records not reliable in all instances, particularly on the matter of reflecting compensatory time.

Some examples are as follows: In pay period 200311, Ms. Pullman claimed 9 hours of overtime while also having taken 36 hours of annual leave. In pay period 200319, she claimed 4 hours of overtime, while having taken 10 hours of annual leave, along with 10 hours of holiday pay and 4 hours of administrative leave. In pay period 200403, she claimed 6 hours of overtime, while having taken 10 hours of annual leave, along with 10 hours of holiday pay. In pay period 200404, she claimed 3 hours of overtime, while having taken 15 hours of annual leave. In pay period 200418, she claimed 20 hours of overtime, while having taken 11 hours of annual leave. In pay period 200504, she claimed 12 hours of overtime, while having taken 16 hours of annual leave. In pay period 200523, she claimed 8 hours of overtime, while having taken 20 hours of annual leave. In pay period 200602, she claimed 16 hours of overtime, while having taken 18 holiday hours. In pay period 200611, she claimed 20 hours of overtime, while having taken 20 hours of annual leave. In pay period 200613, she claimed 14 hours of overtime, while having taken 26 hours of sick leave, 10 hours of holiday pay and 4 hours of administrative leave. In pay period 200617, she claimed 20 hours of overtime, while having taken 20 hours of annual leave. In pay period 200625, she claimed 20 hours of overtime, while having used 70 hours of sick leave during that period. In pay period

200702, she claimed 20 hours of overtime, while having used 8 hours of annual leave, as well as 24 holiday hours. In pay period 200711, she claimed 20 hours of overtime pay, while having used 40 hours of leave without pay.

With due respect to Ms. Pullman's claim, I find that it fails to create a "just and reasonable inference" that the hours she claimed can be substantially supported. Therefore, I must deny this claim.

Patricia Quashie

Ms. Quashie worked as an Investigator in the Atlanta District Office throughout the claims period, all of which time she worked on a flexible schedule, except for weeks in which she performed Intake, working the official hours of the Atlanta District Office (8:30 A.M. to 5:00 P.M.). Her own typical work hours were 9:30 A.M. to 6:00 P.M. She claims 162 hours over 70 pay periods for intake work and completing her yearly goals and timetables. The Agency makes multiple objections to her claims including that her claims are untimely, she is on a flexible schedule, and she did not work the hours claimed in overtime.

Ms. Quashie's Claim Form is accompanied by a series of statements in which she maintains that she performed Intake work (to which she was assigned every fourth week) in no fewer than 64 pay periods. With rare exception in these statements, Ms. Quashie also notes that she "worked at least two hours overtime to complete my goals and timetables by the end of the fiscal year in accordance with the supervisor's instructions. The Agency discouraged employees from recording extra hours." [Emphasis supplied] By my count, Ms. Quashie claimed at least two hours' overtime in 64 pay periods. In six pay periods, she noted five hours for completion of goals and timetables. In addition, her

Claim Form includes documents such as Charge Receipt, Resolution Reports and attendance rosters.

Ms. Quashie submitted a Supplemental Affidavit, dated September 27, 2013. It claimed as follows:

> …The extra hours I worked, during my Intake assignment weeks, were not used to vary my arrival and departure times for work. During Intake week, I was required to work the official office hours of 8:30 a.m. to 5:00 p.m. I was not offered credit time and I did not receive credit and/or compensatory time for my work hours. When I was assigned to Intake, the instructions I received from my supervisors and managers was to continue working until each member of the public was served. We were not permitted to turn people away or tell the people to return another day.
>
> The charge receipt documents, at pages 29 through 42 of my claim are to show the Intake time period for charges which may have been taken by me to the best of my recollection. I obtained the charge receipt records from the Atlanta District office's Union office. The charge receipt documents are for Unit 3, a unit to which I was assigned at that time. It was difficult to do an exact reconstruction of my Intake assignments, because the Agency did not provide me with the records, which I requested.

I take up first the Agency's claim that Ms. Quashie's claim is untimely. It relies on the date of the claim, which appears by Ms. Quashie's signature as October 4, 2012. There appears a handwritten date of October 5, 2012 on the Claim Form, above where the printed filing deadline of May 29, 2012 appears. The Union challenges the Agency's defense of untimeliness on the basis that Ms. Quashie was one of a small number of claimants who was granted an extension to October 5, 2012 to file their claims.

The Union is correct. This issue had been put before me, the conclusion being that Ms. Quashie (and a few others) should be given until October 5, 2012 to file a claim through Rust Consulting. The Agency agreed, in the case of Ms. Quashie, to the mailing of the notice and Claim Form to her, and that she have until October 5, 2012 to file her claim. Rust Consulting acknowledged this arrangement and proceeded to send the documents to Ms. Quashie.

The Agency further objects, among other matters, on the ground of Ms. Quashie's having worked a flexible schedule throughout her claim period, and that she failed to demonstrate the hours of work she alleged.

The Union contends further that Ms. Quashie received no offer of compensation of any kind for her extra work hours, and that the Agency seeks credit for illegal cuff time.

On the matter of Ms. Quashie's overtime claims during Intake weeks, I must conclude that they do not stand on any different footing as do her overtime claims for weeks when she followed her Flexitour hours. The Agency argues correctly, in my view, that her one-week-per-month Intake schedule does not change the nature of her schedule from Flexible to Basic during that time, irrespective of her working the official hours of the office during the Intake week. Therefore, I need not examine in detail the overtime hours Ms. Quashie asserted she worked during Intake weeks, inasmuch as they do not constitute "suffered or permitted" overtime. It is so that Intake generally may necessitate extra hours that may, in turn, qualify as "suffered or permitted" overtime. The 2009 Opinion expressly noted this. Here, however, no change occurred to alter Ms. Quashie's flexible schedule at any time during the claims period. It is for this reason also that I need not make a formal finding on the Agency's argument that Ms. Quashie did not generally work the overtime hours for which she here claims payment.

Therefore, by reason of Ms. Quashie's having worked on a flexible schedule for the entire claims period, I am required to deny her claim.

Norman Reid

Mr. Reid worked as an Investigator in the Atlanta District Office from before the

beginning of the claims period through pay period 200813. He claims 371 hours over 49 pay periods, during which time he indicated having worked 5/4/9 and 4/10 compressed schedules and a basic schedule. The Agency objects to all his claims on the ground that he merely submitted a Claim Form and failed to provide any supporting evidence or explanation, and that his claims are outside the scope.

The Claim Form does not include any documents or other references to the nature of the work Mr. Reid performed for which he claims overtime. His claims allege overtime work in each pay period in amounts ranging from 3 to 10 hours.

I note for the record that Mr. Reid was among the claimants who received a 60-day extension in which to file a valid claim. Mr. Reid's Claim Form was filed May 29, 2012 and was, thus, timely in any case.

The Union contends that, "[f]rom March 14-16, 2007, Mr. Reid engaged in compensable travel, from Atlanta to Albany, GA, a total of approximately 500 miles round trip," which it asserts is not listed in the Agency's pay records, and that, therefore, "[t]he Agency cannot receive credit for time not recorded in the Agency's records, which would reward the employer for his violations of the law." It alleges that the Agency has produced no specific evidence to dispute Mr. Reid's claim.

I acknowledge this representation on Mr. Reid's behalf. However, even Mr. Reid's own Claim Form, with its failure to provide any probative detail on the nature of the overtime work he claims, does not assert any claim for overtime (whether for travel or anything else) for pay period 200707, that includes the dates of March 14 to 16, 2007. I am thus not able to go further in examining the *bona fides* of the claim for compensable travel asserted here by the Union.

Therefore, I must deny this claim.

Kathy Riley

Ms. Riley worked as an Investigator in the Atlanta District Office throughout the claims period. She claims 258 hours over 123 pay periods, during which she indicated she worked both a basic and a 4/10 compressed schedule (plus, as she noted, a 5/4/9 compressed schedule in pay periods 200704 and 200814). Subject to the Agency's other defenses to her claims, it notes that "FPPS records show that Ms. Riley received a net of 4.5 hours of comp time in PP200309 (used 2 of 6.5 hours earned in same pay period). Based on FPPS Records, Ms. Riley may be entitled to payment for 2.25 hours of overtime (1/2 half hour for the 4.5 hours worked that pay period) which equals $54.48 plus liquidated damages for a total of $108.95…."

The Agency contends that, as noted below, Ms. Riley worked a flexible schedule during some of her claimed pay periods, that her claims are outside the scope, that she rarely worked a full 80 hours in a pay period, that supervision could not know of or prevent her working the claimed extra hours, and that her evidence is insufficient and unreliable.

Ms. Riley provided an Affidavit Statement with her Claim Form, in which she stated the following:

> …I was employed with the Equal Employment Opportunity Commission, Atlanta District Office from August 2001 to January 2009. I was employed as an Investigator, GS-1801-12, during the overtime period from April 7, 2003 through April 28, 2009.
>
> During the relevant time period, I worked overtime to complete investigations, to conduct out of town on-site visits, outreach activities, and to perform intake duties. I requested documents from the union and the Commission but was unable receive documents that were needed to support my overtime hours. However, there are former co-workers that can support my overtime claims

> because we all worked late together to meet the office goals. A few of the employees that I worked overtime with on a regular basis are: Lucille Greene, Joann Morrow, and Patricia Quashie.
>
> The Agency failed to provide any Time and Attendance (T&A) records or Cost Accounting Sheets for pay period number 200309 to 200516, 200523, 200525, and 200602-200726. When employed, investigators were informed not to annotate actual hours worked on sign in sheets; instead we were instructed to put down only the work schedule we elected to work. I often found myself working after my normal duty hours during the week. I worked a Basic Schedule until 200520 then Flexitour, 4/10 or 5/4/9 compressed work schedule. I would often work until 5:30 pm. or 6:30 p.m. This had to be done to prepare for intake. In addition, the Investigators were informed by the Atlanta District Director and Deputy Director to service complainants, even if they entered the office at 5:00 p.m., which occurred on most intakes. It would take an average of one to two and half hours to service a complainant during intake. Furthermore, it was more often than not that Investigators worked beyond their scheduled tour of duty to meet the high standards unofficially imposed.
>
> During the time I was on flexitour (4/10), I worked eight hour days during intake.
>
> When traveling for on-site investigations and/or outreach activities, I occasionally returned back to work after my tour ended. On at least once occasion, some members of my unit traveled to Columbus, GA by van for an outreach and we did not return back until nearly midnight. I cannot recall the date.
>
> I also worked overtime to meet the goals for each quarter but especially in the 3rd and 4th Quarter to meet the goals for the fiscal year. Sometimes, especially during the end of the fiscal year, I worked as late as 7:30 p.m. or 8:00 p.m. My overtime claim is definitely limited due to the lack of supporting documentation. I am submitting this claim because I know that I worked overtime during the relevant time period to meet my annual fiscal year goals….

Ms. Riley was among the claimants who were granted a 60-day extension beyond May 29, 2012 within which to file her claim, although her Claim Form was filed by the original deadline of May 29, 2012. The Union alleges that the Agency failed to provide Ms. Riley with her pay records, so that she could file an accurate claim, and therefore asks that the Agency be barred from challenging her claim. Part of this claim, the Union asserts, related to compensation for travel to Augusta, GA on July 10, 2007 (pay period 200716), and that Ms. Riley was denied the Government vehicle logs.

The Agency contends that Ms. Riley has submitted insufficient evidence that she

worked more than 80 hours a pay period that were suffered and permitted by the Agency. It notes also that, for part of the claims period, Ms. Riley indicated she was on a basic schedule but claimed she worked overtime after 4:30 P.M. (The official hours of the Atlanta District Office are 8:30 A.M. to 5:00 P.M.) These will be noted below. It includes also the Declarations of Ms. Williams-Kimbrough, Ms. Hall and Ms. Dandy.

The Union contends that the Agency failed to provide Ms. Riley with her pay records, so that she could file an accurate claim. It notes further that Ms Riley drove to Augusta, GA on July 10, 2007 on compensable travel.

Ms. Riley's Claim Form raises an issue that the Agency has likewise identified. The official hours of the Atlanta District Office were, during the relevant time, 8:30 A.M. to 5:00 P.M. This would, therefore, identify Mr. Riley's work hours during all pay periods where she claimed she was working a basic schedule. This means that the hours from 4:30 to 5:00 P.M. would be deemed regular, or straight-time, work hours. However, her Claim Form reveals, on its face, that, during the following 54 pay periods, she began claiming overtime (ranging from 1 to 4 hours per pay period) for work that went beyond 4:30 P.M.: 200308-200319; 200322-200412; 200418-200426; 200503-200514; and 200516-200519.

The Agency asserts that, if, in fact, Ms. Riley viewed hours after 4:30 P.M. as overtime, she was "not working the official hours of the Atlanta District Office and therefore was working a flexible schedule." Therefore, it concludes, if this was the case, Ms. Riley was not entitled to payment for "suffered or permitted" overtime for any such periods.

I find parts of Ms. Riley's claim to be internally inconsistent. Her assertions in

her Claim Form for the periods she described as "Basic," (pay periods 200308 through 200519) are, in many instances up to pay period 200409, reflected in FPPS records, as 5/4/9 compressed. Thereafter, many such pay periods show her working a 4/10 compressed schedule, whereas Ms. Riley does not begin to reflect her 4/10 compressed schedule beginning until pay period 200520, and continuing thereafter through pay period 200902, the end of her claim period, during which time her overtime claims, in pay periods where she makes claims, range from 1 to 6 hours. Her FPPS records, however, do not, as I read them, show her working a 4/10 compressed schedule after pay period 200709. This makes it extremely difficult to determine if the hours claimed in a given pay period were actually during her regularly scheduled work hours or not, since she fails to indicate during this entire period where she claims to be working a 4/10 compressed schedule, what "time of day" her hours fall.

The Union asserts further that Ms. Riley was denied the Government vehicle logs, and that, in this connection, engaged in "compensable travel" when she drove a Government vehicle to Augusta, GA on July 10, 2007. In fact, the Government vehicle logs for the Atlanta District Office do reflect three occasions on which Ms. Riley drove a Government vehicle while performing her duties, the other two (on February 15, 2007 and February 6, 2008) being for short trips not beyond Atlanta. The July 10, 2007 travel, which would have fallen in pay period 200716, was to Augusta, GA, and covered 231 miles round trip, Ms. Riley returning that same day. She claimed no overtime hours in this pay period, possibly owing to her not then having access to Government vehicle logs.

The Government vehicle logs actually show the following:

- On February 15, 2007, she drove 35 miles in Atlanta and returned the

same day.

- On July 10, 2007, she drove 231 miles round trip to Augusta and returned the same day.
- On February 6, 2008, she drove 6 miles in Atlanta and returned the same day.

From what is in my record, therefore, this is not travel that is compensable with overtime pay.

I acknowledge the Agency's noting that, "[b]ased on FPPS Records, Ms. Riley may be entitled to payment for 2.25 hours of overtime (1/2 half hour for the 4.5 hours worked that pay period) which equals $54.48 plus liquidated damages for a total of $108.95…."

I am prepared to grant a hearing to Ms. Riley for the sole purpose of determining, in light of my "outside the scope" ruling, whether bases exist, during pay periods where she clearly did not work a flexible schedule, such that the proposed Agency remedy should not be directed.

Peggy Rocker

Ms. Rocker worked as an Investigator in the Atlanta District Office on both a 4/10 and 5/4/9 compressed schedule (the former predominating) from before the beginning of the claims period until March 8, 2008. She claims 860 hours over 72 pay periods. In support of her claims, Ms. Rocker submits a Claim Form and a statement. The record includes the Atlanta District Office sign-in/sign-out sheets. The Agency objects to all her claims on grounds that she submitted insufficient and inaccurate evidence, that her claims are outside the scope, that her claimed extra hours were not suffered or permitted, and

that her travel time is not compensable with overtime. It states that her extra hours are likely not accurate in view of her 4/10 compressed schedule, and that she does not specify the details of the work she asserts she performed.

Ms. Rocker's statement sets forth the following:

> Included on the claims form are hours for Intake, Outreach, fact finding, lunch breaks, and Onsite investigations. There are some pay periods where Overtime is reflected for more than one function if intake, outreach and onsites. Onsites where the GSA was used, there are some records, but many onsites the personal car was used and there is no record. We were given yearly performance goals, as it related to onsites (2003-2008). All of the "exceeded Outstanding performance evaluations was given in part, to a high # of onsites. Due to my high # of onsite investigations I was given an "exceed/Outstanding" for many years.
>
> As it relates to outreach, beginning in 2003 and continuing it was an office wide push to take "EEOC" to the people. For us investigators, it meant presentations, many after work and some night to church and civic groups.
>
> Working intake was particularly troublesome because in many instances we did not take our lunch breaks that week. It was always don't worry lunch or quitting time. See the client.
>
> Additionally, I did not leave the office until well after 5:00 p.m. and was told not to sign out the time that I finished but rather sign out at the official closing time of the office.
>
> I remember many times the clerk at the intake would remove the sign in/out sheet at 5:00 pm take it with him/her and replace it with the intake list for the following day.
>
> We took our ["work" or "job"] seriously so we were told if a client came in at 4:59 pm, we had to see him. One of the reasons was we were told we were not on overtime and that we must remained [sic] to take the charge in case there were timeliness issues.

An examination of the pay periods where Ms. Rocker claims overtime hours reveals that these pay period claims range from 1 to 3 hours at the low range to as many as 21 hours. In 48 of these pay periods, Ms. Rocker's claimed overtime hours were in the double digits.

In addition to Ms. Rocker's claims that encompass Intake, Onsites and Outreach, as set forth in the above statement, the Union asserts that, while conducting Onsites, she engaged in compensable travel with the Government vehicle on October 31, 2006; February 15-16, 2007; and April 3-6, 2007. She claims she was not paid by the Agency,

as required by law, for this travel, which, as the Union explained, consisted of her driving the Government vehicle "to a temporary duty station, and to two locations more than 50 miles outside her official duty station." It objects to the Agency's failure to produce evidence to counter Ms. Rocker's claim and to its reliance upon "statements from managers and supervisors who have intentionally engaged in violations of the law."

The Union contends further that the Agency seeks credit for illegal cuff time, which is based on the Agency's violating the law by not maintaining accurate records of employees' work time. It asserts that the Agency produced no evidence to show that Ms. Rocker did not perform the claimed work and relies on the Declarations of managers and supervisors who have intentionally engaged in violations of the law. It maintains that an employer who has not maintained accurate records of employees' work hours may not defeat an employee's claim solely on speculation.

The Union submitted, on Ms. Rocker's behalf, a Supplemental Affidavit, dated September 27, 2013, which stated the following:

> I, Peggy Rocker, am submitting this supplement to my claim filed in the above captioned case. In my written statement that I submitted with my claim form, I referred to the removal of the sign in/out sheet when I worked Intake. When I worked Intake, I was required to change my schedule to an 8 hour per day, five day per week work schedule. I was assigned to Intake every fourth week.
>
> I worked a compressed 4/10 work schedule during April 7, 2003 through my retirement. My regularly scheduled day off was Monday. I would come to work on Mondays and Fridays. Many times I came to work on Saturday and Sunday. We were not permitted to record any extra work hours on the sign in/out sheet.

The Atlanta Travel Log reveals that Ms. Rocker used a Government vehicle: 10/31/06-21 miles in Atlanta; 2/15-16/07-122 miles (to two destinations); and 4/3-6/07-351 miles (destination unclear).

Some aspects of Ms. Rocker's claim are not compelling, particularly owing not

only to the very high number of hours consistently claimed, but also that those claims occur in weeks when she spent much time off work. Examples may be seen in pay periods 200316, 200320, 200325, 200412, 200508, 200608, 200701, 200716 and 200727.

There appears to be no question that Ms. Rocker's activities with respect to Onsites were significant. However, the record does not present these activities in more than an anecdotal manner, and, as a result, it is not possible for me to evaluate during which pay periods (or even specific periods of time), what times of day, and for what duration, these activities took place.

Even the Atlanta Travel Log, which is specific with respect to three distinct occasions of travel with a Government vehicle, does not establish that Ms. Rocker's activities would be eligible for travel overtime. Her travel on October 31, 2006 was a short trip not outside Atlanta. Her trip on February 15 and 16, 2007, which is logged at 122 miles, apparently with two destinations, took place on a Thursday and a Friday (Ms. Rocker having stated that her scheduled day off was Monday). Her trip on April 3 to 6, 2007, while 351 miles, took place from a Tuesday to a Friday, again all on scheduled work days. Under Federal travel regulations, these are not compensable with overtime.

Accordingly, I do not find sufficient evidence to grant Ms. Rocker's claim.

Anthony Seals

Mr. Seals worked as an Investigator in the Atlanta District Office from before the claims period until the end of pay period 200811, principally on a 5/4/9 compressed schedule. (He indicated having worked a basic schedule in pay periods 200601-04.) He claims 822 hours over 136 pay periods. Mr. Seals was among those claimants who were granted a 60-day extension within which to file his claim. The Agency objects to most of

Mr. Seals' claims on the basis of insufficient evidence, no proof that he worked the overtime hours claimed, that they were not suffered or permitted, and that they are outside the scope.

Specifically, the Agency objects to claims for any pay periods where he was detailed to work with FEMA in connection with Hurricane Katrina relief efforts, for which he was also paid overtime and premium pay and during which, despite indicating a basic work schedule, he likely worked a flexible schedule (pay periods 200601 through 200604, during which he claims a total of 12 hours). It claims further that Mr. Seals' statement is not supported by either his claim or the sign-in/sign-out sheets (which, contrary to Mr. Seals' representation, sometimes do reflect extra hours worked). It notes that Mr. Seals' travel vouchers do not show travel that would be compensable with overtime pay, and that Outreach events he performed at schools were done during school hours, not in the evening or on the weekend. It argues that the number of cases resolved, as reflected in Resolutions Reports, does not tend to prove that overtime hours were worked.

Mr. Seals' claim includes a statement which sets forth a narrative applicable to the period from August 24, 2001 to May 28, 2008. (The time period applicable to these claims is April 7, 2003 to April 28, 2009.) It states:

> I declare the foregoing facts and information are true to the best of my knowledge. The information provided herein is based on my recollection of the facts minus the opportunity to inspect various records or documents to help refresh my memory. During my tenure at the Atlanta District EEOC Office I consistently ranked as one of the top investigators. I investigated and closed over 120 cases annually; traveled extensively throughout the state on investigations and outreaches; performed Acting Supervisor duties; and was District Coordinator for the Youth@Work program. Among other achievements I earned Investigator of the Year honors in 2004. My work responsibilities required me to work many hours beyond my scheduled work hours. I was encouraged not to annotate actual hours worked on sign in sheets knowing that our scheduled days

> often extended well beyond normal work hours. It was not uncommon for me to come to work at 7:30 am and not leave until 7:00 pm that evening. I often came to work on weekends. During intake week we had few opportunities to take breaks due to the heavy volume of complainants we saw and counseled.
>
> The information and documentation I submitted is by no means a complete representation of the hours I committed in the performance of my duties. My calculations are very conservative. It does however provide an illustration of what I accomplished, and that what I accomplished required an enormous amount of time to complete.

Mr. Seals' record also includes an October 17, 2003 recommendation for promotion from Sandra Gill, then Mr. Seals' Supervisory Investigator, to District Director Bernice Williams-Kimbrough, and Certificates of Appreciation in October 2004 for his work on behalf of the Clayton County Public Schools and in February 2007 for his participation in Mundy's Mill High School Career Day. As his statement referenced, he was also recognized for his work on behalf of the Youth At Work Initiative, implemented by the EEOC, as well as a special recognition for his FEMA work in the aftermath of Hurricane Katrina, sent to Ms. Williams-Kimbrough. Also included is a 2003 calendar with overtime entries, as well as travel and vehicle logs.

The Union asserts that the Agency overlooked Mr. Seals' web file folders which begin with pay period 200308 and end with pay period 200812, which contain documents supporting all Mr. Seals' overtime hours. (I am unable to identify the documents referenced here, and the Union is advised to inform me if I am in error.) It claims that the Agency has no real objections to Mr. Seals' claim, since the documentation shows he performed the work, the supervisors were aware of his work, and permitted it to continue. Moreover, it notes that, contrary to the Declarations of managers and supervisors, Mr. Seals received money payment for extra work hours in pay periods 200601, 200602, 200603 and 200604, representing pay periods connected with the special FEMA project

for Hurricane Katrina, and that the monies for the work hours were funded through FEMA. It notes further that the Agency has no records to show Mr. Seals received any of the alleged compensatory time or overtime money.

I draw the parties' attention to one file in Mr. Seals' documentation that does not belong. It is an overtime statement that is made by an unidentified Paralegal Specialist from the Charlotte District Office. In my check of the Charlotte District Office files, it pertains to Sarah Bryant, the only Paralegal Specialist claimant from that office.

There is no question that Mr. Seals has performed in his position at a very high level, and that he has been recognized for that performance, as well as for his involvement with the community and his service in the aftermath of Hurricane Katrina. Nonetheless, I cannot conclude that the documentation provided, while considerable, is sufficiently specific to describe activities that occurred within specific time frames, if not within specific pay periods, and whether it must be concluded that those activities did not occur during his regular working hours. Mr. Seals' statement, set forth above (which covers a period of time that begins nearly 20 months before the beginning of the claims period), while attesting to his achievements and the high regard in which he has been held over the years, are not sufficiently descriptive of duties and time frames in more than a general way. I do not believe this alone is sufficient to sustain his claims.

I do find, however, that Mr. Seals should be granted a hearing on the specific issue of the travel logs submitted, in which I identify no fewer than three instances of overnight travel (presumably for Onsites) outside the Official Duty Station that may, depending on the circumstances, qualify for overtime payment. Specifically, these are his Friday, June 8 to Monday, June 11, 2007 trip to Dawson, GA; his Friday, July 20 to

Wednesday, July 25, 2007 trip to Conyers, GA; and his Friday, February 22 to Wednesday, February 27, 2008 trip to Cairo, GA. I advise the parties in this regard that, should they be able to agree on (1) whether these instances do, in fact, implicate travel overtime; and (2) whether they can agree on the number of travel overtime hours involved, a hearing on this issue may be avoided.

In addition, as noted above, I wish to be informed on the Union's reference to Mr. Seals' web file folders.

Clinton Smith

Mr. Smith worked as a Mediator in the Atlanta District Office on a 4/10 compressed schedule throughout the claims period. On his Claim Form, he makes a claim for 187.5 hours over 63 pay periods, covering pay periods 200309 to 200610. During this period, there were sign-in/sign-out sheets available upon which he based his claim. As he explained in his statement, set forth below, he estimated the extra hours he worked in the years 2007 to 2009, a period of time that is not encompassed in his Claim Form. This estimate is for an additional 157 hours (or 2.81 average hours per pay period times 56 pay periods).

The Agency contends principally that Mr. Smith did not work the hours in overtime that he claims, that he did not file a valid Claim Form for pay periods after 200610, and, for his 2003 to 2006 claims, that he has submitted insufficient evidence that he worked more than 80 hours in a pay period that were suffered or permitted by the Agency, and that all of his claims are outside the scope. More specifically, it asserts that the sign-in/sign-out sheets relied on by Mr. Smith to support his 2003-2006 claims do not show that he worked more than eighty hours in a pay period, nor that he worked the

claimed hours. It notes that, for pay period 200524, Mr. Smith already received overtime and premium pay, and so has already been compensated for that pay period. In addition, the Agency argues that, beginning with pay period 200622, Mr. Smith spend significant time on Union activities and that such time would materially affect his claimed overtime hours thereafter.

Mr. Smith submitted a statement, along with his Claim Form, that sets forth the following:

> …During my tenure as a mediator 90% of the time I worked through my lunch time. Throughout the period in question, I have worked passed [sic] my duty time when necessary. Over the period of time in question I conducted more in house mediation in the ATDO [Atlanta District Office] than any other Mediator. Because I conduct more in house mediation, I had considerably less withdrawals and settlements, while other mediators submitted twenty, thirty or more withdrawals and settlements. This is important because no records other than sign in sheets are available from 2007 to 2009. Therefore, I must estimate on the number of overtime hours based on those documents records and attachments submitted for 2003, 2004, and 2005 and partial documentation for 2006. I feel very comfortable with the estimation of overtime because I had a higher increase of resolutions in 2007 (97), 2008 (96), and 2009 (112), which were more than 2003 thru 2006 where documentation were provided. These numbers included those in house mediation that were not successful. Due to the lack of documents provided by management, the information provided below is a very conservative estimation, per pay period.
>
> *For the period 2003 thru 2006, the attached documents will indicate **177.5** hours of work divided by 63 pay periods which equals 2.81 hours of overtime per pay period. **Attachment A**
>
> *For the period of 2007 thru 2009 with the submission of only sign in documents, an estimation of time work[ed] would be 2.81 x 56 pay periods worked, equals **157** hours of overtime for the time period. **Attachment B**
>
> *I must also add 6 hours of overtime for a mediation held with Attorney Jack Rosenberg, in which I worked until 10:30 at night without lunch. I do not have the time or date but attorney Jack Rosenberg can be contacted as a witness and his participation in the mediation held in the ATDO…. **Attachment C**
>
> **175.5 plus 157 plus 6 equals 338 hours of overtime**

The Union contends that Mr. Smith had not received any records from the Atlanta District Office when he filed his claim, and also did not know that hours claimed in a

written statement would not be calculated as part of his claim. He asks that his claim be supplemented as set forth in Attachments B and C of his Supplemental Affidavit. The Union asserts that the Agency has no specific evidence to dispute Mr. Smith's claim, and that his supervisor had reviewed the sheets and so had knowledge of his hours. It notes that Mr. Smith was required to estimate his hours, lacking the requested records, and that the Agency has no legal or factual basis to support its objections.

The Agency presented a detailed analysis of Mr. Smith's first 10 claims (noting that the pattern replicates thereafter), asserting that such analysis refutes, rather than supports, his claims. Inasmuch as the Agency has therefore set forth its own methodology with respect to the relevant sign-in/sign-out sheets, I believe Mr. Smith should have an opportunity to present his own, and so grant him a hearing for that specific purpose, consistent with my "outside the scope" ruling.

Finally, with respect to Mr. Smith's submission covering pay periods after 200610, I find it not appropriate for consideration, as there is no required Claim Form.

Althea Thompson

Ms. Thompson worked as an Investigator in the Atlanta District Office from the beginning of the claims period until July 9, 2006, working principally a 4/10 compressed schedule. She claims 322 hours over 77 pay periods.

Along with her Claim Form, Ms. Thompson included a statement that stated the following:

> I declare the foregoing facts are true to the best of my knowledge and belief: The information provided in my claim is provided based on what I recall due to the lack of records. For the period that I worked for the Atlanta District Office EEOC, I was one of EEOC's top investigators. I processed over 120 cases annually, which required me work many hours beyond my scheduled work hours. We were encouraged not to annotate actual hours worked on sign in sheets but

> was often encouraged to process additional cases. I often found myself working not only after my normal duty hours during the week but also on weekends and holidays. Even though I worked a 4/10 compressed work scheduled, I often came in on my scheduled off day to process cases. During periods where I was required to work a basic work schedule due to intake duty, which required for investigators to come in at 8:00 am until 5:00 pm, I would often come in at 7:00am and would not leave until 6:30pm or 7:00 pm daily. This had to be done to prepare for intake and because I counseled record number complainants, meant I had numerous cases to prepare during intake week and following intake week. It was more often than not that investigators worked beyond their scheduled tour of duty to meet the high standards unofficially imposed.

The Agency contends generally that Ms. Thompson's claim has insufficient support and amounts "to not much more than a general claim that she put in extra hours doing her job." For the record, I note also the Agency's further objection that her claim should be dismissed on the ground that she denied receiving or using compensatory time and that, therefore, her claim is outside the scope. The Agency notes that, apart from Ms Thompson's references to Intake, she failed to describe the nature of her extra work, when it was performed, and why her hours would vary from one pay period to the next. It states that the sign-in/sign-out sheets (which, as the Agency noted, Ms. Thompson used less consistently starting in mid-2005) likewise fail to support her working more than eighty hours in a pay period. Further, it asserts that Ms. Thompson does not allege that her supervisor was aware of her claimed work.

The Union contends that Ms. Thompson was on a basic schedule only for pay period 200324 and otherwise consistently worked a 4/10 compressed schedule. It asserts that Ms. Thompson's written statement, set forth above, was necessary because she received no records from her request to the Agency. It also challenges the accuracy of the FPPS records for Ms. Thompson, particularly for December 18 and 19, 2003, where FPPS records show she was on leave and sign-in/sign-out sheets reveal she was at work,

and supervision reviewed and made notations thereon. The Union asserts that, since Ms. Thompson was not provided with requested records, the Agency should be barred from challenging her claim, and that the Agency has presented no specific evidence to show that Ms. Thompson did not work the extra hours claimed.

I recognize first the Union's argument concerning the non-production of records, which I have addressed generally in the Introductory section of this Report. Ms. Thompson was not among those claimants who requested an extension of time to file her claim. I must ascertain, based on the record before me, whether a just and reasonable inference of extra work performed exists. I find I am unable to reach such an inference.

I acknowledge that Ms. Thompson, as she notes in her statement, was a productive Investigator. To reach an inference, however, that such production will thus result in a finding of working more than eighty hours in a given pay period, more of a showing is required. In this case, the Claim Form itself is of limited assistance, as it does not provide a "what or why," aside from what we might be able to presume from the explanation Ms Thompson offered in her statement. The statement itself, while generally applicable to the entirety of her claims period, is not in any meaningful way pay-period specific. Thus, it is difficult to ascertain why specific claims should be given credence insofar as they might attempt to explain why extra hours were generated in order to complete her tasks.

While, as I have noted elsewhere, including in the 2009 Opinion, that FPPS records are not uniformly reliable, that infirmity would more frequently arise when it comes to assessing how compensatory time is tracked. Here, there is no issue of that, since Mr. Thompson reflected no compensatory time in her Claim Form. Her fairly

extensive leave record, while not dispositive, does not enhance her assertion that 77 pay periods resulted in work exceeding eighty hours.

I am, therefore, required to deny this claim.

Janice Thompson

Ms. Thompson worked as an Investigator in the Atlanta District Office from the beginning of the claims period through pay period 200315, working on a 5/4/9 compressed schedule. She left the Agency on June 30, 2003. She claims 90 hours over six pay periods (15 hours in each). No additional documentation was included.

The Agency objected to Ms. Thompson's claim in its entirely on the basis that she failed to submit any explanation or evidence in support of her claims and that they are outside the scope.

The Union contends that whatever evidence is lacking in Ms. Thompson's claim is by reason of the Agency's failure to provide her with records and its failure to keep accurate records. It notes also that the Agency's FPPS records, as with Atlanta employees generally, do not reflect the actual work hours and leave of employees. The Agency, it asserts, has provided no specific evidence that Mr. Thompson did not work the claimed hours.

With due respect to Ms. Thompson's claim, I am unable to conclude, irrespective of the Union's assertion concerning the issue of the lack of accurate records from the Agency, that she has satisfied her initial burden of establishing a just and reasonable inference that her claimed extra hours merit overtime payment. Accordingly, I must deny her claim.

Horace Treadwell

Mr. Treadwell, now deceased, worked as a Mediator in the Savannah Local Office until he entered into an agreement to work at home and report to the Atlanta District Office. His Claim Form was submitted by his wife, and she claims on his behalf 550 hours over 11 pay periods, or 50 hours per pay period, all in 2003, from pay period 200309 to 200319.

The Claim Form identifies Mr. Treadwell as having worked both a basic and a 5/4/9 compressed work schedule in each of the pay periods claimed. While this cannot be correct, I understand how Mr. Treadwell's widow may have been unclear on this. The Agency presumes that he worked a gliding schedule, inasmuch as FPPS records reveal that he worked eight-hour days. Mr. Treadwell's file includes an endorsement from a Charging Party as well as from an attorney who participated in a mediation with Mr. Treadwell.

The Agency contends further that the claims submitted by Mr. Treadwell's widow are not credible. It points to the FPPS records, which reflect Mr. Treadwell having been on sick leave for virtually every pay period covered on the Claim Form. It asserts further that Mr. Treadwell, working from home, would not have worked extra hours that were known to his supervisor, that he likely worked a gliding schedule and, further, that his claims are outside the scope.

Ms. Treadwell submitted a statement as follows:

> Mr. Treadwell's supervisor at the time of his claim period was Bill Snapp also deceased. The only correspondence I have to support Mr. Treadwell's case is included in this package. Mr. Treadwell Mediator GS13 and Director of the Savannah, GA office Lynn Jordan developed a harsh relationship that made it impossible for them to work in the same building. Mr. Treadwell was told by Bernice Kimbrough Director of the Atlanta Regional Office to find another location to work.

> Bill Snapp came to Savannah to ask local government agencies to help Mr. Treadwell find a location to work. He started out working in the basement of the county clerk[‘]s office, but later had to find another location because the clerk[‘]s office needed the space. He then added on to our home and extended our driveway for extra parking which was approved by Mr. Snapp. Later a local business connection teamed with Lynn Jordan to file a complaint with EEOC about not liking the way Mr. Treadwell conducted mediations out of his home, creating even more problems.
>
> I would like to say that I can attest to the overtime hours because Mr. Treadwell was not afforded an assistant to prepare his correspondence, since he was not allowed in the building where the assistants worked. He would prepare his own correspondence to send to the Atlanta Regional Office working approximately five hours after 4:30pm every working day when arriving home from the clerk[‘]s office or after clients would leave our home. Mr. Treadwell was a dedicated worker. I included some letters of appreciation to support who he really was and I must say this pains me to reflect on those sad times. Mr. Treadwell went into severe depression and had to seek medical help, as his health declined he could no longer work and went out on disability September 6, 2003. If he should be compensated, is it possible to include punitive damages as well, “under penalty of perjury,” thank you.

The Union contends that it was not provided with any records on Mr. Treadwell by the Agency, and that, based on the information provided by Mr. Treadwell’s widow, he was not reporting to any office. It suggests further that “[t]he Agency FPPS records may be fictitious” and that the Agency did not provide any information in response to Ms. Treadwell’s written request for records and should therefore be barred from opposing this claim.

I recognize the unusual circumstance presented here. Nonetheless, I cannot credit the claims made, nor can I presume that they should prevail over records (which the Union argues are discredited) that do not at all support the hours claimed.

Accordingly, this claim must be denied.

Terryl Lawrence-Walton

Ms. Lawrence-Walton worked as an Investigator in the Atlanta District Office

from before the beginning of the claims period until the end of pay period 200813. She worked on both a 5/4/9 and a 4/10 compressed schedule. From pay periods 200519 through 200702 (36 pay periods), she reported working a flexible schedule. She claims 1,005 hours over 136 pay periods. Her claims range from 5 to 10 hours of overtime in each pay period. Although her Claim Form was timely submitted, she was among those claimants who had received a sixty-day extension of time.

Along with her Claim Form, Ms. Lawrence- Walton submitted a statement as follows:

> I declare the foregoing facts are true to the best of my knowledge and belief. The information provided in my claim is provided based on what I recall due to the lack of records that were provided to me from my request to the Atlanta District Office. For the period I worked for the Atlanta District Office, I was one of their top Investigators. I processed over 100 plus cases annually, which required me to work many hours beyond my scheduled work day. We (Investigators) were informed not to annotate actual hours worked on sign in sheets; instead we were instructed to put down only the work schedule we elected to work. I often found myself working not only after my normal duty hours during the week but also on weekends and holidays. Even though I worked flexitour, a 4/10 or 5/4/9 compressed work schedule, I often came in on my scheduled off day to process cases. I would often come in at 6:00 or 7:00 am and would not leave until 6:30pm or 7:30 pm daily. This had to be done to prepare for intake and because I counseled record number complainants, meaning I had numerous cases to prepare for during intake week and following intake week. Also, it had to be done to interview complainants and respondents that were scheduled to work outside normal work hours. In addition, the Investigators were informed by the Atlanta District Director and Deputy Director to service complainants, even if they entered the office at 5:00 p.m., which occurred on most intakes. It would take an average of one to two and half hours to service a complainant during intake. Furthermore, it was more often than not that Investigators worked beyond their scheduled tour of duty to meet the high standards unofficially imposed.
>
> Lastly, during the pay periods of April 15 to May 12, 2007, while I was out recuperating from major surgery, my supervisor, Sylvia Hall, telephoned me on numerous occasions regarding my mid-year appraisal, to provide case statuses and to process cases. Also, she sent an Investigator, Felicia Howard unannounced to my residence to deliver the aforementioned documents. Even though, we (Investigators) were often informed that the directives were coming from the District Director or Deputy Director; I performed these tasks reluctantly.

The Agency contends first that, for the 36 pay periods Ms. Lawrence-Walton

worked a flexible schedule, her claim should be denied. It notes further that, for those remaining pay periods, Ms. Lawrence-Walton does not provide needed details concerning the nature, timing or extent of the work she claims she performed. In addition, it asserts that her claims about time she took in Intake runs contrary to the experience in the Atlanta District Office, and particularly her assertion that it generated significant overtime hours while doing so. It also notes that Ms. Lawrence-Walton's extremely large number of claimed overtime hours is belied by FPPS records, that her alleged extra hours were not suffered or permitted, and that her claims are outside the scope.

With respect specifically to Ms. Lawrence-Walton, the Agency offered the Declarations of Charles Mitchell and Sylvia Hall. Mr. Mitchell, Supervisory Investigator in the Atlanta District Office until 2006, declared as follows: He was not aware that Ms. Lawrence-Walton was working extra hours in overtime, either after hours, on weekends or holidays, or on her days off, with the exception of Outreach. He instructed all Investigators that they were not to work beyond their regular work hours. Intake was to be balanced, rarely requiring extra hours, and Ms. Lawrence-Walton did not counsel an unusually large number of Charging Parties. Investigators were instructed to complete their sign-in/sign-out sheets by filling in their actual arrival and departure times.

Ms. Hall, Supervisory Investigator from June 2006 to November 2007 and Ms. Lawrence-Walton's supervisor for a short time, declared as follows: When she was an Investigator in the Atlanta Regional Office, she received excellent appraisals when only working occasionally beyond her regular work hours. She never told any Investigator, including Ms. Lawrence-Walton, to annotate their sign-in/sign-out sheets with anything other than their actual arrival and departure times. She did not recall Ms. Lawrence-

Walton working beyond her regular work hours, or on weekends or holidays, unless she volunteered to work an Outreach event in the evening or on a weekend, which she did not recall Ms. Lawrence-Walton's doing. She did not recall Ms. Lawrence-Walton's counseling a large number of potential Charging Parties in Intake, and there was no need to arrive early to prepare for Intake or to stay late. She never asked Ms. Lawrence-Walton or any other Investigator to perform work when recovering from major surgery, except if they were out of leave and had approval to work from home. She did not contact Ms. Lawrence-Walton while she was recuperating from surgery to provide case statuses or to work on cases. She did not send Felicia Howard to Ms. Lawrence-Walton's residence to leave files for her, although she may have send Ms. Howard to retrieve a file from her so that someone else could work on it in her absence.

The Union contends that Ms. Lawrence-Walton had not been provided with her records, and that her statement, set forth above, is consistent with the experience of her co-workers in the Atlanta District Office. It argues that Ms. Lawrence-Walton worked extra hours conducting investigations, working in Intake, and was instructed to record only her work schedule. It asserts that, since Ms. Lawrence-Walton provided information "based upon her best estimate without having been provided records upon which she could base her claim," the Agency should not benefit from its illegal conduct and should thus be barred from opposing her claim.

Ms. Lawrence-Walton has claimed a significant number of extra hours, even discounting, as I am required to do, the hours claimed during those pay periods where she worked on a flexible schedule. I also acknowledge that, as the Agency asserts, Ms. Lawrence-Walton's FPPS records are not supportive of her claim. Ms. Lawrence-

Walton's claim is supported principally by her statement, which is essentially an anecdotal account of her asserted extra work hours, and is not, in any significant way, pay-period specific. I am unable to conclude that she has carried her initial burden of showing, even inferentially, that her claims merit payment.

Accordingly, I must deny Ms. Lawrence-Walton's claims.

Kenneth Warford

Mr. Warford worked as a Mediator in the Atlanta District Office from before the beginning of the claims period until pay period 200825. He worked a 4/10 compressed schedule. He testified at the hearings in Atlanta, GA. The Agency objects to his claims on grounds that he did not work most of the claimed hours, that his hours were not suffered or permitted, and that they are outside the scope.

Mr. Warford filed three Claim Forms. The first, dated January 4, 2012, claims 7 hours a pay period in 142 pay periods and 6 hours in pay period 200819, totaling 1,000 hours of overtime from pay period 200308 to 200819. The second, dated May 10, 2012, claims 10.1 hours a pay period in 149 pay periods or a total of 1,505 hours of overtime from pay periods 200309 to 200825. The third, dated May 14, 2012, claims 1,501 hours in 144 pay periods. All three cover the periods April 7, 2003 to November 30, 2008. The third claim (which, as noted below, is the claim he wishes to have considered) claims four to twelve hours (trending toward the twelve) in virtually every pay period. Mr. Warford's statement sets forth the following:

> THIS STATEMENT AND OVERTIME CLAIM SUPERSEDES THE OTHER TWO CLAIMS THAT I HAVE FILED BECAUSE THE EEOC DID NOT PROVIDE ME PROPER DOCUMENTATION UNTIL MAY 10, [2012], AFTER I HAD FILED MY LAST CLAIM.
>
> I am making this statement and submitting this document by of my own free will

in an effort to confirm some of the unpaid overtime hours that I worked over an almost 6 year period of time that is covered in my case. I do this from memory with little or no documentation because I worked the overtime hours at the time of my own free will and was never allowed to properly document those hours on the sign in and sign out sheets. Again, it was never an issue at the time and I never considered being paid for the hours any way, so the hours were not documented.

I am now submitting a request to be paid for some of those overtime hours only because of a provision that has [a]risen as the result of litigation that prevailed in the court.

Since I have now been provided proper records from EEOC, I can go through those records and properly document the overtime hours that I worked and for which I have requested to be paid. I have documented these overtime hours from the following know[n] factors:

THE FIRST KNOWN FACTOR….I arrived at work on a daily basis at 5:00 to 5:30 A.M. However, I was unable to sign in for my work day schedule to begin until 6:30 A.M. This fact alone would compute to 8 to 12 hours of overtime worked in a single two week pay period. There are approximately 148 pay periods during the time under review in my case. **However, when one backs out the pay periods accounting for annual leave, sick leave and holidays,**……that would leave approximately 115 pay periods to consider in my case for overtime pay in this single factor. At the low end of 8 hours of time during a single pay period and there were 115 pay periods under review this would equal 920 hours of over time pay. At the high end of 12 hours of overtime during a single pay period this would equal 12 times 115 or a total of 1380 hours of overtime worked considering this factor alone.

THE SECOND KNOWN FACTOR…..I conducted over 100+ mediations each year. This would compute to around 570 mediations during the period under review. On a regular basis in these mediations, I would run over my work scheduled time from 1 to 2 hours. On may occasions the mediation [session] would run several hours over my scheduled work time because it was imperative to complete the mediation in one session if possible. **No one ever wanted to return to finish the mediation on another day!!! SOMETIMES THOSE MEDIATIONS WOULD SEEM TO RUN FOR EVER!!!!!** However, there were times when a mediation would be completed in the second or third session on other days. At the very low end amount of 1 hour overtime per average mediation, that would compute to 575 hours of overtime and at the higher end it would compute to well over 1150 hours of overtime that I worked under this factor. I am convinced that under this factor alone if I had the actual records to document these overtime hours worked, it would well exceed the 1500 hours of overtime pay that I am requesting to be paid in my claim.

From these documented facts one can see that **AT THE HIGH END** I could have worked well over 2530 hours of overtime during this time of review if all the hours had been properly documented. **AT THE LOW END** I worked 1495 hours. Since I worked as a mediator for EEOC for many years and since I wish to be fair and reasonable in the matter, I have documented only 1500 hours of

> overtime to be paid. This is around the low end estimate and far less than the high end estimate of 2580 overtime hours. Therefore, I request to be paid for 1500 hours of over time pay. Since I have asked for the low end of the estimated pay, I hope that there will be no need for arbitration in the matter. Likewise, I do not wish to impugn anyone in management because I am not sure than anyone in management was fully aware of all the hours of overtime that I was working although they were extremely pleased with the results. As a matter of fact, not even I realized the large number of hours of over time that I had worked until I began to look at the facts and add up all the hours.
>
> I wish to make it very clear….I have tried to correctly document these 1500 overtime hours from the records that have been provided to me by EEOC….THIS DOCUMENTATION MAKES IT SIMPLE AND SHOULD BE VERY CLEAR AND THERE SHOULD BE NO REASON FOR MISS-UNDERSTANDINGS [sic]. However, if there are questions, I will be pleased to try to resolve any issue if such should arise.
>
> **IT IS A FACT THAT NO ONE CAN QUESTION**….I was an outstanding mediator during the many years that I served EEOC and our respective clients. As a matter of fact, I received a Gold Medial [sic] Award around the 2006 and 2007 time period for being one of the top Mediators in the Nation. This was accomplished because I was extremely dedicated and worked many hours of time over my regular work schedule. In conclusion, [a]s I have stated, I did not work the overtime because I expected to be paid for the overtime. Never the less, since I am now able to recover some of that loss of overtime pay as a result of prevailing litigation, I am requesting to be paid for 1500 hours of overtime pay that I know from these documented facts that I worked. Again in conclusion, I believe that the above stated facts are true to the best of my knowledge and well establishes and justify the reason for my request.

In a Supplemental Affidavit dated September 24, 2013, Mr. Warford explained that, in addition to clarifying that it was his third Claim Form that he wanted considered, he had mistakenly entered his actual daily work hours under the "Office Hours" column in the Claim Form. He went on to assert that, "[o]n a daily basis, I did arrive at the office at approximately 5:30 a.m., but I was not permitted to sign in and begin working until 6:30 a.m. I worked from 6:30 a.m. to, at least, 5:30 p.m., each day I was at work and not on leave. When I had mediations, my work hours would extend past 5:30 p.m. on many occasions. I would work until the mediation was completed."

The Agency contends that supervision was not aware of these claimed hours, and

that he did not work most of them. It asserts its belief that, while Mr. Warford may occasionally have worked late at a mediation and reported it to his supervisor, he used compensatory time, resulting in his not working more than eighty hours in a week. It also alleged that Mr. Warford's claim should be dismissed on the ground that it directly contradicts his testimony at the hearing. It further notes that, even after he was furnished with his FPPS records, he did not properly adjust his claim.

The Union represents that it is Mr. Warford's third claim that he wishes considered, since, as he notes in his statement accompanying this final claim, it was only then that he received records he had requested of the Agency. The Union asserts that the Agency failed to maintain accurate records of Mr. Warford's and others' time. It notes further that the Agency's objections are not based on any specific evidence submitted to dispute Mr. Warford's claim, and that Agency records were not an accurate reflection of his and others' work hours.

The record for Mr. Warford is more complex than some, owing to the multiple claim submissions. What has now been clarified is that only the third and last is now before me. Mr. Warford, in his statement, explains in some detail the methodology behind his claim, which he asserts, is still on the conservative side.

My principal concern is that there are potentially significant material issues of fact in the record. On their face, I find them not easily reconciled. The fact is that I effectively have two separate records in this matter, owing to Mr. Warford's previously having given testimony. I conclude that the only way to resolve these issues is through a hearing.

Accordingly, this matter shall be set for hearing.

Rosalyn Williams

Ms. Williams worked as an Investigator in the Atlanta District Office, both on a 4/10 and 5/4/9 compressed schedule, from before the beginning of the claims period until the end of 2011. She claims 309 hours of overtime over 86 pay periods. Ms. Williams testified at the hearings in Atlanta, GA. The Agency objects to her claims on grounds that she did not work the hours in overtime that she claims, and that her claims are outside the scope.

Along with her Claim Form, Ms. Williams submitted a statement that spoke principally of her activities performing Intake and detailing her goals and timetables. In fact, the Agency highlighted her testimony (as well as that of others) in its summary of the Atlanta testimony, included in many of its submissions on Atlanta claimants.

Ms. Williams' Intake statements typically set forth the following (with slight variations):

> Once every four weeks I was assigned to Intake. During my Intake week, members of the public must be served, therefore, I stayed late to complete my work. The Agency discouraged employees from recording extra hours. During pay period [various], I worked at least [typically two or four] hours overtime to complete my Intake work.

Similar statements concerned Ms. Williams' goals and timetables, where she would note that she worked overtime hours to complete that work by the end of a quarter, or by the end of a fiscal year "in accordance with the supervisor's directives." She added that "[t]he Agency discouraged employees from recording extra hours." To a lesser extent, Ms. Williams set forth her activities performing Onsites and Outreach, and associated travel, as well.

The Agency challenges her claim, stating that sign-in/sign-out sheets confirm that

she "often did not work 80 hours in a pay period, much less overtime," and that, if there were extra hours, they would be offset by fewer hours in the other week of the pay period. It further challenges her claim to extra hours working on her goals and timetables. The hours she alleges, according to the Agency, were not suffered or permitted. It submitted the Declarations of Ms. Williams-Kimbrough and Ms. Dandy.

The Union contends that documents submitted by Ms. Williams support her claim of extra work hours, both for Intake and compensable travel, the latter taken with advance approval of her supervisors. She also noted that she was offered illegal credit time.

Much emphasis has been placed by the Agency on the testimony offered by Ms. Williams during the Atlanta hearings. Among the principal issues put before me here are those of Intake, Onsite and Outreach activities, in addition to the time Ms. Williams claims with reference to her "goals and timetables." On the matter of Onsite and Outreach specifically, these implicate claims for travel overtime, most of which it appears would not qualify under Federal travel regulations. One example that may qualify is the Outreach on Friday, October 22 and Saturday, October 23, 2004, where Ms. Williams traveled to Dawson and Albany, GA on behalf of the Terrell County Branch of the NAACP.

In my view, there can be no denying that, in light of Ms. Williams' prior testimony generally and the issue of travel overtime, as well as the Declarations of Ms. Williams-Kimbrough and Ms. Dandy, on the issues of Intake and Outreach, respectively, which I accept as statements of position rather than fact, there are material issues of fact that can be reliably resolved only through a hearing.

Accordingly, I direct that a hearing be conducted in this case.

BALTIMORE

Christine Bazemore

Ms. Bazemore worked as an Investigator in the Baltimore Field Office. Her Claim Form, while timely filed, fails to indicate any overtime hours worked.

Ms. Bazemore's claim, therefore, must be denied.

Denise Bean

Ms. Bean worked as a Mediator in the Baltimore Field Office. She claims 747 hours over 147 pay periods, from pay period 200321 to 200910. Ms. Bean's Claim Form reflects that she worked a basic schedule from 9:00 A.M. to 5:30 P.M. In fact, as the parties agree, she actually worked a flexible schedule, in that the official hours of the Baltimore Field Office were 8:30 A.M. to 5:00 P.M. The Agency objects to her claims on grounds that she worked a flexible schedule, that there is insufficient evidence to create a just and reasonable inference that she worked in excess of 80 hours in a pay period, that any extra hours she worked were not suffered or permitted, and that her claims are outside the scope.

Along with her Claim Form, Ms. Bean has submitted a significant amount of e-mail correspondence, generated in the course of her mediation activities, and reflecting their preparation outside of her normal working hours. These represent communications generally between Ms. Bean, Charging Parties, respondents and her supervisors.

The Union contends that the Agency has presented no evidence to refute Ms. Bean's claim, asserting that it may not complain about the lack of specificity in a claim if the Agency itself does not maintain accurate records.

On the basis of Ms. Bean's working a flexible schedule, I must deny this claim.

LaEunice Chapman

Ms. Chapman worked as a Paralegal Specialist in the Baltimore Field Office. She claims 550.95 hours over 93 pay periods, from pay period 200311 to 200825. She worked a 5/4/9 compressed work schedule.

The documentation submitted by Ms. Chapman along with her Claim Form is extensive. It consists of Cost Accounting Bi-weekly Time Sheets that essentially cover the range of her claim.

The Agency acknowledges that Ms. Chapman "may be entitled to payment for 149.09 hours which equal $5,115.67 plus liquidated damages for a total of $10,231.33." It goes on to object to Ms. Chapman's remaining claims on various grounds. These include, with reference to Ms. Chapman's FPPS records, her having earned and used compensatory time during the same pay periods, that she received time off for the time she worked, that her claims are outside the scope, that she did not work some of the extra hours claimed, and that some of her claims are barred by a prior arbitration decision in the Agency's favor covering all employees who worked in the then Baltimore District Office.

The Union contends that the Baltimore Legal Unit had entered Ms. Chapman's extra work hours in the Agency's automated time and attendance records. It asserts that Ms. Chapman's claim is supported by the documents she submitted for each pay period on her claim, and that she reported her compensatory time on her Claim Form. It alleges further that the Agency's FPPS records are not accurate, as the Agency failed to keep accurate track of hours worked, and produced no evidence to show that Ms Chapman did not work the hours and use the compensatory time she reported.

I take up first the matter of the Agency's argument that some of Ms. Chapman's claims are barred by a prior arbitration decision in the Agency's favor covering all employees in the then Baltimore District Office, and asks that all claims in the case before me that predate February 3, 2004 (the last hearing date in that case and, as the Agency represents, the last day covered by testimony, and falling in pay period 200404) be barred. The grievance in that case had been filed by AFGE, Local 3614 on January 13, 2002. The decision of Arbitrator Lucretia Dewey Tanner, in a dispute between the Agency and AFGE, Local 3614, was issued March 15, 2004. In that decision, the Arbitrator likewise faced a "suffered or permitted" issue. In her Award, clarified July 5, 2005 and upheld on appeal in 2006 (61 FLRA No. 144), she found that there were no employees who had worked overtime for which they were not properly compensated.

On this specific issue, I note that the Agency makes the same argument in the claims of Judy Kirlin and elsewhere. There, the Union's response to the Agency's position was that its argument was essentially irrelevant, because AGFE, Local 3614 had sought retroactive relief prior to the January 13, 2002 date of the grievance, and not, therefore, for any period of time overlapping with the claims period in this case. If, therefore, I am to credit the Union's representation, it will have to be applied here, as well as to any further claim from the Baltimore Area Office in which the Agency's argument is made. Therefore, in all further claims from the Baltimore Area Office where this argument is made, my response here shall be incorporated by reference therein.

Further, as the parties are aware, pay periods in which Ms. Chapman earned no compensatory time and which, by my ruling, are not "outside the scope," may be examined. I will therefore schedule a hearing so that testimony may be taken on the

matter of whether any bases exist such that the proposed Agency remedy should not be directed.

Judy Kirlin

Ms. Kirlin worked as an Investigator in the Baltimore District Office. Her Claim Form reflects that she worked consistently on a 5/4/9 compressed schedule. She claims 1,259 hours over 160 pay periods.

The Agency acknowledges that, based on FPPS records showing that Ms. Kirlin earned and used compensatory time during the claims period, it values her claim at 30.9 hours, equaling $1,168.04 plus liquidated damages, for a total of $2,336.07. The Agency objects to her remaining claims, asserting that there is insufficient evidence that she worked hours in excess of eighty in a pay period, that her claims are outside the scope, that she earned and used compensatory time during the same pay periods, and that she received time off for time worked. The Agency points specifically to Ms. Kirlin's not having produced documentation in support of her claim, so as to demonstrate actual time worked, and that, therefore, her evidence does not create a just and reasonable inference that her claim is supported. In addition, it argues that, because of insufficient evidence provided, it cannot be demonstrated that she actually worked more hours than are reflected in her FPPS records. It suggest that some of Ms. Kirlin's claims are based more on a desire to earn religious compensatory time than to earn overtime. Finally, the Agency references again the March 15, 2004 arbitration award of Arbitrator Tanner, involving the Agency and AFGE, Local 3614, and its assertion that claims accrued prior to February 3, 2004 (pay period 200404) have already been resolved.

Ms. Kirlin submitted a Supplemental Affidavit, dated September 29, 2013, in

which she stated:

> …In submitting my claim, I based my claim from April 2003 to June 2006 on records supplied to me by the Union. Compensatory time earned and used was recorded in the agency payroll records. From June 2006 to June 2009, I based my claim upon my records and my recollection of hours I worked. All my extra work hours were because I was investigating cases, interviewing claimants, conducting onsite visits, and outreach. I was a bilingual Investigator, so I was called upon to service Spanish speaking members of the public and charging parties.
>
> My religious compensatory time earned and used was a separate category and I could not trade religious compensatory time earned and used for regular compensatory time. I could use my regular compensatory time, to take off for religious observances, but religious compensatory time was limited to use for religious purposes.

Apart from Ms. Kirlin's assertion that her religious compensatory time was not included in her claim (although reflected on numerous occasions in Ms. Kirlin's FPPS records as having been both earned and used), the Union contends that the Agency's objections to the applicability of the grievance filed by AFGE, Local 3614 are without merit because the period of relief sought there by AFGE, Local 3614 was retroactive and, thus, does not overlap with the claims period here. It states that, in fact, the grievance record in that case attributes to the Agency, in a grievance response, the position that "Sign-In/Out sheets are unreliable as indicators of overtime. They are used for the sole purpose of recording an employee's presence in the office."

The manner in which this claim is to be handled should, in my view, be consistent with that taken in the above claim of Ms. Chapman, and for the same reason as there. Thus, as the parties are aware, pay periods in which Ms. Kirlin earned no compensatory time and which, by my ruling, are not "outside the scope," may be examined. I will therefore schedule a hearing so that testimony may be taken on the matter of whether any bases exist such that the proposed Agency remedy should not be directed.

Angelica McKinnon

Ms. McKinnon, an Investigator, indicated no extra work hours on her Claim Form. She made a handwritten notation, writing that she had moved and was unable to find her records.

Her claim, therefore, must be denied.

Loretta Miller

Ms. Miller worked as an Investigator in the Baltimore Area Office. She claims 157 hours over 89 pay periods. She was among the claimants who received a 60-day extension of time to file.

It is not entirely clear from the Claim Form whether she worked a flexible schedule, or whether a 5/4/9 compressed schedule, as both blocks appear to be filled in. I will not assume that one was crossed out in favor of the other. The fact is, however, that the parties agree that she did work a 5/4/9 compressed schedule.

The Agency contends that, in light of Ms. Miller's having included no supporting documentation with her Claim Form, that there is insufficient evidence to create a just and reasonable inference that she worked in excess of eighty hours in a pay period. It further notes that Ms. Miller earned and received compensatory time in pay period 200314, and that her claims are outside the scope. The Agency also raises the issue, addressed earlier herein, of the January 2002 grievance brought by AFGE, 3614, as well as the issue of religious compensatory time. On the latter issue, the Agency contends that earning and using religious compensatory time is with the goal of avoiding the use of annual leave, rather than for earning overtime.

Ms. Miller submitted a Supplemental Affidavit, dated September 28, 2013, in

which she stated:

> …In completing my claim form, the information I put in on pay period 200314 and 200316 were mistakes. I did not use 45 hours of compensatory time. I did use religious compensatory time, while employed with the Agency. The process I used to request religious compensatory time was to request the dates I needed religious compensatory time in advance; I would then work the hours needed for the dates requested; and after working the hours, I would use the religious compensatory time on the requested dates.
>
> My hours on my claim form were not worked for religious compensatory time. I worked the extra work hours on my claim form performing investigative work, conducting onsites; and performing Intake work. I reconstructed the work hours to the best of my recollection.

The Union contends that the Agency's specific objections are addressed in Ms. Miller's Supplemental Affidavit, above. In addition, it makes the same response as before to the Agency's argument relating to the previous arbitration case between the Agency and AFGE, Local 3614.

Ms. Miller's claim raises a burden of proof issue. With due respect to Ms. Miller, I am unable to conclude that enough has been shown, in light of her reference to general job duties, without some indication of when, and to what extent, specific duties were performed. Inasmuch as the Claim Form Instructions themselves inform every potential claimant that "[e]ach pay period in which you worked extra hours is a separate claim," some specificity is clearly necessary. It is, therefore, difficult to assess a claim in which no real explanation may be imputed to any given group of hours claimed.

Accordingly, Ms. Miller's claim must be denied.

Yvonne Williams

Ms. Williams worked as a Paralegal Specialist in the Baltimore Field Office from before the start of the claims period until pay period 200619. She claims 455.91 hours over 79 pay periods. The Claim Form, on its face, is unclear with respect to Ms.

Williams' work schedule, in that she designated having worked both a 5/4/9 compressed schedule and flexitour for every pay period. Her records clear up the problem, and the fact is that she worked a 5/4/9 compressed schedule throughout.

Ms. Williams' Claim Form is accompanied by a significant number of documents, among them time and attendance sheets, overtime report forms, e-mail correspondence, and leave request forms.

The Agency acknowledges that, based on its review, Ms. Williams is likely entitled to payment of 95.175 hours, equaling $3,071.14, plus liquidated damages, totaling $6,142.29. It bases this accounting on Ms. Williams' FPPS record of compensatory time earned and used. The Agency objects to the remainder of her claims on various grounds – their being outside the scope, earning and using compensatory time in the same pay period, receiving time off for time worked, and insufficient evidence to support a just and reasonable inference that hours claimed are actual hours worked, or that, if they were, they were unknown to Ms. Williams' supervisor. It also reiterates its objection with respect to the earlier arbitration matter involving the Agency and AFGE, Local 3614.

The Union contends that all the hours in Ms. Williams' claim are supported by specific evidence, identified for each applicable pay period, and that the Agency has not produced any evidence which would call such evidence into question. In addition, the Union asserts that Ms. Williams' supervisor would have knowledge of this, inasmuch as her Claim Form reflects that, for each pay period, Agency e-mails exist. It also reiterates its position that the AFGE, Local 3614 grievance covered a period prior to that covered by the current claims process.

The evidence that has been presented by Ms. Williams, so extensive that it appears three separate files were created to accommodate it, surely appears to satisfy the initial burden Ms. Williams is expected to carry in pursuing her claim. In addition, as the parties are aware, pay periods in which Ms. Williams earned no compensatory time and which, by my ruling, are not "outside the scope," may be examined. I will therefore schedule a hearing so that testimony may be taken on the matter of whether any bases exist such that the proposed Agency remedy should not be directed.

BIRMINGHAM

I set forth first the Union's objection to the Agency's challenge to all claims arising from the Birmingham District Office. It contends that the Agency refused to provide employees with their personal records when those records were requested. It asserts that, shortly before the end of the claims deadline, the Agency provided employees who had requested records with a box of records for all employees in the office. It notes that the claim file of Birmingham employees contains the Agency's response. The Union represents that "[t]he Agency has obstructed employees filing a claim in Birmingham, by refusing to provide vehicle logs, travel logs, leave request slips, and other documents employees requested to prove their claim." The Union thus requests that no objections filed in response to an employee's claim be considered.

I note, in addition, that the claim files for employees from the Birmingham District Office typically include Declarations from three management personnel, who have addressed various issues upon which the Agency relies in its defense of the Birmingham claims. These Declarations are summarized below. The parties are again advised of my position with respect to the evidentiary impact of these Declarations.

Clarence Bell, Acting Enforcement Manager, declared, in summary, as follows: In his position, he managed Enforcement Supervisors, and was the first line supervisor for the Dedicated Intake Unit Investigators, including, at least from January 2007 to April 2009, Vanessa Hannah and Arthur Reid. During that same time period, the Birmingham District Office did not maintain a practice of routinely offering or awarding informal compensatory time to employees who worked extra hours. All staff were reminded that they were not to work beyond their regular hours, and that any requested compensatory time had to be approved in advance. He had no personal knowledge that either Ms. Hannah or Mr. Reid stayed past their scheduled hours to complete their investigative duties and that no one advised him that either had stayed late to complete a walk-in. He had no personal knowledge of any Investigator having performed extra work at home, on their day off or over the weekend, or while conducting an Onsite. He believes no claimants worked extra hours because no requests to do so were brought to his attention.

Debra Leo, ADR Coordinator from at least April 2003 to at least April 2009, addressed details of her first line supervision of Mediators James Lee, Arthur McGhee and Emma Evans. She declared, in summary, as follows: The Birmingham District Office, excluding the Legal Unit, has not maintained a routine practice of offering or awarding informal compensatory time to employees in exchange for working extra hours. On rare occasions, when extra hours were worked, it was formally recorded as compensatory time and recorded in FPPS. It was the practice of some first line supervisors, excluding the Legal Unit, that, on the rare occasions when employees had little notice that they would be working extra hours, they would ask permission and, if granted, they would be permitted to take off an equal amount of hours off later,

preferably in the same pay period. Rarely, if no advance notice was possible, they would advise their managers after the fact and take an equal number of hours off, preferably in the same pay period, while being reminded that advance approval was required. She frequently reminded all Mediators in her unit that extra hours were not to be worked and that requests for compensatory time had to be approved in advance. She had no knowledge that claimants Lee, McGhee (Arthur) and Evans ever worked extra hours without taking an equal number of hours off later, and that none informed her that they had worked extra hours at home or on the weekend. She had no knowledge that any of the three worked extra hours while in the office, except to complete an ongoing mediation. She recalled approving Mr. McGhee to use a Government vehicle to travel on Sunday, April 16, 2006 in order to conduct a mediation on Monday, April 17, 2006, but did not authorize him to work extra hours on that mediation. She had no knowledge of any of the three Mediators working beyond their regularly scheduled hours traveling home from a mediation held outside the office without taking an equal amount of time off. She did not believe Mr. McGhee worked extra hours and noted that his performance as a Mediator was below par.

Delner Franklin-Thomas, Director of the Birmingham District Office since October 2006, declared, in summary, as follows: There has not been a practice of routinely offering or awarding informal compensatory time to employees in exchange for working extra hours. Rarely, when a management official decided that extra hours were needed, the employee was given the option of earning overtime or compensatory time, and if the latter were chosen, it would be recorded in FPPS. If there was a lack of notice of needed extra hours, the employee would ask permission and, if granted, would work

the hours and take an equal amount of hours later, preferably in the same pay period. If there was no time to get advance permission, the extra hours would be worked without prior authorization, and the manager would be advised after the work and the extra hours were then authorized to be taken later, preferably in the same pay period. In such cases, employees were informed not to work extra hours in the future without advance approval. All staff were frequently reminded that they were not to work extra hours, and that compensatory time had to be approved in advance. He had no personal knowledge that any claimant stated late while working in the office, to complete a walk-in during Intake or while conducting Onsites, and had no personal knowledge that any worked at home or on the weekend without receiving an equal amount of hours off. Claimant Aaron Hallaway was a GS-12 Investigator until February 14, 2007 when she was detailed to the position of Supervisory Investigator until April 6, 2007. The detail was renewed April 23, 2007 and expired July 7, 2007. She was then permanently assigned to the position of Supervisory Investigator effective October 14, 2007.

Glenda Bryan-Brooks

Ms. Bryan-Brooks worked as an Investigator in the Birmingham District Office for the entire claims period. She worked a 4/10 compressed schedule. She claims 949 hours over 138 pay periods. She also testified at the hearings in Atlanta, GA and was among those who received a sixty-day extension to file her claim.

The Agency has objected to all Ms. Bryan-Brooks' claims on grounds that she failed to provide sufficient evidence to raise a reasonable inference that she worked the extra hours alleged, that her claims are outside the scope, that supervision could not know of her hours and that they are therefore not suffered or permitted, that she did not worked

the extra hours claimed, and that she received time off for time worked. More specifically, the Agency argues that Ms. Bryan-Brooks failed to offer even a minimal explanation of the nature of the overtime work she asserts she performed. In addition, the Agency relies on the testimony of Supervisory Investigator Booker Lewis, who testified that Investigators under his supervision typically did not work such that overtime hours would be generated.

As part of Ms. Bryan-Brooks' claim, she submitted, for applicable pay periods, a statement entitled "**STATEMENT OF EXPLANATION FOR WORKING AT HOME ON SCHEDULED WORK DAY AND AFTER WORK HOURS**." In these, she set forth extra hours in each pay period she asserted she worked performing investigative work, stating:

> More often than not, it is necessary to perform investigative work outside of the assigned tour of duty. The investigative duties include analyzing documents, preparing request[s] for information, writing cause investigative memos and letter of determinations, and on occasion interviewing witnesses, etc. Because members of the public must be served and due to overwhelming case inventories (backlog), internal explanations resulting in pressure from management and meeting deadlines, working extra hours is imperative to the success of the investigator.

To each such request, Delner Franklin-Thomas, Birmingham District Office Director, responded by Memorandum dated May 15, 2012, indicating which records, if available, were included, and advising that, "[u]nder the Claims Procedures in this case, the Agency is required to provide 'cost accounting sheets and/or leave records, including compensatory time taken…provided that such records are available and can be retrieved without undue delay.'" This letter stated that Intake and Outreach records were beyond the scope of what the Agency was required to provide under the Claims procedures, that certain other records were attached, and that still other requested records were not located. It added that "Emails submitted to your supervisor during the relevant time

periods may be secured through an archive search in Groupwise."

The 2009 Opinion referenced Ms. Bryan-Brooks' viewing the successful conduct of her job as being "about the numbers." The Union referenced Ms. Bryan-Brooks' testimony that she did, in fact, work on her off day to investigate cases, conduct Onsites, and perform Outreach, as well as other relevant duties, and that it was common practice for Investigators to work on their off day and take the day off at a later date. It referenced samples of Ms. Bryan-Brooks' sign-in/sign-out sheets, showing supervisor approval of those, in addition to travel authorizations. It notes that the Agency's refusal to provide documents was submitted with her claim. It further referenced testimony of Ms. Bryan-Brooks that Investigators are advised that, in order to meet their numerical goals, it is necessary to work beyond scheduled work hours, of which supervision was aware. It asks that the Agency's objections be rejected, for refusal to provide the necessary records to complete Ms. Bryan-Brooks' claim. It further points out that Mr. Bell and Ms. Leo did not supervise Ms. Bryan-Brooks, and that their Declarations, as well as that of Mr. Franklin-Thomas are directly contradicted by Booker Lewis' hearing testimony.

In this case, it is apparent that Ms. Bryan-Brooks made her best attempt to document her claim, and has further attempted to do so to the extent possible on a pay-period-by-pay-period basis. This is not uniformly the case with all claimants in the Birmingham District Office. Apart from the potential difficulty in procuring records, I find that there are material issues of fact concerning the "outside the scope" issue, as well as that of supervisory knowledge. Testimony will be required on this, as well as on potential conflicts found in hearing testimony, including that of herself and Mr. Lewis.

Accordingly, a hearing will be directed.

Noah Carter

Mr. Carter worked as an Investigator in the Birmingham District Office until June 30, 2006. He worked on a 5/4/9 compressed schedule. He claims 409 hours over 84 pay periods. Along with his Claim Form is, by pay period, the "**STATEMENT OF EXPLANATION FOR WORKING AT HOME ON SCHEDULED OFF DAY AND AFTER WORK HOURS**" form.

The Agency objects to all of Mr. Carter's claims on grounds that he failed to provide sufficient evidence to create a reasonable inference that he worked the extra hours he claimed, that his claims are outside the scope, that his supervisor did not know about extra work hours and were, thus, not suffered or permitted, and that he received time off for time worked. The Agency asserts that nowhere does Mr. Carter describe the nature and extent of his overtime work in each specific pay period, and whether his claimed overtime hours are estimates. The record reveals, according to the Agency, that the time records Mr. Carter had requested were provided to him. It references the testimony of Supervisory Investigator Booker Lewis to the effect that Investigators generally did not put in hours meriting overtime, and that he knew by virtue of how late he stayed himself.

The Union contends that, in addition to Mr. Carter's providing a sworn statement for his activities in each pay period, he documented the Agency's refusal to provide records he requested. Mr. Lewis, who was Mr. Carter's supervisor, testified to the practices in the Birmingham District Office and the need for each Investigator to meet the goals of the office. It urges that the Agency's objections be rejected, for refusal to provide Mr. Carter with the records necessary for completion of his claim. It argues that the fact that Mr. Carter estimated his extra hours was occasioned by the Agency's failure

to keep accurate records, and that the Agency had records and refused to provide them. It points out that Mr. Bell and Ms. Leo did not supervise Mr. Carter, and that the Franklin-Thomas, Bell and Leo Declarations are contradicted by Mr. Lewis's testimony. It urges rejection of the Agency's objections to "outside the scope," insufficient evidence and receipt of unrecorded compensatory time.

Mr. Carter made a good faith attempt to document his claim. To be sure, there are estimates in the extra work hours he claims. This will be seen elsewhere as well, likely relating to the issue of records. I also note that, in this case and in others here, the Agency has placed a strict interpretation on the kinds of records to which it believed claimants were entitled. Therefore, it may not always be the case that records not produced were not available in some form. Rather, it is that the Agency may have subjectively concluded that records of certain kinds need not be produced. In addition, I note again that there are material issues of fact concerning the "outside the scope" issue, as well as that of supervisory knowledge.

I direct a hearing to determine for this purpose, and, in addition, to receive testimony on potential conflicts found in hearing testimony.

Ollie Croom

Ms. Croom, who is deceased (August 10, 2011), worked as an Investigator in the Birmingham District Office. Ms. Croom's personal representative, Steven Croom, signed a Claim Form on February 6, 2012 which was not filled out. With it, he included the following statement directed to Rust Consulting:

> My name is Steven Croom and I have completed these claims forms as the Personal Representative for the now deceased Ollie Croom. However, I am unable to provide some of the specific information. I contacted the phone number associated with this document and was informed that this is how I should

> precede [sic]. I have also included copies of the Death Certificate and Letters of Testamentary. If you have any additional questions or concerns please contact me using the above address, email, or phone number.

The Agency objects to any claim on behalf of Ms. Croom, asserting that the parties agreed on a claims process, whereby consideration is to be given only to claims accompanied by a Claim Form. It asks, therefore, that the submission of Mr. Croom, on behalf of Ms. Croom, be denied. I do not set forth the other Agency objections, as they are clearly made solely for the record.

The Union contends that the above letter from Mr. Croom to Rust Consulting was not brought to the Union's attention prior to the filing deadline. It also includes sample sign-in/sign-out sheets for the Birmingham District Office, indicating that Ms. Croom worked extra hours, and states that the testimony of Supervisory Investigator Booker Lewis supports that Ms. Croom would have worked extra hours. The Union therefore requests that Mr. Croom be provided with the documents necessary to complete a claim for Ms. Croom, including all sign-in/sign-out sheets, travel logs, vouchers, IMS Outreach reports and other documents necessary to submit a claim.

On first review, it is to be presumed that, consistent with the parties' agreement on the May 29, 2012 deadline for filing a valid claim, this claim on behalf of Ms. Croom should be denied. Crediting the Union's representation that it did not know of Mr. Croom's letter prior to the filing deadline, coupled with the letter itself and these discrete circumstances, I conclude that the integrity of the claims process, and all the understandings reached on how it is to be administered, are not compromised by directing that available relevant records be provided to Mr. Croom so that he may file a claim on behalf of Ms. Croom.

It is so directed.

Emma Evans

Ms. Evans worked as a Mediator in the Birmingham District Office until January 3, 2006. Her Claim Form, while signed, reflects only the official hours of the office encompassing 74 pay periods, and her indicating that the Agency would have e-mails to support her claim. No other information is filled out. Ms. Evans notes an attached affidavit.

Ms. Evans submitted a "Statement (Affidavit) of Explanation for Working Beyond the Hours of Scheduled Time at the Office and Home," dated May 29, 2012, along with her uncompleted Claim Form. It states:

> The EEOC at the Birmingham District Office has always had goals and numbers of cases which it expected its employees to attain each month. If those goals were not attained, it would be adversely reflected in the employee's performance appraisals.
>
> As a mediator, I worked very hard to try to help the EEOC to attain its goals. This almost always entailed working beyond my scheduled hours. Other mediators and I worked as long as necessary beyond our scheduled hours to successfully complete mediations; we also travelled as often as necessary. I brought position statements, cases, and case law home to read, etc., so I could be adequately prepared for mediations. This was necessary because a great deal of time during the day had to be spent calling respondents to get them to agree to mediate cases. It was simply not unusual for other mediators and me to spend many hours after scheduled time for the mediation process. In fact, some mediators and I stayed at one mediation way past the 12:00 a.m. hour to complete some mediations.
>
> Other mediators and I always strove to attain the office's goals. Some of the time we were compensated (with compensatory time) and sometime not. I estimate that I worked at least six hours (average) per pay period without receiving adequate compensation. I worked the 5/4/9 or the 4/10 schedules.

The Agency asserts first that Ms. Evans failed to submit a valid Claim Form. It argues further that Ms. Evans has submitted insufficient evidence to support her claims, that her supervisor could not know of her alleged extra hours, that her claims are outside the scope, that she seeks payment for noncompensable travel time, that she received time off for time worked, and on other grounds stated for the record.

The Union makes a number of contentions to the effect that Ms. Evans did indeed consistently work extra hours, and that her supervisor acknowledged this by signing off on these hours, compensatory time granted and used sometimes being reflected on the sign-in/sign-out sheets. It contends further that hours worked by Ms. Evans and other Mediators were not recorded in the Agency's pay records. More specifically, the Union asserts that the Declaration of Debra Leo, ADR Coordinator in the Birmingham District Office, is false and is contradicted by the sign-in/sign-out sheets. It asks that, despite Ms. Evans' Claim Form listing only 74 pay periods, she be paid 6 hours of overtime for each pay period from April 7, 2003 through April 28, 2009, including liquidated damages.

With due respect to the Union's position in this case, I am unable to consider Ms. Evans' submission a valid claim, as it is substantially incomplete. Accordingly, it must be denied.

Gail Fantop

Ms. Fantop worked as a Paralegal Assistant in the Birmingham District Office throughout the claims period on a 5/4/9 compressed schedule. She claims 203.5 hours over 23 pay periods.

The Agency, while it places value on Ms. Fantop's claim, asserts that the amount of compensatory time she alleges she earned and used in each pay period in which she makes a claim is inconsistent with her data in FPPS. The Agency's calculation of the overtime due Ms. Fantop relies on the FPPS data, and concludes that she is entitled to payment of 35.33 hours, equaling $1,039.59, plus liquidated damages, for a total of $2,071.18.

The Agency also includes the Declarations of Jacqueline McNair, Charles

Guerrier and C. Emanuel Smith. Ms. McNair, then Acting Regional Attorney for the Birmingham District Office, declared as follows: She was Ms. Fantop's direct supervisor from October 2005 until January 2006. During that time, all Legal Unit staff were frequently reminded that they were not permitted to work beyond their regular work hours and that all requests for compensatory time had to be approved in advance and recorded in FPPS. She issued a written policy (attached to her Declaration) to this effect. Extra hours never resulted in unofficial compensatory time.

Mr. Guerrier was Regional Attorney for the Birmingham District Office and Ms. Fantop's second line supervisor. He declared as follows (also referencing supporting documents): He was the second line supervisor of Ms. Fantop and William Hopkins. All Legal Unit staff were frequently reminded that they were not to work beyond their scheduled hours and that all requests for compensatory time had to be approved in advance by supervision. He did not permit employees to earn unofficial compensatory time, and all compensatory time earned was recorded in FPPS. He was not aware that Ms. Fantop worked beyond her scheduled hours.

Mr. Smith declared as follows (also referencing supporting documents): He is Ms. Fantop's second line supervisor. All staff in the Legal Unit are frequently reminded that they are not to work in excess of their scheduled hours and that all requests for compensatory time must be approved in advance. Prior to his becoming Regional Attorney, Ms. McNair issued the same notice, which he reissued. If an employee worked extra hours without advance approval, he or she would be counseled but would be given formal compensatory time recorded in FPPS, not unofficial compensatory time. Ms. Fantop was issued a warning notice in February 2010 when he learned she worked extra

hours without permission, even though she had been counseled not to do so. Except for this occasion, he had no knowledge of Ms. Fantop's working beyond her scheduled hours, except if she received official compensatory time.

The Agency contends that, apart from those elements of her claim that are supported by FPPS records, showing compensatory time earned and used, Ms. Fantop has not produced sufficient evidence to demonstrate by just and reasonable inference that her alleged extra hours reflect actual time worked. In addition, any claim she has for travel is, as the Agency argues, not compensable with overtime.

The Union contends that the Agency's objections to "outside the scope," offsets for compensatory time received, extra work hours performed in the same pay period, and compensatory time used, as well as other general objections, are not supported. It argues that Ms. Fantop's extra work hours are substantiated by Agency records, among them sign-in/sign-out sheets, and that the work was performed for the benefit of the Agency. In addition, it states that Rust Consulting had calculated $11,043.54 for Ms. Fantop.

As I have stated elsewhere, including in the introductory section of this Report, I cannot give evidentiary weight to Declarations or written statements alone, irrespective of which party proffers them.

In examining Ms. Fantop's claim, and in light of my "outside the scope" ruling, as well as on this issue of supervisory knowledge, I direct that a hearing be conducted for the purpose of determining whether bases exist such that the proposed Agency remedy should not be directed.

Sandra Figgers

Ms. Figgers worked as an Investigator in the Birmingham District Office until

June 30, 2006. For part of that period, she worked a 4/10 compressed schedule, the remainder of the time a 5/4/9 compressed schedule. Ms. Figgers was among those claimants granted an extension for filing her claim.

The Agency objects to Ms. Figgers' claim on grounds that she failed to provide sufficient evidence to raise a reasonable inference that she worked the extra hours alleged, that her claims are outside the scope, that the alleged extra hours were not suffered or permitted, that she did not work the extra hours claimed, and that she received time off for time worked. Her identical and repeated statements from one pay period to the next, as the Agency notes, are not sufficient explanation for the hours she claims. It also points to what it describes as Ms. Figgers' "pattern of taking leave in pay periods where she claims overtime work," and that this is not consistent with a viable claim. It references the lack of even a minimal explanation for the large number of hours claimed, noting, in part, her leave record as reflected in FPPS.

Ms. Figgers' statements, repeated by pay period, reflect varying hours claimed but otherwise state the following:

> More often than not, it is necessary to perform investigative work outside of the assigned tour of duty. The investigative duties include analyzing documents, preparing request[s] for information, writing cause investigative memos and letter[s] of determinations, and on occasion interviewing witnesses, etc.. Because members of the public must be served and due to overwhelming case inventories (backlog), internal expectations resulting from pressure from management and meeting deadlines, working extra hours is imperative to the success of the investigator.

The Union contends that "[t]he Agency refused to provide Outreach records, onsite records, vehicle logs, Intake records, and travel records" despite the fact that the Agency was in possession of such records. Moreover, it argues that "[t]he Franklin-Thomas, Bell, and Leo declarations are directly contradicted by Supervisory Investigator

Booker Lewis's hearing testimony." It notes, finally, that "[t]he use of Annual and Sick leave and Leave Without Pay is not a barrier to the receipt of payment for overtime."

Ms. Figgers presents a claim of significant overtime hours, but I find here that, despite asserted conflicts beween declarations and hearing testimony, these claims do not carry her initial burden of proof to establish a just and reasonable inference that the claim has sufficient merit. I recognize that the Union claims significant records were withheld. However, Ms. Figgers' claim was timely filed, on May 25, 2012, despite her sixty-day extension of time. Her explanation of her extra work hours by pay period was not specific. I understand that she is not the only claimant from the Birmingham District Office who utilized this form. Here, however, other matters place additional doubt on the *bona fides* of her claim. These include, as the Agency has noted, the matter of her taking leave in pay periods where she claims overtime hours. This is not to say that such scenarios are not possible; they suggest, however, that a number of these overtime hours, particularly when Ms. Figgers took some form of leave, carry an inference of misstatement, however inadvertent. This makes, in my view, for a less than credible submission.

Accordingly, Ms. Figgers' claim must be denied.

Mary Grandison

Ms. Grandison worked as an Investigator in the Birmingham District Office for the entire claims period, working a 4/10 compressed schedule. She claims 990 hours over 98 pay periods. Her claim documentation consists of the statement, utilized by other Birmingham claimants as well, that reflects generally, by pay period, hours claimed performing her investigative duties and her need to work extra hours.

It states:

> More often than not, it is necessary to perform investigative work outside of the assigned tour of duty. The investigative duties include analyzing documents, preparing request[s] for information, writing cause investigative memos and letter[s] of determinations, and on occasion interviewing witnesses, etc.. Because members of the public must be served and due to overwhelming case inventories (backlog), internal expectations resulting from pressure from management and meeting deadlines, working extra hours is imperative to the success of the investigator.

The Agency objects to all Ms. Grandison's claims, first on the ground that she failed to submit a timely claim. Her supporting documentation was postmarked on July 26, 2012. I find here that, while Ms. Grandison was not on the original list of those employees granted a sixty-day extension, the record reflects that Agency counsel agreed on June 1, 2012 to grant Ms. Grandison an extension. Therefore, her July 26, 2012 filing is, in fact, timely.

The Agency objects further to Ms. Grandison's claim on the grounds that she failed to provide sufficient evidence to raise a reasonable inference that she worked the extra hours alleged, that her claims are outside the scope, that the alleged extra hours were not suffered or permitted, that she did not work the extra hours claimed, and that she received time off for time worked. More specifically, she resorted to the general form, replicated by pay period, that states only generally, with no elaboration, the number of hours she claimed for that pay period.

The Agency, referencing FPPS records, points to numerous examples wherein Ms. Grandison, while claiming overtime hours, was instead on leave for the entire pay period, whether it be annual, sick, holiday or leave without pay. Ms. Grandison's overtime totals by pay period, are significant and, in fact, are in the double digits in most pay periods.

The Union contends that, in addition to Ms. Grandison's claim having been timely filed, the declarations of Mr. Bell and Ms. Leo should not be credited in that they did not supervise her and, further, are contrary to the records and the hearing testimony. It argues that Ms. Grandison was denied the right to file a more accurate claim based on the Agency's denial of her records. It notes further that Ms. Grandison did not receive the documents as she requested them, but rather a box of documents containing Cost Accounting sheets for her and her coworkers. It states that Intake schedules, Outreach records, compensatory time records, sign-in/sign-out sheets and leave requests were not provided. With respect to the Agency's Declarations, the Union states that Mr. Bell and Ms. Leo did not supervise Ms. Grandison and both of their Declarations were contradicted by the record and hearing testimony. It argues that the Agency's refusal to produce records and the inaccurate statements concerning Ms. Grandison's claim are additional proof that the Agency has no proof to dispute her claim.

This is another instance where, given the issue of records, I see a *Mt. Clemens* burden of proof issue. Ms. Grandison's claimed work hours, as noted above, are significant. More to the point, they are significant when viewed by individual pay periods. This is not to say that they are necessarily not credible for that reason alone. However, these claims of extra hours are not significantly supported by the repeating statements that accompany them. Further, when viewed in the context of what FPPS records reveal concerning various absences from work during entire pay periods in which she claims overtime, and in more than small amounts, it creates an issue of credibility concerning Ms. Grandison's claim generally. I am, therefore, not persuaded that Ms. Grandison can satisfy her initial burden of proof by demonstrating by just and reasonable

inference the amount and extent of overtime claimed.

Accordingly, I must deny this claim.

Aaron Hallaway

Ms. Hallaway worked as an Investigator in the Birmingham District Office for the entire claims period, working in part a 4/10 compressed schedule and in part a 5/4/9 compressed schedule. The Union identifies Ms. Hallaway as having been in the Dedicated Intake Unit.

I am not certain if the parties are in agreement on how the multiple claims before me came to be. However, I attempt here to lay out what appears to be the case. Ms. Hallaway first filed a claim, the only one the Agency deems to be valid, covering 115 pay periods (from pay period 200308 to 200722). In it, she claims hours in each pay period ranging from ten to thirty hours per pay period (mostly in the higher end). This claim was filed online on May 29, 2012. Then, a copy of the Claim Form, with supporting documents, was mailed with a postmark of May 31, 2012, which the Agency deems to be untimely, asking that it be stricken. (If this were all that was before me, I would disagree and find the supporting documents to have constituted a timely submission, as having been postmarked within 3 business days of the filing of the first online claim.)

The Agency asserts that, owing to certain misunderstandings (apparently a lack of knowledge), shared by both counsel, concerning the fact that Ms. Hallaway had already filed a timely Claim Form, they agreed to the granting to Ms. Hallaway of an extension of time to file until July 28, 2012. This was followed by a request by Union counsel to Rust Consulting to reopen Ms. Hallaway's claim on the ground that an extension to July 28, 2012 had been agreed upon. On July 27, 2012, Ms. Hallaway filed a second online

claim, which the Agency likewise deems untimely. This claim was for 158 pay periods (from pay period 200308 to 200910). A second mailed claim form was then mailed, postmarked July 30, 2012, and included supporting documentation for pay periods 200723 to 200909, also deemed an untimely submission by the Agency.

The Union maintains that there is no need to reject any claim, and that all the documents are timely. It agrees that Ms. Hallaway is not eligible to file a claim for the period when she permanently became a Supervisory Investigator. Thus, it excludes claims for pay periods 200723 to 200910. I do not take the Union to agree that Ms. Hallaway's claims for pay periods 200703 to 200715, during which time Ms. Hallaway was detailed to the position of Supervisory Investigator, should likewise be excluded.

I do not yet set forth the positions of the parties on the merits. I believe it is necessary for counsel to meet with me *in camera* in order for them to clarify just what understandings, or misunderstandings, may have resulted along the way. Until this is resolved, I have no real way of knowing what is before me for decision. Therefore I defer further consideration until these threshold matters are resolved.

Vanessa Hannah

Ms. Hannah worked as an Investigator in the Birmingham District Office for the entire claims period, working a 5/4/9 compressed schedule. She claims 825 hours over 123 pay periods, and worked in the Dedicated Intake Unit. She was among the claimants who received a 60-day extension of time to file. She submitted a large number of documents with her Claim Form, covering the years 2003 to 2009, which consisted of multiple copies of a response to document requests from District Director, Delner Franklin-Thomas, along with a statement, replicated for each pay period, entitled:

"**STATEMENT OF EXPLANATION FOR THE DEDICATED INTAKE UNIT INVESTIGATOR**." It states:

> While serving as an investigator in the dedicated intake unit, I am required to perform intake duties during the official office hours to include: interviewing walk-ins, mail review, drafting charges, and telephone interviews. In addition, my investigative duties include analyzing documents, preparing request[s] for information, writing cause investigative memos and letter of determinations, and on occasion interviewing witnesses, etc.
>
> Because members of the public must be served and due to giving priority to walk ins and time sensitive correspondence, in addition to the overwhelming case inventories (backlog) and internal expectations resulting in pressure from management to meet deadlines, working extra hours is imperative to the success of the investigator.
>
> During pay period # _____ dates_____I worked_____extra hours performing my assigned investigative work.

The Agency contends that Ms. Hannah failed to provide sufficient evidence to raise a reasonable inference that she worked the extra hours alleged, that her claims are outside the scope, that the alleged extra hours were not suffered or permitted, that she did not work the extra hours claimed, and that she received time off for time worked.

More specifically, the Agency views the above statement as not being linked in any way to work done in any particular pay period. In addition, the Agency asserts that it fails to provide even a minimal explanation of the "amount and extent" of the claimed extra hours nor does it support that the alleged overtime was worked. It notes examples of some pay periods where Ms. Hannah claims overtime hours where she utilized extensive leave.

In this regard, the Agency submits again the Declarations of Mr. Bell, Ms. Leo and Mr. Franklin-Thomas. Mr. Bell expressly references Ms. Hannah as being assigned to the Dedicated Intake Unit, and Mr. Franklin-Thomas references walk-ins during Intake.

Ms. Hannah submitted a Supplemental Affidavit, dated September 28, 2013,

stating the following:

> …During pay period 200315, June 29, 2003 to July 12, 2003, and 200506, February 20, 2005 to March 5, 2005, I was an Investigator in the Dedicated Intake Unit. When I was on annual leave and on weekends, I would take work home to complete. When I returned to work, I would turn the work in to my supervisor and the work was accepted.
>
> As an Investigator in the Dedicated Intake Unit, my scheduled work day ended at 6:30 p.m. When Clarence Bell became my supervisor, on the majority of my work days, I did not see Mr. Bell in the office after 4:30 p.m. or 5:00 p.m. On rare occasions, Mr. Bell might be in the office until 6:00 p.m.

The Union contends that the Agency, as in other claims, continues to fail to provide employees with records which would assist them in filing their claims. It argues that the Agency cannot object to the lack of accuracy and specificity of claims "when the evidence has shown the FPPS records upon which the Agency relies are inaccurate and contain false information," and that the Agency has provided no evidence to dispute Ms. Hannah's claim. It deems the Agency's claim that extra work hours are contained in FPPS to be "an outright fabrication by the Birmingham office managers and supervisors." The Union argues that the Agency cannot simply assert that it has insufficient evidence to respond to claims when its own records are inaccurate and violative of the FLSA. It asserts that the Agency had sufficient evidence, including Charge Receipts, to evaluate Ms. Hannah's claim and verify if she worked the extra hours claimed.

I must again assess the probative weight of the nature of the documentation submitted. The documents are certainly numerous but, in all fairness, there is very little detail. As seen before, the claim for every pay period is, by definition, the same except for the pay period, the dates and the hours. There must be some expectation that the information offered will be of some assistance in informing what the nature and extent of extra work claimed may have been for a particular pay period. This is not present.

It should be remembered that the Claim Form Instructions themselves advise claimants that every pay period constitutes a separate claim. The uniformity of recitation here is, with due respect to Ms. Hannah, not of assistance. What this submission does, in essence, is to reiterate an identical job description for every pay period, but what it fails to provide is why the number of extra hours varies from one to the next, or, for that matter, why extra hours were generated in the first place. Moreover, these identical statements are little more than a numerical summary of what is reflected in the Claim Form itself. While I acknowledge and understand the Union's explanation for why greater detail is not forthcoming, and its assertions regarding the perfidy of the Agency, I am unable to take what is before me as sufficiently probative to warrant relief. Even in matters where obtaining adequate records is an issue, there remains a recognized initial burden of proof to be carried. It is the claimant who must carry that initial burden, and I cannot conclude that it has been carried here.

Accordingly, the claim must be denied.

Yolanda Hawes

Ms. Hawes worked as an Investigator in the Birmingham District Office until December 11, 2004. She worked a 5/4/9 compressed schedule, and claims 216 hours over 44 pay periods, in which her claims allege between 4 and 8 hours. Ms. Hawes is among the claimants who received a 60-day extension of time to file. The Agency has objected to all of Ms. Hawes' claims because she failed to provide sufficient evidence to raise a reasonable inference that she worked the extra hours claimed, that her claims are outside the scope, that the alleged extra hours were not suffered or permitted, that she did not work the extra hours claimed, and that she received time off for time worked.

More specifically, the Agency questions Ms. Hawes' credibility when she reports having worked extra hours in a number of pay periods where she had actually taken eighty hours of leave in one form or another. (See Ms. Hawes' Supplemental Affidavit in this regard, below.) Further, it references again the Declarations of Mr. Bell, Ms. Leo and Mr. Franklin-Thomas.

Ms. Hawes' claim is accompanied by documents that, as previously seen, consist of response letters to record requests from Mr. Franklin-Thomas and, for each pay period, the documenting of extra hours on the "**STATEMENT OF EXPLANATION FOR THE DEDICATED INTAKE UNIT INVESTIGATOR**."

Ms. Hawes submitted a Supplemental Affidavit, dated September 30, 2013, in which she stated the following:

> …During the pay periods when I took Leave Without Pay, I had a serious medical illness and the leave I took was under the Family Medical Leave Act, which permits me to use Leave Without Pay. I also participated in the Leave Share program. I was assigned to the Dedicated Intake Unit. Even though I was on Leave Without Pay and not in the office, I took work home; completed the work; turned the completed work in to my supervisor; and the work was accepted.

The Union contends that the Agency has failed to provide employees with records that would assist them in filing their claims, and cannot complain that their claims are not sufficiently accurate, where FPPS records themselves are inaccurate and contain false information. The Agency, it argues, has provided no evidence to dispute Ms. Hawes' claims. It states again that the Agency's assertion that extra hours are in FPPS is a fabrication by Birmingham management and supervisors, and it had sufficient evidence to evaluate Ms. Hawes' claim and verify if she worked the extra hours claimed. It states that Ms. Hawes' Supplemental Affidavit explains the reasons she claimed extra work hours when she was on Leave Without Pay, and her Affidavit is consistent with her co-

workers in the Dedicated Intake Unit.

The circumstances of the case of Ms. Hawes are very similar to those of Ms. Hannah, above. Again, the documents contain very little detail. As seen before, the claim for every pay period is, by definition, the same except for the pay period, the dates and the hours. There must be some expectation that the information offered will be of some assistance in tending to prove what the nature and extent of extra work claimed may have been for a particular pay period. Short of this, I would need some other basis on which to support a finding that Ms. Hawes' case merits further scrutiny. I note again that these forms do not really go beyond what the Claim Form has already reported.

Even were I to consider Ms. Hawes' Supplemental Affidavit, and attempt to weigh the work she states she did while on Leave Without Pay, and presume, as she infers, that her supervisor knew of this work and accepted it, that would not be of assistance. Under 5 CFR §551.401(c), hours in an unpaid nonwork status, including Leave Without Pay, are not considered "hours of work," and, in any event, are not hours actually worked. Even if these were paid leave hours, viewing them as potentially meriting overtime pay would not be correct. (See Discussion of "**PAID LEAVES**" under "**LEGAL ISSUES**.") All the above, therefore, is insufficient, in my view, to carry Ms. Hawes' initial burden of proof.

I must therefore deny this claim.

Julia Hodge

Ms. Hodge worked as an Investigator in the Birmingham District Office throughout the claims period. She worked a 4/10 compressed schedule after it appears she had worked a flexible schedule from pay period 200309 until pay period 200410.

She claims 1,043 hours of overtime over 148 pay periods. She testified at the hearings in Atlanta, GA, and also received a sixty-day extension to file her claim.

The Agency objects to all Ms. Hodge's claims from pay period 200309 through pay period 200409 because she was on a flexible schedule. In addition, as a threshold matter, the Agency objects to all Ms. Hodge's claims on the ground that they are untimely. Ms. Hodge's documents were postmarked July 19, 2012. In addition, the Agency objects on the grounds of her failing to provide sufficient evidence to raise a reasonable inference that she worked the extra hours alleged, that her claims are outside the scope, that the alleged hours were not suffered or permitted, that she did not work the extra hours claimed, and that she received time off for time worked.

The Agency noted that Ms. Hodge was supervised by Supervisory Investigator Booker Lewis, who testified that his subordinates were required to ask permission to work beyond their normal schedule, and those who did would receive an equal amount of time off. It asserts further that Ms. Hodge testified that she would not be able to work outside her normal schedule unless she made her supervisor aware of it.

Ms. Hodge's Claim Form was accompanied by the "**STATEMENT OF EXPLANATION FOR THE DEDICATED INTAKE UNIT INVESTIGATOR**," as well as the letter from Mr. Franklin-Thomas for all her pay periods, a significant number of documents. In addition, there were numerous sign-in/sign-out sheets.

The Union contends that Ms. Hodge had worked on her days off to complete her work assignments and stayed late to complete work to meet the office's numerical goals. It notes, in this regard, that Mr. Lewis, in his testimony, confirmed the practices in Birmingham and the need for each Investigator to meet the office's goals. Here as well,

the Union argues that the Agency's failure to maintain accurate records required Ms. Hodge to estimate the extra hours she worked, and failed to produce records that would have substantiated her claim, asserting in her testimony that her supervisor knew her job could not be completed in 8 or 10 hours. Further, it claims that the Agency's Declarations are contradicted by Mr. Lewis's hearing testimony, and that Ms. Hodge was not permitted to have her sign-in/sign-out sheets reflect the actual time of her departure from work but was required to sign out the time of her departure from her work schedule, even when she did not leave the office. It urges that the Agency's objections be rejected for refusal to provide the records necessary to complete a claim, which required employees to estimate their claims. It notes that Declarants Clarence Bell and Debra Leo did not supervise Ms. Hodge.

On the threshold issue of timeliness, Ms. Hodge's claim was, in fact, postmarked July 19, 2012, which, on its face, would make it an untimely submission. She did, however, receive a sixty-day extension and was one of those claimants originally covered by my May 30, 2012 Ruling. Thus, Ms. Hodge's claim is timely.

On the merits of this claim, while part of Ms. Hodge's submission was the "**STATEMENT OF EXPLANATION FOR THE DEDICATED INTAKE UNIT INVESTIGATOR**" and related letters from Mr. Franklin-Thomas, there was a significant submission of sign-in/sign-out sheets as well. The potential evidentiary significance of this, although I make no finding at this point, relates to the Union's allegation referencing the requirement to sign out at the work schedule time of departure, even if actual departure times were later. This is one basis on which I believe a hearing would be warranted. Another such basis is the matter of supervisory knowledge on the part of Mr. Lewis.

Accordingly, I direct that a hearing be held on this claim.

William Hopkins

Mr. Hopkins worked as a Paralegal Specialist in the Birmingham District Office throughout the claims period on a 4/10 compressed schedule. He claims 208 hours over 31 pay periods.

The Agency objects to most of Mr. Hopkins' claims on grounds that he failed to provide sufficient evidence to raise a reasonable inference that he worked the claimed hours, that his claims are outside the scope, that the alleged hours were not suffered or permitted, that he did not work the extra hours claimed, and that he received time off for time worked. It adds that Mr. Hopkins also appeared to indicate extra hours spent in travel, for which he should have received compensatory travel time. It acknowledges that, in pay period 200703, as a consequence of Mr. Hopkins' earning forty hours of compensatory time, he earned payment of 20 hours, equaling $659.20, plus liquidated damages, for a total of $1,318.40.

Mr. Hopkins' Claim Form is accompanied by statements, along with document request acknowledgments from Mr. Franklin-Thomas, organized by pay period, in which he explains that he is "routinely assigned tasks to perform in various stages of litigation and enforcing statutes within the legal unit's responsibility including the processing of Freedom of Information (FOIA) requests, 5 U.S.C. The Act provides for disclosure of federal agency records, to be processed within twenty days of receipt. To reduce the backlog of requests, overtime hours were provided."

The above general description, which appears in every statement, is followed in every statement with a specific description, including the date(s), of Mr. Hopkins'

activity and overtime hours claimed for each pay period. These most often relate either to processing FOIA requests on given occasions, and occasionally reference trial preparation activities, including travel.

More specifically, the Agency contends Mr. Hopkins' numerous claims for processing FOIA requests are not plausible because Regional Attorney Charles Guerrier, as referenced in his Declaration, had notified him that he was not processing enough FOIA requests, and that those he did process were untimely.

The Agency offered the Declarations of Mr. Guerrier, as well as those of C. Emanuel Smith, Regional Attorney in the Birmingham District Office, and Jacqueline McNair, former Acting Regional Attorney in the Birmingham District Office.

Mr. Guerrier, who was Regional Attorney from January 2001 through October 2005, declared as follows (also referencing supporting documents): He was the second line supervisor of Mr. Hopkins and Gail Fantop. All Legal Unit staff were frequently reminded that they were not to work beyond their scheduled hours and that all requests for compensatory time had to be approved in advance by supervision. He did not permit employees to earn unofficial compensatory time, and all compensatory time earned was recorded in FPPS. Mr. Hopkins was assigned to respond to FOIA requests as part of his paralegal duties but he did not timely perform that function, and this was documented in his performance appraisals and related documents. He was not aware that Mr. Hopkins had, with one exception, worked past his scheduled hours, and on that one occasion, he did not have authorization.

Mr. Smith declared as follows (also referencing supporting documents): He is Mr. Hopkins' second line supervisor. All staff in the Legal Unit are frequently reminded

that they are not to work in excess of their scheduled hours and that all requests for compensatory time must be approved in advance. Prior to his becoming Regional Attorney, Ms. McNair issued the same notice, which he reissued. If an employee worked extra hours without advance approval, he or she would be counseled but would be given formal compensatory time recorded in FPPS, not unofficial compensatory time. From at least January 2006 until at least April 2009, he had no personal knowledge of Mr. Hopkins' working past his scheduled hours except when he received official compensatory time, if any.

Ms. McNair declared as follows: She was Mr. Hopkins' direct supervisor from October 2005 until January 2006. During that time, all Legal Unit staff were frequently reminded that they were not permitted to work beyond their regular work hours and that all requests for compensatory time had to be approved in advance and recorded in FPPS. She issued a written policy (attached to her Declaration) to this effect. Extra hours never resulted in unofficial compensatory time. She had no knowledge that Mr. Hopkins worked extra hours and she was certain he had no reason to do so.

In a Supplemental Affidavit dated October 4, 2013 Mr. Hopkins stated:

> …During 2004 and 2005, I had a serious illness and participated in the leave donation program. My leave, during my treatment, was covered by donated sick leave. After completion of my treatment, I was never informed that the days I took off were not covered by leave donation and I was not aware my records contained Leave Without Pay.
>
> For the period of January 7, 2007 through March 3, 2007, I worked extra hours on a trial in Mississippi and processing FOIA requests. The trial was lengthy and the Birmingham Legal Unit had an enormous number of FOIA requests that had to be processed. Sometimes the extra work hours I worked would be recorded in the payroll records and sometimes the extra hours would not be recorded. The hours I claimed on my form are extra hours I worked and if hours are in the payroll records for the use of compensatory time, then I did use that time.

The Union contends that the Agency's failure to locate requested documents

hampered his claim, and stated in his Supplemental Affidavit that he believed his leave was covered by leave donations. It believes further that the Declarations of managers and supervisors cannot be credited, and that the Agency has submitted no evidence in support of its objections to Mr. Hopkins' extra work hours. Mr. Hopkins, it notes, submitted specific statements for each pay period stating the work he performed.

In this case, there are elements of similarity and also elements of difference from some that have been previously considered. The element of similarity is that Mr. Hopkins submitted general statements of his work for every pay period. The element of difference is that, unlike some others, Mr. Hopkins expressly stated in some of these the task he was performing, as well as the day or days of the pay period on which he performed them, and, finally, tallying his overtime hours for the pay period for those activities. It is this specificity that, in my view, is more likely to raise a reasonable inference that the stated work may have been performed. It also raises the issue of supervisory knowledge. In addition, pay periods in which he earned no compensatory time and which, by my ruling, are not "outside the scope," may be examined.

Based on the above, therefore, it is my judgment that a hearing be granted so that these matters may be explored through testimony, and to determine whether bases exist such that the proposed Agency remedy should not be directed.

Charles Hullett

Mr. Hullett worked as an Investigator in the Birmingham District Office from the beginning of the claims period until June 16, 2006. He worked a 4/10 compressed schedule.

Mr. Hullett filed two Claim Forms. The first alleges, by the Agency's reckoning,

13 hours over 6 pay periods. (I could detect only 10 ½ hours.) He then filed an amended claim alleging 304.5 hours over 68 pay periods. The Agency views the second claim to be untimely, as it was mailed on June 5, 2012, after the May 29, 2012 deadline, and Mr. Hullett, according to the Agency, provided no explanation why this second claim was not timely filed.

Mr. Hullett, in both claims, submitted generalized statements representing the extra hours he claimed. In the first, he had occasion to submit two separate generalized forms. The first, seen in other cases as well, was "**STATEMENT OF EXPLANATION FOR WORKING AT HOME ON SCHEDULED OFF DAY AND AFTER WORK HOURS**." This form reads:

> More often than not, it is necessary to perform investigative work outside of the assigned tour of duty. The investigative duties include analyzing documents, preparing request[s] for information, writing cause investigative memos, and letter of determinations, and on occasion interviewing witnesses, etc. Because members of the public must be served and due to overwhelming case inventories (backlog), internal expectations resulting in pressure from management and meeting deadlines, working extra hours is imperative to the success of the investigator.
>
> During pay period #_____dates_____I worked_____extra hours performing my assigned investigative work.

The second generalized form Mr. Hullett submitted as part of his first claim dealt specifically with Onsites. This form, entitled "**STATEMENT OF EXPLANATION FOR ONSITE**," read:

> On occasion I conducted onsite investigations. Prior to the onsite, I am required to review and analyze the charge, responses and evidence submitted. In preparation for the onsite, I determine information needed in conducting interviews, identity of witnesses to be interviewed, developing interview questions tailored to each individual/group.
>
> I am expected to complete this preparation in conjunction with my current work load. Because members of the public must be served, I would stay late or work at home in preparation for my on site During pay period #_____date_____I worked _____extra hours preparing to conduct the onsite.

> Occasionally, I performed onsite visits after working hours and sometimes extending two or three days. This required working extra hours. During pay period #_____dates_____I worked_____extra hours performing my assigned investigative work.

The Agency objects to all Mr. Hullett's claims on grounds that he failed to provide sufficient evidence to raise a reasonable inference that he worked the extra hours alleged, that his claims are outside the scope, that the alleged extra hours were not suffered or permitted, that he did not work the extra hours claimed, and that he received time off for time worked.

Specifically, with respect to the first claim, the Agency deems there to be insufficient explanation for why Mr. Hullett was unable to perform his Onsite work during regular hours. It suggests further that his second claim, alleging an additional 291.5 hours of overtime, casts doubt on all his claims.

The Union contends that the Agency failed to assist Mr. Hullett with his claim, in that, with the possible exception of some leave requests, it advised him it had no records for the periods before 2007. Mr. Hullett, who left the Agency in 2006, made claims for extra work hours working at home, on his off days, and for conducting Onsites. It asserts that, not only did the Agency refuse to provide records to Mr. Hullett, but supervisors Bell and Leo, who submitted Declarations on behalf of the Agency, did not supervise Mr. Hullett. Moreover, it states that these Declarations run counter to Booker Lewis's hearing testimony. Annual and sick leave use do not invalidate Mr. Hullett's claims for given pay periods, since these hours are used in calculating employees' 40-hour weeks or 80-hour pay periods. In addition, Mr. Hullett made no claims for extra work hours for pay periods 200611 to 200613.

I take up first the threshold timeliness issue with respect to Mr. Hullett's second

claim. It was, in fact, mailed on June 5, 2012. However, the record reflects that, owing to the agreement of counsel for both parties, memorialized by e-mail, Mr. Hullett was permitted to reopen his claim and file a second because, as he said "all of my overtime hours were not recorded." Therefore, the second claim was timely filed.

I now come to the issue of what has been proven, or at least reasonably inferred, by these claims. In doing so, I acknowledge the Union's position that Mr. Hullett was impeded in obtaining records that he believed would support his claimed hours.

With respect to Mr. Hullett's first claim, in which Mr. Hullett submits both of the forms set forth above, I find one issue of material fact that I believe requires testimony, and on which basis I grant a hearing. That is the issue of Onsites, and whether, in the circumstances where Mr. Hullett asserts he performed them, they were caused to be performed, either in whole or in part, during extra hours. This is contested, because Mr. Hullett clearly asserted he performed Onsites after working hours, sometimes lasting multiple days. In examining the Declarations of Messrs. Franklin-Thomas and Bell, they state quite the opposite, declaring that there simply was never a need for an Onsite to extend beyond working hours. Insofar as any remaining hours claimed by Mr. Hullett in his first claim that he did not intend to apply to Onsites, I deny that part of the claim.

With respect to Mr. Hullett's second claim, I note his greatly expanded hours, for which he indicated in his second Claim Form, he did not believe any Agency e-mails would assist him. In support, he used only the "**STATEMENT OF EXPLANATION FOR WORKING AT HOME ON SCHEDULED OFF DAY AND AFTER WORK HOURS**" form in each pay period. This raises the same burden of proof issue that I have addressed in other claims. What is lacking here, as in those other instances, is a pay-period-by-pay-period specific

accounting of what was done at that particular time. Without further support, as I have observed, this form, and this claim in general, is little more that a repeated generalized job description and a second recital of the hours claimed per pay period that already appears in his Claim Form. This is not of assistance with respect to satisfying an initial burden of proof, even in those cases where there is an issue of incomplete or missing records.

Accordingly, I must deny Mr. Hullett's second claim.

Kevan Jackson

Mr. Jackson worked as an Investigator in the Birmingham District Office. He claims 352 hours over 93 pay periods on a 4/10 compressed schedule. The Agency challenges all of Mr. Jackson's claims on the grounds that he failed to provide sufficient evidence to raise a reasonable inference that he worked the extra hours claimed, that his claims are outside the scope, that the alleged extra hours were not suffered or permitted, that he did not work the extra hours claimed, and that he received time off for time worked.

I note here that Mr. Jackson submitted two online claims. The first was finalized on May 29, 2012 and therefore presented no timeliness issues. He amended his claim in September 2012 and he was advised, by an e-mail from Rust Consulting of September 14, 2012, that I had granted him an extension until October 5, 2012 to supplement his claim.

The Agency argues that the only support offered by Mr. Jackson for either of his claims consists of the forms entitled "**STATEMENT OF EXPLANATION FOR WORKING AT HOME ON SCHEDULED OFF DAY AND AFTER WORK HOURS**" and, in some cases, "**STATEMENT OF**

EXPLANATION FOR THE DEDICATED INTAKE UNIT INVESTIGATOR." These, the Agency asserts, do not attempt to explain anything regarding the nature of his work in each pay period, why the extra hours were needed, and either the date or what hours during the day the work was performed. All that was attached, the Agency notes, was the response from District Director Franklin-Thomas to his requests for information, which records do not support his claim. It also pointed to Mr. Jackson's having taken leave in many of the pay periods in which he claims overtime work, but, as the Agency argues, no explanation is offered for these circumstances. Moreover, the Agency argues that no managers were aware of Mr. Jackson's claimed extra hours.

The Union contends that, for both of Mr. Jackson's claims, the Agency's responses to his requests for documents revealed that it had failed to provide him with documents to assist in the filing of his claim. It urges that Mr. Jackson's estimates of his hours should not be rejected because it was the Agency's failure to provide him with requested documents that required these estimates.

Although both of Mr. Jackson's claims are timely, they are both documented in such a way, as has been examined in other claims, that very little detail into the specific work he claims to have done in extra hours is offered. It is one thing to provide generalized statements as to the ongoing nature of one's work from pay period to pay period, whether it concerns investigative duties as a whole, or, in some cases, Intake duties particularly. However, as I have emphasized in other claims, and as the parties agreed for purposes of this process, each pay period in which extra hours are claimed, must be treated as a separate claim.

Mr. Jackson fails to demonstrate, by way of carrying an initial burden of proof,

that the nature of his claims, either *in toto* or if examined by specific pay periods, is informative on the matter of what work was really done, and whether there was a reason for why it should be accepted as having been done outside of Mr. Jackson's regular tour of duty. This is the threshold that must be met before other issues that may inform a claim become relevant. I find that that threshold has not been met here.

Accordingly, these claims must be denied.

Leon Jones

Mr. Jones worked as an Investigator in the Birmingham District Office. He claims 561 hours over 148 pay periods. He claims to have worked a basic schedule from pay periods 200309 through 200812 (except for pay period 200516), and thereafter on a 4/10 compressed schedule from pay period 200813 to pay period 200910, the last applicable pay period in this claim process. As I believe the parties agree, however, Mr. Jones was actually on a flexible schedule from the beginning of his claim period through pay period 200812.

Mr. Jones received an extension to file his claim, but still filed timely on May 25, 2012.

The Agency objects to all of Ms. Jones' claims first on the basis of his having worked a flexible schedule through pay period 200812, and, in addition because he provided insufficient evidence to raise a reasonable inference that he worked the extra hours claimed, that his claims are outside the scope, that his alleged extra hours were not suffered or permitted, that he did not work the extra hours claimed, and that he received time off for time worked.

Specifically, the Agency notes that much of Mr. Jones' claim focuses on work he

claimed to have performed in the evenings, occasions of which supervision would be very unlikely to have been aware. Nor, it states, did he earn compensatory time in any pay period. It points to the generalized statements he provided in support of his hours, arguing that they do not tend to explain anything.

Mr. Jones' claims from pay period 200813 to 200910 are documented by the "**STATEMENT OF EXPLANATION FOR WORKING AT HOME ON SCHEDULED OFF DAY AND AFTER WORK HOURS,**" accompanied by the transmittal letters from Mr. Franklin-Thomas.

The Union contends that, despite his request, Mr. Jones did not receive records from the Agency that would assist him with filing his claim, and that, therefore, the Agency cannot challenge Mr. Jones' estimates and/or averages of his extra work hours.

Inasmuch as Mr. Jones was on a flexible schedule from the beginning of his claim period through pay period 200812, I deny that portion of his claim. With respect to the remainder, those from pay periods 200813 to 200910, they are explained only by the "**STATEMENT OF EXPLANATION FOR WORKING AT HOME ON SCHEDULED OFF DAY AND AFTER WORK HOURS,**" document and the letters of Mr. Franklin-Thomas. This, as I have stated before, is meaningful only to the extent that it tracks the same hours that are reported on Mr. Jones' Claim Form pay period by pay period. There is no further annotation or explanation to give these hours meaning.

Looking at Mr. Jones' FPPS records for the periods of time after he moved to a 4/10 compressed schedule, there are pay periods where he claimed extra hours when he was either on sick or annual leave. The only one of these that, on its face, appears to be entirely incorrect (and, therefore, not plausible) is the entry on Mr. Jones' Claim Form for pay period 200826, where he took 80 hours of annual leave and also claimed four extra

hours.

In the end, however, examining pay periods 200813 to 200910 only, I find there is insufficient evidence on which to base any kind of relief.

Accordingly, Mr. Jones' claims for these pay periods must be denied.

James Lee

Mr. Lee worked as a Mediator in the Birmingham District Office from before the claims period until January 3, 2008. He worked a 4/10 compressed schedule. He claims 496 hours over 124 pay periods. In each of these pay periods, he claims 4 extra hours, and does not include any further documentation.

The Agency opposes all Mr. Lee's claims on the grounds that he failed to provide sufficient information to raise a reasonable inference that he worked the extra hours claimed, that his claims are outside the scope, that the alleged extra hours were not suffered or permitted, that he seeks overtime pay for travel, and that he would have received time for any extra time worked.

The Agency points specifically to Mr. Lee's not having included any supporting documentation nor any explanation for his claim that he worked 4 extra hours in every single pay period. In addition, it notes, there is no accounting for what work he was allegedly performing and when it was being performed. It also points to certain pay periods in which, while he claimed 4 extra hours, he took significant leave. It points to one instance, in pay period 200702, where he took 80 hours of leave (some of that being holiday leave).

The Union contends that, while Mr. Lee did not submit any documents in support of his claim, "[t]he Agency was aware of the work of the Mediators because their extra

work hours were recorded on the sign in/out sheets (some of which, covering days in February 2005, were submitted by the Union), but not recorded in the Agency time and attendance records." It asserts that Mr. Lee, as well as Emma Evans, "continuously worked beyond their scheduled work hours; engaged in compensable travel time; and their supervisor Ms. Leo knew and approved of the extra work hours," adding that Ms. Leo's declaration, submitted by the Agency, is false.

On the matter of the 4 hours per pay period noted by Mr. Lee in his Claim Form, there is no dispute that no support therefor (other than the declaration of the hours itself) exists. Without more, I cannot, thus, credit this assertion, as it does not inform with respect to the nature of this work or any other details about it.

I must make a point here with respect to this and some other claims that set forth extra hours, sometimes with identical or similar patterns from pay period to pay period, but do not offer additional documentation in support of these hours. As I have noted before, I am aware of the Union's very strongly argued position in opposition to what it deems the Agency's consistent practice of denying claimants needed documentation. I am also aware that, as the Union has argued, the Agency's withholding of needed documentation is the very reason why Mr. Lee and other claimants in the Birmingham District Office have been unable to submit Claim Forms that are more strongly supported. However, without at least some statement or assertion in support of extra hours claimed that attempts to give some context to the claim, the initial burden under *Mt. Clemens* is not met.

I must also examine the sign-in/sign-out sheets that the Union has supplied, in order to determine whether there are hours that may be relevant. These sign-in/sign-out

sheets cover periods in February 2005 and, in part, reflect mediation work outside the office. There are days indicated on these sheets covering the period from February 7 to February 25, 2005, representing pay periods 200505 and 200506. They show that, in pay period 200505, Mr. Lee worked in the office and traveled 2 days on a mediation in Mobile, AL (Monday, February 14 and Tuesday, February 15), both days noting 10 hours. The day following the mediation (Wednesday, February 16) is notated as a travel day back to the office, also noting 10 hours. In pay period 200506, they show two days in the office, noting 10 hours, one day off for working on February 18, and one regular off day.

My review of these sign-in/sign-out sheets reveals that there are no entries that are potentially payable. Mr. Lee's days in the office are consistent with his 4/10 compressed schedule. His mediation entries on February 14 and 15 in Mobile, AL both indicate 10-hour days, as does his travel day back to the Birmingham District Office on February 16. These all occurred on his regular work days, his regular off day being Friday. Therefore, there is no potential travel overtime in this case.

Accordingly, I must deny Mr. Lee's claims.

Arthur McGhee

This claim raises first the issue of whether Mr. McGhee, by virtue of his position history, occupied a qualifying position for purposes of these claims during the time for which he seeks payment for extra hours. His Claim Form asserts that he worked 150 extra hours over 16 pay periods (pay period 200525 through 200615) from October 30, 2005 to June 30, 2006 (the date of his retirement).

I will set forth what the Agency claims Mr. McGhee's position history to be. The

Agency represents as follows:

> On his Claim Form, Arthur McGee [sic] indicates that he was a mediator in the Birmingham District Office from 10/30/05 to 6/30/06….However, Mr. McGhee was a Supervisory Investigator who was detailed to a Mediation position from 11/1/05 through approximately 6/16/06, at which time he was downgraded from a Supervisory Investigator (GS-13) to an Investigator (GS-12)…. He retired from the Agency on 6/30/06 as a GS-12 Investigator…

The Agency contends that, as a consequence of the above – namely, that Mr. McGhee was in a Supervisory Investigator position during the time of his claimed overtime work, in support of which it produced SF-50 records, he is not eligible for overtime compensation and, therefore, all of his claims should be denied. FPPS records reflect Mr. McGhee's occupying the position of Supervisory Investigator for all relevant pay periods until pay period 200614, where for that pay period and the next (his last), he is shown as an Investigator.

The Agency's further objections to Mr. McGhee's claim are that he worked a flexible schedule, that he failed to provide sufficient evidence to raise a reasonable inference that he worked the extra hours claimed, that his claims are outside the scope, that the claimed extra hours were not suffered or permitted, that he did not work the extra hours claimed, that he received time off for time worked and that some of his claims are for noncompensable travel time.

Mr. McGhee's Claim Form represents that he worked a basic work schedule throughout the claimed pay periods. He acknowledges that the official hours of the Birmingham District Office are 8:00 A.M. to 4:30 P.M., but claims that his extra hours uniformly began at 5:00 P.M. This includes pay periods 200614 and 200615, his last pay periods claimed and the only two where he was classified as an Investigator. This strongly suggests not a basic schedule, but a flexible one.

Mr. McGhee attached statements, replicated in multiple pay periods, describing his extra hours performing duties as a Mediator. These, entitled **"STATEMENT OF EXPLANATION FOR WORKING AFTER WORK HOURS REGARDING MEDIATION DUTIES,"** state as follows:

> More often than not, it was necessary to perform mediation tasks outside of the assigned tour of duty. In order to conduct a sufficient number of mediation conferences, it was necessary to expend a great deal of time after normal duty hours to meet office goals. I spent considerable time performing work in the office and at my home after normal business hours to perform these tasks.
>
> The mediation duties included numerous contacts with Charging Parties and Respondents in an effort to persuade the parties to participate in the mediation process.
>
> During pay period #_____dates_____, I worked _____extra hours performing mediation work.

In addition, for purposes of documenting his travel time, Mr. McGhee would include the following **"STATEMENT OF EXPLANATION REGARDING TRAVELING FROM MEDIATIONS AFTER NORMAL WORK HOURS"**:

> More often than not, it was necessary to travel from mediations outside of the assigned tour of duty. When conducting mediations in distance [sic] cities such as, Mobile, Huntsville, Montgomery, Phenix City, and Tuscaloosa, Alabama, there were occasions when mediations lasted past the normal work hours. On these occasions, the travel time was far beyond my normal work schedule.
>
> Oftentimes, mediation duties required extended hours outside of the assigned tour of duty; therefore, it was necessary to travel home late into the night.
>
> During pay period #_____dates_____, I traveled_____extra hours after performing mediation duties.

Mr. McGhee also included mediation reports and a travel authorization.

The Union contends that Mr. McGhee worked a basic work schedule. It notes further that he identified his mediation duties by noting specific pay periods, and produced a specific mediation statement, his mediation activity report, and a Government vehicle authorization form. It points to the sign-in/sign-out sheets for the Mediation Unit

as reflecting that all Mediators were working beyond their scheduled work hours and consistently engaging in compensable travel. In addition, Mr. McGhee submitted a Supplemental Affidavit (set forth below) indicating, contrary to the Agency's assertions, that he was not a supervisor and performed no supervisory duties. It challenges the declaration of Ms. Leo as "a complete fabrication," claiming that "Ms. Leo was aware of the extra work hours and participated in the illegal conduct of not reporting the extra work hours in the time and attendance system."

Mr. McGhee's Supplemental Affidavit, dated September 26, 2013, states:

> …During my detail to the ADR Mediator position in the Birmingham District Office, I did not have and did not exercise any supervisory duties in my position. I did not evaluate employees; was not responsible for time and attendance; had not authority to discipline employees; and had no duties of my former position title of Supervisory Investigator. At all times when I was in the position of ADR Mediator, my immediate supervisor was Debra Leo, ADR Coordinator. I was required to report to Ms. Leo and follow her direction as my immediate supervisor.

In reviewing the above, I must first recognize that the Agency's records reflect Mr. McGhee's status as a non-covered employee for purposes of the claims process. I recognize the Union's and Mr. McGhee's position that he was nonetheless performing covered Mediator duties. However, I am not authorized effectively to reclassify Mr. McGhee and, thus, bring him within the agreed-upon group of eligible job classifications, irrespective of what he asserts concerning his duties as a Mediator and his failure to exercise any supervisory duties. Even were I to find that Mr. McGhee is indeed a covered employee for purposes of this claims process, I believe it is clear that, based on the entries relating to his extra hours worked during every pay period, he was working a flexible schedule for the entire period for which he claims payment for extra hours.

Accordingly, in either event, I am required to deny this claim.

Devoralyn McGhee

Ms. McGhee worked as an Investigator in the Birmingham District Office from May 1, 2006 until February 28, 2009, working a 4/10 compressed schedule, and thereafter working a basic schedule until April 25, 2009. She claims 560 hours over 80 pay periods. The Agency objects to all of these claims, with the exception of one pay period (pay period 200808) in which compensatory time is recorded in FPPS. The Agency objects on grounds that she failed to provide sufficient evidence to raise a reasonable inference that she worked the extra hours alleged, that her claims are outside the scope, that the alleged extra hours were not suffered or permitted, that she did not work the extra hours claimed, and that she received time off for time worked.

Ms. McGhee accompanied her Claim Form with the "**STATEMENT OF EXPLANATION FOR WORKING AT HOME ON SCHEDULED OFF DAY AND AFTER WORK HOURS**" for each of her pay periods, along with the cover letter from Mr. Franklin-Thomas, responding to her document requests.

The Union contends that the Agency submits no specific evidence to support its objections, noting that the testimony of Investigators and supervisors reveals that employees were working extra hours performing work for the benefit of the Agency. It asserts that the Agency has failed to keep accurate work records and cannot, therefore, complain about the lack of accuracy of employees' work hours.

The claim of Ms. McGhee raises again the matter of the initial burden of proof that must be met in order to raise a just and reasonable inference that the extra hours claimed have actually been worked as extra hours. I am unable to find, on the basis of Ms. McGhee's repeated statement alone, that this initial burden of proving her claim by

pay period has been met.

I must, therefore, deny this claim.

Glenda Muldrow

Ms. Muldrow worked as an Investigator in the Birmingham District Office throughout the claims period on a 4/10 compressed schedule. She claims 519.5 hours over 142 pay periods. She was among the claimants who received an extension of time to file her claim. The Agency objects to all her claims on grounds that she failed to provide sufficient evidence to raise a reasonable inference that she worked the extra hours claimed, that her claims are outside the scope, that the claimed extra hours were not suffered or permitted, that she did not work the extra hours claimed, and that she received time off for time worked.

The Agency notes that Ms. Muldrow submits general statements of a few sorts by pay period (with the cover letter of Mr. Franklin-Thomas), including, most frequently, **"STATEMENT OF EXPLANATION FOR WORKING AT HOME ON SCHEDULED OFF DAY AND AFTER WORK HOURS,"** as well as in certain applicable pay periods, **"STATEMENT OF EXPLANATION FOR ONSITE,"** and **"STATEMENT OF EXPLANATION FOR OUTREACH."** The Agency states uniformly, with respect to these statements, that Ms. Muldrow does not meaningfully explain the work claimed to have been performed, nor is any particular such work assigned to any specific pay period. It also states that Ms. Muldrow's time records do not support the argument that extra hours were worked, nor do the sign-in/sign-out sheets cover an entire pay period. In addition, it points to FPPS records that reveal that Ms. Muldrow had taken leave of some duration in all but 7 of the 160 pay periods in the claims period, but still claims extra hours for which she never received compensatory time.

The Union contends that the Agency failed to provide Ms. Muldrow with records for Outreach, sign-in/sign-out sheets for 2003 to 2006, compensatory time records and e-mails, and Intake. It asserts that Ms. Muldrow and others worked extra hours to complete their work, but that the office failed to accurately record the hours employees worked, noting that Birmingham claimant Julia Hodge had testified at the hearings in Atlanta, GA that employees were not permitted to enter actual work hours on the sign-in/sign-out sheets.

Ms. Muldrow produced a large number of documents, reflecting claimed extra work hours performing general Investigator duties, as well as Onsites and Outreach. The issue of what may have been proved, even inferentially, however, with respect to specific activities at specific times and durations, is lacking. I have spoken before about the burden of proof, and have observed that, even in circumstances where production of records is an issue, and given Ms. Muldrow's extension of time, I am left with the fact that there must be some suggestion of time worked that is shown to be outside regular working hours. This must, in turn, result in the generation of overtime for working more than 80 hours in a pay period. I do not believe this can be demonstrated, even inferentially, here.

For the above reasons, I must deny this claim.

Wonder Osborne

Ms. Osborne worked as an Investigator in the Birmingham District Office until June 10, 2006 on a 4/10 compressed schedule. She claims 460 hours over 80 pay periods. She was among the claimants who received an extension of time to file her claim. The Agency objects to all her claims on grounds that she failed to provide

sufficient evidence to raise a reasonable inference that she worked the extra hours claimed, that her claims are outside the scope, that the claimed extra hours were not suffered or permitted, that she did not work the extra hours claimed, and that she received time off for time worked.

The Agency specifically notes Ms. Osborne's providing the "**STATEMENT OF EXPLANATION FOR WORKING AT HOME ON SCHEDULED DAY OFF AND AFTER WORKING HOURS,**" submitted for each claim, along with a copy of the Memorandum from Director Franklin-Thomas concerning her requested records. As in previous claims, the Agency asserts that such a statement fails to reference work performed in any particular pay period and gives no meaningful explanation of the work claimed to have been performed, when it was performed, or the reason why it took extra time. The Agency also points to Ms. Osborne's having taken extensive leave, and that, during some pay periods when she claims hours, she did not work.

The Union contends that Ms. Osborne, who was in the Dedicated Intake Unit, requested documents to assist with filing her claim and did not receive the documents she requested. It asserts further that the Agency cannot object to a claim when its own records of time worked are not accurate. Ms. Osborne and her coworkers, the Union asserts, took work home, worked on weekends, and worked while on annual and sick leave.

Ms. Osborne submitted a Supplemental Affidavit, dated September 27, 2013, stating:

> …In pay periods 200321 and 200322, I had a serious illness and was required to use my annual leave. I was an Investigator, assigned to the Intake Unit, at that time. While I was out ill, I did perform work at home. I performed work at my home which my supervisor Allen Gosa accepted when it was completed.

> I did not use any Leave Without Pay in pay period 200513, May 29, 2005 to June 11, 2005. I have attached the pay records the agency provided to me for the pay period and no leave without pay is shown on pay period 200513.

The parts of Ms. Osborne's claim that are supported only by the repeated **"STATEMENT OF EXPLANATION FOR WORKING AT HOME ON SCHEDULED DAY OFF AND AFTER WORKING HOURS"** are difficult to credit, owing to their lack of specificity, their failure to delineate specific tasks and when, and for what duration, they were performed. This vagueness, as noted previously, does not, in my view, create the just and reasonable inference of extra work performed that will carry a claimant's initial burden, even in a case where document production has been at issue. In addition, while I acknowledge Ms. Osborne's reference, above, in her Supplemental Affidavit to work performed while ill and on annual leave, such hours, standing alone, do not immediately generate overtime.

Accordingly, I must deny this claim.

Arthur Reid

Mr. Reid worked as an Investigator in the Birmingham District Office for the entire claims period. Mr. Reid claims 372 hours over 97 pay periods. He is among the claimants who were granted an extension of time to file a claim, although his claim was finalized on May 27, 2012. He reports on his Claim Form that he worked a 5/4/9 compressed schedule from pay period 200309 to pay period 200603, and that he moved to a 4/10 compressed schedule from pay period 200604 until the end of the claims period. The Agency disagrees, asserting that, in fact, from the beginning of the liability period through pay period 200603, he was not on a 5/4/9 schedule, but was rather on a flexible schedule.

The Agency objects to all Mr. Reid's claims on grounds that he worked a flexible

schedule from pay periods 200308 to 200603, that he failed to provide sufficient evidence to raise a reasonable inference that he worked the extra hours claimed, that his claims are outside the scope, that the claimed extra hours were not suffered or permitted, that he did not work the extra hours claimed, and that he received time off for time worked.

Mr. Reid's Claim Form is accompanied by statements for each pay period, along with the Memorandum from Mr. Franklin-Thomas responding to his request for documents. The statements are titled **"STATEMENT OF EXPLANATION FOR THE DEDICATED INTAKE UNIT INVESTIGATOR."** As seen before, these are designed to indicate how many extra hours in a given pay period the Investigator is performing work in the Dedicated Intake Unit. They state:

> While serving as an investigator in the dedicated intake unit, I am required to perform intake duties during the official office hours to include: interviewing walk-ins, mail review, drafting charges, and telephone interviews. In addition, my investigative duties include analyzing documents, preparing request[s] for information, writing cause investigative memos and letter of determinations, and on occasion interviewing witnesses, etc.
>
> Because members of the public must be served and due to giving priority to walk ins and time sensitive correspondence, in addition to the overwhelming case inventories (backlog) internal expectations resulting in pressure from management to meet deadlines, working extra hours is imperative to the success of the investigator.
>
> During pay period #_____dates_____I worked_____extra hours performing my assigned investigative work.

The Union contends that the Agency failed to provide Mr. Reid with the documents he requested, which included Outreach and Intake schedules. It states that Mr. Reid's written statement attests to the extra hours he was required to work in the Dedicated Intake Unit. The Union states further that, when the Agency submitted sign-in/sign-out sheets, they were for the entire office, Mr. Reid's being mixed in among the 415 pages. It notes that due to the unreliability of FPPS records, it is not even possible to

determine whether the Agency's claim that Mr. Reid switched work schedules is accurate. In addition, it states that the Agency's FPPS records have been proven to be inaccurate and unreliable, as the Agency failed to enter actual work hours in the time and attendance system.

Before reaching the merits of this claim, I address the matter of identifying Mr. Reid's work schedule from the beginning of the claims period until pay period 200603. As much as the Agency would assert that it is clear, it is, in my view, a genuine question. The Agency points to a small sample of sign-in/sign-out sheets, from approximately January 7 to January 29, 2004 and appears to use this to conclude that Mr. Reid was on a flexible schedule from the beginning of the claims period up until pay period 200603. I do not believe that is determinative, and am not certain if the Agency is relying on a larger sample.

I direct that the parties resolve that issue before I proceed with my determination of this claim. It does not matter whether counsel attempt to do so on their own or whether they prefer to meet *in camera* with me.

Arthur Sanders

Mr. Sanders worked as an Investigator in the Birmingham District Office throughout the claims period. He claims 682 hours over 144 pay periods. Mr. Sanders reported on his Claim Form that he worked a basic schedule throughout, but the Agency, relying on FPPS data, asserts that he worked a compressed schedule (reflected in FPPS as 4/10) from pay periods 200308 through 200726, and that, from pay period 200727 to pay period 200826, he worked a flexible schedule, as opposed to a basic schedule. The Agency, noting that the Birmingham District Office apparently no longer utilized sign-

in/sign-out sheets in 2007 and 2008, acknowledged it had no documents reflecting the actual daily work hours for Mr. Sanders during that time. However, it notes that, since Mr. Sanders stated on his Claim Form that his extra work hours began at 5:00 P.M., and not 4:30 P.M. (the official hours for the Birmingham District Office being 8:00 A.M. to 4:30 P.M.), it concludes that Mr. Sanders' regular tour of duty ended at 5:00 P.M., thus signifying a flexible schedule. On this basis, therefore, the Agency contends that Mr. Sanders is not entitled to any overtime compensation from pay periods 200726 through 200826.

The Agency objects to all Mr. Sanders' claims, on the grounds of his having worked a flexible schedule as set forth above, that he failed to provide sufficient evidence to raise a reasonable inference that he worked the extra hours claimed, that his claims are outside the scope, that the claimed extra hours were not suffered or permitted, that he did not work the extra hours claimed, and that he received time off for time worked.

The documentation accompanying Mr. Sanders' Claim Form consists of the document entitled **"STATEMENT OF EXPLANATION FOR WORKING AT HOME ON SCHEDULED OFF DAY AND AFTER WORK HOURS,"** along with the Memorandum from Mr. Franklin-Thomas relating to Mr. Sanders' request for documents, replicated for all pay periods in Mr. Sanders' claim. The Agency contends that these documents fail to provide any real explanation of the nature of Mr. Sanders' overtime work or the amount and extent of the claimed extra hours, or that they were worked at all.

The Union contends that, despite his requests for information, Mr. Sanders did not receive any documents for Intake and Outreach, in addition to having received no sign-in/sign-out sheets and Cost Accounting Sheets for the period 2003 to 2006. It argues that

the Agency has submitted no specific evidence in support of its objections, and should not profit from its own failure to maintain accurate records.

Based on the above, the only pay periods that may come into play are pay periods 200308 to 200726, inasmuch as it appears clear that Mr. Sanders assumed a flexible schedule thereafter. This conclusion is based on the fact that the official hours of the Birmingham District Office are 8:00 A.M. to 4:30 P.M. and Mr. Sanders notated his extra hours beginning not at 4:30 P.M. but at 5:00 P.M. The records of his work during that earlier period, while plentiful, are of little assistance beyond the information reflected on the Claim Form itself. The statement appended to each pay period, as I have noted before, is essentially a general job description plus a reporting of hours worked during that pay period, which is replicated on the Claim Form. Unless this statement adds information not already reported on the Claim Form itself, it is of little value on the subject of extra hours. Thus, it tells nothing concerning the nature of the work, when during the pay period it was performed, when during the day it was performed (although we are to presume it was outside of the regular work schedule), or why the activity took the time reported. As I have had occasion to note before, the initial burden in these matters, even in cases where records production is in issue, rests with the claimant to demonstrate by just and reasonable inference that the amount and extent of the extra work claimed has been worked. I cannot conclude that Mr. Sanders has met that initial burden.

For these reasons, I must deny Mr. Sanders' claim.

Rita Sterling

Ms. Sterling worked as an Investigator in the Birmingham District Office on a 4/10 compressed schedule throughout the claims period. She claims 1,087 hours over

124 pay periods, ranging from 4 to 13 hours per pay period. The Agency objects to her claim on grounds that she failed to provide sufficient evidence to raise a reasonable inference that she worked the extra hours claimed, that her claims are outside the scope, that the alleged extra hours were not suffered or permitted, that she did not work the extra hours claimed, that she earned and used compensatory time in the same pay period, and that she received time off for time worked. In addition, it points to a pattern of taking leave that militates against concluding that extra work hours were performed in so many pay periods.

The documents accompanying Ms. Sterling's Claim Form are organized by year from 2003 through 2009. Each contains the Claim Form, the Delner Franklin-Thomas Memorandum, an Affidavit of Explanation for Intake, an Affidavit of Explanation for Onsite, and an Affidavit of Explanation for Working at Home on Scheduled Off Days and After Work Hours.

The Intake Affidavit states:

> During my intake rotation, I was required to perform intake duties during the official office hours. Because members of the public must be served, upon completion of performing my intake duties, I would stay late performing my regular investigative duties.

The Onsite Affidavit states:

> On occasions, I conducted onsite investigations. Prior to the onsite, I am required to review and analysis [analyze?] the charge, responses and evidence submitted. In preparation for the onsite, I determine information needed in conducting interviews, identity of witnesses to be interviewed, developing interview questions tailored to each individual/group. I am expected to complete this preparation in conjunction with my current work load. Because members of the public must be served, I would stay late or work at home in preparation for my onsite. Occasionally, I performed onsite visits after working hours, sometimes extending two to three days and this required extra hours.

The Working at Home on Scheduled Work Days and After Work Hours Affidavit states:

> More often than not it is necessary to perform investigative work outside of the assigned tour of duty. The investigative duties include analyzing documents, preparing request[s] for information, writing cause investigative memos and letter of determinations, and on occasion interviewing witnesses, etc. Because members of the public must be served and due to overwhelming case inventories (backlog), internal expectations resulting in pressure from management and meeting deadlines, working extra hours is imperative to the success of the investigator.

The Union contends that Ms. Sterling has demonstrated the reasons for her having worked extra hours in Intake, conducting Onsites and working at home after her scheduled work hours and on her days off. It notes that she did not receive any Outreach and Intake documents and received no documents for 2003 to 2006, with the exception of leave requests.

Ms. Sterling submitted a Supplemental Affidavit, dated September 30, 2013, in which she states the following:

> …When I filed my claim, I stated that the claim was based upon my knowledge to the best of my belief. I did not have all the records, because I was not provided all the records for the complete overtime claim filing period.
>
> In performing my duties, as an Investigator, I would take work home and complete the work while I was on annual and/or sick leave. I don't recall receiving compensatory time in the period of March 16, 2008 to March 29, 2008. I do believe I worked extra work hours during that pay period. Working extra work hours was not uncommon, because of the large number of case assignments I and my coworkers were required to complete.

Ms. Sterling's reference, above, to not recalling receiving compensatory time in the period of March 16, 2008 to March 29, 2008 clearly references her FPPS records, which reflect that she did, in fact, both earn and use compensatory time in that pay period (200807).

The Union asserts that, in addition to failing to give Ms. Sterling her records, it did not accurately record her work hours, and that the extra hours she and her co-workers worked were known to supervision. It notes that the Agency produced no evidence to show that Ms. Sterling did not work these extra hours and the Declarations of supervisors

and managers are both unreliable and contradicted by testimony and documents.

Ms. Sterling's documentation, a well-organized submission, suffers from a lack of specificity. While she surely references Intake, Onsites and working at home on scheduled work days and after work hours, these statements are simply too generalized and neither time-specific nor activity-specific. They likewise do not contain any insight into the circumstances why the general work being described was, in fact, performed outside regular working hours.

Therefore, inasmuch as the initial burden rests with Ms. Sterling to establish a just and reasonable inference that she generated extra work hours, and since I do not believe that burden, even if a relaxed one under *Mt. Clemens*, has been met, I must deny this claim.

Jeanne Walker

Ms. Walker worked as an Investigator in the Birmingham District Office for the entire claims period on a 4/10 compressed schedule. She claims 1,365 hours of overtime over 151 pay periods. The Agency objects to all her claims on the grounds that she failed to provide sufficient evidence to raise a reasonable inference that she worked the extra hours claimed, that her claims are outside the scope, that the alleged extra hours were not suffered or permitted, that she did not work the extra hours claimed, and that she received time off for time worked.

The Agency contends that Ms. Walker provided no meaningful information about the investigative work, Outreach or Intake that she stated she performed outside her regular schedule, or the reason why a large amount of extra hours was needed or the estimated date or time of day these extra hours were worked. It notes that she has failed

to calculate how many extra hours she worked in such a large number of pay periods, particularly since, in many of these pay periods, she took significant amounts of leave.

Ms. Walker submitted a Supplemental Affidavit, dated October 10, 2013, stating the following:

> …When I filed my claim, all the hours I submitted on my claim were for investigating cases, interviewing witnesses, conducting onsites, and outreach. The workload was and continues to be so large that I could not accomplish all my work in my regularly scheduled work hours. I have worked on weekends, my off days, and taken work home to complete my work. As an employee, I was not permitted to record my extra work hours on the Agency sign in/out sheets and payroll records.
>
> This year I believe I will have approximately 127 resolution and possibly 12 cause findings. I have worked extremely hard during my career as an Investigator and the Agency records will show that I am a high achiever.

The Union contends that the Agency failed to give Ms. Walker her Intake and Outreach records and gave her no records for the period 2003 to 2006 and did not accurately record her work hours. It notes further that supervision was aware of the extra hours worked by Ms. Walker and her co-workers, and that the Agency produced no evidence that these extra hours were not worked. The Declarations of supervisors and managers, it states, are unreliable and contradicted by the hearing testimony and documents in this case.

Ms. Walker's claim presents a statement of work she performs, both generally as an Investigator and also performing Onsites, Intake and Outreach. Her claim of extra hours is significant in bulk, but it does not convey the specificity needed in order to establish at least an inference that her work has been performed during extra work hours and, by being suffered or permitted, merits overtime payment. It is uncertain what specific tasks she performed (beyond her generally described duties), and when and for how long she performed them. The burden here is that there be some idea of the amount

and extent of the claimed work that may be established by just and reasonable inference. This is a claimant's burden, and, with due respect, I do not believe Ms. Walker has carried it.

The one possible exception to this general finding that, in my view, merits a hearing has to do with Ms. Walker's contention that she would work on weekends and off days and would take work home. I am prepared to grant a hearing to determine if she can establish that such work constituted extra work hours and was suffered or permitted.

BOSTON

Anthony Linsk

Mr. Linsk worked as an Investigator in the Boston Area Office from April 1, 2000 through May 23, 2005. He claims 63 hours over 8 pay periods from July 27, 2003 through December 13, 2003. The Agency objects to his claims first because he admits on his Claim Form that he worked a flexible schedule in every pay period claimed, that he worked no overtime in seven of the eight pay periods claimed, and that his claims are outside the scope.

The Agency notes that Mr. Linsk used as support for his claim weekly sign-in/sign-out sheets, but that a review of these documents reveals that, in seven of the eight pay periods at issue, he worked or took leave for 40 hours or less each week. Thus, it asserts that, since Mr. Linsk's own documents do not support his claim, the claim should fail.

The Union contends that the chart provided by the Agency, which purports to reflect Mr. Linsk's working a flexible schedule, is not supported by the sign-in/sign-out sheets submitted by Mr. Linsk and approved by the Office Director. It claims he worked

a 4/10 scheduled and took Fridays off, and that the Agency was entering into its FPPS records that Mr. Linsk was on an 8-hour-per-day, five-day-per-week work schedule. It argues that the Agency has failed to submit any evidence to contradict the sign-in/sign-out sheets that demonstrate Mr. Linsk worked extra hours without payment.

This is a circumstance where, on its face, a case may be made for either a 4/10 compressed schedule or a flexible schedule, depending on the source relied upon. Mr. Linsk himself reported working a flexitour schedule on his Claim Form, and yet his sign-in/sign-out sheets clearly show an off-day on Fridays. I ask the parties to advise me whether they are, at this point, able to agree. If so, I will proceed with the disposition of this claim. If not, I will direct a meeting *in camera* to decide the issue. I find this better than for a decision to be made that either wrongly might grant a remedy, or wrongly withhold it.

CHARLOTTE

The Union contends, with respect to all claims by employees at the Charlotte District Office, that the office refused to acknowledge employees' document requests and only provided documents to employees after I had granted an extension of time for employees who had been denied documents. It argues that the Agency's actions obstructed employees' efforts to file their claims and that the Agency should, therefore, be barred from objecting to any claims from the Charlotte District Office based on "insufficient evidence" or on any other ground.

More specifically, the Union asserts that claimants were deprived of Government vehicle logs for the years 2005 through 2009 when a documents request was made, and that these logs revealed that employees were conducting compensable travel on a daily

basis. For this reason, the Union urges that the Agency be barred from opposing any Charlotte District Office employee claim for extra work hours when traveling to conduct Onsites and Outreach. It maintains that the vehicle logs reveal that managers and supervisors were aware of the work and that it was a regular practice for employees to travel throughout the state. The Union, therefore, makes a general request that the Agency be required to pay all individuals on the vehicle logs six hours of overtime money payment for each trip that is more than fifty miles outside the radius of the Charlotte District Office and, in addition, to pay four hours of overtime to each employee on the vehicle logs who traveled on an overnight trip in a Government vehicle.

I advise the parties that, based on the information above, I am unable to grant the relief requested, in part because it represents a "general" remedy and lacks specific support. In addition, except in limited circumstances, overtime pay for travel is not the appropriate remedy; rather, it is travel compensatory pay. I direct the parties to my discussion of travel time in the "**LEGAL ISSUES**" section of this Report.

In addition, since the Agency has uniformly included a document in its submissions for Charlotte District Office claimants, I reference it here, rather than doing so as part of the discussion of each claim. It is a Memorandum of Understanding between the Charlotte District Office and AFGE, Local 3599, issued April 12, 2005 by Reuben Daniels, Jr., District Director, concerning the implementation of hours of work in the Charlotte District Office ("Charlotte MOU"). It was signed on March 29, 2005 by Mr. Daniels, on behalf of the Agency, and Sharon Baker, President of AFGE, Local 3599.

Sarah Bryant

Ms. Bryant worked as a Paralegal Specialist in the Charlotte District Office throughout the relevant time period on a 5/4/9 compressed schedule. She claims 105 hours over 49 pay periods. The Agency objects to all of her claims on grounds that she did not work the claimed extra hours, that management could not have known or prevented her from working the claimed extra hours, that she provided insufficient evidence to show that she worked the claimed extra hours, and that her claims are outside the scope.

I note here the Declarations in Ms. Bryant's file of Lynette Barnes, Regional Attorney in the Charlotte District Office, and of Tina Burnside, Supervisory Trial Attorney. Ms. Barnes's Declaration speaks to her being at one time Ms. Bryant's first line supervisor, later her second line supervisor. She stated in her Declaration that Ms. Bryant's FOIA duties did not require the large percentage of her job that she stated. Ms. Burnside, who became Ms. Bryant's first line supervisor, speaks to the same. Both also state that there was never any informal arrangement that Ms. Bryant should work unrecorded extra hours, that she was never authorized to work extra hours, and that her FOIA duties would not require it.

As part of her claim, Ms. Bryant included statements pertaining to relevant pay periods generally to the effect that, inasmuch as the Charlotte District Office processed upwards of 500 FOIA requests in a fiscal year, she, in addition to her paralegal duties, typically "worked 15 to 30 minutes overtime on several days during the pay period, without any formal arrangement between my supervisor and myself." Similar statements indicate that, in the last month of the fiscal year, her workload increased "to assist the attorneys with completion of assignments by year's end," and that she had to "close down

last year's FOIA program." I note here that the Agency argues, referencing the Paralegal Specialist Position Description (GS-950-11), that FOIA processing is part of her job, not "in addition to it."

Pursuant to the Charlotte MOU, employees such as Ms. Bryant who were on a compressed work schedule were ineligible for credit hours but were eligible for compensatory time. The Agency argues, therefore, that her failure to report any compensatory time after the effective date of the Charlotte MOU strongly suggests that she did not actually work any overtime, and that her indicating on her Claim Form that the Agency likely did not have e-mails helpful to her case points to her not having requested to work extra hours or to inform her supervisor that she had already done so.

The Union contends that the Agency payroll records produced in 2007 to the Union do not show any credit hours recorded in Ms. Bryant's FPPS records, and that, in addition, the Agency admits that "credit time is illegal for employees on a compressed schedule and so any effort by the Agency to assert credit time would be illegal." This, it notes, is a further illustration of the failure of the Agency to maintain accurate time records, and cannot claim credit for compensatory time use that is not reflected in employees' records. Further, it argues, the FPPS records are extracts that do not have any entries showing how alleged credit hours were earned.

Ms. Bryant submitted a Supplemental Affidavit, dated October 11, 2013, stating:

> …During my employment in the Charlotte District Office, the responsible management official for the Legal Unit was Lynette Barnes. Ms. Barnes made it clear to me, and other employees of the Legal Unit, that all employment policies and practices of the Legal Unit were her responsibility and we were not subject to the policies and practices implemented or placed into effect by Reuben Daniels, the Charlotte District Director.
>
> Throughout my employment, I worked a 5/4/9 work schedule. The only discussions I had concerning my 5/4/9 work schedule may have been a change in

> my time of arrival and departure. I did not discuss a change in my 5/4/9 work schedule except for one occasion when I requested to change to a 4/10 work schedule. My request was ultimately denied by Ms. Barnes. I never worked a flexible work schedule.
>
> The extra work hours on my claim form were for work responding to FOIA requests, managing the FOIA program for the Charlotte District and litigation support work. It was impossible to complete the work assignments within my scheduled work hours.
>
> I did receive a performance improvement plan during my employment. I filed a grievance and challenged the performance improvement plan. Through mediation, we settled the grievance with an agreement, which stated if I completed the performance improvement plan successfully, the unsatisfactory rating would be withdrawn and replaced with a successful rating. I did satisfactorily complete the performance improvement plan and the unsatisfactory rating was withdrawn. The Agency is aware of the grievance and the mediation agreement.

It is not implausible that Ms. Bryant's FOIA duties or her assistance of attorneys might, at some times, cause extra work to be performed. It is more a matter of making some showing of the times, the circumstances and the extent of such work. Ms. Bryant's descriptions of her extra FOIA work, while arguably not as pay-period-specific as they might possibly be, are plausible and, further, assign modest amounts of extra time per pay period for their completion. Another matter is the conflict between Ms. Bryant's two supervisors and herself concerning the extent of her own activities with respect to the FOIA program. Whether this may have an impact on Ms. Bryant's eligibility for overtime for having worked extra hours, and whether they were suffered or permitted, are issues that, in my view, require a hearing.

Orma Buie

Ms. Buie worked as an Investigator in the Charlotte District Office throughout the claims period and, despite her indicating a basic schedule on her Claim Form, was on a flexible schedule, with which the Union agrees. She claims 6,975 hours in 160 pay

periods. She was one of the claimants who was granted an extension of time to file her claim, although it was signed on May 21, 2012. The Agency objects to all her claims because she worked a flexitour schedule throughout the relevant period. In addition, the Agency objects to Ms. Buie's claims for the reasons that she is not entitled to any compensation for work performed during breaks, that she did not work the claimed extra hours, that management could not have known or prevented her from working overtime, that she provided insufficient evidence to show that she worked any extra hours, that her claims are outside the scope, that she cannot claim overtime work while on annual, sick, or other leave status, and that many of the claimed overtime hours did not constitute work performed for the benefit of the Agency.

Ms. Buie submitted an Affidavit with her Claim Form. I set it forth here in full:

> I, Orma Buie declare under penalty that the statement made on the Claim Forms are true and correct and that the Equal Employment Opportunity Corporation [sic] – Charlotte District Office – Management (EEOC) knowingly designed and strategized office standards for work productions forcing me to perform work in excess of 40 [meaning 80] hours Every Pay Period before, during and after the relevant period for this claim. I have provided documentation to support this claim.
>
> In addition, the Charlotte District Office received the attached request for additional documentation on April 26, 2012, according to US Postal service. As of May 21, 2012, the agency has failed to respond. This request would support my overtime claim.
>
> INTAKE-15 (fifteen) additional overtime hours for the week and the additional five days (ten total days)
>
> 5-hours of no lunch-10 hours to complete work product
>
> The 15 hours would be in Addition to the overtime routinely done for case processing requirements.
>
> Background
>
> Intake Rotation-once per month-the work required 2 weeks minimum depending on the flow of walk-ins and mail. Management was aware of the time required as noted by the 10 day deadlines imposed for the work. I as union steward in 2009-2010 requested and assisted in this 10 day turnaround because prior to these

negotiations, we were held to a five day deadline. Work product was to be turned in on the last day of the intake week. Management felt we were compensated by closing intake on Friday at twelve o-clock-giving you four hours to complete your work.

This forced even more overtime on the Intake week. The ten day change allowed for extending overtime giving five more days.

Overtime was still warranted because of the impact of intake on Case Processing which management would NOT reduce or consider for the month of intake rotation.

Case Processing

Overtime-20 hours per week-minimum for first 3 weeks of the month and increase 15 hours the last week of the month for closures.

Total 75 overtime hours per month. The Intake month included which is an additional 15 hours - totals 90 hours per month. [Handwritten]-Note: there were weeks of variation of rotation-example 1 rotation every two months – OBuie resulting in 75 OT hours that pay/…

Background Case Processing

There are numerous functions required in the processing of cases. The most important thing is that the Inventories (pending cases) were unmanageable.

There were at times over 150 cases in my inventory always over a 100. The month of October (1st of the year pending inventory is always low but just for that one month). A manageable case load is 35-40 maximum. The quality standards could only be met in a 40 hour work week with a reasonable case load. The A1 cases required (legal meetings, onsite, request for information, constant telephone call, interviews etc.) The outcome of the investigation if a violation was found, leads to much more time to process. The preparation involved in A1 cases resulted in most of the overtime. B cases that must be developed to make A cases (litigation worthy) can result in even more work than the cases initially assessed as an A. C cases usually closed during your intake week. My inventory consisted of more A cases and deadlines imposed by legal resulting in hours and hours of overtime.

The development and processing without clerical assistance, given the number and type (A-B) without considering intake required at minimum, 20, hour per week. I did not take a lunch.

I worked minimum 2 hours per day overtime during the five day workweek. I worked a minimum of 5 hours every Saturday or Sunday depending upon what case I was processing and deadlines to be met.

I was required to turn in 10 resolutions a month. I would have to work all weekend (15 hours) the last weekend of each month to make the requirements for closures.

LEAVE-SICK-ANNUAL-USE OR LOSE

My leave did not impact the overtime. There was no exception made for the work requirements. I took cases with me to the hospital, doctor visits, and hair appointments, dental appointments, on air planes while on vacations, outdoor concerts, and reading in traffic jams, while visiting friends and relatives, cases were always in my car at the ready. This work was done while on leave. My doctors and family complained about the effect the work load was having on my health all the time.

EEOC Managers never failed to remind you that you were still responsible for your inventory and upon your return, additional cases were placed in your pending inventory.

The pain and suffering for me while dealing with a disability that the agency refused to provide an effective accommodation can never be compensated nor can the valuable time I cannot have back with my family and now deceased mother.

I say shame on EEOC – the model agency for civil rights.

I am now forced out of the agency because of acerbation and retaliation of the above effect on my disability and the agency's failure to effectively accommodate me. All cries for help were ignored.

I seek fair justice for the overtime work I performed.

The Agency submitted the Declaration of Barry Fulp, former Supervisory Investigator in the Charlotte District Office. Mr. Fulp declared he was unaware that Ms. Buie ever worked overtime on any work he assigned her in Intake, or worked through lunch while on Intake, and that she "never asked me for any comp, credit or overtime."

The Agency also submitted the Declaration of Gloria Barnett, Enforcement Manager in the Charlotte District Office, who declared that Ms. Buie worked a flexible schedule and, to her knowledge, never requested, worked or was denied any overtime requests during the relevant period.

The Union contends that the Charlotte District Office initially refused to supply documentation to Ms. Buie, and that Ms. Buie submitted her performance evaluations,

Agency charge receipt lists, cause findings and resolutions, work lists from her personal computer, onsite reports and projection requirements, all demonstrating the extent of the work that caused Ms. Buie to work extra hours. It notes that, not only does the Agency not submit any evidence to dispute the hours Ms. Buie states she performed, but the Declaration of Barry Fulp is unsupported by any documentation and the unsigned Declaration of Gloria Barnett, who did not directly supervise Ms. Buie, provides no documentation to dispute Ms. Buie's claim of extra work hours, nor does any Agency document dispute her claim that she performed the work for which she seeks compensation. It asserts that the Agency may not rely on an illegal compensatory time system which violated the requirement to keep accurate records of the actual work hours of employees.

Ms. Buie submitted a Supplemental Affidavit, dated September 30, 2013, stating the following:

> …During the period from April 7, 2003 to April 28, 2009, I did work a flexible work schedule of 7:00 a.m. to 3:30 p.m. I was required to select my hours of work and I did not use the extra hours I worked to vary my arrival and departure time at work or to shorten the length of my work week. I worked the extra work hours performing my duties, of Investigator, on cases I was assigned by my supervisors. I did request overtime because the work could not be completed within my scheduled work hours. When I would request overtime, I was informed by my supervisors I could not have overtime, but I was required to complete the work assignments. I would complete the work assignments and the completed work would be accepted by my supervisors.
>
> When I requested the Union file a grievance on overtime work hours, I was not aware that the National Union had a grievance pending on overtime.
>
> My disabling condition is asthma. Because of my asthma and the air quality on the 4th floor of the Charlotte District office, I could not take charges in the designated Intake unit. When assigned to Intake, I would interview and take charges in my office. Neither Barry Fulp or Victoria Mackey were on my floor when I was performing Intake. When assigned to Intake, the office instruction was to stop interviewing new potential charging parties at 3:00 p.m., unless the person had traveled to Charlotte from out of town. If the person traveled from out of town, the office instruction was to interview the individual and take the charge if needed.

I acknowledge Ms. Buie's dedication to her job and to the public served by the Agency. However, as the law requires, Ms. Buie's claim must be denied, as she worked on a flexible schedule.

Velmer Buxton

Mr. Buxton worked as a Mediator in the Charlotte District Office throughout the claims period. As reflected on his Claim Form, he worked a gliding flexible schedule. He claims 281.5 hours over 145 pay periods. The Agency objects to all his claims on the ground that he worked a gliding flexible schedule. It also claims it is entitled to an offset for claimed overtime work Mr. Buxton received and used compensatory time off, and objects on the grounds that he earned and used compensatory time during the same pay period, that he seeks compensation for work performed during breaks, that he did not work the claimed additional overtime hours, that management could not have known or prevented him from working the claimed additional overtime hours, that he is not entitled to any compensation for non-compensable travel time, that he provided insufficient evidence to show that he worked the claimed additional overtime hours, and that his claims are outside the scope.

Mr. Buxton submitted an affidavit with his Claim Form, which stated:

> …During the period 04/06/2003-05/09/2009, my position was mediator. I frequently travelled outside the office to conduct mediations and outreaches. Normally I would leave my house between 8:00-8:15 am and it would take me about 30 minutes to arrive at work. On days when I had to do mediations outside the office I would leave my house between 6:30 am and 7:00 am. On many occasions I would return to the office after 6:00 pm and stay until around 6:30 pm to complete paperwork and respond to inquiries that had accumulated. There were also times in accommodating the schedules of the parties that in office mediations that ran past 6:00 pm. There were also many instances when I worked through the lunch period.
>
> I do not have supporting documentation for the overtime hours worked. I did request and receive from the District Resource Manager, travel logs. However,

> there was no information at all for the year 2003. The travel logs also would not reflect the times I travelled with Larry Ross, Cora Davis or Michel Vaughn to conduct mediations and/or outreaches (GSA car request would be in their name), nor the times when I drove my own private vehicle.
>
> My claim for overtime hours is accurate to the best of my knowledge.
>
> I can recall but one time I requested and received compensatory time for 1.5 hours. In trying to do the best job I could do in helping the unit/office meet its goals, there was not a lot of time to take compensatory time.

The Union contends that the travel/driver logs revealed that Mr. Buxton and his co-workers traveled on Sundays, Saturdays, overnight, on day trips more than fifty miles from their duty stations on a daily basis from April 2003 to April 28, 2009. It notes that the records show the Agency's supervisors were aware of the travel, did nothing to compensate the employees, and failed to record all the extra hours the employees worked, asserting that "[t]he Agency's claim that the travel would be noncompensable is another ruse the Agency employed to keep from paying employees for their work." Moreover, it asserts that the Agency's FPPS records "are filled with incorrect information." The Agency, it notes, obstructed the filing of claims by refusing to provide documentation requested by employees.

Mr. Buxton's claims must be denied as he works on a flexible schedule.

Melinda Caraballo

Ms. Caraballo worked as an Investigator in the Charlotte District Office from October 24, 2005 through the end of the claim period, working, as she reported, both a basic and 5/4/9 compressed schedule. She claims 25 hours over 13 pay periods. The Agency objects to most of Ms. Caraballo's claims on grounds that the Agency is entitled to an offset for claimed overtime work where she received and used compensatory time off, and that she often earned and used such compensatory time in the same pay period.

The Agency does not dispute that she should have been compensated an additional .5 hours for each of 11.5 hours of overtime worked and claimed in 9 pay periods where she did not use the earned compensatory time. The Agency concludes that Ms. Caraballo is entitled to payment of 5.75 hours, which equals $117.84, and an equal amount of liquidated damages, for a total of $235.68.

The Union notes that Ms. Caraballo submitted e-mails and Cost Accounting Bi-weekly time sheets supporting her extra work hours and the reasons the hours were worked. It contends that the Agency's objections are invalid and not in accordance with the law. It asks that Ms. Caraballo be paid for her extra work hours, minus compensatory time used, and an equal amount of liquidated damages.

In examining this claim, pay periods in which Ms. Caraballo earned no compensatory time and which, by my ruling, are not "outside the scope," may be examined. I therefore direct than a hearing be conducted for the purpose of determining whether bases exist such that the proposed Agency remedy should not be directed.

Sandra Chavez Cichocki

Ms. Chavez Cichocki worked as an Investigator in the Charlotte District Office from October 24, 2005 through the end of the claims period. Her Claim Form reflects that she worked a basic schedule through pay period 200605, working a 5/4/9 compressed schedule thereafter. She claims 34.5 hours over 17 pay periods. Accompanying her Claim Form are numerous compensatory time e-mails with Enforcement Manager, Gloria Barnett, and overtime authorization requests. The Agency objects to most of her claims on grounds that the Agency is entitled to an offset for claimed overtime work where she received and used compensatory time off, and that she often earned and used such

compensatory time during the same pay period.

The Agency does not dispute that Ms. Chavez Cichocki should have been compensated an additional .5 hours for each of 16.5 hours of overtime worked and claimed in 8 pay periods where she did not use the earned compensatory time. The Agency concludes that Ms. Chavez Cichocki is entitled to payment of 8.25 hours, which equals $168.39, and an equal amount as liquidated damages, for a total of $336.77.

The Union contends that Ms. Chavez Cichocki's compensatory time earned was not recorded in the time and attendance records, and that compensatory time used was recorded on the biweekly time sheets as other leave, with no money payment offered for the extra work hours.

There are pay periods in which Ms. Chavez Cichocki earned no compensatory time and which, by my ruling, are not "outside the scope" and may thus be examined. In light of that ruling, I direct that a hearing be conducted for the purpose of determining whether bases exist such that the proposed Agency remedy should not be directed.

Thelma Currence

Ms. Currence worked as an Investigator in the Charlotte District Office from before the beginning of the claims period until January 3, 2006. She claims 50 hours over 25 pay periods. The Agency objects to all her claims on grounds that it is entitled to an offset for claimed overtime work where she received and used compensatory time off, that she admits receiving and using compensatory time in some of the same pay periods, that management could not have known or prevented her from working the additional claimed extra hours, that she is not entitled to any compensation for noncompensable travel time, that she provided insufficient evidence to show that the she worked the

additional claimed extra hours and that some of her claims are outside the scope.

The Agency submitted the Declaration of Michael Whitlow, Enforcement Manager in the Charlotte District Office. In it, he states that he believed he supervised Ms. Currence for a short time in 2006 before she retired. He claimed he had no knowledge that Ms. Currence ever either worked for overtime or compensatory time on any work assignment or requested it.

Ms. Currence submitted a statement with her Claim Form as follows:

> During the pay periods beginning March 23, 2003 through January 7, 2006, I was an Investigator in the Charlotte District EEOC Office. The accepted office practice was to provide compensatory time for those extra hours of work during travel, or intake duty, or outreach assignment, or settlement conferences. I do not recall any written records of comp time during the time I performed extra work hours doing intake, or traveling to investigative sites, or outreach, or settlement conferences, whether at the local office or out of town.
>
> Prior to retirement, I was assigned as an acting intake supervisor for about a couple months or so. During that period, I worked in access [sic] of 80 hours per pay period due to the necessity of completing reports at the end of the work day on a daily basis, as well as weekly and monthly reports. Those hours were not compensated as I made a decision to retire and I exhausted hours of accrued sick leave.

The Union contends that Ms. Currence had to rely solely on her best recollection "because her extra work hours and any compensatory time were not recorded in the Agency's pay records." As with other employees in the Charlotte District Office, the Union asserts that "[t]he conduct of the Agency and supervisors and managers in this office is egregious," in that Ms. Currence and others have been deprived of records that would have assisted in proving their claims.

Ms. Currence submitted a Supplemental Affidavit, dated September 30, 2013, which stated:

> …When I filed my claim, I was not sure whether the flexitour and compressed work schedule were the same. I checked both boxes, but I was on a 5/4/9 compressed work schedule beginning in pay period 200319, August 24,

> 2003 until my retirement. The hours of 9:30 a.m. to 6:30 p.m. were my work hours on the 5/4/9 work schedule. Prior to changing to the 5/4/9 work schedule, I was on the basic work schedule.
>
> When I entered, on the claim form, that I received compensatory time, I did not always take the compensatory time in the same pay period I worked the time. The compensatory time I received was not recorded in my pay records and I constructed the compensatory time I received to the best of my recollection. I did work extra work hours when I was performing onsite work, Intake, interviewing witnesses, and other Investigator duties. I was never able to take all the compensatory time in the same pay period which I earned the time. I filled in my claim form with compensatory time hours I used, because I wanted to at least credit the time I used. A review of my FPPS pay records show that on some of the pay periods where I stated I used compensatory time, I was charged annual and sick leave. In those instances where my pay records show I took annual or sick leave, I actually submitted a leave slip for those hours.
>
> I requested records from the Charlotte Office, but did not receive records on my Intake assignments, onsites, and travel.

I find Ms. Currence's account to be credible and earnest. Her statements, as well as the Agency's own account, persuade me that there is no easy way to reconcile Ms. Currence's receipt and use of her compensatory time. I find it inappropriate, in light of this record, to assume, as the Agency has, that all the compensatory time Ms. Currence earned had to have been used, particularly since FPPS records do not so reflect. In addition, while I do not take Mr. Whitlow's Declaration as evidence, I note that he was not even certain that he did supervise Ms. Currence for a short period of time before she retired in January 2006. Thus, whatever recollection he purports to have about Ms. Currence's requests (or lack thereof) for compensatory time or overtime is not, in my view, probative.

Accordingly, in light of the above, I find that Ms. Currence merits a hearing to determine the viability of her claim.

Tansel Ezell

Ms. Ezell worked as an Investigator in the Charlotte District Office throughout the claims period on a basic schedule. She claims 621 hours over 114 pay periods. She

is among the claimants who were granted an extension of time to file her claim, although she filed it on May 21, 2012.

The Agency objects to all her claims on grounds that she earned and used compensatory time during the same pay period, that she is not entitled to any compensation for work performed during breaks, that she did not work the claimed extra hours, that management could not have known or prevented her from working overtime, that she is not entitled to any compensation for noncompensable travel time, that she provided insufficient evidence to show that she worked any extra hours, and that her claims fall outside the scope.

Ms. Ezell submitted an Affidavit, dated May 21, 2012, with her Claim Form. While lengthy, I set it forth here in full so as better to reflect her defense of the overtime hours claimed. It states:

> The overtime I am claiming is what I know to be a minimum amount of the overtime I actually worked but because records such as emails, logs required to sign in and out of the office building where EEOC-CLDO is currently located, calendars, intake rotation lists, intake walk-in assignment logs, and other documents are no longer available or was not provided by EEOC, I am providing my best estimate of the dates and times I worked above and beyond my regular, 40 hour work week.
>
> During my employment with EEOC as an Investigator GS-12 (from approximately 2003 until 11/2009), the office hours were from 8:30 am until 5:00 pm, Monday thru Friday and throughout that time frame my tour of duty was from 8:30 am to 5:00 pm. To the best of my knowledge I remember that Investigators were assigned to Intake on a rotating basis (by Unit and name) and each Investigator was assigned to Intake one week a month, sometimes two weeks a month depending upon how many Investigators were available and the number of weeks in a month.
>
> I know that during my employment I was given deadlines and timeframes from my Supervisor (Melvin Hardy) and Enforcement Managers (Gloria Barnett and Mike Whitlow) to complete work, turn in closures, conduct interviews with the Charging Party, Respondent, or witnesses on charge files (usually "A" designa[t]ed charges, but also for other charge files) and was given deadlines to have RFI's prepared for review and sometimes revised by the Supervisor and/or Legal Unit before being mailed out. There were deadlines I had to meet on charges that were taken in Intake as well as Holowicki's, intake inquiries

(telephone and mail) and later inquiries that came from the EAS system. During the week I was assigned to Intake I was forced to work evenings, after 5:00 pm during my Intake week and on weekends in order to get my completed Intake files, Holowicki's, and telephone and mail inquiries back to the Intake Supervisor, Barry Fulp. However, because of all the deadlines to be met with Intake work as well as work in Enforcement, I was also forced to have to work on Saturdays and Sundays in order to get my assigned case load in Enforcement completed as well. Charging Party's [sic], and/or their witnesses were not always available and able to be contacted between 8:30 am and 5:00 pm which meant I was contacting them after 5:00 pm, and on Saturdays. I know that deadlines and timeframes became more critical during my Intake rotation and the week after my Intake rotation, at the end of each month, and about the last 6 months of the fiscal year, which all contributed to the amount of overtime I was forced to work.

Additionally, I was assigned special interviews and/or special charges and interviews to conduct from my Enforcement Manager (Gloria Barnett) on charges or parties involved where Ms. Barnett wanted thorough notes and other specific information regarding the charge allegations while assigned in Intake and when I was not assigned to Intake (at times where the Charging Party may have complained about an Investigator or a specific situation). Also there were meetings with the Investigator, Enforcement Manager, Supervisor, and sometimes Legal (A1/A2 Cause review meetings) and these meetings would sometimes continue beyond my tour of duty. Additionally because of scheduled A1/A2 meetings, me and other Investigators were forced to come in early or stay late in order to prepare for said meetings. Because of deadlines, me and other Investigators were forced to work through our lunch breaks or we took no lunch at all while in Intake and working in Enforcement (Maelene Woods, Madeline Poe, Orma Buie, Barbara Smith); and some Investigators who had off days or other types of alternate work schedules (Barbara Smith, Orma Buie, and Maelene Woods) would come into the office on their off days in order to get work completed or they would leave the office at or after their scheduled tour of duty ended and return to work and continue to work on cases (Orma Buie) because of deadlines given by the Supervisor and/or Enforcement Manager. Additionally, because of being forced to work overtime in order to get work completed, my coworkers provided transportation home for me because it was so late when we left work the public transportation system where I lived did not have buses that traveled beyond a certain time of the evening (Madeline Poe, Lillie Garrett, Harvey Cummings, and others). I know that throughout my employment up until approximately sometime in 2008, the Enforcement Managers (Gloria and Mike Whitlow) and Supervisor (Melvin Hardy) were aware that Investigators were working beyond their tour of duty because they would let us know they were leaving for the nite, and tell us we shouldn't stay too much longer either; or in some instances they would ask for work or information on a case or cases past our tour of duty, and closures were completed and turned in past my/our tour of duty. Also onsites and training sessions were required and on occasion because of preparing for the onsite, working beyond my tour of duty was necessary and on just about every onsite conducted there was no lunch taken at all. With regard to training sessions some were scheduled so that I was forced to travel before my tour of duty began (specifically a training session for the Charlotte office in Columbia, S.C. on 08/16/2004 shows we arrived in Columbia at 7:09 am) see

> attached. For all of these reasons (and some I have forgotten) and the fact that I felt for my Charging Parties and cared about my work product), I was forced to work thru lunch or not take lunch at all, complete interviews (on Enforcement case files as well as Intake charges, telephone inquiries/mail inquiries, Holowicki's, and EAS information), complete special assignments from my Supervisor and Enforcement Managers, prepare RFI's and make preparations for onsites, have training sessions, etc., beyond my regular tour of duty.
>
> I would also like to add that it was common knowledge in the Charlotte District Office that overtime was a no no from management including Reuben Daniels, the Director. It had been commonly said that Investigators earned too much money to pay them for overtime work. Unfortunately, the Investigators, including me did not normally ask for over time because of this statement. Additionally, the Investigators would talk amongst our close peers about the amount of work and the fact that we were continuing to take work home, stay late/come in early, or come in on weekends to complete our work. I know that Orma Buie was complaining about the workload and that it was taking working beyond her tour of duty to get it done (to Management and the Union), and she was a seasoned Investigator. But she got no real assistance either. I think we all felt we had no other choice but to do what we had been doing (take work home, come in early, stay late or work weekends). We were afraid or maybe embarrassed to admit that we were not able to complete our work during our regularly scheduled tours of duty. However because we felt it was us (each person individually not really considering the workload and deadlines we were given) in 2008, I complained to the Office Union Representative, Vicki Mackey, about the amount of work we had and the fact that we were taking work home, working beyond our tours etc. and the workload was unmanageable (see attached relevant portions of that email dated 10/22 and 23/2008 because I don't have the complete copy any longer). Vicki's response was not receptive and nothing was done as a result of it. Additionally, even though I told Vicki I was not going to continue to work beyond my tour of duty, I continued to do so. I now know (but did not know at the time I sent Vicki the emails) that there was something in the works from the Union regarding the overtime. I also sent a complete copy of that email communication between Vicki and I to Sharon Baker when it occurred because I was so upset that our Office Union Representative was unwilling to help and she was supporting Management[']s theory that overtime was not necessary for Investigators in order to get the work done (and I believe she felt this way all during her tenure as the office Union Representative while I was employed)….

With respect to the e-mail communication referenced immediately above by Ms. Ezell, I note only that the exchange between Ms. Ezell and Ms. Mackey was confrontational and less than cordial.

The Union contends that Ms. Ezell had requested documents from the Charlotte District Office to assist in preparing her claim but received no response. It further

references Ms. Ezell's overnight travel on August 16, 2004 to Columbia, SC (a 93-mile one-way trip) for Joint Investigator training for which she was not compensated with travel overtime. The Union asserts that management and supervisors in the Charlotte District Office "obstructed employees in filing claims and engaged in egregious violations of the law" and have deprived them of records that would have assisted in proving their claims.

The Agency referenced here the Declarations of Mr. Fulp and Ms. Barnett. Mr. Fulp stated that, when he supervised Ms. Ezell in the Intake Unit, he found her to be a good, but very slow, worker, and had told her to tell him if she worked any overtime so that he could give her time off later in the week. He stated that he was not expressly aware that she actually did work any overtime on Intake. Ms. Barnett stated that she was unaware that Ms. Ezell had requested, worked or was denied any overtime during the time Ms. Barnett supervised her.

What I have in this claim is, from an evidentiary standpoint, two management Declarations opposing Ms. Ezell's own statements. As I have said in the introductory section of this report, I do not believe judgments on the *bona fides* of a monetary claim may be reached by comparing contrary hearsay statements. This can be accomplished only through a hearing, where the principals can testify, comment on documents as needed, and be subject to cross-examination.

Additionally, on the matter of Ms Ezell's travel to Columbia, SC for Joint Investigator Training that was held Monday, August 16 and Tuesday, August 17, 2004, the information requires me to conclude that it is not eligible for travel overtime under 5 CFR §551.422(a)(4). Ms. Ezell arrived in Columbia Monday morning and checked out

the following day. As neither day was a non-scheduled work day for Ms. Ezell, she would not qualify for travel overtime.

Based on the above, I will direct a hearing to determine the circumstances of the events referenced by Ms. Ezell and her supervisors.

Robert Flowers

Mr. Flowers worked as an Investigator in the Charlotte District Office from before the claims period until June 23, 2006, working a gliding flexible schedule. He claims 80 hours over 4 pay periods. The Agency objects to all his claims on the ground that he worked a flexitour schedule. In addition, the Agency objects on grounds that include Mr. Flowers' not working the claimed extra hours, that management could not have known or prevented him from working overtime, that he provided insufficient evidence to show that he worked any extra hours, and that his claims are outside the scope.

The Union contends that the evidence demonstrates that the Agency and managers and supervisors in the Charlotte District Office obstructed employees in filing claims and engaged in illegal acts. Mr. Flowers submitted a Supplemental Affidavit, dated October 4, 2013, which stated:

> …When I filed my claim, I did not have any records from the Agency. I completed the claim form to the best of my recollection, for my extra hours worked. My extra work hours were worked during Intake and processing my case assignments. When I was in Intake, I would work through lunch to serve members of the public. I would take work home, prior to the end of the fiscal year, to meet the number of closure deadlines required by my supervisor. All Investigators had a heavy workload. At the end of the fiscal year and prior to my taking vacations, if I did not take work home, I would fall behind in my work, which would affect my performance evaluation.
>
> I was on a gliding schedule. However, I did not and could not use my extra work hours to vary my arrival and departure times at work or to vary the length of my work week. Although I was on the gliding work schedule, the

> office requirement was that you work an eight hour day, regardless of the time of my arrival. I was not permitted to use extra work hours to shorten my work day. If I did not work an eight hour work day, I was required to submit a leave slip for the hours I did not work.

Mr. Flowers' claim must be denied on the ground that he worked a flexible schedule.

Golphin Hankinson

Mr. Hankinson worked as an Investigator in the Charlotte District Office from before the claims period until January 2, 2004 on a flexitour schedule. He claims 126 hours over 18 pay periods. The Agency objects to all his claims on the ground that he worked a flexitour schedule. In addition the Agency objects on grounds that include that Mr. Hankinson did not work the claimed extra hours, that management could not have known or prevented him from working overtime, that he provided insufficient evidence to show that he worked any extra hours, and that his claims are outside the scope. It argued that, unlike similarly situated Investigators in the Charlotte District Office, Mr. Hankinson failed to use the system in place for recording extra hours worked and receiving compensatory time, and, further, failed to so inform his supervisor.

The Union contends that the Agency and managers and supervisors in the Charlotte District Office obstructed employees in filing claims and violated the law. It asserts that Mr. Hankinson and others have been deprived of records which would have assisted in proving their claims.

The Union submitted a Supplemental Affidavit, dated February 14, 2013, stating:

> …When I submitted my claim, I had requested records from the Charlotte District Office of EEOC and had not received a response. The Union informed me the Agency had not provided any hardcopy records on me to the Union.
>
> The hours on my claim form were hours I worked to complete my work for Intake, Onsite visits, and Factfinding conferences. I would work during lunch

> and during my breaks to complete my work. I was not working the extra hours to vary the length of my workday or workweek.

Mr. Hankinson's claim must be denied because he worked a flexible schedule.

Roscoe Hood

Mr. Hood worked as an Investigator in the Charlotte District Office throughout the claims period. He worked a gliding flexible schedule. He claims 1,093 hours over 159 pay periods. The Agency objects to all his claims on the grounds that he worked a flexible schedule, and that his claim is untimely. In addition, the Agency objects on grounds that he is not entitled to compensation for work performed during breaks, that he did not work the claimed extra hours, that management could not have known or prevented him from working overtime, that he is not entitled to any compensation for noncompensable travel time, that he provided insufficient evidence to show that he worked any extra hours, and that his claims are outside the scope.

Mr. Hood submitted, with his claim, a statement setting forth the bases for the extra work hours he claimed. While lengthy, I set it forth in full, as I have done, above, in the matter of Ms. Ezell, so as properly to reflect the bases for the overtime hours claimed. It states:

> Although I worked a Gliding schedule, during Intake week, Investigators at the Charlotte District Office were required to work from 8:30am to 5:00pm. During Intake week, the agency required Investigators to sign in prior to interviewing a Charging Party, and to sign out at the completion of the interview. Intake was fast-paced. Almost immediately after completing one interview, you had to get another Charging Party, and go on to conduct the next interview. It was not unusual for me to go to lunch at 2:00pm or 3:00pm. Friday was the only day on which I could go to lunch between noon and 2:00pm, because on Fridays, charge receipt ended at noon, unless a potential Charging Party had unusual or urgent circumstances. The Intake interviews that I conducted sometimes lasted as long as two hours. Occasionally, I would have to take a charge that was assigned for an interview at 4:00pm, and in extreme instances, Sandra Young, one of the Clerks who gave the Intake assignments to Investigators, would give us assignments after 4:00[p]m. Apologetically, Sandra would say, "I know, but…"

The Intake reception area was almost always full of potential Charging Parties. Typically, I could not complete the processing of new charges to the Intake Supervisor at the end of an 8 hour work day…of charges that were not allowed to flex. There was no other way to finish your Intake before you had to get back to your caseload. I would always stay at work longer than 8 hours during Intake week, especially on Fridays, in an attempt to complete as much charge receipt documentation as possible, prior to returning to my regular investigative job duties. The hardship that was caused by Intake was particularly bad during the winter months. During the winter, I would always go home during darkness. I never left on Fridays prior to 6:00pm. This would create problems for me at home. My wife can attest to my late Friday home arrivals. My lateness created domestic tension. I remember, in particular, those Friday nights when Madelon Poe (see below), and I would be in the Intake area of the office, trying to complete our Intake work. We would verify each other's presence, because of the eerie silence that existed after everyone else had left work.

During 2004 the pace of Intake duty increased because of attrition. Numerous Investigators retired and the Intake rotations went from about once every 6 or 7 weeks to once a month.

Additionally, during Intake Week, we were given long lists of telephone calls, calls from potential Charging Parties that had been received by other EEOC personnel. We had to complete the calls, counsel the potential Charging Party and record the result of our counseling.

During the week following my Intake week, in addition to completing my phone list, I would always have to bring several taken charges that I had taken back to my regular work office, in order to complete the Intake process, and prepare Intake documents for supervisory review. If Mike Whitlow, Enforcement Manager, saw Intake documents on my desk or the desks of other Investigators, he would say things like, "that shit belongs in Charge Receipt", or "don't bring that shit down here." At that time, Investigators were stationed on the 3rd floor of the building, and charge receipt was on the 4th floor. On countless occasions, I did my best to conceal, from Whitlow, the charge receipt documents that I had not yet completed. Needless to say, I could not complete my Intake documentation, deal with messages that I had received during my Intake week and continue the processing of my Charge inventory without also working more than 8 hours on the Monday following Intake week. Moreover, at times, I would not complete my Intake documentation until the Tuesday following Intake week. This "domino effect" pushed backed the completion of all work tasks, and required me to work more than 8 hours per day, almost every day.

Fellow Investigators, namely Madelon Poe, Maelene Woods, Golphin Hankinson, Barbara Smith, Robert Flowers, Ava Morrow, Orma Buie, Philippe Felsenhardt and others, can attest to the overtime work that was required in order to complete the processing of Intake documentation. Additionally, the Investigators knew that asking Whitlow for Compensatory Time was a waste of time.

Especially during the month of August, and particularly during the month of September, the pressure to resolve charges by the end of the fiscal year was

> intense. Management told you to complete charges, and did not tell you that you had to leave at the end [of] 8 hours of work. Management would tell you the number of charge resolutions that you needed in order to attain particular performance levels.
>
> On-site investigations also caused me to work overtime. Typically, an On-Site Investigation required leaving early, uncompensated travel time and returning to the office after the office had closed. The office had a locked box that was expressly for the purpose of depositing the keys of the GSA vehicles. Working through lunch, in an effort to get back to the office at a reasonable time, was normal. It was only during the last year of my EEOC employment (I retired on July 2, 2010) that Melvin Hardy, my supervisor, specifically told me that I should not work through lunch.
>
> While under the supervision of Whitlow, Whitlow would periodically conduct "stand down" days. On these days, all of the Investigators would sit in [the] library all day long to discuss charges in an effort to produce resolutions. We were expected to work through lunch and eat pizza. We were to have none of our usual daily contacts. Consequently, a certain portion of the phone messages that came in during the "stand down" days would have to be answered. This too, resulted in working past the end of your normal daily tour of duty schedule.
>
> At some point in time, during the relevant period, the CTDO laid out sign-in sheets for Investigators. From these sig[n]-in sheets, it could be observed that the Investigators were recording times which indicated that overtime had been worked. Shortly thereafter, the sign-in sheet practice was discontinued.

The Union contends that the Agency has presented no evidence to show that Mr. Hood did not work the hours he claimed, and that, further, the Agency has obstructed Mr. Hood and other employees in filing claims and has violated the law.

Although Mr. Hood mailed his supporting documents on July 26, 2012, his claim is timely inasmuch he is among the claimants who received a sixty-day extension to file.

However, Mr. Hood's claim must be denied as he worked a flexible schedule.

Samuel Lomax

Mr. Lomax worked as an Investigator in the Charlotte District Office from before the claims period until his retirement on January 2, 2006. While in some pay periods on his Claim Form, he indicated he worked both a flexitour and a 4/10 compressed schedule, the latter is the correct one. He claims 62 hours over 18 pay periods. The Agency

objects to all his claims on grounds including that he did not work the claimed extra hours, that management could not have known or prevented him from working overtime, that he is not entitled to any compensation for noncompensable travel time, that he provided insufficient evidence to show that he worked any extra hours, and that his claims are outside the scope.

In a May 23, 2012 statement accompanying his claim, Mr. Lomax stated that he "worked time in excess of the regular 40 hours per week in my investigative duties performing intake duties and on-site investigations. Additionally, I worked overtime traveling to and from duties away from the standard office setting."

The Agency referenced the Declaration of Gloria Barnett, Enforcement Manager in the Charlotte District Office and, for at least half the claims period, Mr. Lomax's second line supervisor. She declared having no information to show that Mr. Lomax requested, worked or was denied any overtime requests during the relevant period.

The Union contends that no specific evidence is presented by the Agency to show that Mr. Lomax did not work the hours he claims, and that he and other employees have been deprived of records that would have assisted in proving their claims. Additionally, it asserts that the Agency and managers and supervisors in the Charlotte District Office obstructed employees in filing claims and engaged in "egregious violations of the law."

With due respect to Mr. Lomax's claim, it is lacking in the fundamental detail necessary to make out a viable claim. No meaningful information has been provided that would lead one to conclude that he has worked extra hours deserving of overtime payment. The general description of his duties does not assist in determining what specific tasks he performed, when he performed them, and for how long. Mr. Lomax's

reference to travel likewise has insufficient detail to make out an overtime claim.

For these reasons, therefore, I must deny Mr. Lomax's claim.

Victoria Mackey

Ms. Mackey worked as an Investigator in the Charlotte District Office throughout the claims period on a flexitour schedule. She claims 1,168 hours over 146 pay periods. The Agency objects to all her claims on the ground that she worked a flexitour schedule throughout the relevant time period. In addition, the Agency objects on grounds that she did not work the claimed extra hours, that management could not have known or prevented her from working overtime, and that her claims are outside the scope.

Among the documents Ms. Mackey included with her Claim Form are closure records, resolutions reports, Intake rotation rosters and Earnings and Leave statements (the Union noting with respect to this last that they revealed Ms. Mackey did not use a large amount of annual or sick leave).

Along with her Claim Form, Ms. Mackey submitted a statement as follows:

> I am filing for overtime for the complete period April 7, 2003 to April 28, 2009 and I worked as a GS 12 Investigator during this whole period.
>
> I never worked overtime when I was in intake because I could manage to get my work done while I was in intake. I did however work most Saturdays and Sundays during this 6 year period because investigators were being rotated into intake in my office every fourth week. I have provided the intake rosters that shows this. (Tab 2) Our Director Reuben Daniels during this 6 year period ran our office lean as far as investigators and hired very few investigators during this 6 year period. I was the union steward when we started rotating into intake every 4th week during the 6 year period and I remember telling him one time, if we s[p]end 25% of total work time for fiscal year in intake, then our resolutions should be decreased by 25% for the year. He just looked at me, did not acknowledge what I said, and he never decreased the numbers expected for outstanding during that 6 year period so he knew or certainly should have known that if we wanted to get an outstanding on our performance evaluation and get an award, we had to work overtime. I took my work home and I worked overtime hours on Saturday and Sunday to make up for the 25% of my work year I was spending in intake. We were also told by our first line supervisors, that we had

> no money for overtime and they could not give comp time because they had to allocate money for the comp time. All of management knew that most of the investigators were working at home but no one cared; all they cared about was making the production numbers for our office which meant they too would get monetary awards. We constantly had staff meetings during this 6 year period held by the Director letting us know how far along the office was in meeting its production goals.
>
> I have provided computer printouts of my production during this 6 year period which shows that I never closed under 100 charges in any of those 6 years yet I was in intake 25% of my work time (Tab 1) As union steward, I knew that a lot of EEOC offices had far more investigators than we had yet we produced the same amount of work as the other offices with less staff and 25% of our time in intake. It is a breakdown in this Agency at headquarters because someone needs to be monitoring the fact that so few investigators are being asked to spend 25% of their time in intake yet produce as much work product as though they were not spending 25% of their time in intake and equivalent to other offices with far more investigators.
>
> I have provided my leave and earnings statement for 2009 and 2008 however I cannot find the years from 2003 to 2007. I usually take 80 hours at a time when I go on vacation and usually I go on vacation in the months of September or October. I subtracted overtime from two pay periods each year when I am out of town on a long vacation. My leave records for 2009 and 2008 support the fact I usually take vacation 80 hours at a time. (TABS 3 & 4)
>
> I always received an outstanding performance evaluation along with a monetary award for outstanding performance during this 6 year period. I am sure EEOC has a copy of those records.

The Agency appended to Ms. Mackey's file the Declaration of Ms. Barnett, who stated therein that she had supervised Ms. Mackey prior to Melvin Hardy's becoming her supervisor on April 16, 2006. She declared that she had no information in her records indicating that Ms. Mackey had requested, worked or been denied overtime during the relevant period, nor did she have knowledge of why Ms. Mackey claimed to have worked overtime on weekends to make up for the large amount of time she had spent working in Intake.

The Union contends that the Agency has submitted no evidence to contradict Ms. Mackey's claim of working overtime hours, and that the Agency and its managers and supervisors in the Charlotte District Office obstructed employees in filing claims and

engaged in egregious violations of the law.

Because Ms. Mackey worked a flexible schedule, I must deny her claim.

Clarence Manuel

Mr. Manuel worked as an Investigator in the Charlotte District Office throughout the claims period on a flexitour schedule. He claims 69.5 hours over 11 pay periods. The Agency objects to all his claims on the ground that he worked a flexitour schedule. Among the Agency claims, in addition, are that it is entitled to an offset for claimed overtime work where he received and used compensatory time off, that he did not work the claimed extra hours, that management could not have known or prevented him from working overtime, that he provided insufficient evidence to show that he worked the claimed extra hours, and that his claims are outside the scope.

In addition to having submitted Intake Rosters with his claim, Mr. Manuel submitted a Supplemental Affidavit, dated October 3, 2013, which stated:

> …When I filed my claim, I did not request my leave records. I recalled working overtime, mainly during Intake. I forget I had worked extra hours in pay period 200813 and received 7 hours 30 minutes of compensatory time. The extra hours were probably when I worked on a weekend. I subsequently used the time it appears from the FPPS records of 1 hour during pay period 200822 and 5 hours and 30 minutes during pay period 200826. I did not recall these extra hours and compensatory time and therefore I did not list it on my claim form.

The Union contends that the Agency has submitted no evidence to contradict Mr. Manuel's claim of working overtime hours, and that the Agency and its managers and supervisors in the Charlotte District Office obstructed employees in filing claims and engaged in egregious violations of the law.

Because Mr. Manuel worked a flexible schedule, I am required to deny his claim.

Ava Morrow

Ms. Morrow worked as an Investigator in the Charlotte District Office throughout the claims period, reflecting on her Claim Form that she worked both 5/4/9 and 4/10 compressed schedules. She claims 48 hours over 24 pay periods. She appended Intake rosters to her claim. The Agency objects to most of her claims on grounds including that it is entitled to an offset for claimed overtime work, that she did not work hours claimed in overtime, that management could not have known or prevented the claimed overtime work, that she presented insufficient evidence of her hours claimed in overtime, and that her claims are outside the scope.

The Agency's specific objections to Ms. Morrow's claim include her being on leave for the entire pay period 200816, where she claimed 2 hours of overtime, as well as having claimed 2 hours of overtime in pay period 200909 during one of her Intake weeks. The Agency doubts that these hours were actually in overtime, in that she had only worked one day that week, when she was on a 4/10 compressed schedule. It makes a similar argument for several other pay periods where she worked Intake, claiming 2 hours of overtime on top of her 10-hour workday. Since FPPS reveals that she knew how to use the system for recording overtime, the Agency asserts that those occasions when it did not so reflect are an indication that she did not make her supervisor aware of it. It thus argues that there is no just and reasonable inference that these challenged overtime hours were worked.

The Agency does not dispute that Ms. Morrow should have been compensated an additional .5 hours for each of 2 hour of overtime worked and claimed in one pay period where she did not use the earned compensatory time. It concludes that Ms. Morrow is entitled to $33.43 in overtime compensation, plus an equal amount as liquidated

damages, totaling $66.86.

Specifically, the Agency points to Ms. Morrow's Claim Form for pay period 200726, where she claims 2 hours of overtime. The Agency's FPPS records reflect that Ms. Morrow earned and was credited with 3 hours of compensatory time in that same pay period, and that she used it in pay period 200813. The Agency thus claims an offset for this earned and used compensatory time.

The Union contends that the Agency has submitted no evidence to contradict Ms. Morrow's claim of working overtime hours, and that the Agency and its managers and supervisors in the Charlotte District Office obstructed employees in filing claims and engaged in egregious violations of the law.

While I acknowledge the Agency's offer as explained above, I find that there are at least two grounds for directing a hearing in this case. The first is on the matter of supervisory knowledge, where the Agency has presumed none. The second is that, with respect to the "outside the scope" argument of the Agency, my ruling allows review for pay periods where no compensatory time has been earned. In light of my ruling on this issue, I direct that a hearing be conducted for the purpose of determining whether bases exist such that the proposed Agency remedy should not be directed.

Sharon Pearson

Ms. Pearson worked as an Investigator in the Charlotte District Office from before the claims period until January 6, 2006. She claims 95 hours over 23 pay periods. The Agency objects to all her claims on grounds including that she did not work the claimed extra hours, that management could not have known or prevented her from working overtime, that she provided insufficient evidence to show that she worked the

claimed extra hours (no supporting documents having been provided), and that her claims are outside the scope. It notes, in addition, that Mr. Pearson's claim may be untimely, as it cannot identify on what date it was filed.

There is some confusion in this record with respect to Ms. Pearson's work schedule. While she identifies her work schedule as "Flexitour" for every claimed pay period, and while the Union appears to so identify it as well, this does not appear to be the case. First, FPPS records indicate a 5/4/9 compressed schedule. Second, Mr. Fulp's Declaration, supplied with this file, identify Ms. Pearson as working a 5/4/9 schedule for the entire duration of her claim. Third, and not least significant, the Agency does not argue a flexible schedule.

The Union notes that Ms. Pearson's claim is apparently partially completed online, but not finalized. My records do not reveal that Ms. Pearson is among those claimants who received an extension of time to file. The Union states that it was not notified that Ms. Pearson had not filed a completed claim, and asserts that she had requested records to assist in her filing a claim and did not receive any documents from the Charlotte District Office. It contends that Ms. Pearson was obstructed from filing her claim, and argues, in the alternative, that she should be provided her records and given the opportunity to submit a claim.

My review indicates that there had been e-mail exchanges, including between Union and Agency counsel, apparently with no concrete result. It appears that some records (Cost Accounting Bi-weekly time sheets) had been furnished, but others had not, as of early May 2012. There is little else to inform me. Therefore, I direct that the parties meet with me *in camera* in an attempt to ensure that all the facts available are

disclosed.

Harriet Poe

Ms. Poe worked as an Investigator in the Charlotte District Office throughout the claims period, reporting she worked a gliding flexible schedule. She claims 1,091 hour over 159 pay periods. The Agency objects to all her claims on grounds that she worked a flexible schedule. It further objects on the grounds that she did not work the claimed extra hours, that management could not have known or prevented her from working overtime, and that her claims are outside the scope.

While Ms. Poe was not among those claimants granted an extension of time for filing a claim, she submitted a statement with her Claim Form asserting that she was denied requested documents. In it, she stated:

> With regard to my EEOC Overtime Claim, I am providing the following statements to clarify and support my claim. I have been an investigator with the Commission 32 years and 8 months and my performance has significantly contributed to the agency goals. During this period I worked a schedule with 9:00 a.m. as my core arrival time (meaning I could arrive as early as 30 minutes prior to 9:00 or as late as 30 minutes after 9:00 a.m.). However, during Intake rotation weeks the hours were set from 8:30 to 5:00 p.m. and overtime was the rule.
>
> Although I requested information from EEOC that could assist me in the preparation of my claim, I did not receive all the requested documents. I believe that the agency (CTDO) has emails and other documentation that can help to substantiate my claim for the amounts listed, if not exceeding those that I have submitted. However, I have attempted to compile overtime averages by taking into consideration my inventory, Intake rotations, attendance, resolutions, end of the year production, etc.
>
> During the claim period I was assigned to Enforcement Manager Michael Whitlow from 2003 through September 2008 and I was reassigned in October 2008 to Enforcement Manager Gloria Barnett and Supervisor Melvin Hardy.
>
> While I was under Mr. Whitlow, the office became severely understaffed. A large number of senior investigators retired and a hiring freeze was in effect. Consequently, the Intake rotation became more frequent, my caseload increased and I inherited a number of older, complex class and systemic files that were labor intensive. This forced me to work longer days, to work nights at home, and

to work on files on the weekends at home in order to meet deadlines and timeframes. At times I worked on cases when I was at home sick or while at home on vacation. It had been made clear by Mr. Whitlow that certain numbers had to be met by investigators in order to receive specific performance ratings and for the office to meet its goals. We were always pushed around the end of every fiscal year (about August and September) to "move" cases.

With regard to Intake rotation, Mr. Whitlow required that all work related to the Intake function be completed during the rotation week and that none of the paperwork, telephone inquiries, etc., be brought back to the enforcement unit for completion. However, this was not feasible without working overtime since Intake interviews were conducted up until 5:00 p.m. and could last 45 minutes to 2 hours depending on the issues/basis. In addition, notes, notifications, letters, etc. had to be prepared. This routinely required my staying past 5:00 p.m., working during lunch and even taking Intake files home for completion. It was not uncommon on any given day, after working beyond 5:00 in Intake, to report back to the enforcement unit to complete work, make calls, etc., in an attempt to manage my caseload, submit files, and/or to discuss or prepare documents requested by management.

Other coworkers on Intake with me during the rotation weeks also worked overtime. These coworkers included Maelene Woods, Roscoe Hood, and Tanzel Ezell. We tried not to leave anyone alone after hours in the Intake office due to the isolation of the area and the fact that the Intake Supervisor left at 5:00. Often times when Ms. Ezell and I worked late together in Intake, I drove her home.

Following my reassignment to Enforcement Manager Barnett/Supervisor Hardy in October 2008, I continued to work overtime in Enforcement in order to meet processing expectations and projections on files identified for closure, cause and conciliation. I was also assigned files from another investigator who left the agency. Overtime in Intake continued to be necessary due to interview hours and time required for document preparation.

Following an overnight, two day conciliation/mediation in Asheville, NC in November, 2006, the clerical employee who accompanied me on this onsite was told by Mr. Whitlow to be sure to put in the number of hours she worked overtime; however, Mr. Whitlow did not mention overtime hours or compensatory time for me. At no time during the overtime claim period was I ever offered or given compensatory time.

Further, no documents are attached inasmuch as the agency failed to fully comply with my request for information that could have substantiated my claim. The agency failed to provide me with Intake rotation rosters for 2003 through 2009, Intake CP assignment sheets for April 2003 through June 2009, performance appraisals for the years 2003 through 2007 and leave requests forms for the applicable periods.

Again, it is my belief that the agency (CTDO) has emails and other supportive documentation that can help to substantiate my overtime claim.

The Union contends that the Agency has submitted no evidence to contradict Ms.

Poe's claim of working overtime hours, and that the Agency and its managers and supervisors in the Charlotte District Office obstructed employees in filing claims and engaged in egregious violations of the law.

Because Ms. Poe worked a flexible schedule, I am required to deny her claim.

Anita Ramos

Ms. Ramos worked as an Investigator in the Charlotte District Office from February 3, 2007 to the end of the claims period on a 5/4/9 compressed work schedule. She claims 105 hours over 19 pay periods. The Agency objects to all her claims on grounds among which are that it is entitled to an offset for claimed overtime work where she received and used compensatory time off (in the amount of 10 hours), that she twice earned and used compensatory time in the same pay period, that she did not work the claimed extra hours, that management could not have known or prevented her from working overtime, that she provided insufficient evidence to show that she worked the claimed extra hours, that for part of the relevant period she worked in a position that is outside the scope of this arbitration, and that her claims are outside the scope.

With respect specifically to the Agency's claim that Ms. Ramos worked in a non-qualifying position, it notes first that these arbitration proceedings cover, with respect to Investigators, only those GS-1810 Investigators at pay grades 9 to 12. It references FPPS records that reflect that Ms. Ramos became an Investigator GS-1810 at pay grade 7 on February 3, 2007 (pay period 200704) and did not reach pay grade 9 (qualifying for purposes of this case) until May 24, 2008 (pay period 200811). Therefore, it asserts that Ms. Ramos's claim for 6 hours of overtime in pay period 200807 (her first pay period claimed) is outside the scope of this case and, therefore, noncompensable. I have

reviewed these records and, in fact, pay period 200807 does not qualify.

In addition, the Agency asserts that, in pay period 200816, where she claims 5 hours of overtime, but also earned and used 9 hours of compensatory time, and in pay period 200901, where she claims 4 hours of overtime, but also earned and used 9 hours of compensatory time, the Agency does not owe Mr. Ramos for the 9 hours of overtime claimed in these two pay periods (I believe the Agency's assertion that she claimed 18 hours during these two pay periods is an inadvertent error, possibly owing to adding the two 9's instead of 5 and 4).

The Union contends that the Agency has submitted no evidence to contradict Ms. Ramos's claim of working overtime hours, and noted that she entered on her Claim Form that the Agency has relevant e-mails. It asserts that the Agency and its managers and supervisors in the Charlotte District Office obstructed employees in filing claims and engaged in egregious violations of the law.

In examining Ms. Ramos's file, it appears from her Claim Form alone (apart from the Agency's notations, above, respecting what it deemed its inaccuracies) that it is difficult to substantiate the hours reflected. In fact, there are no supporting documents that might inform with respect to the kind of work performed, in what pay periods and time frames such work was performed, and a more precise indication of why the hours claimed should be viewed as having been worked outside of normal work hours. Absent this information, it is difficult to conclude that her burden of establishing a just and reasonable inference of qualifying hours has been met.

Therefore, I am required to deny this claim.

Larry Ross

Mr. Ross worked as a Mediator in the Charlotte District Office throughout the claims period on a 5/4/9 compressed schedule. He claims 101 hours over 57 pay periods. He was one of the claimants who received an extension of time to file. The Agency objects to many of his claims on grounds among which include that it is entitled to an offset for claimed overtime work where he received and used compensatory time off, sometimes during the same pay period, that he did not work some of the claimed extra hours, that management could not have known or prevented him from working some of the claimed extra hours, that he provided insufficient evidence to show that he worked some of the claimed extra hours, and that some of his claims are outside the scope.

The Agency specifically notes that Mr. Ross supplied no supporting documentation with his Claim Form, and asserts that he did not claim the Agency had any e-mails that might aid his claim. (Actually, he did do so in pay period 200315.)

The Agency acknowledged that Mr. Ross was entitled to compensation for an additional .5 hours for each of the 84 hours of overtime worked and claimed for 18 pay periods. It concludes, therefore, that Mr. Ross is entitled to overtime compensation for 42 hours, in the amount of $1,932.56, plus an equal amount as liquidated damages, totaling $3,865.12.

Mr. Ross submitted a Supplemental Affidavit, dated January 30, 2013, in which he sought to correct his claim form with respect to extra hours worked, as well as compensatory time earned and used. It states:

> …When I completed my claim forms, I did not understand the difference between the Flexitour schedule and the compressed work schedule. I was a compressed 5/4/9 work schedule.
>
> I did not understand that I was to record all extra hours worked and

compensatory time hours received and used. I sent my documents to Jason Hegy and Barbara Hutchinson [Agency and Union counsel, respectively]. The documents I submitted to Mr. Hegy and Ms. Hutchinson, contained extra work hours and compensatory time hours received and used, which were not recorded on my claim form. I thought the hours in my documents would be automatically taken into consideration on my claim.

I wish to have my claim supplemented by the documents sent to Mr. Hegy and Ms. Hutchinson containing the following hours:

Pay Period Number/Date	**Extra Hours Worked**	**Compensatory Time Used**	**Compensatory Time Received**
2006/10 4/16/2006-4/29/2006	3	3	3
2006/15 6/25/2006-7/8/2006	3	0	3
2006/16 7/9/2006-7/22/2006	3	5	3
2008/05 2/17/2008-3/1/2008	3		
2008/06 3/2/2008-3/15/2008	9		
2008/12 5/25/2008-6/7/2008	2	9	

I did request records from the EEOC, but I did not receive any records for all of the pay periods. I have reconstructed the extra hours I worked to the best of my ability.

The Union contends that Mr. Ross was deprived of the opportunity to file a complete and accurate claim. It notes further that the Government vehicle logs have multiple entries for Mr. Ross each month and year. It argues that the Agency has not submitted any evidence to show that Mr. Ross did not work the hours he claims, and that the Agency has ignored the documents he submitted. It asserts that the Agency and its

managers and supervisors in the Charlotte District Office, from which he requested records and received none, obstructed employees in filing claims, ignored documentary evidence received, and violated the law.

Moreover, the Union states, consistent with Mr. Ross's Supplemental Affidavit, above, that he did not understand the difference between the flexitour and compressed schedules, that he was to record all his extra hours on the Claim Form, that he had sent all his documents to counsel for both parties, believing the hours would automatically be included, and that he therefore wished to amend his claim to include the hours in his Supplemental Affidavit.

Although the Agency's monetary offer to Mr. Ross evinces his having earned and used compensatory time, my "outside the scope" ruling allows review for pay periods where no compensatory time has been earned. Consistent with this ruling, I am directing a hearing for the purpose of determining whether bases exist such that the proposed Agency remedy should not be directed. In addition, I want to meet with counsel for both parties *in camera* prior to the convening of this hearing in order to discuss and dispose of the Claim Form issues raised above by the Union.

Barbara Smith

Ms. Smith worked as an Investigator in the Charlotte District Office from March 5, 2007 through the end of the claims period, principally on a 5/4/9 compressed schedule. (See discussion below regarding those few pay periods where she notes she was on a basic work schedule.) She claims 583 hours over 56 pay periods. The Agency objects to all her claims on grounds that she worked a flexitour schedule during part of the relevant time period, that she did not work the claimed extra hours, that management could not

have known or prevented her from working overtime, that she is not entitled to any compensation for noncompensable travel time, that she provided insufficient evidence to show that she worked the claimed extra hours, that for part of the relevant period she worked in a position that is outside the scope of this arbitration, that her claims are outside the scope, and that she was paid for some overtime work.

The Agency notes specifically that Ms. Smith claimed she worked on a basic schedule from pay periods 200708 (her first one claimed) through pay period 200713, during which periods she claimed 39 extra hours. It challenges this assertion because, in her statement (set forth below), she states her initial work hours were 7:30 A.M. to 4:00 P.M., while, as she correctly noted on her Claim Form, the official hours of the Charlotte District Office were 8:30 A.M. to 5:00 P.M. Thus, the Agency argues that Ms. Smith was not actually working a basic schedule in her first six pay periods but rather, a flexitour schedule. It adds that, according to FPPS records, this flexitour schedule actually continued for two more pay periods, through pay period 200715. It therefore asserts that Ms. Smith is not entitled to any overtime compensation for any of her first 8 pay periods. As seen below, this argument is academic, as Ms. Smith did not occupy a qualifying position during the above time frame.

Further, the Agency maintains that, according to FPPS, in pay period 200909 (Ms. Smith's next to last claimed pay period), she worked and was paid for 4.5 overtime hours. The Agency asserts that this demonstrates that, at least for the last two pay periods of Ms. Smith's claim, she knew of the system in place in the Charlotte District Office for recording and paying for such work. It thus claims that her overtime claims for pay periods 200909 (15 hours) and 200910 (12 hours) have no basis.

With respect to the Agency's argument that Ms. Smith was outside a qualifying position for part of her claim period, it notes that, according to FPPS records, she was a GS-1810 Investigator at pay grade 7 from pay period 200707 until pay period 200819, when she became a pay grade 9 Investigator. Thus, it maintains that 367 of her claimed overtime hours from pay period 200707 through pay period 200818 are beyond the scope of this case. This is correct. Ms. Smith's first qualifying pay period is pay period 200819.

Ms. Smith submitted a statement along with her claim, in which she stated:

> …I began my employment with the EEOC CHAR-DO on or about March 7, 2007 as an Investigator. I worked under the supervision of Michael A. Whitlow, Enforcement Manager, E-2, throughout my entire tenure with EEOC. My employment ended on or about January 14, 2012, when I accepted a position with another federal agency for which I am still currently employed.
>
> When I started as an Investigator, I was placed on a standard/basic work schedule of 5 days per week (Monday through Friday). As best I can recall, I was required to work 90-days before being allowed to work a compressed work schedule. I best recall my initial work hours began at 7:30am until 4pm; however, within 45 days from my first day working, I was working until 5pm and as late as 7pm consistently. As best I can recall, I worked an average of 8-10 additional hours over my regularly scheduled 8 hour per day tour of duty from March 2007 through early July 2007. Part of the reason I worked the additional hours early in my tenure with EEOC was I was required to quickly learn multiple EEOC policies and procedures involving enforcement and the investigative process. Within the first 30-days, I was shadowing senior Investigators, I particularly recall one being Roscoe Hood, in Intake to learn Charge Receipt procedures. Intake rotation for Investigators was and still is 1 week in duration. After the first day of shadowing Investigator Hood, my supervisor, Mr. Whitlow, directed me to begin taking charges independently without supervision. The Intake process involves a lot of paperwork and documentation in the Integrated Management System (IMS), EEOC's internal database system for charges. The additional hours I worked beginning very early in my tenure involved preparing Intake notes, Intake Assessment, preparing Notice of Charges to Respondents, and entering required data into IMS. I was given little training on performing all of these tasks therefore, to ensure I was doing the work correctly and timely, I worked additional hours.
>
> In or about June 2007, I was allowed and began working a compressed (5/4/9) work schedule with one Friday in each pay period as my compressed day off. I continued working this compressed work schedule through the remainder of my tenure with the CHAR-DO.

Beginning by mid August 2007 or early September 2007 I had an inventory of approximately 20-30 cases in my pending inventory. These cases were complex and involved multiple bases and issues. It is also important to know one of the cases assigned to me within the first 6-9 months to me was a Systemic (class) case involving U.S. Air filed by airline pilots alleging age discrimination. This Systemic case evolved into a national Systemic class action that ultimately was to be processed by the EEOC Phoenix District Office; however, a decision by my supervisor, Mr. Whitlow, was made to retain four (4) of these cases in the CHAR-DO and remain assigned to me to conduct the investigation. This case resulted in my working additional hours outside of my normal tour of duty as well. It should also be noted that I earned the benefit of working a telework schedule.

In or about September 2007, I had several A-1 cases assigned to me that required working with the Legal Unit and following directions for conducting investigations on these cases. I began scheduling onsites including one conducted in late January or early February 2008 in Burnsville, NC, about 2 ½ to 3 hours drive from the CHAR-DO. The onsite for this case (430-2007-02619) resulted in my working an additional 5-6 hours. I also conducted onsite investigations in Aiken, SC, and Fairfax, SC. In one of these instances, I was investigating another Systemic case involving 37 Charging Parties that required the use of translation services for both the Charging Parties where I eventually traveled to Immokalee, Florida.

Overall, I best recall I consistently work hours outside of the 80 hours per pay period beginning in early 2008 and continued until I left the Agency in 2012. It was necessary to work the additional hours to attempt to keep the ever increasing inventory of cases assigned to me and to meet the "un-official" performance standards regarding number of Causes, Not Causes, Merit Resolutions, and Onsites. By the end of my first 18 months of employment, I had an inventory of 70-90 cases. To meet the CHAR-DO and E-2 Unite goals, as well as secure a performance rating above satisfactory, I worked late evenings beyond my tour of duty hours. This can be confirmed by several of my former colleagues who were also present at one time or another when I worked the additional hours. These colleagues include, but are not limited to: Roscoe Hood, Maelene Woods, Tansel Ezell, Harriet Poe, Barry Fulp, Melvin Hardy, and Orma Buie.

In addition to working late evenings beyond my tour of duty, there were occasions where I came into the office on weekends (on Sundays but some Saturdays) and some holidays. I also worked from home on my compressed days off and also on weekends (Saturdays and Sundays) and holidays in order to keep up with the increased inventory. There were times when I worked on cases, either writing LODs or transposing interview notes while on annual or sick leave. The bottom line is I did what I had to do to meet the demands of the work, the office goals and the expectations of my supervisor. The additional hours worked were especially consistent between July and September when the final year-end pressure was on. Management was aware of the additional time put in by staff but did not offer overtime or compensatory time pay.

I am providing this information to [the] best of my recollection and I state that

> what I have provided and claim as overtime worked is true/accurate and to the best of my knowledge. I have requested some documents from the EEOC CHAR-DO that I feel would support my claim; however, the only documentation provided to me in response to my request was a computer generated printout of my time and attendance records covering a certain period. This document only reflects the normal tour of duty and annual/sick leave used. It does not provide any record of the additional hours worked. I believe the Agency has records it can provide to support my claim such as email, IMS entries, travel documents, etc. Due to my no longer being employed by the EEOC or having access to any of the aforementioned documentation, I am unable to provide supporting documentation. Therefore, I am providing this affidavit/statement. I am available and am willing to provide any additional justification to my claim upon request.

The Union contends that, with the exception of payment she received for overtime in pay period 200909, the Agency's records have been shown to be inaccurate and, presumably, continue to be so. The Union argues that no specific evidence was submitted by the Agency to show that Ms. Smith did not work the hours she claims, and the evidence does show that the Agency, through its managers and supervisors in the Charlotte District Office, obstructed employees in filing claims and have violated the law.

I turn to Ms. Smith's written statement, submitted with her Claim Form. Owing to the fact that she did not occupy a qualifying position for purposes of these proceedings until pay period 200819 (late August-early September 2008), I am unable to weigh the assertions she made concerning events predating that time. However, I am able to do so for those portions of her statement that appear to reference those periods of time from September 2008 through the end of the claims period (with the exception of pay period 200909, where the Union acknowledges Ms. Smith's receipt of unscheduled overtime and FLSA premium pay totaling 9 hours).

In this respect, a principal argument of the Agency's is that of lack of supervisory knowledge. The Agency makes this inference, as I see it, for two reasons: (1) Ms. Smith was aware of the procedure in place in the Charlotte District Office for recording and

paying employees for overtime work, as seen in pay period 200909 (although not in pay period 200910, as the Agency also asserts), but otherwise failed to utilize it; and (2) that some of her alleged extra hours took place when supervision was very unlikely to have been aware of it.

With respect especially to the second, Ms. Smith asserted in her statement that she had been working not only after hours but from home on her compressed days off, on weekends and on holidays, as well as when she was on annual or sick leave. She asserted that this was particularly consistent at the end of the fiscal year, and that management was aware of this additional time.

I believe that there is sufficient specificity in these assertions to direct a hearing to receive testimony on the specific issue of supervisory knowledge as it may apply to the overtime hours asserted by Ms. Smith from pay period 200819 through the end of the claims period.

Maelene Woods

Ms. Woods worked as an Investigator in the Charlotte District Office throughout the claims period on a 4/10 compressed schedule. She is among the claimants who received an extension of time to file her claim. She claims 2,852 hours over 160 pay periods. The Agency objects to all her claims because she is not entitled to any compensation for work performed during breaks, that she did not work the claimed extra hours, that management could not have known or prevented her from working overtime, that she provided insufficient evidence to show that she worked the claimed extra hours, and that her claims are outside the scope.

The Agency includes Declarations from Barry Fulp, former Enforcement

Supervisor in the Charlotte District Office, and Michael Whitlow, Enforcement Manager in the Charlotte District Office. Mr. Fulp declared as follows: He supervised Ms. Woods from 2002 to 2007, during which time he recalled rare instances when she would have occasion to take work home, believing she did not often work past her scheduled hours. He informed her she was not to take work home without prior authorization. He would permit employees who had to work extra hours to take compensatory time in the same period or shortly thereafter, and was not aware Ms. Woods was working large amounts of overtime. He believed Ms. Woods was typically able to take care of her Intake work during scheduled hours, partly because she worked a 10-hour day, and that she never informed him she was putting in extra hours working in Intake.

Mr. Whitlow declared as follows: He succeeded Mr. Fulp in supervising Ms. Woods. He recalled Ms. Woods' riding to work and returning home with her husband and never saw her working after 6:00 P.M., although he sometimes would see her waiting in the lobby after work, waiting for her ride home. It was his practice to permit employees to take compensatory time if they had to work beyond their regular hours, and did not recall Ms. Woods' having made such a request, either in advance or after the fact.

Ms. Woods submitted a statement along with her claim form. As with other claimants who did the same, I set it forth in full so that her position is fairly represented. It states:

> The following is my statement concerning my employment with EEOC and the overtime work that I performed during the relevant time frame of April 7, 2003 through April 28, 2009. During this entire period, I was an investigator working the 4/10 schedule (Monday through Thursday, 10 hours per day with Fridays off). My set work hours were from 7:30 a.m. until 6:00 p.m.
>
> I had worked with the Commission for over 30 years and I knew from experience that if you get behind on your investigations, it is difficult to catch up. Because investigators were responsible for intakes and investigative duties, all of the

necessary work could not be completed during the normal work day; therefore, based on demands from management, I would have to carry work home to complete at the end of the work day, on my day off (Fridays) and/or on weekends to help meet the office goals. I have requested documentation from management concerning biweekly leave, the intake assignment roster, and other documentation, yet I have received nothing. I am therefore, giving an estimate of the average overtime hours worked weekly/monthly during the relevant overtime period along with approximate dates. These averages will be the same for each year and are very conservative numbers.

During the overtime period, I rarely had time to take off for vacations. I would take a day here and there, yet no substantial time due to the office/management demands. I can recall that at the end of each year, due to my work schedule, I would have a large number of "use or lose" hours that had to be taken by the following January. Even when I was required to take the leave, I took work home to do because I could not afford to get behind on my investigation.

During the relevant overtime period, things became more difficult after the Commission began losing investigators for reasons to include retirements. I can recall at least eleven (11) investigators that left during this overtime period. Their work was redistributed to those of us remaining and I began working even more overtime hours after work, on days off and on weekends, just to try to keep up. Some years I worked more than others. I began actually losing close [to] 100 or more hours of annual leave and having to request that it be restored, which it was. The Commission has documentation concerning this. I requested by-weekly leave documents, yet to date, the Commission has not responded.

During April 2003 through April 2009 I was assigned to work in the intake unit approximately one week each month. I have attempted to recall the exact times that I worked there, yet this is very difficult based on the amount of time that has passed. When I completed my [bi]-weekly leave forms, I was told by management to record my 4/10 schedule hours and not my actual intake hours in order to make things easy for the time keeper. The Commission issued a yearly roster which would show my intake assignments and the dates. I requested this along with other intake documentation; yet to date, I have received nothing. I am therefore, estimating the dates below.

Intake hours were from 8:30 a.m. until 5:00 p.m., Monday through Friday. I was required to work the entire 5 days (Monday through Friday) and I was told there would be no exceptions. For each intake week, I reported to work as usual, working from 7:30 a.m. until at least 6:00 p.m. for the entire five (5) days of intake. Management was aware of my situation yet, did nothing to assist me. Based on office standards and requirements, I worked at least 50 hours per week each time I was assigned to intake resulting in at least ten (10) hours of overtime monthly.

BASED ON THE ABOVE, I AM CLAIMING AT LEAST 10 HOURS OF OVERTIME, ONE WEEK EACH MONTH DURING THE RELEVANT PERIOD.

Each week I worked in intake, there was at least two days when I could not take

time for lunch. The intake supervisor would assign me clients (charging parties) that would carry me through my lunch time. During this period, if individuals were in the office by 5:00 p.m. they were to be seen. The majority of the other investigators on intake with me worked on flexible schedules leaving at approximately 3:30 p.m.; therefore, in many cases I was the only one left to see the late charging parties. The intake supervisor would assign me these individuals which meant that I would be working in some cases past 6:00 pm., past my time to leave. This happened at least once during each intake assignment; therefore, I am claiming an additional hour per week of overtime for each week assigned to intake. My intake supervisor, for some of the time in question, was Barry Fulp who would leave promptly at 5:00 each day due to his transportation situation. He should have some knowledge of the above. I am claiming an additional two (2) hours per month, each time in intake (one hour for the lunch situation and one for handling late Charging Parties).

The intake work that I was unable to complete during the week would be the first thing I worked on the following week which took time away from my investigative duties.

TOTAL OVERTIME HOURS BEING CLAIMED FOR INTAKE IS TWELVE (12) HOURS PER MONTH DURING APRIL 7, 2003 AND APRIL 28, 2009. THIS IS A VERY CONSERVATIVE NUMBER.

The following information concerns my position outside of intake, performing investigative duties. As mentioned above I worked the 4/10 work schedule and during the relevant time frame, CTDO lost a number of investigators resulting in their work being redistributed to those remaining. It is my belief that the Commission was experiencing budget shortfalls during this period and there was a freeze on hiring; yet, expectations from management were still high concerning meeting the office goals. It was left to those of us remaining to accomplish this.

The CTDO management gave investigators actual number[s] needed to do well on their performance evaluations. I wanted to do well, yet, could not get all of the required work done during my normal work day, therefore, I took work home on a daily basis to complete, including the week I spent in intake. I worked evenings and even on Fridays, my day off, to get it done. Investigators also had meeting[s] with the supervisor and legal to discuss possible “cause cases”. During these meeting[s] I was always given time frames to complete certain investigative functions. All of the work/assignments could not be completed during my work day; therefore, this too required me to take work home to complete. This overtime work included yet was not limited to analyzing files, contacting Charging Parties that I could not reach during the day, prepare request[s] for information, etc. From approximately January through April of each year, I worked approximately four (4) hours overtime each week to complete these assignments and any carryover work from my intake assignment. This is a very conservative number.

FOR THE PERIOD JANUARY THROUGH APRIL OF EACH RELEVANT YEAR, I AM CLAIMING 16 HOURS OF OVERTIME PER MONTH.

The closer it got to the end of the fiscal year the more management began placing

demands on investigators for resolution of charges. We were given print outs concerning charges that needed to be resolved prior to the end of the fiscal year, September. From May through July of each year, I worked at least 10 overtime hours per week in order to conduct a thorough investigation and still "make my numbers" to do well on my evaluation. This included work done after work hours at home, working hours on my day off and on the weekends.

FOR THE PERIOD MAY THROUGH JULY OF EACH RELEVANT YEAR, I AM CLAIMING 40 HOURS OF OVERTIME EACH MONTH.

In August and September of each year the number of overtime hours increased to approximately 15 hours or more weekly to include sometime actually going into the office on my scheduled off day and/or working at home. This is a very conservative estimate. I know that I spent more hour[s] than I am identifying.

FOR THE MONTHS OF AUGUST AND SEPTEMBER OF EACH RELEVANT YEAR, I AM CLAIMING 60 HOURS OF OVERTIME.

My supervisor, Michael Whitlow was aware of my overtime work to include, yet not limited to coming into the office to work on some of my Fridays off. As long as I met the time frames he assigned to me and gave him resolutions to assist in meeting the office goals, it was fine. I was never offered any overtime or compensatory time. It is my belief that management knew or should have known that the work could not be accomplished in the course of a normal work schedule, yet, knew that I would do whatever was necessary to get it done and do it well. This meant working overtime. By the way, I cannot recall receiving anything less than an outstanding evaluation during the relevant time frame.

The beginning of October through December, of each relevant year, I continued to work at home and on Fridays when necessary. I am claiming only approximately two (2) hours per week even though I know that I worked more hours. The work during this period involved getting in touch with Charging Parties and witnesses that I could not reach during the week. I interviewed them and recorded their testimony. It also included reviewing the files to include position statements prior to the actual interview. I also took some "use or lose" leave in December or January, yet, I still put in overtime hours at home.

FOR THE PERIOD OCTOBER THROUGH DECEMBER OF EACH RELEVANT YEAR, I AM CLAIMING 8 HOUR[S] OF OVERTIME PER MONTH.

I am aware of other investigators who worked overtime and were aware of my doing the same: Harriet Poe, Barbara Smith, Tansel Ezel[l], Roscoe Hood, Orma Buie and others. We would check with one another to make sure everyone had a ride home and/or would not be left there alone that late in the evening.

The dates and overtime hours that I am claiming are the best that I can recall based on no assistance from the Commission concerning information that I requested. It was difficult placing these numbers on the claim form, yet I did the very best that I could.

All of the above is true to the best that I can recall.

The Union contends that no evidence has been submitted by the Agency to show that Ms. Woods did not work the hours she claims. It asserts that the evidence reveals that the Agency, through its managers and supervisors in the Charlotte District Office, obstructed employees in filing claims and violated the law, and that Ms. Woods and others have been deprived of records that would have assisted in proving their claims.

Ms. Woods has claimed a large number of overtime hours. The extent of her documentation is her written statement. In my view, a reasonable expectation, when such a significant overtime claim is made, is that it will be documented in such a way as to raise at least the suggestion that the claimed work was done. I recognize, of course, the Union's position that claimants, including Ms. Woods, have been hampered in their efforts in this regard. That was the principal reason why the Union requested the opportunity to extend the claims filing deadline for some individuals, Ms. Woods included, to accommodate as much as possible such issues along the way.

With that said, Ms. Woods' claim is larger than that of every other Charlotte District Office Investigator, save Ms. Buie. Such a claim particularly calls for information, beyond a lengthy statement, that is likely to have some tendency to support the claims made. Unlike the claim of Barbara Smith, Ms. Woods' requested hours appear to be derived in such a way that they not only appear arbitrary in their repeating application but, even more than that, they are relatively indefinite with respect to the specific times (much less individual pay periods) to which they refer. With due respect, I cannot deem them of great probative value.

Therefore, I must deny Ms. Woods' claim.

CHICAGO

The Union contends, with respect to all claims submitted by employees of the Chicago District Office, that the Agency withheld documents from employees that would have assisted them in filing their claims. It asserts, generally, that, in response to the Union's information request, the Chicago District Office stated it had no compensatory time or credit records for any employees and submitted leave requests for the year 2006. It alleges that employees who requested records from the Chicago District Office during the claims process received no response or were informed that documents requested did not exist. The Union asks, therefore, that the Agency be prohibited from challenging any claims from employees in the Chicago District Office based upon what the Union deems its refusal to provide records requested by employees during the claims process.

Joyce Barksdale

Ms. Barksdale worked as a Paralegal Specialist in the Chicago District Office throughout the claims period on a 5/4/9 compressed schedule. She claims 5.15 hours over 4 pay periods. The Agency objects to her claims because she used any compensatory time earned in the same pay period and, therefore, did not work more than 80 hours in the pay period, and she has submitted insufficient evidence in support of her claims.

The documentation accompanying this claim includes principally notes of interviews in four of her cases. The Agency contends that these documents are not meaningful in that they do not give any idea of why they should aid in generating extra work hours.

The Union points to Ms. Barksdale's having submitted her personnel action forms

and witness interviews in support of her claim, contending that the Agency's objections to her claim are without support. It asserts that the Agency's FPPS records for Ms. Barksdale do not show any compensatory time used by her for the pay periods covered by her claim. Rather, as the Union notes, they reflect Ms. Barksdale's having used a time off award for pay period 200503 and annual leave for pay period 200502, and that she used no leave for pay period 200507, and used annual leave for pay period 200508. Yet it notes that Ms. Barksdale honestly reported this information, which apparently was in her possession. The Union argues, in light of this, that the FPPS records "are so riddled with incorrect and inaccurate information that they cannot be relied upon." It alleges that the Agency "has not bothered to consult its own records or its managers and supervisor," and has instead made baseless objections in an effort to avoid paying money it owes, alleging further that "Ms. Barksdale's claim is simply a microcosm of the Agency's conduct for its violations of the FLSA."

The documentation here, by way of four interviews Ms. Barksdale conducted, are not, in fact, revealing with respect to why these activities should generate extra work hours. Actually, the only set of notes where I can see a time of day indicated is in the Anderson interview, which apparently took place between 5:15 and 6:15 P.M. Even with that, the evidence is insufficient to support an overtime claim.

FPPS records here appear to inure to the benefit of Ms. Barksdale, essentially indicating that her honest report that she had used all the compensatory time she had earned in each of the four claimed pay periods was not accurate. The Union views this as symptomatic of the Agency's conduct in these proceedings, and illustrative of FPPS records being notoriously inaccurate. Indeed, the 2009 Opinion spoke to this issue, and

particularly with reference to the issue of compensatory time reporting.

I acknowledge that Ms. Barksdale appeared to have earned and used the same amount of compensatory time she received in each of her 4 reported pay periods, as she reports on her Claim Form. Taking that to be so, there are no extra hours remaining to be tabulated. There are a few figures, however, that I found out of place in any event. It is true that FPPS records do not reflect any compensatory time either received or used in any of the 4 pay periods claimed by Ms. Barksdale. Instead, they show her having taken 17 hours' combined annual and sick leave in pay period 200502, and 35 hours' combined annual and sick leave in pay period 200503, along with a 9-hour time off award. While the Union went on to talk of pay periods 200507, where, by FPPS records, Ms. Barksdale took no leave and neither earned nor used compensatory time, and 200508, where FPPS records show she took 2 ¼ hours of annual leave but neither earned nor used compensatory time, I believe it meant to address pay periods 200607 and 200608. In pay period 200607, FPPS records reflect Ms. Barksdale's using a 9-hour time off award and taking no leave and neither earning nor using compensatory time in pay period 200608.

Whichever accounting is credited here, the result is that Ms. Barksdale would not have worked extra hours during the pay periods claimed.

Therefore, I must deny this claim.

Charles Bold

Mr. Bold worked as an Investigator in the Chicago District Office from before the claims period until January 3, 2006. He reported working on a basic schedule, but it appears clear that his work hours were 7:45 A.M. to 4:15 P.M., which he mistakenly entered as the official hours of the Chicago District Office (which were 8:30 A.M. to 5:00

P.M.). Therefore, he worked a flexible schedule. He claims 232 hours over 31 pay periods. The Agency objects to all Mr. Bold's claims on the ground that he worked a flexitour schedule. In addition, the agency states it is entitled to an offset for claimed overtime work where Mr. Bold received and used compensatory time off, and objects on grounds that he earned and used compensatory time during the same pay period, that he did not work the claimed extra hours, that management could not have known or prevented him form working overtime, that he provided insufficient evidence to show that he worked any extra hours, and that his claims are outside the scope.

The file includes several leave slips and Resolutions reports.

Mr. Bold included a statement which sets forth the pay periods reflected in the claim form, noting:

> I have been retired for over six years. I do not have overtime records. I am submitting the following pay period claim form with the amount of extra (overtime) worked as far as I can recall to the best of my ability….I was a high closure Investigator and would take work home. I would work nights and on Saturdays.

In a Supplemental Affidavit, dated October 2, 2013, Mr. Bold stated:

> …When I filed my claim, I checked the basic work schedule, because I was not sure that my 8 hour per day, 5 day per week schedule was not a basic schedule. The work hours I put on my claim form were my scheduled hours of work each day. I was on a flexible work schedule, but I did not use the hours I claimed as overtime to vary my arrival and departure times from the office or to vary my work week. I was required to submit a leave slip for any time I would not be in the office. I was performing my Investigator duties, during all of the periods I claimed overtime on my claim form. As I stated the work was performed in the evenings or on weekends. I was not permitted to record any extra work hours on my time and attendance records.

The Union contends that the Agency must not be able to rely on its illegal conduct to defeat employees' claims for unpaid overtime, and must produce specific evidence that the hours claimed were not worked.

Mr. Bold's claim must be denied, inasmuch as he worked a flexible schedule.

Lydia Casalino

Ms. Casalino worked as a Mediator in the Chicago District Office throughout the claims period on a 5/4/9 compressed schedule. She claims 916.5 hours over 134 pay periods. She was among the claimants who received an extension of time to file a claim. The Agency objects to all her claims on grounds that the Agency is entitled to an offset for claimed overtime work where Ms. Casalino received and used compensatory time off, that she earned and used compensatory time during the same pay period, that she is not entitled to any compensation for work performed during breaks, that she did not work the claimed extra hours, that management could not have known or prevented her from working overtime, that she is not entitled to any compensation for noncompensable travel time, that she provided insufficient evidence to show that she worked extra hours, that her claims are outside the scope, and that her claims are untimely.

The Agency supplied Declarations from Mary Manzo, retired ADR Coordinator for the Chicago District Office, and from Patricia Jaramillo, Enforcement Manager. Ms. Manzo supervised the ADR Unit, which consisted of five Mediators, including Ms. Casalino. She declared that Ms. Casalino would usually speak with her in person, rather than through e-mail, regarding compensatory time. She stated she did not believe Ms. Casalino had used as much as 120 hours of compensatory time for her work on a Spanish translation project in 2007. She declared further that Ms. Casalino would receive compensatory time whenever she missed her lunch or her breaks, and stated that, if Ms. Casalino had engaged in a mediation on her day off, she would have received compensatory time. She also declared that Ms. Casalino was not that likely to work late, since her 5/4/9 compressed schedule had her in the office until 6:30 P.M.

Ms. Jaramillo declared that she herself did the bulk of the translation work for the 2007 project, but that Ms. Casalino's assistance was normally on the weekends and nights. She did not believe that this project would have caused her to be authorized 120 hours of compensatory time.

Along with her Claim Form, Ms. Casalino submitted, for individual pay periods, the following letter addressed to Rust Consulting:

> I have submitted the overtime claims from 2003 to 2009 on the EEOC Website.
>
> Below is a summary of the documents I have in support of my claims.
>
> 1. Resolutions reports for the period 2003-2009. The data I obtained from these reports, allowed me to estimate the extra hours I worked during each pay period and the reasons/circumstances for working extra hours, for each of the cases that were successfully mediated identified in the report.
> 2. Copies of the IMS Outreach Reports submitted to my supervisor showing the outreach activities done on August 16, 17 and 20, 2008, and on September 2, 2008, which required me to work extra hours to prepare for and to do the outreach presentations. I was authorized to use the extra hours worked as compensatory time.
> 3. The Telecommuting Plans and note pads with telephone messages (2007 and 2008), show some of the extra hours worked performing mediation activities late in the evening.
> 4. In 2007, I was authorized 120 hours of compensatory time, by two supervisors for translating information for the Call Center. I have the Spanish translations of the scripts. The translations were done during evenings, 5-4-9 days and on weekends.
> 5. I have the Spanish translations I did for the ADR and Intake Units for the Chicago District Office. These translations were done during evenings, weekends and on my 5-4-9 days.
> 6. The 2009 Calendar shows the mediations held, dates I worked my lunch and breaks to continue with the mediation in progress, and dates I stayed late to complete mediation activities.
>
> If you wish to have any of the above information, please let me know.

The Agency's response to this was essentially that, if Ms. Casalino were in possession of these potentially helpful documents, she should have submitted them when they could be more meaningfully evaluated.

In addition to a history of her mediation conferences conducted by fiscal year, Ms. Casalino submitted numerous declarations, representing various pay periods covered

in her claim, in which she set forth the extra hours she estimated she had worked.

Common to all of these are the following assertions:

1. My name is Lydia DeJesus-Casalino.
2. Since September, 1979, I have worked for the Equal Employment Opportunity Commission (EEOC), Chicago District Office, now located at 500 West Madison Street, Chicago, Illinois, Suite 2000, Chicago, IL 60661. From September 1979 to April, 1999 I worked as an investigator.
3. From April, 1999 to the present, I have worked as an ADR Mediator. At present I am classified as Bilingual Spanish Mediator-GS-301-13 Step 8. I have been in a compressed work schedule (5-4-9) since July, 2003.
4. My duties entail contacting parties concerning our ADR services to explain the process of mediation, conducting mediation conferences, responding to calls from the public to, preparing mediation agreements and ADR reports, conducting outreach activities and other mediator's duties. I also serve as translator and interpreter for numerous Spanish speaking charging parties with language barriers. I have helped other mediators communicate with their Spanish speaking parties to help resolve their cases. I have translated into Spanish all ADR information and documents and Intake information. I have also translated information used by the Call Center in Headquarters for the Spanish speaking public.
5. During the period April, 2003 to April 28, 2009, I earned compensatory time for extra hours I worked. The circumstances which required me to work the extra hours were to mediate complex cases requiring more time to complete. I worked thru lunch and breaks to avoid disrupting the progress being made by the parties. I stayed late in the evening to complete negotiations in progress and agreements. I also earned compensatory time when I worked my 5-4-9 days to do mediation conferences. I also earned extra time when I worked weekends and late in the evenings to prepare for outreach activities, to translate documents, ADR and Intake information for the Spanish speaking public. I also earned compensatory time, when I performed outreach activities after 6:30 p.m.
6. During the period April 7, 2003 to April 28, 2009, the practice in my ADR Unit concerning earning compensatory time was: 1. I informed the supervisor the number of extra hours I worked. 2. The supervisor recorded the "extra hours" in her personal calendar (as unofficial time). 3. When I asked to use the compensatory time accumulated, the supervisor verbally approved my request to use it as "comp time" and proceeded to cross out from her calendar the number of hours I was using. I was allowed to accumulate the extra time worked to be used in the future.
7. I was not allowed to earn "overtime pay" for any of the extra hours I worked.

Ms. Casalino submitted a Supplemental Affidavit, dated October 3, 2013, which states:

> …When I filed my claim, I was reconstructing my extra hours worked to the best of my recollection, because I requested documents for my compensatory

> time. I was not provided the documents for the compensatory time. The hours in my declaration are the extra hours I worked. If there was a discrepancy between the hours claimed on my claim form and my declaration, the extra hours on my declaration are the most accurate representation of my extra work hours.
>
> On the Spanish translation project, I worked under the supervision of Mary Manzo [then ADR Coordinator] and Julianne Bowman. I was given the 120 hours of compensatory time for the project. Ms. Manzo kept exact track of all extra work hours I accrued and used.

Accompanying her Supplemental Affidavit is a series of e-mails from the period April through July 2012, wherein Ms. Casalino requested documents in support of her claim. These included, in part, requests for Cost Accounting bi-weekly time sheets and leave request forms. She was informed that the Chicago District Office no longer had access to time and attendance records for 2007, but was provided Cost Accounting time sheets and leave records for certain periods in 2008, 2009 and 2010. She also requested Mary Manzo's calendars from 2003 to 2009, in which, as Ms. Casalino recalled, "she recalled the extra time worked and used by the mediators." In response to this request, Ms. Casalino was informed by Ms. Bowman that Ms. Manzo was contacted and replied that she did not, in fact, maintain such calendars.

The Union contends that, in addition to Ms. Casalino's claim being timely filed (having received an extension of time within which to file her claim), Ms. Bowman misled her about records in the possession of Ms. Manzo and has obstructed her claim. It states that the Agency is required to come forward with specific evidence that the claimed extra hours were not worked.

I note first that Ms. Casalino's claim filing is timely because, as I noted above, she was on the list of claimants who was granted a sixty-day extension of time to file.

The information submitted by Ms. Casalino gives a reasonably clear picture of her mediation activities, as well as other projects. While they do not, by themselves, compel a

conclusion that these activities, or at least portions of them, must have occurred outside of normal working hours, they suggest, by their bulk, that it is possible. The material issues of fact that are created by comparing Ms. Casalino's statements with the Declarations of Ms. Manzo and Ms. Jaramillo cannot be resolved by comparing documents. I have earlier stated that such documents, being hearsay, are no real substitute for testimony and other reliable evidence.

What I have before me is, in my view, sufficient at least to suggest that Ms. Casalino's job duties may have caused extra work hours that the Agency does not acknowledge. In addition, while I see that Ms. Casalino's indication on her Claim Form that she did not earn or receive compensatory time is clearly not correct, the fact is that, if there are pay periods where this actually is the case, they are no less available for examination, as my "outside the scope" ruling stated.

For these reasons, I find that a hearing should be conducted in this claim.

Joanne Guinta

Ms. Giunta worked as a Mediator in the Chicago District Office from before the claims period through July 2006. She then worked in the Tampa Field Office until her retirement on September 30, 2006. She worked a 5/4/9 compressed schedule. She claims 284 hours over 74 pay periods. She was among the claimants who received an extension of time to file a claim. The Agency objects to all her claims on grounds that the Agency is entitled to an offset for claimed overtime work where Ms. Giunta received and used compensatory time off, that she earned and used compensatory time during the same pay period, that she is not entitled to any compensation for work performed during breaks, that she is not entitled to any compensation for noncompensable travel time, that she

provided insufficient evidence to show that she worked any extra hours, and that her claims are outside the scope.

The Agency specifically points to the below statement of Ms. Giunta, which causes it to conclude that Ms. Giunta received compensatory time for all the extra hours she worked, and that she used it all "either during or after the relevant period." Thus, the Agency claims a complete offset.

The Agency has appended a Declaration from Mary Manzo, former ADR Coordinator in the Chicago District Office. Ms. Manzo identified Ms. Giunta as one of the five Mediators she supervised. She spoke to the informal policy in the Chicago District Office of allowing employees to earn compensatory time instead of overtime for extra hours of work. Ms. Giunta, she declared, normally communicated with her through e-mail rather than in person. She recalled that Ms. Giunta most often, though not always, used her compensatory time in the same pay period in which she earned it. She stated that she never denied a Mediator's request for compensatory time, and that Ms. Giunta received it when she missed lunch and/or breaks.

The Agency argues that Ms. Giunta has made "widely varying claims" respecting her extra hours worked in specific pay periods. It notes that, "[w]hile Ms. Giunta properly explains that she is not to blame for the dearth of evidentiary support…, it is her burden to produce sufficient evidence to demonstrate by just and reasonable inference that the claimed overtime hours reflect actual time worked." It claims she has failed to meet that burden.

Ms. Giunta submitted the following Statement with her claim, which I set forth in full:

> I, Joanne Giunta, served as an EEOC-Mediator (GS13) at the Chicago District

Office from April 2000 thru July 2006 and at the Tampa Field Office (Hardship Transfer) from August 20, 2006 thru September 30, 2006. My retirement date from EEOC: September 30, 2006.

EEOC/CDO-Mediation Unit:
The practice utilized by Mary Manzo, ADR Supervisor-CDO, regarding compensatory time is as follows: I submitted hours worked overtime in a given pay period, in writing, to Mary Manzo. If she approved the time, it was then recorded, as "unofficial" compensatory time, in her personal office calendar. She allowed me to take the approved "unofficial" compensatory time along with my annual leave for vacations or for other personal purposes. She approved the "unofficial" compensation time on an *hour for hour basis rather than one and one half time*. *Further*, she did not offer me the option to choose overtime pay rather than compensatory time for hours worked overtime.

Upon my request, via Certified mail to the District Director-CDO, I was provided Cost and Accounting Biweekly Time Sheets. I was also provided Standard Form 71 (Request for Leave & Approved Absence) for the years 2003-2006. The Cost Accounting Sheets were incomplete and none of the SF71 Forms show a record of *Compensatory Time Off* because, as stated above, Mary Manzo kept detailed records of the approved "unofficial" compensatory time on her personal office calendar. I requested, in writing via email, that Julianne Bowman, Deputy District Director-CDO and supervisor of Mary Manzo, provide me with a copy of Mary Manzo's records on the compensatory time she approved for me during 2003 thru 2006. Deputy Director Bowman has failed to acknowledge or responded to my request for such. To my knowledge, Mary Manzo's records were the only records kept regarding my overtime and "unofficial" compensatory time. Therefore, I am not able to give specific pay periods when the "unofficial" compensatory time was used. I do recall, that I attached much of the "unofficial" compensatory hours to my vacation times. One example, I remember taking the entire month of February, 2006 off so I assume I used some of the "unofficial" compensatory hours during the pay periods of 2/5/2006-2/18/2006 and 2/19/2006-3/4/2006.

I worked many days through **lunch and break times** so as not to lose momentum during a mediation; worked many evenings so as to be able to speak with Charging Parties (by telephone) who were not available to speak with me during the daytime hours; and many evenings when mediations extended beyond my regular work day hours, especially when significant monetary benefits were at stake.
(**ATTACHMENT A**-Sample letter from a Respondent to the District Director-CDO regarding my working during evening hours) [Not reproduced here. Counsel for Respondent wrote to District Director John Rowe to commend Ms. Giunta on her diligence in crafting a settlement.]

Mediators were expected to perform Outreach activities. "Unofficial" compensatory time was given for preparation of **outreach activities** during **evening hours and week-ends**. (**ATTACHMENT B-**Cover of a **24 page instructional packet** for attendees of the Kane County Bar Association Continuing Education. [Not reproduced here.] I created the logo **MEDIATION MAKES GOOD BUSINESS SENSE IN MORE WAYS THAN ONE** and

compiled the instructional packet for participants to go along with my oral presentation. The Kane County Bar Association specifically invited me to be a speaker/instructor. Both Mary Manzo and Julie Bowman approved the Bar Association's request for me to participate as a speaker/instructor. **I worked at least 10 overtime hours in preparing for this presentation. (Pay period 5/29/05-6/11-05)**

Upon my retirement, in 2006, I disposed of my EEOC/CDO work calendars and other records that would have assisted me in completing the overtime claim most accurately. At this time, I am at the mercy of utilizing "incomplete Cost Accounting Sheets" and incomplete "Mediation Resolution Reports". I was initially provided an incomplete Resolution Report only showing dates and number of mediations without **$ Benefits or Names of Parties**. That limited information made it impossible to try to make associations and re-construct my overtime. I made a second written request to Julianne Bowman for complete resolution reports to include **$ Benefits and the names of Parties**. As a result of this second request, I was sent **$ benefits** which have been of assistance in completing my overtime claim. **(Documents available for comparison and review)**. I was advised by Julianne Bowman that she could not send me the Parties names due to *confidentiality*. I question that reasoning as the names of the Parties had previously been disclosed to me upon assignment of mediations. Further, I am aware that current EEOC employees had access to all of the information on cases including Parties names. Recall is all I have to work with and names would have further assisted me in the process of calculating overtime. However, at least, the dates and $ benefits did suffice in helping me with my overtime calculations.

I did find a **MEMO-October 19, 2005**, to Mary Manzo, (**ATTACHMENT C**-[Not reproduced here] excerpts from this MEMO confirm the number of mediation resolutions and $ Benefits for FY 2003 thru FY 2005:
10/01/02-9/30/03 $1,060,233 (Total 80 Resolutions)
10/01/03-9/30/04 $ 938,549 (Total 74 Resolutions)
10/01/04-9/30/05 $1,184,867 (Total *65 Resolutions) **3 additional successful mediations were held in FY2005 but were reported in FY 2006 due to my being out of the office and not able to submit the paperwork.*
This Memo points out…my outreach activity for the Kane County Bar Association-Continuing Education.
This Memo also points out a few of my high level settlements ($194,333, $155,400, $197,518, $83,293) and Outreach activity. I wish to stress that many of the large $ settlements required me to extend my regular work hour schedule. **(My Resolution Report(s) for 2003 thru 2006 with Dates & $ Benefits are available).**

I requested Cost Accounting Sheets from the Personnel Administrator, Tampa [Field] Office from August 20 thru September 30. To date, I have not received anything from the Tampa Field Office. I recall my last mediation in Tampa was on September 27, 2006 (my birthday) and I recall working 3 overtime evening hours to settle that case. I remember because the Area District Director was in the office waiting for me to conclude the mediation. I also developed the *final draft* of an outreach brochure submitted to the Director of the Tampa Field Office & ADR Coordinator-Miami/Tampa. I created the outreach brochure

logo/design/text/layout. I worked at least **6 hours overtime-evening hours** to complete the project.. **(ATTACHMENT D: IS EQUAL OPPORTUNITY WORKING AT WORK?...IT SHOULD BE…IT'S THE LAW!** (Pay period 9/17-9/30/06)

The overtime hours that I am submitting are a conservative estimate to include: lunch/break times; evening hours for calling CP's not available during daytime hours; mediations going into evening hours; evening and week-end preparation time for Mediation Outreach activities).

CHICAGO DISTRICT OFFICE

Year 2003 April, 2003 through December, 2003=**65 hours** of "unofficial" compensatory time (not based on one & one half time)

Year 2004 January, 2004 through December, 2004=**74 hours** of "unofficial" compensatory time (not based on one and one half time)

Year 2005 January, 2005 through December, 2005=**81 hours** of "unofficial" compensatory time (not based on one and one half time) **(Above # includes 10 hours of outreach overtime)**

Year 2006 January, 2006 through July, 2006= **42 hours** of "unofficial" compensatory time (not based on one and one half time)

TAMPA FIELD OFFICE

Year 2006 August 20, 2006 through September 2006=**12 hours** overtime (no comp time or overtime pay) **(Above # includes 6 hours related to mediation overtime and 6 hours of outreach overtime)**

[Emphasis supplied]

Ms. Giunta's file includes a testimonial letter from a Respondent's attorney who participated in one of Ms. Giunta's mediations, a document evidencing her participation in a Labor and Employment Law seminar in June 2005, and a memorandum she sent to Ms. Manzo highlighting her accomplishments that she wanted Ms. Manzo to consider in her 2005 performance evaluation.

The Union contends that, consistent with Ms. Giunta's Statement and her records, she and other Mediators in the Chicago District Office worked extra hours in mediations, Outreach and on compensable travel for the Agency. It urges that the Agency's objections to Ms. Giunta's claim be rejected, as they seek to take advantage of its own illegal conduct. It argues that, having failed to keep accurate records, and having further denied Ms. Giunta the records she requested, the Agency is in no position to assert that it should receive credit for informal compensatory time, for which it has offered no proof. The Agency, it maintains, must produce specific evidence that Ms. Giunta did not work the hours she claims.

I view this case as one where the general procedures usually followed between Mediators and supervision are relatively clear, but that the details sometimes were left to conjecture, that not being the fault of Ms. Giunta (as the Agency itself appears to acknowledge). It is certain that Ms. Giunta received and used compensatory time, but there is a great deal of doubt when an attempt is made to quantify it. After all, Ms. Giunta herself apparently could not even make a guess at it, since, as she wrote on her Claim Form over the compensatory time columns, "NO RECORDS AVAILABLE."

Once again, I cannot treat Ms. Manzo's Declaration as evidence, nor can I do the same with Mr. Giunta's statements. I believe, however, that there is enough detail suggested in these documents (surely in those provided by Ms. Giunta), and material issues of fact presented, that require a hearing.

I therefore direct that a hearing be scheduled.

Regina Husar

Ms. Husar worked as a Mediator in the Chicago District Office from April 1,

2006 through the end of the claims period on a 5/4/9 compressed schedule. She claims 149.5 hours over 26 pay periods. She testified at the hearings in Philadelphia, PA. The Agency objects to all her claims on grounds that it is entitled to an offset for claimed overtime work where Ms. Husar received and used compensatory time off, that she earned and used compensatory time during the same pay period, that she is not entitled to any compensation for work performed during breaks, that she did not work the claimed extra hours, that management could not have known or prevented her from working overtime, that she is not entitled to any compensation for noncompensable travel time, that she provided insufficient evidence to show that she worked any extra hours, and that her claims are outside the scope.

The Agency notes specifically that, in her Claim Form, she notates no compensatory hours received, while it likewise reflects she had used 70.25 hours of compensatory time. However, it relies on her previous testimony to conclude that "she more than likely used all or almost all of her comp time in the same pay period in which she received it." It concludes, based on its analysis, that Ms. Husar's assertions in her Claim Form directly contradict her 2008 testimony.

In addition, Ms. Husar's documentation contains travel receipts that also carry handwritten notations (presumably her own). The Agency has come to its own conclusion that these notations translate to 46 hours of claimed travel time. I cannot replicate this figure, although it may be simply an issue of deciphering numbers. I am therefore uncertain whether the nature of some or all of this travel time qualifies for monetary payment. In limited circumstances, it may. I am going to need more information before I can either credit the Agency's argument that it is noncompensable

with monetary payment (but rather with travel compensatory time), or if, at least in part, it does qualify. I note, in this regard, that FPPS records reflect her nonscheduled day in her 5/4/9 schedule as Monday.

The Union contends that her testimony in February 2008 supports her claim, and the Agency may not rely on its own illegal conduct to defeat this claim, noting Ms. Husar's testimony that, in the Chicago District Office, employees were instructed to place their scheduled work hours on the Cost Accounting Bi-weekly time sheets. The Agency, it argues, has failed to produce specific evidence that Ms. Husar did not work the hours claimed.

There are elements of this claim that strongly suggest the presence of material issues of fact. One is the extent, if any, to which the Claim Form is inaccurate with respect to what it reports concerning compensatory time use, and for which I choose not to rely on the Agency's conjectural explanation for it. Another is the matter of the nature of the travel time claim. A third is that, in light of my ruling on the "outside the scope" issue, there are some pay periods not reckoned by the Agency that may be examined. The matter of supervisory knowledge on the part of Ms. Manzo is likewise relevant.

I am directing a hearing on these issues.

Paula Jackson

Ms. Jackson worked as a Paralegal Specialist in the Chicago District Office throughout the claims period on a 5/4/9 compressed schedule. She claims 28 hours over 3 pay periods, all of which fell in calendar year 2004. The Agency objects to her claims on grounds that she has provided insufficient evidence to support her claims, that her supervisor could not have known of any overtime worked, that she earned and used

compensatory time in the same pay period, and that her claims are subject to an offset for compensatory time received. Ms. Jackson's Claim Form contains no additional information or documents.

The Agency references the Declaration of Diane Smason, Supervisory Trial Attorney in the Chicago District Office. She reported that, as she recalled, she supervised Ms. Jackson from 2004 to 2006, and that there were no trials in the Chicago District Office in 2004. She noted further that pre-trial preparation and summary judgment responses would be the typical reason for a Paralegal Specialist's having to work extra work hours, and she could recall neither occurring in 2004, the year in which Ms. Jackson's claimed pay periods fall. In the event that extra hours would be worked, Ms. Smason indicated that she would arrange equivalent time off on an informal basis.

The Union contends that, despite Ms. Jackson's having submitted no written description for her extra work hours, this does not hamper her claim, inasmuch as the 2009 Opinion found that the Agency had intentionally violated the FLSA. The Agency's actions included failure to keep accurate records and failure to provide records to employees so that they might substantiate their claims. The Union, referencing the Declaration of Ms. Smason, notes that it did not establish that Ms. Jackson did not work the hours claimed and receive compensatory time, and that the Agency's own records should be able to establish whether extra work hours were required.

Irrespective of the 2009 Opinion's finding of Agency liability, this is no substitute for making out at least an inferential individual claim that extra hours, worthy of overtime payment, exist. Unfortunately, in the case of Ms. Jackson, there is no real showing at all. I cannot find that Ms. Jackson's initial burden has been carried.

Therefore, Ms. Jackson's claim must be denied.

Janet Johnson

Ms. Johnson worked as a Paralegal Assistant in the Chicago District Office. Her Claim Form was submitted without any pay periods reported, and therefore does not constitute a valid claim. The Union agrees no valid claim was submitted.

This claim must, therefore, be denied.

Gloria Mayfield

Ms. Mayfield worked as an Investigator in the Chicago District Office throughout the claims period on a 5/4/9 compressed schedule. She claims 499 hours over 101 pay periods. The Agency objects to all her claims on grounds including that it is entitled to an offset for claimed overtime work where Ms. Mayfield received and used compensatory time off, that she earned and used compensatory time during the same pay period, that she did not work the claimed extra hours, that management could not have known or prevented her from working overtime, that she provides insufficient evidence to show that she worked any extra hours, and that her claims are outside the scope.

The Agency suggested, based on a spot review of selected pay periods, that Ms. Mayfield has significantly overstated her claimed extra hours. It notes that, in light of the practice in the Chicago District Office for Investigators to record extra hours worked and receive compensatory time in lieu of overtime, it is not conceivable that Ms. Mayfield would have worked her claimed extra hours, since her Claim Form reflects that she neither received nor used compensatory time in any pay period, and her indication that the Agency would not have e-mails that might support her claim. In addition, the Agency notes, Ms. Mayfield's less than outstanding case resolution statistics lend no support to

her claim of extra hours worked. It states that she, unlike other Investigators, did not communicate her extra work hours in any form to supervision.

The Agency references two Declarations, both of which it asserts cast doubt on the credibility of Ms. Mayfield's claims. One is from Cheryl Mabry-Thomas, who was, until October 2004, Enforcement Supervisor in the Chicago District Office, and supervised an Enforcement Unit consisting of several Investigators, one of whom was Ms. Mayfield. She referenced Ms. Mayfield's performance problems and related that she could recall no time when Ms. Mayfield requested compensatory time for any reason, either in advance or after the fact, and could likewise recall no time when Ms. Mayfield worked overtime. She noted that, if Ms. Mayfield left later than others, it was due to her arriving later than most employees. The other Declaration is from Tyrone Irvin, Enforcement Supervisor in the Chicago District Office beginning in April 2006. Mr. Irvin stated that Ms. Mayfield had serious problems arriving at work on time, and that it grew into a serious issue, eventually causing resort to the reasonable accommodation process. Mr. Irvin, after reviewing Ms. Mayfield's submission of resolution reports, cast doubt on their veracity. He further stated that he could recall no occasion when Ms. Mayfield requested approval, orally or in writing, to work beyond her regular hours for the purpose of earning compensatory time or overtime.

Ms. Mayfield's Claim Form includes Charge and Resolutions reports, separated by pay period, including handwritten notes.

Ms. Mayfield submitted two Supplemental Affidavits, both dated October 4, 2013. The first states:

> …When I filed my claim, I did not have my leave records. I reconstructed my work based on my closure lists. I performed the work, during the pay periods, on the documents submitted with my claim form. I would perform work at home,

even when I was on leave. I would talk with Charging Parties by telephone and conduct other investigative work, which could be completed without being in the office. I would turn the work in when I returned to work and on occasion, when I was sick, a coworker would drop off and pick up files for me to do work. I did try to get my leave records and to the best of my recollection, I was told the records were not available.

Ms. Mayfield's second Supplemental Affidavit, dealing principally with her performing work at home (as referenced also, above), states:

I'm extremely proud and passionate for the work that I do as an Investigator for the Equal Employment Opportunity Commission. I go above and beyond to get the job done. As an Investigator I'm required to work beyond 8 hours many days, because of the ever changing schedules of Charging Parties and Attorneys.

I have done EEOC's work when on Administrative leave, Advanced Annual Leave and sick leave during my employment with EEOC. The following are examples of me working while on various leave:

1)My Mom death/burial-July 22, 2013-July 31, 2013-Administrative Leave, and possible Sick Leave my records will reflect that I was not at work. Even though I was not at work I investigated and spoke with but not limited to the following Charging Parties:

*Pamela Calloway
*Joseph Horbeck
*Nicole Ousley
*Attorney Anne Larsen from Ogletree, Deakens & Nash
155 N. Wacker Dr. Suite 4300
Chicago, IL
312-558-1253

2)Scheduled Day Off, Saturday July 27, 2013-EEOC Investigator Sherice Galloway came to my house because she needed information for investigation of the above Anne Larsen.

3)Scheduled 549 Day-October 30, 2013-Worked in Charge Receipt on Phones therefore-549 Day-Switched to October 16th in which I still worked on that day from home investigating cases and contacting charging parties.

4)Similar to a multitude of incidents, Tim Wojtusik who at the time worked in the Chicago District Office was instructed by Deputy Director Julianne Bowman to bring investigation documents to my home while I was on sick leave. Payroll records will reflect that I was on sick leave while continuing to investigate cases. Wojtusik is currently working in the EEOC's Phoenix Office.

5)At the end of Fiscal Year 2010 or 2011, my performance dictated that I

> qualified for an End of the Year Award but didn't receive it like all other employees.
>
> 6)The Chicago District Office records should reflect that this office has been very flexible with employees working from home while sick i.e. Yvonne Springs (Retired/Consultant/Deceased), Leticia Morin (Disability/Nursing Home) and Chicago District Office current State and Local Coordinator Ms. Armenola Smith. These EEOC employees were allowed to work from home for months and even years at a time. Both employees Yvonne Springs and Leticia Morin had individuals come to the Chicago District Office and pick up files/folders which contained investigative materials and took them back to their homes. This is common practice for EEOC Chicago District Office.
>
> 7)During my employment with EEOC I have never received any Compensatory times for working at home while on Advanced Sick Leave, Advanced Annual Leave, Annual Leave and/or Administrative leave.
>
> 8)It should also be noted that over the past seven years I have filed EEO's complaints and grievances because of harassment by the Chicago District Office. The complaints were filed against the District Director, John P. Rowe and previous supervisor, Tyrone Irvin.

The Union contends that the Agency's objections seek to profit from its "illegal conduct and obstructionist behavior." It argues that employees in the Chicago District Office were required to work extra hours to complete their work, and that, due to the Agency's failure to keep records, employees were not able to be paid. It asserts that the Agency has no specific evidence that Ms. Mayfield did not perform the work claimed, and that the Declarations of supervisors, who have violated the law and failed to keep proper time records, may not defeat an employee's claim.

This case is an illustration of why I informed the parties, at the beginning of this Report, why I cannot treat Declarations or statements, regardless of which party offers them, with the same weight as I would treat testimony. There clearly are serious differences between the assertions contained in the statements of Ms. Mayfield and the Declarations of Ms. Mabry-Thomas and Mr. Irvin. It is also clear how much each party

is relying on these written statements to advance their respective positions, as well as references made by the Agency to the hearing testimony of others. There are significant issues of material fact that are, to this point, not explained.

I recognize that the Agency has attempted its own analysis, in part through a sample of facially inaccurate claims for extra hours, of the lack of credibility of Ms. Mayfield's claim. I do not dismiss its approach. However, these sharply competing assertions are resolved, in my view, only with a hearing.

A hearing will be directed to address these issues.

Carol Milazzo

Ms. Milazzo worked as an Investigator in the Chicago District Office throughout the claims period. She worked a flexitour schedule. She claims 54 hours over 27 pay periods. The Agency objects to all her claims on the ground that she worked a flexitour schedule. In addition, it states it is entitled to an offset for claimed overtime work where Ms. Milazzo received and used compensatory time off, and objects on grounds including that she earned and used compensatory time during the same pay period, that she seeks compensation for work performed during breaks, that she did not work the claimed extra hours, that management could not have known or prevented her from working overtime, that she provided insufficient evidence to show that she worked any extra hours, and that her claims are outside the scope.

In addition to submitting her Claim Form, including leave slips, Ms. Milazzo wrote to Rust Consulting on December 27, 2011, stating:

> I am a 62 year old employee who was hired as an Investigator in February 1999.
>
> Originally I did not own a computer and the office allowed me to use the old fashioned desktop computer at home and I kept it there as a stationary computer.

> Over the relevant period of time, up until about three years ago, I had two work at home days a week, Weds and Fri.
>
> My start times varied from 7 a.m. to 8:00 a.m. over the years. We had expectations in this office and we knew we had to meet those expectations. When working at home, people returned my calls later in the evening or weekends. There were instances when the only time you could get a hold of a Charging Party or potential witness was after your regular work hours ended or they would call you on the weekend.
>
> There are no hard records of the work I did during this time other than year end reviews. When case loads reached 350 we worked even harder with very little staff. For those of us who stuck in there, we just worked harder to get the job done.
>
> My original computer was retrieved years ago and we were issued newer models (laptops). With the new computers we experienced computer "crashes" and records were not able to be restored.
>
> I can only ask for what is called rough justice in determining the merits of my claim. You realize this has gone on for years and years. Nobody wrote down all the lunches we worked through. All I have is my word and my track record. Thank you for any consideration in assessing my claim.

The Union contends that Ms. Milazzo was required to estimate her extra work hours expressly because the Agency lacked the records that would have permitted her to make her claim more specific. The Agency admits Ms. Milazzo and other employees worked extra work hours; it simply failed to record them. The Union asserts that the Agency may not rely on its illegal conduct to defeat employees' claims for payment of unpaid overtime, and must produce specific evidence that the hours claimed were not, in fact, worked.

Ms. Milazzo's claim must be denied, as she worked a flexible schedule.

Kara Mitchell

Ms. Mitchell worked as an Investigator in the Chicago District Office from May 12, 2008 through the end of the claims period. She worked a basic schedule. She claims 185 hours over 16 pay periods. The Agency objects to all her claims on grounds that it is

entitled to an offset for claimed overtime work where Ms. Mitchell received and used compensatory time off, that she earned and used compensatory time during the same pay period, that she did not work the claimed extra hours, that management could not have known or prevented her from working overtime, that she is not entitled to any compensation for noncompensable travel time, that she provided insufficient evidence to show that she worked any extra hours, and that her claims are outside the scope.

The Agency points to Ms. Mitchell's Claim Form, noting that she neither received nor used compensatory time during any of the sixteen pay periods for which she claimed extra hours worked, and that she did not claim that any relevant e-mails existed that would support her claim. This, coupled with the practice in the Chicago District Office that employees would track requests for compensatory time through e-mails, leads to the conclusion, as the Agency asserts, that Ms. Mitchell did not actually work any overtime.

Ms. Mitchell's Claim Form is accompanied by computer screen shots, identified by pay period, that purport to illustrate work she performed outside her regular work hours. In addition, there is a brief signed undated memorandum, entitled "Overtime Justification Payroll 1/4/2009-1/17/2009" which states:

> Right after the beginning of 2009, my supervisor (who has since retired), informed me that I was not closing enough cases. She gave me a list of cases that had to be closed or in some manner significantly worked on by the end of each week and at the end of the week meeting, I was to explain what I did and why. At the time, I was still on probation and because I was in fear of losing my job, on Friday, January 16, 2009, I arranged to speak with several charging parties on that following Monday, Kings's birthday, as they would also be off from work and would be free to discuss their allegations. I could not obtain my phone records but as a result of these conversations, I was able to close a few of these cases during this payroll period.

In addition, Ms. Mitchell included a flight itinerary for travel to Washington, DC June 7 to 13, 2008 (Saturday to Friday) for what the Agency identifies as new hire

training. On the paper, she wrote that, due to a flight delay from a storm, she arrived home at 10:00 P.M. instead of at 6:00 P.M. Her FPPS records show her receiving travel compensatory time of 10 hours.

The Union contends that Ms. Mitchell worked on holidays, prior to the start of her workday, and traveled more than fifty miles from her duty station in Chicago. The documents she submitted refute any Agency objection that the work for which she claims overtime was not performed, and the supervisor Declarations submitted by the Agency do not dispute that the work was performed.

While there are suggestions, principally through Ms. Mitchell's computer screen shots, that extra work was done outside regular work hours, these are literally snapshots of work that cannot otherwise be described as having any particular duration. If it shows Ms. Mitchell was in the office outside of regular hours, it is too speculative to conclude that a clearly defined period of time was spent performing extra work for the benefit of the Agency. Nor does her statement about working on Martin Luther King Day in 2009, during which pay period she claimed 10 extra hours, have the weight that an e-mail request for compensatory time on that day might have had.

With respect to Ms. Mitchell's travel to Washington, DC in June 2008, for which she received travel compensatory time, it appears, without further showing, that this is the kind of travel activity for which travel compensatory time is appropriate. I note that, while the travel actually began on Saturday, June 7, 2008 and not Sunday, June 8, there is no claim related to the Saturday, which falls in the unclaimed 200812 pay period.

Accordingly, I find that this claim should be denied.

Victoria Shealey

Ms. Shealey worked as an Investigator in the Chicago District Office from before the beginning of the claims period until July 9, 2004. She indicated on her Claim Form that she worked a basic schedule, but her indications of when her extra hours were worked strongly suggest a flexible schedule. She claims 240 hours over 29 pay periods. The Agency objects to all her claims on the ground that she worked a flexitour schedule. In addition, the Agency asserts it is entitled to an offset for claimed overtime work where Ms. Shealey received and used compensatory time off, and objects on grounds that she earned and used compensatory time during the same pay period, that she did not work the claimed extra hours, that management could not have known or prevented her from working overtime, that she provided insufficient evidence to show that she worked extra hours, and that her claims are outside the scope.

The Agency appended a Declaration from then Enforcement Supervisor, Cheryl Mabry-Thomas, under whose supervision Ms. Shealey worked for a year to a year and a half. Ms. Mabry-Thomas recalled that Ms. Shealey, who had performance problems, also did not request compensatory time and was frequently off work.

Along with her Claim Form, Ms. Shealey advised Rust Consulting that she was not provided with requested overtime records by the Chicago District Office, noting that, "[p]er my understanding, the Chicago District Office destroyed relevant records at some point prior to arbitration in this matter."

Ms. Shealey submitted a Supplemental Affidavit, dated October 12, 2013, stating:

> …During my employment with the Agency, I find a disability discrimination complaint. The Agency refused to accommodate my disability, which resulted in my having to take leave without pay and forcing me to work under intolerable conditions. I have attached the appeal decision, in my disability complaint to this affidavit. [Not reproduced here.] The decision, at pp. 6-9,

> shows I was forced to use leave without pay because of the denial of a reasonable accommodation. Rather than implementing the appeal decision, the Agency has refused to return me to my position and has used a process called reconsideration to refuse returning me to work. The Agency's objections, that I was using my leave as fast as I accumulated it; then using leave without pay; and that I was terminated, are false statements, since the Agency is fully aware of the facts in my case.
>
> While I was employed with the Agency, even though I was disabled, my supervisors continued to assign me cases and required me to process work, even when I was on leave and leave without pay. The hours I placed on my claim form were hours I believed I worked. The Agency refused to provide me with records in response to my request and the records provided by the Union were not helpful to me, since the Union only had electronic payroll records.

The Union contends that the Agency refused to provide information to Ms. Shealey and never provided the records to the Union. It notes that, not only did the Agency obstruct Ms. Shealey in her effort to file a claim, but concealed in its objections its knowledge that Ms. Shealey's leave was related to her requests for accommodation, thus suggesting wrongly that Ms. Shealey was an employee who did not come to work and did not wish to work. The Agency, it argues, may not rely on its illegal conduct to defeat employees' claims for payment of unpaid overtime.

Ms. Shealey was surely on a flexible schedule. The official hours of the Chicago District Office were 8:30 A.M. to 5:00 P.M. Yet, apart from claimed weekend hours, she claimed weekday extra hours from 4:30 to 5:00 P.M. This is not, as she indicated, a basic schedule. Further, her leave slips reflect a work schedule of 8:00 A.M. to 4:30 P.M.

It is appropriate to acknowledge that Ms. Shealey believed, as she described in her Supplemental Affidavit, above, that she had been poorly treated by supervision at the Agency and received no accommodation for her disability. However, owing to what surely was her flexible schedule, I must deny Ms. Shealey's claim.

CINCINNATI

Thomas Feiertag

Mr. Feiertag worked as an Investigator in the Cincinnati Area Office from before the claims period until March 16, 2012. He reported working a flexitour schedule for all but five pay periods claimed (200803 to 200807), these being on a 5/4/9 compressed schedule. He claims 128 hours over 55 pay periods. He testified at the hearings in St. Louis, MO. The Agency objects to his claims on grounds that he worked a flexitour schedule for 52 of the 55 pay periods claimed (the discrepancy between the Agency's accounting and Mr. Feiertag's to be explained, below), that he claims overtime for paid breaks and travel time, that he worked no overtime during pay period 200820, that he provided insufficient evidence to support his claim during pay period 200802, that he received compensatory time and/or credit time for any extra hours worked, some of which may have been used during the same pay period, and that his supervisor could not have known that he was working through his lunch periods.

The Agency contends, with respect to Mr. Feiertag's flexitour schedule, that, for two of the pay periods in which he claims he worked a 5/4/9 compressed schedule, they were actually flexitour as well, inasmuch as FPPS records reflect that he worked eight-hour days in pay periods 200803 and 200804. Mr. Feiertag's FPPS records do so reflect. Thus, it states that the only pay periods that should not automatically be excluded as being on a flexitour schedule are pay periods 200805, 200806 and 200807.

With respect to these three pay periods, Mr. Feiertag claimed, in statements appended to his Claim Form, that he worked through his break period three times in pay period 200805 (claiming 1.5 hours), seven times in pay period 200806 (claiming 3.5 hours) and eight times in pay period 200807 (claiming 4 hours).

Along with his Claim Form, Mr. Feiertag submitted a series of detailed statements setting forth his activities by pay period, principally Intake and Outreach, as well as investigative work.

In addition, Mr. Feiertag claimed in a statement that he worked two hours of overtime on August 17, 2006 (pay period 200618) performing duties for an Outreach TAPS seminar in Dayton, OH.

The Union contends that, while it agrees with FPPS records that compensatory time was used on one occasion, there is no dispute that credit hours were not accounted for. It asserts that the Agency may not simply say it is not responsible for this abuse of the payroll system.

The record reflects that, except for three pay periods, 200805, 200806 and 200807, Mr. Feiertag's claims cannot be sustained by reason of his working a flexitour schedule. With respect to the remaining three, while FPPS records appear not to favor a finding of overtime eligibility, I weigh that against the specificity of Mr. Feiertag's claims in this regard. The parties are directed to examine and resolve these, failing which I will make a decision.

Cheryl Janes

Ms. Janes worked as an Investigator in the Phoenix District Office from before the claims period through April 2006 and in the Cincinnati Area Office from May 2006 through April 3, 2008. She worked a flexitour schedule. She claims 59.5 hours over 31 pay periods. The Agency objects to her claims on grounds that she worked a flexitour schedule, that she did not work the hours she claims, that she received compensatory time and/or credit time, some of which may have been used during the same pay period, and

that her supervisor could not have known of any overtime work.

The Agency included two Declarations from Phoenix District Office managers. Berta Echeveste, then Supervisory Investigator in the Phoenix District Office, declared that Investigators were instructed not to work overtime hours unless approved by a supervisor, and that when that was not possible, to inform supervision as soon as possible. Investigators were also told to refrain from working either before or after scheduled work hours. In addition, she noted that Intake and Outreach were generally conducted during normal business hours. All hours worked, she stated, were entered in FPPS. David Rucker, also former Supervisory Investigator in the Phoenix District Office, declared to similar effect.

Along with her Claim Form, Ms. Janes submitted a written statement setting forth in detail, by pay period, activities for which she claims overtime and the overtime hours she claimed for each event. These include, principally, Intake, case processing and witness interviews, review and analysis of case files, and completing paperwork and closure documents. In this statement, she noted:

> I began working as an Investigator in the United States Equal Employment Opportunity Commission's (EEOC's) Indianapolis District Office in September 1979. I transferred to the Phoenix District Office in January 1981. In May 2006 I transferred to the Cincinnati Area Office, retiring effective April 2008. I retired after 31 years of Federal service.
>
> Field offices were expected to complete processing goals set by Headquarters. With staff shortages and the ever increasing number of complaints and charges nationwide, working hours beyond a 40 hour work week was common. The majority of the overtime hours I worked for EEOC were never officially recorded.
>
> From April 2003 through March 2005 while in the Phoenix office, I worked a Gliding schedule. Once every four weeks I was assigned Intake duties. During my Intake week, I often would work longer than my regular work hours to complete my duties. These duties included interviewing Potential Charging Parties either in person or by telephone and completing required paperwork.

> In accordance with EEOC's statutes, processing Intake charges are particularly "time sensitive" and were a priority above all other investigative duties and responsibilities.

Ms. Janes described that "[t]he nature of investigative work with EEOC is that it does not always happen between 8am-4:30pm, Monday through Friday. At times I conducted interviews or completed casework on the weekend." She proceeded to set forth pay periods and overtime hours she assigned to this work.

Her statement continued:

> In May 2006 I transferred to the Cincinnati Area Office. Due to the staffing shortage, I and other investigators were assigned mailed Intake questionnaires and telephone inquiries on a daily basis and were required to interview walk-in Potential Charging Parties on a 4 person, rotation basis. I was required to type all correspondence and closure documents for case files in my inventory.
>
> The Area Director held "1 on 1" case review meetings with each investigator every other month. Timeframes for case processing and closure dates were set by the Area Director. Many of these expectations were unreasonable and impossible to meet. During these meetings I was expected to be familiar with specific details contained in each of my 45-50 case files. These meetings would last most of an 8 hour day. In preparation for these meetings, I spent overtime hours reviewing/analyzing case files, preparing questionnaires and completing Investigative Memos and closure documents. [These overtime hours are thereafter set forth by pay period.]
>
> EEOC's fiscal year runs from October 1st through September 30th. There is a tremendous push in all EEOC's offices to complete and close as much work as possible before the end of each fiscal year.
>
> In August 2006 I broke my right wrist and was off work approximately one month. I was 53 years of age with my first cast. I returned to work on Monday, September 25, 2006. I recall being expected to close cases and type closure documents as if nothing had happened. [Overtime hours for the end of the fiscal years 2006 and 2007 are thereafter set forth by pay period.]
>
> Once every 3 months I had a case review meeting with upper management to discuss the Cause (A) cases in my inventory. Those present usually were the Deputy Director and trial attorney from the Indianapolis District Office and the Area Director. At times, my immediate supervisor attended these meetings. Management set timeframes and project completion dates for those particular cases. In preparation for these meetings, I spent extra hours reviewing/analyzing case documents, drafting questionnaires and Investigative Memos. [These overtime hours are thereafter set forth by pay period.]

The Union contends that Ms. Janes' extra work hours in 2003, 2004 and 2005 are

entered in her pay records and, to this extent, the hours have been approved and the work authorized. It argues that the Agency's arguments with respect to flexible schedules and offsets for the use of compensatory time and earning extra work hours is not valid. It points to FPPS records, which reflect a total of 81 hours in pay period 200310, and the Agency has produced no specific evidence to dispute Ms. Janes' claim.

By virtue of Ms. Janes' flexible schedule, I am required to deny her claim.

Valerie Lawrence

Ms. Lawrence worked as an Investigator from April 7, 2004 through April 15, 2006 and as a Mediator from April 16, 2006 through May 1, 2012 in the Cincinnati Area Office. She claims 69 hours over 32 pay periods. She was on a flexitour schedule for 7 of the 32 pay periods for which she makes claims. These are pay periods 200420, 200519, 200520, 200522, 200523, 200610 and 200618. In the remaining pay periods she worked a 5/4/9 compressed schedule. The Agency objects to her claims on grounds that she worked a flexitour schedule during the 7 pay periods set forth above, that she claims overtime for breaks and travel time, that she provided insufficient evidence to support her claim, that her supervisors could not have known of any overtime work, and that she received unofficial credit time, most or all of which was used during the same pay period.

Among her documents accompanying her Claim Form are statements asserting that she worked through her breaks on many occasions when she was conducting mediations, for which she indicated, on most such occasions, she received unofficial credit hours and was at no time offered overtime. She also submitted statements regarding her work performing Intake, despite short staffing, and working through lunch and breaks. In addition, she submitted travel vouchers, charge receipts and resolutions

reports.

The Union contends that Ms. Lawrence was frequently required to work through breaks so as not to frustrate efforts to achieve successful mediation results. The Agency may not profit from illegal conduct such as offering unofficial credit hours, and is required to have a system of accounting for such hours, which do not appear in her FPPS records. It asserts that Ms. Lawrence has submitted detailed information in support of her claims and the Agency is unable to dispute the work she has performed.

I have examined this record, and am unable to discern by what method Ms. Lawrence was to have received unofficial credit hours. It is clear that this is an "off the books" method of acknowledging time worked. As such, I cannot dispose of this claim without some explanation of how this system worked specifically to "credit" Ms. Lawrence for her mediation work and whatever other tasks may have earned her this type of "compensation." I will meet *in camera* with counsel on this issue, and if that does not resolve this matter to my satisfaction, I will direct a hearing to determine what, if any, remedy may be appropriate.

On the matter of the travel documents submitted, all but one appears to be same-day travel that is not compensable with overtime. The one that is not same-day travel, Ms. Lawrence's trip to Indianapolis, IN from Monday to Wednesday, August 14 to 16, 2006, where she engaged in race and color training, is likewise also not compensable with overtime inasmuch as it does not involve any nonscheduled workdays.

To the extent of the seven pay periods during which Ms. Lawrence worked a flexible schedule, her claim is denied.

Maria Saldivar

Ms. Saldivar worked as an Investigator in the Cincinnati Area Office from October 1, 2006 through May 25, 2012. She worked a 5/4/9 compressed schedule, except for her first claimed pay period (200624) when she worked a basic schedule. She claims 35.5 hours over 10 pay periods. Ms. Saldivar testified at the St. Louis, MO hearings. The Agency objects to many of her claims on grounds that she claims overtime for travel time, that she received credit time and/or compensatory time, some of which may have been used during the same pay period, and that she provided insufficient evidence to support her claim. The Agency concludes that Ms. Saldivar is entitled to payment for 10.76 hours, plus liquidated damages, totaling $532.68.

Part of Ms. Saldivar's claim is for 8 hours of overtime for travel. This occurred in pay period 200624, the first on her claim and the pay period in which she was on a basic schedule. Between October 29 and November 3, 2006, she was engaged in training in Dallas, TX and she clearly communicated these plans in e-mail exchanges with Area Director, Wilma Javey. Ms. Javey granted her 8 hours of "credit time."

In addition, Ms. Saldivar communicated with Ms. Javey concerning a trip to St. Louis, MO on March 31, 2008, for which she requested "Comp Time for the additional time incurred.…" This was in pay period 200808, a pay period not included in her claim, and it is apparent that she placed it instead in pay period 200809. Her FPPS records show that she did earn 6 hours of compensatory time in pay period 200808.

The Union contends that all the hours on Ms. Saldivar's claim form are supported by specific documents showing the extra hours worked. It acknowledges that the Agency is entitled to a deduction for compensatory time used, and notes that FPPS records show Ms. Saldivar used 9 hours of compensatory time in pay period 200821 and 7 hours in pay

period 200822. In this respect, the records clearly show that Ms. Saldivar was diligent in communicating such matters by e-mail to Ms. Javey, and as the 2009 Opinion noted, Ms. Javey was appreciative of Ms. Saldivar's willingness to work beyond her regular work hours.

From what I am able to discern from the travel documentation before me, the Agency is correct that Ms. Saldivar was properly acknowledged with travel compensatory time, in that she was traveling during non-working hours. Travel regulations do not allow for overtime in those circumstances.

With respect to the Agency's proposed resolution, and in the event Ms. Saldivar chooses not to resolve her claim on that basis, I am prepared to grant a hearing for the purpose of determining whether bases exist such that the proposed Agency remedy should not be directed.

DALLAS

The Union asserts, generally, on behalf of all employee claims from offices under the jurisdiction of Dallas, including San Antonio and El Paso, that there is evidence of a practice and policy in these offices that intentionally barred employees from documenting and receiving payment and credit of any kind for extra work hours. It notes that it bases this position on documents taken from files produced by the Agency in response to the Union's Request for Information, and identifies these documents as excerpts of the files of Diana Villarreal.

Ms. Villarreal, an Investigator in the Dallas District Office, is not a claimant in these proceedings. Documents relating to Ms. Villarreal reference a request she made to work 7 hours of overtime in the pay period from October 5 to October 18, 2003. Her

request was granted by former Deputy Director, later Director of the Dallas Regional Office, Janet Elizondo, on October 16, 2003. On that same date, Ms. Villarreal signed an "Individual Report of Overtime Authorized and Worked" which reflected the 7 hours actually having been worked two days later, on October 18, 2003. On October 20, 2003 Lillie Wilson, signed the form as the Supervisory Official. There later appeared a notation on November 12, 2003 on the same overtime request form that, by direction of Ms. Wilson, the reported hours of Ms. Villarreal were not to be entered into FPPS because "Diane never worked."

Jacqueline Allen

Ms. Allen worked as a Mediator in the Dallas District Office throughout the claims period on a 5/4/9 compressed schedule. She claims 83.85 hours over 20 pay periods. The Agency objects to Ms. Allen's claims for pay periods 200316, 200324, 200418, 200506, 200510, 200511, 200516, 200614, 200907 & 200908 on grounds that she submitted insufficient evidence, that she received double compensatory time for Outreach, and/or she is seeking overtime pay for travel time. The Agency also objects on grounds that all of her claims are subject to an offset for compensatory time received, subject to which the Agency concludes that Ms Allen is entitled to payment for her claims for the remaining pay periods.

Specifically, the Agency's assertion that Ms. Allen (referenced in e-mails and a Travel Authorization form as Jacqueline Levermore) received double compensatory time for Outreach is referenced in the Declaration of Deborah Urbanski, ADR Coordinator for the Dallas District Office. The Agency concludes that, subject to offsets, Ms. Allen is entitled to payment for 11.02 hours, plus liquidated damages, totaling $767.99.

Ms. Allen has produced relevant and detailed records that include calendar entries, regular e-mails documenting her mediation activities, and travel documents. In addition, she complied a chart, identifying by pay period her activities by type (mediation, Outreach, training) and time spent.

The Union contends that Ms. Allen has uniformly submitted specific documents supporting her claims by pay period. These include calendars with daily activities, travel authorizations and travel itineraries, and e-mails. The latter prove that Ms. Allen's supervisors were constantly kept advised of her daily activities. It asserts that the Agency has produced no evidence to dispute Ms. Allen's claim, and that she is entitled to the presumption of the policy in Dallas that prevented an accurate recording of her extra work hours.

I acknowledge the Agency's objections with respect to some of the documentation offered by Ms. Allen. Specifically, it notes that her chart of activities does not uniformly reflect that overtime was worked and, if so, whether it constituted after-hours travel time. In addition, it was not able (nor was Ms. Urbanski in her Declaration) to identify "SMU training" (presumably referencing Southern Methodist University) and whether it was an activity authorized by the Agency. I must presume, unless the parties advise me otherwise, that this presumed factual gap can be easily resolved.

As far as the nature of Ms. Allen's travel, it does not appear that any of it falls within the limiting scenario that merits money payment (see "**COMPENSATION FOR TRAVEL TIME**" discussion under "**LEGAL ISSUES**"). However, in respect to the activity in which Ms. Allen engaged during the pay periods disputed by the Agency, and for which Ms. Allen

has submitted reasonably specific documentation, I am prepared to grant a hearing for the purpose of determining whether bases exist such that the proposed Agency remedy should not be directed.

Alice Bell-Barber

Ms. Bell-Barber worked as a Paralegal Specialist in the Dallas District Office throughout the claims period, working a flexitour schedule. She claims 99.5 hours over 14 pay periods. The Agency objects to her claims on grounds that she continuously worked a flexitour schedule and, in addition, that she has provided insufficient evidence to support her claims, that her supervisor could not have known of any overtime worked, and that her claims are outside the scope.

The Agency included a Declaration from Robert Canino, Regional Attorney of the Dallas District Office, and Ms. Bell-Barber's first line supervisor. In it, he stated that Ms. Bell-Barber's hours were 7:30 A.M. to 4:00 P.M., and that, whenever he was aware of Ms. Bell-Barber's working extra hours, he gave her an equal amount of time off. The Agency, while noting that Ms. Bell-Barber was frequently quite exacting with respect to the sometimes fractional amounts of extra hours she claimed, asserts that there is no way of knowing how these amounts were derived.

Ms. Bell-Barber submitted an affidavit with her Claim Form. In it, she asserts that she worked the claimed overtime hours "performing pre-trial preparation, filing legal documents with the court, e-filing documents with the court, copying and faxing documents, and completion of work assignments in order to meet the goals set forth by the Commission." The Agency objects here on the ground that this statement is not time-specific and is little more than a job description. Ms. Bell-Barber also submitted a

computer snapshot illustrating, with annotations delineating separate pay periods, documents she worked on outside of her regular work hours.

The Union contends that Mr. Canino, who declared in an affidavit that, for any extra hours she worked, he gave her equal time off, does not deny that she worked the extra hours she claimed. It asserts that Ms. Bell-Barber is entitled to the presumption of the policy in Dallas that prevented an accurate recording of her extra work hours.

I must deny Ms. Bell-Barber's claim as she was uniformly on a flexible schedule.

Azella Dykman

Ms. Dykman worked as an Investigator in the Dallas District Office throughout the claims period. She testified at the hearings in St. Louis, MO. She claims 82.5 hours over 51 pay periods. She claims to have worked a basic schedule for all the pay periods for which she claims extra hours. The Agency challenges this assertion, as detailed below, and states that she worked a flexible schedule.

The Agency states that Ms. Dykman's schedule was 7:30 A.M. to 4:00 P.M., except for Intake weeks, and that the office hours of the Dallas District Office were 8:00 A.M. to 4:30 P.M. This, it notes, is confirmed, by Ms. Dykman's own statement (set forth below). As explained below, Ms. Dykman claimed she worked a basic schedule whenever she worked in Intake.

Ms. Dykman submitted numerous documents along with her Claim Form, among which is a statement that includes the following:

> The overtime hours I am claiming is to the best of my ability as I do not have all documents to support all of the hours claimed. I could be mistaken by a few hours but this is the best I can provide. The agency may have all the rest of the necessary records/documents. I am also submitting copies of my EEOC Earnings and Leave Statements reflecting the YTD (year to date) totals of Credit Hours earned and used for each calendar year as well as Credit Hours carried over from

> prior years. These particular documents more or less reflect the total overtime hours I am claiming. However, I never checked to verify that they were accurate.
>
> Further, I would like to add that I was instructed by my supervisor at the time, Lillie Wilson [Enforcement Supervisor in the Dallas District Office, who supervised Ms. Dykman from 2003 to 2009], that I count extra time worked in Intake as Credit Time as opposed to Compensatory Time. Therefore, throughout my employment, I counted the extra time I worked in Intake as Credit Time and I used all of the Credit Time I earned.
>
> Also, for further clarification, whenever I worked in Intake, I was required to work the official duty hours of the office which was 8:00 a.m. to 4:30 p.m. and any extra time worked was deemed Credit Time. When I was not in Intake, my hours of work were generally 7:30 a.m. to 4:00 p.m.
>
> Thank you for your time and consideration of my overtime claim.
> [Emphasis supplied]

Among the other documents submitted by Ms. Dykman with her Claim Form were Cost Accounting Bi-weekly time sheets, overtime reports (on which, by her signature, she would "waive overtime"), Request for Leave forms (to report credit time usage), and Earnings and Leave statements.

The Union contends that the Agency's objection that Ms. Dykman was on a flexible schedule is not valid, and that the facts surrounding Ms. Dykman's work hours were adjudicated in the liability phase of the hearing. It argues that, as the Agency did not appeal the initial decision, which was affirmed by the FLRA, Ms. Dykman is entitled to payment on her claim.

The threshold consideration here is just what Ms. Dykman's work schedule actually was. It seems apparent, from Ms. Dykman's own statement that accompanied her Claim Form, that, except for Intake, "my hours of work were generally 7:30 a.m. to 4:00 p.m.," and that does not match with the office hours of the Dallas District Office, which were 8:00 A.M. to 4:30 P.M.

The Union asserts, as noted above, that "[t]he facts surrounding Ms. Dykman's

work hours were adjudicated in the liability phase of the hearing…." I am unclear on this reference. It is a fact that I referenced Ms. Dykman in the 2009 Opinion. However, the 2009 Opinion did not have as one of its purposes to adjudicate the *bona fides* of any particular employee's future claim. My reference to Ms. Dykman was that she was among the employees in the Dallas District Office who, when using "Request, Authorization, and Report of Overtime" forms, was required to sign in an area that clearly stated: "WAIVE OVERTIME." There is no reference, so far as I can determine, to Ms. Dykman's work hours and, thus, no adjudication.

It is Ms. Dykman's own statement that speaks to her flexible schedule. The only matter to be noted is that, while Ms. Dykman asserts in her statement that "my hours of work were generally 7:30 a.m. to 4:00 p.m.," on her Claim Form, she consistently reported the time frame of her additional work hours as 7:30 A.M. to 8:00 A.M. Ms. Dykman herself explained this as credit time Ms. Wilson directed her to take while on her Intake schedule, all of which time she used.

Accordingly, by virtue of Ms. Dykman's flexible schedule, I must deny her claim.

Barbara Fuller

Ms. Fuller worked as a Paralegal Specialist in the Dallas District Office throughout the claims period on a 5/4/9 compressed schedule. She claims 250 hours over 50 pay periods. The Agency objects to most of her claims on grounds that she has provided insufficient evidence to support her claims, that her supervisor could not have known of any overtime worked, and that her claims are outside the scope.

The Agency deems that Ms. Fuller is entitled to compensation for 21.5 hours, representing pay periods 200604, 200616, 200617, 200716 and 200717. It assumes that

it was in these pay periods when Ms. Fuller performed trial support work, and likely working overtime, for three trials, the first in pay period 200604, where she claims 10 hours; the second in pay periods 200616 and 200617, where she claims 13 hours (4 and 9, respectively); and the third in pay periods 200716 and 200717, where she claims 20 hours (8 and 12, respectively). It states that such payment would be subject to a 50% offset for receipt of compensatory time. It calculates that Ms. Fuller is entitled to payment for 21.5 hours, plus liquidated damages, for a total of $1,298.75.

The Agency also appended the Declaration of Regional Attorney, Robert Canino, Ms. Fuller's first line supervisor since 2003. Mr. Canino declared that, whenever he was aware of Ms. Fuller's working extra hours, she would receive an equal amount of time off.

Ms. Fuller asserted in an affidavit submitted with her Claim Form that, "[i]n order to serve the public, I worked late and/or after hours to performing litigation and trial duties, and completion of work assignments set forth by the Commission."

Ms. Fuller also submitted a Supplemental Affidavit, dated October 7, 2013, in which she stated:

> …I am the Sr. Paralegal Specialist in the Dallas Legal Unit. I worked extra hours performing responses to summary judgment motions, preparing summary judgment motions, performing pretrial support and trial support work. I would work nights and weekends performing the work required by attorneys in the Legal Unit. I did not always received [sic] compensatory time for the time I worked.
>
> For pay period 200320, I do not recall receiving overtime money payment. However, if the payroll records show I received money payment, then I probably received the payment.

The Union contends that the Agency has produced no evidence to dispute Ms. Fuller's claim, and that she is entitled to the presumption of the policy in the Dallas

District Office which prevented an accurate recording of her extra work hours. In addition, the Union argues that, in the absence of records, the Agency is not entitled to any credit for compensatory time which was not recorded or claimed as used by Ms. Fuller.

Ms. Fuller indicated in her Supplemental Affidavit that she did not always receive compensatory time for the time she worked. In fact, to the extent her Claim Form is accurate (and it is not entirely consistent with FPPS records), she neither received nor used it at all in the pay periods she claims. Ms. Fuller, in light of my "outside the scope" finding, is not limited in her recovery for extra hours worked in relevant pay periods where she did not receive compensatory time. This is provided that evidence is produced indicating supervisory knowledge of such work.

Accordingly, I direct that a hearing be conducted for purpose of determining whether bases exist such that the proposed Agency remedy should not be directed.

Victor Galvan

Mr. Galvan worked as an Investigator in the Dallas District Office throughout the claims period. Although his Claim Form is not entirely clear concerning his work schedule in certain pay periods where he appeared to indicate both a basic and a 4/10 compressed schedule, it is likely that the 4/10 compressed schedule is accurate. He claims 760 hours over 160 pay periods. The Agency objects to all his claims on grounds that he executed a release and waiver of claims. In addition, he provided insufficient evidence of any overtime worked, that he did not work at least some of the hours claimed, that there is no evidence that his supervisor knew of any overtime work, and that his claims are outside the scope.

Along with his Claim Form, Mr. Galvan addressed a letter to Rust Consulting that states, in relevant part:

> I am sending the required forms regarding being forced to suffer working overtime without being paid time and a half for having done so. Forced to sign waivers, compensatory, credit (co-authored) by Janet V. Elizondo, current Acting Director that would give compensatory pay (trading days off for another time and being paid at the same rate[])]. Please note the 12 pages of e-mails which cite requests for the documents. To date the Agency, Payroll, Jason Hegy's, Attorney and their reluctance provided records, furnishing, lists, incomplete records, multiple duplications of same documents. I included the e-mails which prove requests for the extension….
>
> The e-mails that support the Dallas District Office knew that I had worked and/or suspected that I had worked overtime, were threatening e-mails not to work beyond hours from Michael C. Fetzer, Ousted District Director, Janet V. Elizondo, Deputy Director, Alma J. Anderson, Supervisor, most which were sent in 2008, 2009. During this time I received various forms of retaliation in violation of the CBA. Please note credit hours never showed up on time sheets and would be lost from pay period to pay period if not used….I am sending the requested forms along with the e-mails. I worked more overtime than is cited on the forms but on average, I reviewed files at night, weekends and checked voice mail on regular basis to be able to close cases per management goals of closing cases to make their numbers. I did Spanish Speaking, outreach engagements on Saturdays, as part of the initiative spearheaded Naomi Earp, then Chair. I did receive comp time in lieu of overtime….

The Agency included Declarations from Alma Anderson, Enforcement Supervisor in the Dallas District Office, and Sandra Taylor, Former Enforcement Supervisor. Ms. Anderson declared that she was Mr. Galvan's direct supervisor for a time in 2008 and 2009 and that she had no knowledge that Mr. Galvan had ever taken files home, nor did he inform her he was doing so. Ms. Taylor declared the same.

With respect to the Agency's waiver argument, the Union references its October 31, 2013 response to the Agency's general claims objections, wherein it rejects the Agency's argument that Mr. Galvan's claims here are barred because he entered into a Settlement Agreement with the Agency on an unrelated matter concerning his employment. The Union there asserts that neither Mr. Galvan's Settlement Agreement

nor those of two other claimants – Francine Schlaks (Las Vegas) and Lwanda Okello (Seattle) – were executed with the Union, and the Union was not a party to any of the actions covered by these Settlement Agreements. Moreover, it notes that all three Settlement Agreements were executed after the Union filed its grievance in this case. It stresses the Union's right as the exclusive representative to act on its own behalf and on behalf of groups of employees, and that "[n]o individual employee can invoke and/or relinquish the Union's rights, since individual employees do not have status to act for the Union, under the law." This matter is referenced and a ruling thereon made in the "**LEGAL ISSUES**" section of this Report. That ruling declines to invalidate Mr. Galvan's claim on the basis of the Agency's waiver argument.

With respect to the other Agency arguments, the Union contends that the Agency's refusal to give Mr. Galvan the records he requested prevented him from filing an accurate claim, and the Agency, having done so, cannot now argue that Mr. Galvan's estimate of hours is not sufficient. The Agency, it notes, has produced no evidence to dispute Mr. Galvan's claim, and he is entitled to the presumption of the policy in the Dallas District Office, which prevented an accurate recording of his extra work hours.

Mr. Galvan's submission, particularly considering the breadth of his claims, is accompanied by no real details that might tend to support them. Apart from the Claim Form itself, which encompasses the entire claims period, I am able to see nothing of substance that tends to show what his claimed hours consist of, what work was involved, when it was performed, and what might have caused it to be performed outside his regular work hours.

I am required to determine if, despite issues relating to records production, which

Mr. Galvan pursued in e-mail correspondence, he has made an initial showing, even by inference, that the amount and extent of his claimed overtime work can be established. On the state of this record, I am unable to conclude that he has done so.

Accordingly, I must deny Mr. Galvan's claim.

Dolores Garey

Ms. Garey worked as an Investigator in the Dallas District Office until January 3, 2006. She submitted a Claim Form but, as the Union agrees, made no claims and did not properly execute the Claim Form.

Accordingly, Ms. Garey has failed to file a valid claim.

Karen Heard

Ms. Heard worked as an Investigator in the Dallas District Office throughout the claims period on a 5/4/9 compressed schedule. She claims 167.5 hours over 137 pay periods. The Agency objects to all her claims on grounds that she provided insufficient evidence to support almost all her claims, that her supervisor could not have known of almost all of the claimed overtime work, and that almost all her claims are outside the scope.

Ms. Heard's Claim Form is accompanied by a statement as follows:

> I swear or affirm that to the best of my knowledge, that I, in my capacity as an Equal Employment Opportunity Investigator for the Equal Employment Opportunity Commission, Dallas District Office (EEOC), and as a necessary and reasonable course and scope of my employment with EEOC, I worked the submitted overtime hours, as described in my Overtime Claims Documentation during the period of April 7, 2003 to April 28, 2009. In order to serve the public, I worked late performing intake duties, conducting on-site investigations, outreach services, and completion of work assignments in order to meet the goals set forth by the Commission.

The Agency references the Declarations of Lillie Wilson, Enforcement Supervisor

in the Dallas District Office; Janet Elizondo, former Enforcement Manager and Deputy Director, and now Director of the Dallas District Office; and Sandra Taylor, former Enforcement Supervisor in the Dallas District Office and former first-line supervisor of Ms. Heard.

Ms. Wilson declared that she knew of no occasions when Ms. Heard, who had a tardiness problem, worked late, worked through lunch or breaks, worked weekends, and had no reason to believe Ms. Heard worked overtime. Ms. Elizondo declared that she had reminded her staff that no one was to work extra hours without specific management approval. Ms. Taylor, who supervised Ms. Heard in 2003 and 2004, declared that she did not recall a time when Ms. Heard worked through lunch or that she had been so informed. She noted that the practice in Intake was that the Intake Supervisor would control Investigators' hours, including lunch. She stated she recalled no occasions when an Investigator worked past regular work hours without obtaining prior approval to work either for credit time, overtime or compensatory time. She recalled that she would periodically remind employees at the end of the workday that they should stop working and go home.

Referencing the Declarations of Ms. Elizondo, Ms. Wilson and Ms. Taylor, the Union contends that it was Ms. Elizondo and Ms. Wilson who had authorized keeping extra work hours out of the FPPS system. Therefore, it notes that employees such as Ms. Heard could not have extra hours recorded and the Agency was directly responsible for this. It asserts that Ms. Heard, therefore, is entitled to the presumption of the policy in the Dallas District Office, which prevented an accurate recording of her extra work hours.

Ms. Heard's claim is supported in essence solely by her statement. It is a general

description of her job duties and, unfortunately, gives no sense of her specific activities, much less duties in individual pay periods, and at specific times of day. If it is accepted that these are the duties for which she claims pay for extra hours, it is her initial burden to show, at least by inference, that her hours were, indeed, eligible for overtime payment. Without more, there is no way to reach that conclusion.

Accordingly, I must deny this claim.

Cynthia Hotman

Ms. Hotman worked as an Investigator in the Dallas District Office throughout the claims period. Her Claim Form reflects her working a basic schedule but, as will be discussed below, she actually worked a flexible schedule. She claims 187.5 hours over 54 pay periods. The Agency objects to all her claims on grounds that she worked a flexible schedule and that, in addition, she voluntarily chose to work extra hours in exchange for compensatory time solely for reasons of personal convenience, that she submitted insufficient evidence to support the amount of hours claimed prior to 2008, and that any potentially valid claims are subject to an offset for compensatory time used.

Ms. Hotman appended a statement along with her Claim Form, which stated:

> Intake hours were office hours of 8:00 a.m. to 4:30 p.m. I always worked from 7:00 a.m. until 8:00 a.m. when I had Intake. In 2008, Melanie Breen became my new Supervisor. She insisted upon documentation of these hours worked. Therefore, there are payroll records of overtime worked for this period of time forward. There is no paper documentation of time worked prior to her arrival as Supervisor as my prior Supervisor did not document extra time worked. I have estimated as closely as possible exact dates for Intake.
>
> It was the Dallas District Office's policy that if an Investigator was assigned to Intake and was unavailable that day due to illness, vacation etc., it was that Investigator's responsibility to switch Intake days with another Investigator and still perform Intake duties. Therefore, although specific days may at times be inaccurate, the number of days in Intake would be correct. I have no way of knowing when that happened although I recall it did not occur frequently.

> I recall two (2) specific instances of substantial amounts of overtime worked outside of Intake. The first was a Mediation which occurred on or about November 17, 2004, Charge No. 310-2003-01139. The second was an Outreach event at North Dallas High School on or about February 9, 2008.
>
> Additionally, whenever the Dallas District Office had training lasting all day or week, training was consistently 8:00 a.m. until 4:30 p.m. I would also come in at 7:00 a.m. and work prior to the start of training. I cannot give exact dates. Although I'm sure there were other instances of undocumented overtime, I cannot attest to specifics.
>
> I also used compensatory time after May 9, 2009.

Ms. Hotman's Claim Form also includes Cost Accounting Bi-weekly time sheets and overtime reports.

The Agency appended the Declarations of Janet Elizondo, former Enforcement Manager and Deputy Director, now Director of the Dallas District Office, and that of Melanie Breen, then Enforcement Supervisor in the Dallas District Office. Ms. Elizondo declared that Ms. Hotman continuously worked a flexitour schedule and that she wanted to work her Intake week in the same hours she usually worked because of a transportation issue. Ms. Elizondo declared that she could not, but that she would allow Ms. Hotman to work an extra hour starting at 7:00 A.M. if she would waive the overtime, and that this arrangement was not documented until March 2008, when she asked Ms. Hotman to begin documenting her earnings and her use of compensatory time. Ms. Breen, who supervised Ms. Hotman in 2008 and 2009, declared that she worked a flexitour schedule, except in Intake weeks.

Ms. Hotman executed a Supplemental Affidavit, dated October 5, 2013, stating:

> ...When I filed my claim, I checked the basic work schedule in error, because many of the hours I claimed were for hours when I worked in Intake. I was on a flexible work schedule during the period of April 7, 2003 through April 28, 2009.
>
> During my employment, I was told that when I was assigned to Intake, I could not leave work until 4:30 p.m. Prior to Melanie Breen, my supervisor was A.C. Thompson. I did not to the best of my recollection have any discussions with

> A.C. Thompson or Janet Elizondo about my hours of work of compensatory time, during my assignment to Intake. I was told I had to stay until 4:30 p.m., without exception. When Ms. Breen became my supervisor, there was some discussion, but the discussion, to the best of my recollection was about the need to claim hours worked not the type of hours worked.

The Union contends that employees on a flexible work schedule may be paid for extra work hours. It asserts that the facts do not show that Ms. Hotman elected to receive compensatory time, and that this argument was rejected in the liability phase of this case (referencing the case of Azella Dykman, above). It notes, in this respect, that the Agency gave neither Ms. Dykman nor Ms. Hotman a choice to work, and both were directed to change their hours. The Agency, it argues, has not provided any specific evidence that Ms. Hotman did not work the hours claimed. Because Ms. Elizondo's policy, the Union states, was to deny extra work hours by refusing to record them, hers and others' Declarations are not credible.

There is no real question at this point that Ms. Hotman worked a flexible schedule. The Union is correct when it argues that "[e]mployees on a flexible work schedule may be paid for extra work hours." However, no circumstance here permits it. As noted in the Collective Bargaining Agreement at Section 30.07, where those limitations are set forth, such extra work hours are authorized to be worked and are, therefore, by definition, not "suffered or permitted."

Accordingly, I am required to deny this claim because Ms. Hotman worked a flexible schedule. While I addressed the issue of receipt of compensatory time as a matter of "choice" in the 2009 Opinion, I therefore need not reach it my consideration of this claim.

Tammy Johnson

Ms. Johnson worked as an Investigator in the Dallas District Office throughout the claims period, working a 5/4/9 compressed schedule. She claims 143.75 hours over 105 pay periods. The Agency objects to all her claims on grounds that she provided insufficient evidence, that she did not work at least some of the overtime claimed, that her supervisor could not have known of any overtime work, and that her claims are outside the scope.

Along with her Claim Form, Ms. Johnson submitted an Affidavit in which she states:

> …I have worked for the EEOC from September 29, 1991 to the present date. All which time I served as an Equal Employment Opportunity Investigator.
>
> I swear or affirm that to the best of my knowledge, that I, in my capacity as an Equal Employment Opportunity Investigator for the Equal Employment Opportunity Commission, Dallas District Office (EEOC), and as a necessary and reasonable course and scope of my employment with EEOC, I worked the submitted overtime hours, as described in my Overtime Claims Documentation during the period of April 7, 2003 to April 28, 2009. In order to provide Customer Service to the public such as the Charging Parties, Respondents, and internal staff and stakeholders, I have worked late performing intake duties, conducting on-site investigations, traveling, outreach services, and completion of other work assignments in order to meet the goals set forth by the Commission. I have worked in excess of 80 (eighty) hours per pay period.

The Agency regards this statement, which it views merely as a summary of her job duties, as so vague as not even to reflect any specific duties she performed at any specific time or which of these duties may have resulted in extra hours worked and claimed.

The Agency references the Declarations of Janet Elizondo, previously Enforcement Manager and Deputy Director, now Director of the Dallas District Office; Melanie Breen, then Enforcement Supervisor in the Dallas District Office; and Sandra Taylor, former Enforcement Supervisor in the Dallas District Office and former first line

supervisor of Ms. Johnson. Ms. Elizondo declared that she informed her staff that no extra hours were to be worked without express supervisory approval. She supervised Ms. Johnson in 2007 and early 2008 and declared that she had no knowledge of her ever working overtime, through lunch or at any time outside her regular work hours. Ms. Breen, Ms. Johnson's first line supervisor in 2008 and 2009, declared that Ms. Johnson never told her she had worked through lunch, or at any time outside regular work hours, including taking work home, or performing one of her rare Outreach events outside regular hours. Ms. Taylor declared that she could not recall ever seeing Ms. Johnson work through lunch or outside regular hours without specific approval to work either for credit time, compensatory time or overtime.

The Union contends that the Agency's objections to Ms. Johnson's claim are not supported by the facts and the law, stressing that the Dallas District Office prohibited the recording of extra work hours. This resulted, as the Union argues, in the inability of employees to have resort to records that would have assisted them in filing a claim. Thus, it asserts, the Agency's argument that the claim contains "insufficient evidence" must not be credited. Ms. Johnson's supervisors do not deny that the claimed work was performed, merely asserting, without specific evidence, that they did not witness it. None of these statements contains specific evidence to support it.

It is difficult, based on the very general information Ms. Johnson has been able to report, to conclude that an inference may be made, outside of the extra hours noted on the Claim Form itself, that these extra hours were actually worked. Ms. Johnson's statement is not probative with respect to specific activities, specific times, and some indication tending to support that such activities were performed outside regular work hours.

Without more, I cannot conclude that the initial burden of proof has been carried.

Accordingly, I must deny this claim.

Shelia Justice

Ms. Justice worked as an Investigator in the Dallas District Office throughout the claims period on a 5/4/9 compressed schedule. She claims 127.5 hours over 101 pay periods. The Agency objects to all her claims on grounds that she provided insufficient evidence, that she did not work at least some of the overtime claimed, that her supervisor could not have known of any overtime work, and that her claims are outside the scope.

The Agency contends that Ms. Justice provided no information on how she derived the amounts of extra hours claimed, or how she calculated them to such small time intervals. It referenced the Declarations of Janet Elizondo, previously Enforcement Manager and Deputy Director, now Director of the Dallas District Office; Lillie Wilson, Enforcement Supervisor in the Dallas District Office; and Sandra Taylor, former Enforcement Supervisor in the Dallas District Office and former first line supervisor of Ms. Justice.

Ms. Elizondo, who supervised Ms. Justice in 2007 and early 2008, declared that she reminded her staff of the policy of not working extra hours without prior management approval. She stated that she was never told that Ms. Justice worked overtime and had no personal knowledge that she worked through lunch, or ever worked outside her regular work hours. She noted in addition that Ms. Justice had lateness and absence issues. Ms. Wilson, who supervised Ms. Justice from 2005 to 2009, declared that she never observed Ms. Justice working prior to her scheduled start time, and that she was very punctual. She stated that the few times she observed Ms. Justice working late, she told her to stop work

immediately and go home, and Ms. Justice never advised her that she was working extra hours. Ms. Taylor declared that she could not recall when Ms. Justice worked through lunch or that she had been so informed, or that she had observed her working outside regular hours without approval.

The Agency noted further that, to the extent Ms. Justice claims overtime for Outreach work, she, like others in the Dallas District Office, has been more than fully compensated for such work based on the Dallas District Office's policy of providing double compensatory time for after-hours Outreach.

Ms. Justice supplied an Affidavit along with her Claim Form, which states:

> …I have worked for the EEOC from February 23, 1983 to the present date. On April 7, 2003 I held the position of Equal Employment Opportunity Investigator GS.12 and I currently still hold the same position.
>
> I swear or affirm that to the best of my knowledge, that I, in my capacity as an Equal Employment Opportunity Investigator for the Equal Employment Opportunity Commission, Dallas District Office (EEOC), and as a necessary and reasonable course and scope of my employment with EEOC, I worked the submitted overtime hours, as described in my Overtime Claims Documentation during the period of April 7, 2003 to April 28, 2009. In order to serve the public, I worked beyond my schedule[d] work time performing intake duties, conducting on-site investigations, participating in outreach services, and completing work assignments in order to meet the goals set forth by the Commission.

Ms. Justice submitted a Supplemental Affidavit, dated October 8, 2012, where she states:

> …When I submitted my overtime claim, I was completing the claim electronically. I may have entered extra work hours in pay period 200402 and 200801 by mistake. I did usually take leave around the holidays, so if I was on leave for the full pay periods 200402 and 200801, then the entry was an error.

The Union notes that Ms. Justice's entry of extra hours worked in pay periods 200402 and 200801 are likely errors. It contends that the Agency's objections are without basis, and that the Dallas District Office intentionally chose not to record employees' work hours. As a result, employees were denied money payment for extra

work hours. Moreover, it asserts that the supervisors' Declarations are not credible.

I am confronted with a claim for which there is no reasonable support. Ms. Justice's statement, accompanying her Claim Form, is, as I have noted elsewhere with similar statements, lacking the detail that would be informative with respect to describing specific activities at specific time, with some indication of why that particular activity was accomplished outside of regular working hours. As this same statement is offered for every pay period, the lack of specificity is even more pronounced, since, as I have observed before, the instructions that accompany the Notice to Claimants states expressly that each pay period is a separate claim and must be supported as such. Unfortunately, I am lacking the details here that might arguably create a just and reasonable inference as to the amount and extent of the actual work claimed to have been worked. The Claim Form hours, by themselves, do not provide the detail needed.

Accordingly, I must deny this claim.

Dawn Lewis

Ms. Lewis worked as an Investigator in the Dallas District Office throughout the claims period. Her Claim Form reflects that she worked a basic schedule throughout, but the evidence reveals, and the parties agree, that she worked a flexible schedule. She claims 156 hours over 82 pay periods. The Agency objects to all her claims on grounds that she continuously worked a flexible schedule and that, in addition she provided insufficient evidence to support almost all her claims, that her supervisor could not have known of most of the claimed overtime work, and that most of her claims are outside the scope.

As noted, the parties agree that Ms. Lewis worked a flexible schedule. The

official office hours of the Dallas Regional Office are 8:00 A.M. to 4:30 P.M. On January 4, 2007 Ms. Lewis sent an e-mail to her supervisor, Lillie Wilson, which read: "I would like to change my tour of duty work hours from 7:45 am – 4:15 pm to 8:30 am – 5:00 pm." Ms. Wilson responded the next morning and agreed, reminding Ms. Lewis that her hours in Intake would be the official office hours – namely, 8:00 A. M. to 4:30 P.M.

Ms. Lewis submitted an Affidavit along with her Claim Form (applicable to all pay periods) where she states:

> …I have worked for the EEOC from September 13, 1999 to the present.
>
> I swear or affirm that to the best of my knowledge, that I, in my capacity as an Equal Employment Opportunity Investigator for the Equal Employment Opportunity Commission, Dallas District Office (EEOC), and as a necessary and reasonable course and scope of my employment with EEOC, I worked the submitted overtime hours, as described in my Overtime Claims Documentation during the period of April 7, 2003 to April 28, 2009. In order to serve stakeholders, the public, and to meet the required goals and expectations of the Commission, I worked beyond the 80 hours per pay period performing intake duties, conducting on-site investigations, outreach services, managing case load, and interviewing witnesses on priority A1 cases.

The Agency deems this statement, replicated for each pay period, nothing more than a general description of Ms. Lewis's job duties, and gives no detail regarding what duties were performed when, or which of these may have led to a particular amount of overtime. Nor, the Agency contends, does she give any detail about the time of day she performed this work, and why any particular assignments took place during extra hours. The Agency presumes that, since FPPS records reflect her having received credit time in a few pay periods, it was owing to weekend Outreach work, for which, consistent with Dallas Regional Office policy, she received double compensatory time.

Ms. Lewis submitted a Supplemental Affidavit, dated October 21, 2013, which stated:

> …When I submitted my claim, I was not sure of the work schedule, which applied to my work hours. I did know I worked an 8 hour day, 5 days per week. I did not work the hours, the office was open for business to the public. After I received the explanation of the different schedules, I can say that I was on a flexible work schedule, with fixed start and stop times, different from the times the office was open for business to the public.
>
> My extra work hours were not always recorded in my official pay roll records. At one time, we were not allowed to record any extra work hours in the payroll records. I would report the extra hours I worked to my supervisor and I would keep a record of the time I used. When the Agency told me I would receive credit time, I was only told I could accumulate a certain number of hours in a pay period. I do know that my credit hours have appeared on my leave and earnings statement in 2009. I can't say when the Agency began entering the information, so that it appears on my leave and earnings statement.

The Agency referenced the Declarations of Janet Elizondo, previously Enforcement Manager and Deputy Director, now Director of the Dallas District Office; Lillie Wilson, Enforcement Supervisor in the Dallas District Office; and Sandra Taylor, former Enforcement Supervisor in the Dallas District Office and former first line supervisor of Ms. Lewis. Ms. Elizondo declared that she regularly reminded her staff that no extra hours were to be worked without prior management approval. Ms. Wilson, who supervised Ms. Lewis from 2005 to 2009, declared that Ms. Lewis was continuously on a flexitour schedule and she never observed Ms. Lewis working prior to her scheduled start time and almost always left the office before 5:00 P.M. She stated having seen Ms. Lewis arrive at work late several times in 2006 and, rather than staying late, she took annual leave. She stated further that she would sometimes see Ms. Lewis in the office after 5:00 P.M. with her child and, according to Ms. Wilson, she appeared to be waiting for her husband and not performing work. She also stated that, on rare occasions, when she saw Ms. Lewis working after 5:00 P.M., she instructed her to stop and go home. She declared that, other than the above, she never observed Ms. Lewis being in the office outside regular working hours. Ms. Taylor declared that she had never seen Ms. Lewis

working through lunch.

The Union contends that the Agency cannot receive credit for illegal informal compensatory time, and that, having failed to keep accurate records, it may not be rewarded for such conduct. The Union asserts that the supervisors' Declarations are not credible and the Agency has produced no evidence that Ms. Lewis did not perform the work claimed.

I am required to deny Ms. Lewis's claim because she worked on a flexible schedule.

Petra Pineda

Petra Pineda worked as an Investigator in the Dallas District Office from January 2001 through February 2, 2008. She noted on her Claim Form that she worked a 5/4/9 compressed schedule during the 3 pay periods she includes. She claims 30 hours over these 3 pay periods. The Agency objects to her claims on grounds that she submitted insufficient evidence to support a claim, that she did not work at least some of the claimed overtime, that her supervisor could not have known of any overtime worked, and that her claims are outside the scope.

The Union notes that Ms. Pineda did not finalize her claim, and that it was not brought to the attention of the Union (referencing Exhibit B, *Claim Followup* in the Union's submission). It asks the opportunity to contact Ms. Pineda to determine if she wishes to file a claim. In the alternative, it asserts, Ms. Pineda should be paid for the hours she has submitted.

I acknowledge the Union's argument that Ms. Pineda's claim was not brought to its attention. However, I have no facts beyond that. Also, with respect to the Union's

Exhibit B, which deals with certain difficulties experienced by the Union regarding the receipt of claimant information from Rust Consulting, none of this correspondence makes reference to Ms. Pineda.

I am prepared to take up this matter with counsel *in camera*, but I am in no position at this point to grant either form of relief requested by the Union.

John Ross

Mr. Ross worked as a Mediator in the Dallas District Office throughout the claims period, working a 5/4/9 compressed schedule. He claims 146 hours over 70 pay periods. The Agency objects to his claims on grounds that he has provided insufficient evidence to support his claims, that his supervisor could not have known of any overtime worked, and that his claims are outside the scope.

Along with his Claim Form, Mr. Ross submitted an affidavit, replicated for every pay period, stating the following:

> …I have worked for the EEOC from September 17, 1979 to the present date. [Since] January 1, 1999, I served as a[n] Equal Employment Opportunity Mediator.
>
> I swear or affirm that to the best of my knowledge, that I, in my capacity as an Equal Employment Opportunity Mediator for the Equal Employment Opportunity Commission, Dallas District Office (EEOC), and as a necessary and reasonable course and scope of my employment with EEOC, I worked the submitted overtime hours, as described in my Overtime Claims Documentation during the period of April 7, 2003 to April 28, 2009. In order to serve the public, I worked late conducting mediations, outreach services, and completion of work assignments in order to meet the goals set forth by the Commission.

The Agency regards this statement as nothing more than a general description of Mr. Ross's job duties, and it fails to explain what duties he was performing at what times and which of these duties resulted in his working extra hours. Further, it notes, no specific tasks are referenced. The Agency referenced the testimony of Deborah

Urbanski, Mr. Ross's supervisor from 2004 to 2005, who supervised Mr. Ross remotely from Houston. She declared that the Dallas Mediators had reported to her that they worked rarely beyond their regular hours, and that the few times they did, Mr. Ross was not among them.

The Agency references the Declaration of Katherine Perez, ADR Coordinator for the Dallas District Office and Mr. Ross's direct supervisor from 2006 to 2009. Ms. Perez supervised Mr. Ross remotely from San Antonio. She declared that Mr. Ross arrived at work punctually and left regularly at the end of his regular tour, noting that she would frequently call him after 4:30 P.M., the end of his tour, and he did not answer. She stated that Mr. Ross typically called her after his mediations ended, which usually was by 1:00 P.M., and few of his mediations ran late. She stated further that she could recall no Outreach events Mr. Ross conducted outside of his regular hours.

Mr. Ross submitted a Supplemental Affidavit, dated October 5, 2013, which stated:

> …When I filed my claim, I thought my May 25, 2012 letter [Mr. Ross's letter of that date to Union counsel, Barbara Hutchinson, care of Rust Consulting, including his Claim Form and Affidavit] would be forwarded to Barbara Hutchinson. On October 5, 2012, I spoke with Ms. Hutchinson, who informed me the letter was not forwarded to her.
>
> When I filed my claim, I reviewed Settlement Agreements of cases I was assigned and determined my extra work hours based upon the complexity of the cases and based upon the time I believe I worked to the best of my recollection. Mediations did not always end at the scheduled time, with many mediations being concluded after my scheduled work hours. Deborah Urbanski and Katherine Perez were not in the Dallas Office, where I worked on a daily basis. Ms. Urbanski knew I worked beyond my scheduled work hours completing mediation work assignments. There was no formal or informal record kept of the extra work hours. I was told that if I worked beyond my scheduled work hours I should take off the next day or take the time in the pay period. This advice was not realistic because we were required to schedule our mediations, one month in advance. If I worked extra hours, I could not take the time off the next day or in the same pay period, because I would have mediations scheduled, which I was obligated to complete. When Ms. Perez became my supervisor, the arrangement

> for extra work hours remained much the same. After the decision on the Union's overtime grievance in 2009, my supervisors and management began to speak about extra work hours and advised we were not to work beyond our scheduled work hours. However, the workload did not decrease and mediations continue to require I work beyond my scheduled work hours.

The Union contends that the Agency has produced no evidence that Mr. Ross did work the hours he claims. It views Ms. Perez's Declaration as not credible inasmuch as she was not located in the Dallas District Office. Further, it noted, Gloria Smith submitted multiple e-mails showing that Ms. Perez was in touch with her employees daily, and Ms. Perez does not deny that Mr. Ross was performing work outside his scheduled work hours. The Agency, the Union argues, is required to produce specific evidence that Mr. Ross did not perform the work he claims.

Mr. Ross's claim presents a circumstance where, despite the general lack of pay-period-by-pay-period specificity, there is a narrative of his mediation activity that credibly describes the need, owing to the mediation process, to work extra hours so that that process is served. In addition, Mr. Ross's claims of extra hours by pay periods are modest and, for that reason, may, although I do not yet make such a finding, provide a just and reasonable inference that the amount and extent of these claimed hours are reasonable. Further, the fact that Mr. Ross was supervised remotely over these years suggests the possibility of constructive, if not actual, supervisory knowledge of extra hours worked.

Accordingly, I grant Mr. Ross a hearing so that he may present testimony in support of his claim.

Olga Sepulveda

Ms. Sepulveda worked as an Investigator in the Dallas District Office throughout

the claims period, working a 4/10 compressed schedule. She claims 416.3 hours over 134 pay periods. The Agency objects to all her claims on grounds that she provided insufficient evidence, that she did not work at least some of the overtime claimed, that her supervisor could not have known of any overtime work, and that her claims are outside the scope.

The Agency argues specifically that, while Ms. Sepulveda's claim is among the largest among claims from the Dallas District Office, it is entirely devoid of explanation or documentation. It adds that, in pay period 200426, when she was not at work at all (a combination of sick and annual leave), she still claims 2 hours' overtime.

The Agency adds the Declarations of Janet Elizondo, previously Enforcement Manager and Deputy Director, now Director of the Dallas District Office; and Melanie Breen, then Enforcement Supervisor in the Dallas District Office. Ms. Elizondo declared that she had no personal knowledge that Ms. Sepulveda had ever worked through a lunch break, or that she was authorized to do so, or that she ever had occasion to work beyond her regular hours. She stated that Ms. Sepulveda and others were advised they could not do so without prior approval. Ms. Breen declared that, to her personal knowledge, Ms. Sepulveda never worked through lunch, nor did she inform her she had done so. She declared further that, on rare occasion, when Ms. Sepulveda had to speak to a witness in the evening, she would be instructed to come in late on that same day, so that she would remain within her regular 10-hour work day. She stated she knew of no occasion when Ms. Sepulveda worked overtime hours.

The Union contends that, while Ms. Sepulveda did not submit any additional documentation in support of her claim, she is entitled to the presumption that extra hours

she worked were subject to the Dallas Regional Office's policy of not recording employees' extra hours in the time and attendance records. It argues that the Agency's declarations were submitted by "supervisors who engaged in illegal conduct of prohibiting the accurate keeping of employees work hours." Specifically, it notes the Declarations of Ms. Elizondo and Ms. Breen, stating that they lack credibility "in light of the handwritten notation that no overtime work hours were to be entered into the FPPS records." It asserts that, while the Agency claims Ms. Sepulveda did not work the claimed extra work hours, it produced no specific evidence to show it. The Union argues that, if employees received compensatory time for which the Agency now seeks an offset to the extent such time was used, it must produce the records to support such a claim.

I am aware, even in such cases as that of Ms. Sepulveda, where no documentation in support of the Claim Form was produced, that the Union believes relief is merited in light of its reference to the policy in the Dallas Regional Office concerning the non-recording of employees' extra hours. The issue that remains, however, is that this does not remove entirely the burden that a claimant such as Ms. Sepulveda must meet. She still must make, consistent with *Mt. Clemens*, some showing of the amount and extent of her extra hours as a matter of just and reasonable inference. Even absent certain records that would otherwise make such a task easier, there must be some information offered in aid of meeting that burden. Whether it be statements that address specific cases, whether it be personal calendar entries or some other log, or some other indicator that specific tasks were performed in certain time frames that raise the suggestion that extra hours were worked to complete them, something is needed. I cannot find enough here to assist in meeting that initial burden.

Accordingly, Ms. Sepulveda's claim must be denied.

Gloria Smith

Ms. Smith worked as a Mediator in the Dallas District Office throughout the claims period on a 4/10 compressed schedule. She claims 2,920 hours in 149 pay periods. Ms. Smith testified at the hearings in St. Louis, MO. The Agency objects to all her claims on grounds that she provided insufficient evidence of overtime work, that the evidence strongly indicates she did not work most of the claimed overtime hours, that she earned and used compensatory time in some of the same pay periods, that some of her claims are for noncompensable travel time, that some of her claims are for paid break time, that her supervisors could not have known of most of her claimed overtime work, and that her claims are subject to an offset for compensatory time received.

Ms. Smith's Claim Form is accompanied by a large number of documents, among which are Cost Accounting Bi-weekly time sheets, leave requests, calendar notations, travel related documents, e-mails with supervision, expense records, records of conferences, Outreach records, and other miscellaneous notes.

The Agency stresses what it deems the "truly enormous sum of hours" claimed by Ms. Smith, noting that it far exceeds those claimed by John Ross and Jacqueline Allen, the two other Mediators in the Dallas District Office. It combines this with its conclusion that Ms. Allen conducted fewer mediations on average than her two Mediator colleagues. In addition, it argues that Ms. Smith did not produce the contemporaneous work logs and other records that she had testified were in her possession. It also asserts that Ms. Smith's hourly notations on her monthly calendar logs are not contemporaneous and are, therefore, unreliable. Further, despite her written statement, it challenges Ms. Smith's

claim for having worked an hour early each day, along with what the Agency deems are many other exaggerated claims, which compromise her credibility.

The Agency references the Declarations of Janet Elizondo, previously Enforcement Manager and Deputy Director, now Director of the Dallas District Office; Deborah Urbanski, ADR Coordinator for the Dallas Regional Office from March 2004 to January 2006 and Ms. Smith's direct supervisor (remotely from Houston); and Katherine Perez, ADR Coordinator for the Dallas District Office and Ms. Smith's direct supervisor (remotely from San Antonio) from 2006 to 2008. Ms. Elizondo declared that there was a strict policy in the Dallas District Office that working beyond one's regular hours, without prior management approval, was strictly prohibited. Ms. Urbanski declared that, when Ms. Smith would schedule mediations on Fridays to accommodate the parties, she would keep track of those hours and take them at a later time. She stated she was aware Ms. Smith conducted some Outreach on the weekends, for which she received double compensatory time. She declared further that if she were aware of the significant number of overtime hours Ms. Smith is claiming, and that Ms. Smith was working her day off without taking another day off in the same pay period, it would not have been permitted. Ms. Perez declared that Ms. Smith would occasionally advise her that a mediation had run late and would be advised the next day. She stated that she knew Ms. Smith would sometimes schedule mediations on Fridays to accommodate the parties, and that she would take another day off in the same pay period or keep track of the hours and take the hours in a later pay period. She stated she was aware Ms. Smith would perform weekend Outreach for compensatory time, and was not aware Ms. Smith had worked overtime while attending conferences in Washington DC in 2007 and 2008.

Ms. Smith submitted a Supplemental Affidavit, dated October 9, 2013, stating:

> …I reviewed the documents I submitted in support of my claim. The notation on the January 9, 2009 leave slip, concerning award leave, was a notation, that rather than sick leave being used, the award leave I had received was to be used for my absence. Award leave was given as a substitute for monetary awards and was not recorded in the payroll records of the Agency. The page, prior to the January 9, 2009 leave slip, contains a handwritten note to our timekeeper Rose, stating "Do not put on Books[.]" The handwritten note is the writing of Kathy Perez, my immediate supervisor.
>
> I was the Agency representative to the HBCU group and my attendance was considered Outreach. Even after requesting all my travel for HBCU as well as that related to mediation cases, I never received them from Steve (Last Name Unknown).
>
> I did include in the extra hours, on my claim form, 1 hour each day five days per week for starting work at 5:30-6:00 a.m., when I arrived at the office. [Emphasis supplied]

The Union contends that Ms. Smith's documentation is supportive of her claim, consisting of documents for each pay period showing the mediation work that caused her to work the extra hours on her claim, and that the Agency's supervisors and managers were aware of and approved Ms. Smith's extra work hours. These documents include activity calendars, travel vouchers and itineraries, Cost Accounting Bi-weekly time sheets, and Outreach. In addition, the Union asserts that Ms. Smith's travel should be deemed compensable travel throughout the state of Texas. Despite the Agency's objections to the number of hours claimed by Ms. Smith, the Union notes that the Agency produced no evidence to show that Ms. Smith did not work the hours claimed. The Union further points to e-mails with her supervisors and signed approvals for her trips throughout the state, and the Agency's claim that it did not know and did not approve of this is baseless. In addition, Ms. Smith listed all compensatory time used from her records.

There is no denying that Ms. Smith's claim is a large one. I acknowledge the

Agency's assertion that it does not view it as credible, in part because it contrasts sharply with the claims of Ms. Smith's two Mediator colleagues in the Dallas District Office. On the other hand, I presume that the Agency's calling this "insufficient evidence" means that it does not prove what it should prove with respect to extra hours, and not that she has failed at least to attempt to support her claim, as it has argued elsewhere.

I will not attempt here to ascertain the credibility of Ms. Smith's statements or the supporting documents she has entered. Nor, as I have stated before, do I intend to make credibility findings based solely on the three Agency Declarations. In this respect, I refrain from finding Ms. Smith's claim not credible merely because of its size. If it is subject to attack, at least in part, for that reason, it should occur when witnesses can confront each other.

I find that Ms. Smith's documentation, at least inferentially, permits this claim to go to a hearing. In this way, matters bearing on credibility may be more reliably tested.

Sheila Squire

Ms. Squire worked as an Investigator in the Dallas District Office throughout the claims period, on a 4/10 compressed schedule. She claims 255 hours over 160 pay periods. The Agency objects to all her claims, except for pay period 200314, on grounds that she provided insufficient evidence, that she did not work at least some of the overtime claimed, that her supervisor could not have known of any overtime work, and that her claims are outside the scope.

Specifically, the Agency points to her statement (set forth below) as merely a description of her job duties, containing no information referencing specific tasks performed at specific times with some explanation of why they generated extra work

hours. It does note that, according to Ms. Squire's FPPS records, she earned 4 hours of compensatory time in pay period 200314 and used it in the following pay period, while noting that there is no indication that compensatory time was either requested or earned in any other relevant pay period. It also pointed to four pay periods where Ms. Squire claims overtime, and in which she did not work – namely, pay periods 200502, 200702, 200801 and 200817. Further, it argues that, from the evidence, Ms. Squire likely worked no overtime in 2009, owing to her leave record, which was addressed in a June 29, 2009 e-mail to her from Enforcement Supervisor, Melanie Breen, in which Ms. Breen set forth her concerns and directed corrective measures.

The Agency also referenced a Declaration from Janet Elizondo, previously Enforcement Manager and Deputy Director, now Director of the Dallas District Office, along with a separate Declaration from Ms. Breen. Ms. Elizondo declared that she supervised Ms. Squire in 2007 and early 2008, and had no knowledge of her either taking no lunch break or of her working beyond her regular hours. Ms. Breen declared that she had supervised Ms. Squire from April 2008 to April 2009 and had no personal knowledge of Ms. Squire's working outside her regular hours, working excess hours at home, or working after hours or on the weekend performing Outreach.

The Agency concludes that, due to her earning 4 hours of compensatory time in pay period 200314, used in the following pay period, Ms. Squire is owed $132.80, which includes liquidated damages.

Ms. Squire submitted an affidavit along with her Claim Form, in which she states:

> …I have worked for the EEOC from January 1, 1988 to the present date. All which time I served as an Equal Employment Opportunity Investigator.
>
> I swear or affirm that to the best of my knowledge, that I, in my capacity as an Equal Employment Opportunity Investigator for the Equal Employment

> Opportunity Commission (EEOC), and as a necessary and reasonable course and scope of my employment with EEOC, I worked the submitted overtime hours, as described in my Overtime Claims Documentation during the period of April 7, 2003 to April 28, 2009. In order to serve the public, I worked late performing intake duties, conducting on-site investigations, outreach services, and completion of work assignments in order to meet the goals set forth by the Commission.

Ms. Squire submitted a Supplemental Affidavit, dated October 9, 2013, stating:

> …When I submitted my overtime claim, I was relying on my recollection. I did take annual leave around holidays and if I filled in my claim form for extra work hours during the pay periods of 200502, 200702, and 200801, when I was on annual leave, it was a mistake.
>
> The May 21, 2012 email, which was scanned in to my supporting documents folders was an error. I did not intend to submit the email, as support for my overtime claim.
>
> I have reviewed the payroll record, for pay period 200817. I do not believe that the payroll record is accurate and I do not recall taking any annual leave for the complete pay period of August 3, 2008 through August 16, 2008.

The Union contends, in response to the Agency's production of a June 29, 2009 leave restriction letter, that it should not, as the Agency appears to suggest, be deemed to be indicative of Ms. Squire's work habits during the entire claim period. It notes that this letter has no signature or acknowledgement of receipt by Ms. Squire, which is the regular procedure for issuance of such letters. The Union argues that, if the Agency believed Ms. Squire had been failing to follow leave procedures for six years, it surely would not have waited that long to notify her of suspected leave abuse, and that the letter, insofar as it suggests poor work habits on Ms. Squire's part, should be rejected. It points out that no evidence has been produced in support of Ms. Squire's not working the hours she claims, and that she should be viewed as having been subjected to the policy of the Dallas District Office that prohibited the recording of extra work hours.

Of the fully 160 pay periods covered by Ms. Squire's claim, she herself claimed having neither earned nor used any compensatory time (irrespective of the Agency's

notation for pay period 200314). In light of my ruling on the "outside the scope" issue, I direct that a hearing be conducted for the purpose of determining whether bases exist such that the proposed Agency remedy should not be directed.

Yasmin Thomas

Ms. Thomas worked as an Investigator in the Dallas District Office throughout the claims period, working a 5/4/9 compressed schedule. She claims 126.75 hours over 143 pay periods. The Agency objects to all her claims on grounds that she provided insufficient evidence, that she did not work at least some of the overtime claimed, that her supervisor could not have known of any overtime work, and that her claims are outside the scope.

The Agency notes that Ms. Thomas' affidavit (set forth below) offers no real information, beyond her general job duties, with respect to what tasks she performed, when they were performed, and how they were likely to have generated extra work hours. In addition, it points to pay periods 200619 and 200820, in which she claims small amount of overtime, but she was off work the entire time.

The Agency offers the Declarations of Janet Elizondo, previously Enforcement Manager and Deputy Director, now Director of the Dallas District Office; Lillie Wilson Enforcement Supervisor in the Dallas District Office, and Ms. Thomas' direct supervisor from 2006 to 2009; and Sandra Taylor, former Enforcement Supervisor in the Dallas District Office, and Mr. Thomas' direct supervisor from April 2003 to February 2004. Ms. Elizondo declared that she reminded her staff regularly about not working excess hours without prior management approval. Ms. Wilson declared that she never observed Ms. Thomas working either before or after he regular hours, nor did Ms. Thomas so

advise her, but would sometimes arrive late and would stay to make up the time. Ms. Taylor declared that she never observed Ms. Thomas work through lunch nor did she see any Investigator work outside regular working hours without supervisory approval to work for credit time, compensatory time or overtime.

Ms. Thomas submitted an affidavit with her Claim Form stating:

> …I have worked for the EEOC from January 1, 1988 to the present date. All which time I served as an Equal Employment Opportunity Investigator.
>
> I swear or affirm that to the best of my knowledge, that I, in my capacity as an Equal Employment Opportunity Investigator for the Equal Employment Opportunity Commission, Dallas District Office (EEOC), and as a necessary and reasonable course and scope of my employment with EEOC, I worked the submitted overtime hours, as described in my Overtime Claims Documentation during the period of April 7, 2003 to April 28, 2009. In order to serve the stakeholders, I worked in excess of 80 hours per pay period, performing intake charge duties (mail, phone, and in-person charges), informational telephone inquiries, investigations, on-site investigations, outreach services, and other duties as assigned in order to meet the goals set forth by the Commission.

Ms. Thomas submitted a Supplemental Affidavit, dated October 10, 2013, stating:

> …When I submitted my overtime claim, I used my computer directory logs and I may have mistakenly entered time in a pay period, however, all the time I submitted on my claim form is time I worked performing my Investigator duties. I am not attempting to claim time, which I did not work.
>
> On many occasions, I called charging parties, while on sick and/or annual leave. It was impossible to complete the work required in Intake and for investigation of my case assignments, without working past my scheduled work hours.

The Union contends that, in Ms. Taylor's Declaration, she does not declare that Ms. Thomas did not work, but rather that she did not recall it. It asserts that, in light of the policy of the Dallas District Office that extra hours are not recorded, it is not surprising that no one recalls employees working overtime. It argues that, aside from the supervisory Declarations, which the Union views as not credible, the Agency has produced no evidence that Ms. Thomas did not work the extra hours she claims.

The initial burden here, as in all claims, rests with the claimant. The "Notice to Claimants" form notes that expressly. Ms. Thomas, in her Affidavit submitted with her Claim Form, set forth general job responsibilities without being able to specify what particular duties took place either during specific pay periods or, at least, during specific time frames. As I have said previously, every pay period constitutes a separate claim. By this analysis, it is difficult for me to conclude that Ms. Thomas, in her submission, has been able to establish, even by inference, the amount and extent of work that was performed at times that may qualify for overtime payment. Granting, for example, the statement she made in her Supplemental Affidavit that she was in contact with Charging Parties while she was on sick and/or annual leave, this is not work that would generate overtime hours.

Accordingly, I am required to deny Ms. Thomas' claim.

Cecil Warren

Mr. Warren asserts that he worked as a Mediator in the Dallas District Office throughout the claims period on a 4/10 compressed schedule. He claims 377 hours over 65 pay periods. I phrased the reference to Mr. Warren's position as a contention, rather than a fact, inasmuch as the Agency takes the threshold position that Mr. Warren did not hold a position covered by the grievance at any time during the relevant period. It argues further (presumably in the alternative) that Mr. Warren submitted insufficient evidence to support a claim, that his supervisor could not have known of any overtime worked, and that his claims are outside the scope.

I note first that, after communications between counsel for the parties in 2012, it was agreed that Mr. Warren would be given leave to file a claim, with a deadline of

October 5, 2012. Mr. Warren's Claim Form was timely filed. However, the matter of his employment status for purposes of these proceedings was not then resolved, nor has it to this date.

I will summarize briefly both parties' positions here for the record, although I may not include every contention. I advise the parties now that the status of Mr. Warren, short of the parties' agreement on this at some point, will have to be determined by a hearing. I find the parties' positions on this issue to be irreconcilable. To attempt to respond to this issue based on submissions and Declarations alone, without testimony, is, in my view, not practicable. It is, effectively, a full-blown grievance by itself.

The Agency observes first that Mr. Warren's claim covers the period from pay period 200603 (which begins January 8, 2006) through the end of the claims period. He claims that he has held a Mediator position, according to the "Start Date" and "End Date" entries on his Claim Form, from December 2, 2002 until at least September 20, 2012. The Agency states that Mr. Warren did not occupy the Mediator position covered in these proceedings at any time referenced above. Rather, it states, referencing Mr. Warren's FPPS records, that he has for all this period encumbered the position of "Equal Opportunity Specialist," an exempt position (also known as "State and Local Coordinator") in the Dallas Regional Office throughout the claims period. It stated that Mr. Warren's position underwent a realignment in early 2006, at the time the San Antonio Field Office was placed under the direction of the Dallas District Office. However, it asserts that this did not result in a change to Mr. Warrens' duties or to his exempt status. He underwent a detail, during which time he performed mediation work, while remaining FLSA-exempt and was at no time classified as non-exempt.

The Union contends that Mr. Warren had been assigned to the Mediator position for the periods October 1, 2006 to January 25, 2007; January 29, 2007 to May 28, 2007; May 31, 2007 to September 28, 2007; October 1, 2007 to January 28, 2008; January 31, 2008 to May 30, 2008; and June 2, 2008 to September 30, 2008. It asserts that Mr. Warren performed mediations and was evaluated for his performance of duties as a Mediator. It argues that, even though the Agency assigned Mr. Warren to the Hearings Unit, it is his position which governs his eligibility, and that, therefore, the Union's grievance covers his as a Mediator. It argues that then Agency counsel, Jason Hegy, had admitted that Mr. Warren was assigned to a Mediator position and that the Agency's current position stands contrary to that statement. It maintains that, as a Mediator, Mr. Warren was in a covered position and is eligible to file a claim for recovery of extra work hours.

Mr. Warren executed an affidavit, swearing that he worked the hours set forth on his Claim Form, wherein he classified himself as a Mediator, a covered position in this proceeding.

Mr. Warren submitted a Supplemental Affidavit, dated October 7, 2013, stating:

> …During the period covered by my overtime claim, I was assigned to the position of Mediator, in the Dallas Office Hearings Unit. I was under the supervision of Dwight Lewis, supervisor of the Hearings Unit. When I was reassigned to the Hearings, Unit, my office was physically moved. Janet Elizondo's [previously Enforcement Manager and Deputy Director, now Director of the Dallas District Office] October 7, 2008 email, 9:18 a.m., shows the beginning periods of my reassignment. The reassignment continued throughout the period I submitted on my overtime claim.

The Union contends that counsel for the Agency, referencing his June 1, 2012 e-mail to Union counsel, "admitted Mr. Warren was assigned to a Mediator position." The Union thus argues that, "[a]s a Mediator Mr. Warren was in a covered position and is

eligible to file a claim and recover for extra work hours."

Agency counsel, in his June 1, 2012 e-mail, stated:

> Mr. Warren is not a class member. He had been a State and Local Coordinator (which, as you know, is an exempt position) and on 10/1/06, he was detailed to "unclassified duties." While on detail, he was assigned to the federal sector hearings unit where he was a mediator. As you know, positions in the hearings unit are not part of the class in this case.

Union counsel responded by e-mail, stating that Mr. Warren was performing mediator duties and that his was a covered position, which governs his eligibility, irrespective of his assignment to the Hearings Unit.

For the reasons detailed above, this matter is referred for a hearing on the threshold issue of Mr. Warren's eligibility to participate in the claims process.

DENVER

With respect to Denver claimants, the Union notes that all Investigators were required to change to a basic work schedule for weeks they were assigned to Intake.

Irma Abalos

Ms. Abalos worked as an Investigator in the Denver Field Office from before the claims period until pay period 200814. She claims 84 hours over 81 pay periods. She indicates on her Claim Form that she worked a basic schedule (with exceptions when she was on a 5/4/9 schedule), an assertion the Agency disputes, stating she worked a flexible schedule. The Agency objects to all her claims, first because she was on a flexible schedule. In addition, it asserts that most of her claims are outside the scope (except for a few pay periods where she earned and used compensatory time in the same pay period), and that she did not submit sufficient evidence to create a just and reasonable inference that she worked all the overtime hours claimed.

Ms. Abalos's Claim Form is accompanied by a handwritten statement, which states:

> I completed this "Claim Form" to the best of my recollection absent the complete records.
>
> I requested the Cost Accounting Sheets (April 1, 2003-June 30, 2003 and June 23, 2006-July 7, 2008) on May 14, 2012 from the EEOC timekeeper. However, at [the] time of completing this form, I had not received the cost accounting sheets.
>
> As such, I approximated 1 hour per month during the intake week. It was common for Investigators to work 1-2 hours plus during intake. I was unable to calculate outreach conducted absent the records.

The matter of whether Ms. Abalos worked a flexible schedule is referenced in the Declaration of Holly Romero, Enforcement Supervisor in the Denver Field Office and Ms. Abalos' direct supervisor from October 2005 to June 2008. She declared that Ms. Abalos was on a gliding flexible schedule, and went on to say that "[a]ttached are three emails she sent to me letting me know she had arrived for work at 7:10 a.m. and/or 7:15 a.m." [The referenced e-mails are not attached in my file.] She stated that the official hours of the Denver District Office were 8:00 A.M. to 4:30 P.M. She went on to declare that she was not aware that Ms. Abalos worked past her scheduled hours when assigned to Intake, and that, if Ms. Abalos had so informed her, she would have been instructed to stop.

The Agency referenced also the Declaration of Nancy Sienko, Director of the Denver Field Office. She declared that, from at least 2006 to 2009, the Denver Field Office had a practice of giving informal compensatory time for extra hours worked, but only after management approval. She further declared that Investigators were given until Wednesday of the following week to complete Intake-related paperwork, so as to reduce the work needed to be completed during

Intake week.

The Agency asserts that Ms. Abalos did not explain why her work in Intake would keep her until 5:30 P.M. on eight-hour days and until 6:00 P.M. on nine-hour days. In this respect, the Agency again references the Holly Romero Declaration, where Ms. Romero declares that Intake should not require overtime. It notes further that Ms. Abalos makes the notation "Outreach" besides her claimed hours in certain pay periods (as in pay periods 200425 and 200426), with no explanation beyond that. It also points to a number of other pay periods marked on the side with the designation "Intake," with no further elaboration.

Ms. Abalos informed Union counsel that she had requested documents on May 14, 2012 from the EEOC timekeeper and had received no response. The Union contends that the Agency refused to supply her with the requested records in an effort to obstruct her in filing her claim. It points to Agency sign-in/sign-out sheets which reflect that she worked through lunch and stayed beyond the end of her scheduled work day. The Union asks that the Agency be prohibited from submitting any additional evidence to oppose this claim based on its failure to supply Ms. Abalos with the documents requested.

The nature of Ms. Abalos' work schedule is a material issue of fact. I understand that Ms. Romero's Declaration identified it as a gliding flexible schedule. Ms. Romero noted that there were three e-mails attached, which, as I have stated above, I do not have. I cannot, from an evidentiary standpoint, take this Declaration as testimony or fact. This has been explained with respect to Declarations and statements, generally.

If the parties are able to dispose of this issue, I will obviously know how to proceed. Otherwise, a hearing will be necessary.

Todd Chavez

Mr. Chavez worked as an Investigator in the Honolulu Local Office and in the Denver Field Office throughout the claims period. He claims 450 hours over 113 pay periods. The matter of his work schedule will be addressed below. The Agency objects to all his claims on grounds that he worked a flexible schedule from pay period 200308 through 200621. In addition, it argues that he provided insufficient evidence of overtime work, that the evidence shows he did not work most of the claimed overtime hours, that he claims overtime pay for work performed during paid breaks, that he has already been compensated with overtime pay for overtime work he performed in a single pay period, that his supervisor could not have known of any other claimed overtime work, and that his claims are outside the scope.

Specifically on the matter of Mr. Chavez' work schedule, he reports on his Claim Form that he worked a basic schedule for claimed pay periods 200308 through 200621, and a 4/10 compressed schedule from claimed pay periods 200703 through 200910.

The Agency, as noted above, argues that Mr. Chavez worked a flexible schedule from pay periods 200308 through 200621. During this time, he was working in the Honolulu Local Office, the official hours of which were 8:00 A.M to 4:30 P.M. It states that Mr. Chavez' leave request forms from 2005 reflect that his schedule was then 10:00 A.M. to 6:30 P.M.

In fact, these documents also report that, in August and October 2004, his leave requests first reflected hours from 8:00 A.M. to 4:30 P.M. (the official Honolulu Local Office hours). Then, in March and June 2005, the hours reflected are 9:00 A.M. to 5:30 P.M. In August 2005, the hours reflected are 10:00 A.M. to 6:30 P.M. and in October

and December 2005, the hours reflected are 10:00 A.M. to 6:00 P.M. While these documents say what they say, I cannot be sure, without more, that they must prove the Agency's flexible schedule argument.

In addition, I note an e-mail dated January 31, 2003 from Mr. Chavez to Timothy Riera, Director of the Honolulu Local Office and Mr. Chavez' first line supervisor from 2003 to 2006. In it, he states he would like to work a 5/4/9 compressed schedule with a start time of 8:30 A.M. He adds: "I understand with the glide band my start time is between 8:00 am to 9:00 am., let me know if this is not correct." The record before me does not show a response from Mr. Riera, but the Agency presumes that this "glide band" was the result.

On these matters, the Agency references the Declaration of Mr. Riera. Mr. Riera declared that, from some time in 2005 until he transferred out of Honolulu in late 2006, Mr. Chavez's work hours were 10:00 A.M. to 6:30 P.M., Monday through Friday, and that, before that, they were 8:00 or 9:00 A.M. until 4:30 or 5:30 P.M. on a gliding schedule. He stated that, during his time in Honolulu, he varied his start and end times by as much as an hour. He stated that Mr. Chavez provided assistance to more junior Investigators but had no reason to believe that Mr. Chavez worked any extra hours either with these tasks or with his normal Investigator duties. Mr. Riera stated he had no reason to believe Mr. Chavez worked any extra hours in 2003 at any time of the day, nor did he believe Mr. Chavez did so in 2004, since he was on a long-term leave of absence. He declared further that, in 2005 and 2006, he never observed Mr. Chavez working prior to his start time and, since he (Riera) left by 6:30 P.M., he had no knowledge if Mr. Chavez worked later than that, although he never reported that he did. He also declared he had

no reason to believe Mr. Chavez was working through lunch.

Also submitting Declarations were Holly Romero, Enforcement Supervisor in the Denver Field Office; Nancy Sienko, Director of the Denver Field Office; and Colleen Scaramella, former Enforcement Supervisor in the Denver Field Office and Mr. Chavez' first line supervisor for about a year in 2006-2007. Ms. Romero, who was Mr. Chavez' first line supervisor from December 2007 to 2012, declared that Mr. Chavez never told her he worked outside his regular hours, through lunch or over the weekend. Ms. Sienko declared that, at least from 2006 to 2009, Investigators were given until the following Wednesday to complete Intake-related duties so as to reduce their workload during Intake weeks.

The Agency argues further that Mr. Chavez' written statement covering his work in the Denver Field Office (see below) does not contain any facts or claims indicating any overtime work. It notes that, despite what Mr. Chavez indicated on his Claim Form regarding the existence of "Supporting Emails" for every claimed pay period, he did not include any. It also noted numerous pay periods where Mr. Chavez claimed overtime hours but in which he did not work.

Mr. Chavez submitted two statements with his Claim Form, the first of which stated:

> From April 7, 2003 through September 29, 2006, I was assigned to the Equal Employment Opportunity Commission's Honolulu Local Office (HLO). I was the senior investigator and responsible for assisting junior investigators with their work product, conducting investigations, intake related duties and assisting the public when the need arose. In addition, I often acted as the IT (Information Technology) person/contact for computer related issues, I completed excess expenditure reports, monthly postage reports and other task[s] as assigned. To complete my assignments and duties, I often worked through lunch and I worked overtime.
>
> The HLO was part of the Equal Employment Opportunity Commission's San

> Francisco District Office until on or around January 1, 2006. After January 1, 2006, the HLO became part of the Equal Employment Opportunity Commission's Los Angeles District Office and still falls under their jurisdiction today.
>
> On May 17, 2012, I submitted requests to the HLO, the San Francisco District Office and the Los Angeles District Office for copies of my (1) biweekly cost accounting sheets, (2) SF-71 leave request forms and (3) Agency compensatory records for the above-mentioned time period. The information the EEOC provided to me is incomplete.
>
> I understand that should additional information become available, I may amend my EEOC Overtime Claim.
>
> Based on the information and documents the EEOC has provided to me, I swear under penalty of perjury that the information I have provided is correct to the best of my knowledge.

Mr. Chavez's second statement included the following:

> From October 1, 2006 through the present, I have been assigned to the Denver Field Office (DFO) to perform the duties of a GS-12 Investigator.
>
> On May 17, 2012, I submitted requests to the DFO for copies of my (1) biweekly cost accounting sheets, (2) SF-71 leave request forms and (3) Agency compensatory records for the above-mentioned time period. The EEOC's DFO has only provided me with two (2) documents, both related to intake for the 2009 calendar year.
>
> I understand that should additional information become available, I may amend my EEOC Overtime Claim.
>
> Based on the information and documents the EEOC has provided to me, I swear under penalty of perjury that the information I have provided is correct to the best of my knowledge.

The Union contends that Mr. Chavez worked, successively, a 5/4/9 compressed schedule, a basic work schedule, and a 4/10 compressed schedule. It asserts that, despite having made record requests from the Honolulu, San Francisco and Los Angeles offices, he received no response to these requests, and received only two documents from the Denver office. It notes that, despite Mr. Chavez's Claim Form indicating that the Agency possessed documents that would assist Mr. Chavez in filing his claim, these requests were refused. Further, it states that the Agency misrepresented Mr. Chavez's

circumstances, as well as his work schedule, according to FPPS records, and that he requested to amend his claim if additional records became available. It asks that the Agency be prohibited from challenging Mr. Chavez's claim due to its refusal to provide him with records that would have aided in filing an accurate claim. It requests that any claim of Mr. Chavez for periods of leave without pay on the FPPS records be removed from his claim.

The threshold issue of work schedule is before me, and, as it appears, the Agency's records are not consistent. The January 31, 2003 e-mail and Mr. Riera's Declaration are, in my view, not determinative. As in the case of Ms. Abalos, this is a material issue of fact. Before proceeding with the merits of this claim, to whatever extent they may be, the matter of Mr. Chavez' schedule and the extent, if any, that it may adversely affect his claim generally, must be resolved. The parties are directed to attempt to do so, failing which a hearing will be necessary on this issue, so as to determine to what extent the claim is viable.

Camellia Lopez

Ms. Lopez worked as an Investigator in the Denver Field Office throughout the claims period. She has not filed a valid Claim Form, as it bears the notation: "No Pay Periods added." It is not certain when this Claim Form was submitted.

On May 28, 2012 Ms. Lopez directed a letter to Agency and Union counsel stating:

> My name is Camellia G. Lopez, I retired on November 18, 2011 from the EEOC Denver Field Office and I did not receive any claim forms or information on how to file for my overtime claim. I found out when I was visiting an old coworker Aletha Mora and found out that the deadline was May 29, 2012.
>
> Please be advised that I attended approximately 10 out of town outreach events

> held on weekends and worked after hours at the office and at home during the time period April 7, 2003 to April 28, 2009. I worked approximately 1200 hours of overtime, please send me the necessary information to pursue the payment of overtime.

The letter was mailed May 30, 2012.

The Agency objects to the sufficiency of both Ms. Lopez' submissions.

The Union had submitted to me a June 13, 2012 e-mail setting forth the circumstances it believed were responsible for Ms. Lopez's not having been able to file a valid claim by reason of her retirement from the Agency.

The Union contends that Ms. Lopez was unable to file a claim because the Agency refused to have her sent a claim form, and noted that Ms. Lopez retired shortly after the claim forms were sent out by e-mail to current employees. It asserts that the Agency never agreed to permit a claim form to be mailed to Ms. Lopez, and here requests that a hard copy claim form be mailed to Ms. Lopez and that she be permitted to submit a claim.

This is not really a matter of whether an exception of some kind should be made to the orderly nature of the parties' claims process. My records reveal that the Agency did, in fact, agree to permit a Claim Form to be mailed to Ms. Lopez. I refer the parties to an e-mail dated September 10, 2012 from then Agency counsel Jason Hegy to Mary Jo Pearson of Rust Consulting, in which he informed her that "[t]he Agency agrees with the Union that you should mail the notice and claims forms to…Camiella [sic] Lopez."

If I am to presume, therefore, based on the Union's position, that this was never done, I will direct that a hard copy Claim Form be mailed to Ms. Lopez as promptly as possible and that she be permitted to file a claim. She will be given sixty (60) days after her receipt of the Notice and Claim Forms in which to file a claim, and the Agency will

have sixty (60) days after such filing to submit a response.

Aletha Mora

Ms. Mora worked as an Investigator in the Denver Field Office from at least the beginning of the claims period until December 31, 2006. She worked a 5/4/9 compressed schedule. She claims 1,188 hours over 99 pay periods. The Agency objects to all her claims on grounds that she provided insufficient evidence of the claimed overtime work, that she did not work any overtime after December 31, 2005 because she was no longer working for the Agency, and that her claims are outside the scope.

The Agency asserts that Ms. Mora provides no information on how she derived 12 hours of overtime in every pay period, and gives no examples of specific tasks she performed in any specific time frame after regular hours. It also notes that, from Ms. Mora's IMS records, her number of closures in fiscal year 2003 was 120 cases; in fiscal year 2004 146 cases; in fiscal year 2005 97 cases; and in fiscal year 2006 (working only one quarter) 14 cases. It contrasts these number with Ms. Mora's estimate in her statement, below, that she closed "up to 300 cases per year."

The Agency references the Declaration of Nancy Sienko, Director of the Denver Field Office. She declared that, from at least 2006 until at least 2009, Investigators have been permitted to complete Intake-related paperwork by Wednesday of the following week to reduce the Investigators' work during Intake week.

Ms. Mora submitted the following statement with her claim, which had been filed electronically on her behalf by fellow claimant Todd Chavez:

> I, Althea L. Mora, was admitted to Cedars Health Care Center Nursing Home (Home) in Lakewood, Colorado due to physical pain; however, I am of sound mind. I currently reside in the Home until such time as I am released.

> I worked for the United States Equal Employment Opportunity Commission (EEOC) for over 32 years. From April 7, 2003 until my retirement [on] December 31, 2006, I performed the duties of an Investigator GS-12 under Enforcement Supervisor Andrew Williams.
>
> During the above-mentioned time period, it was common knowledge in the EEOC's Denver office that investigators were expected to close approximately 8 cases per month which totaled to 96 closures per fiscal year. Due to my hard work, I was given awards for closing up to 300 cases per year; this is nearly three times the amount of closures submitted by other investigators Because of the competitiveness between enforcement units, Enforcement Supervisor Williams wanted [me to] process as many cases as possible during the fiscal year and he was aware of the fact that I always worked overtime, including Saturdays and Sundays.
>
> I requested documents from the EEOC to assist me in filing my claim. I received some of my documents and other documents which were not mine and included the social security numbers for Sandra Nakata, Irma Abalos and Glenn Parker.
>
> A do not have access to a computer or access to my home records. I requested Todd Chavez file my claim for me, which he did electronically. For each of the pay periods I claimed overtime for in Claim 50000123, I worked at a minimum twelve (12) hours of overtime.
>
> Please take into consideration my circumstances and if additional documentation needs to be submitted, contact my daughter, Patty Murphy….

Ms. Mora submitted a Supplemental Affidavit, dated October 19, 2013, stating:

> …The extra work hours, I submitted on my claim form, were for work I did investigating charges of discrimination which were assigned to me. I worked in the evenings, at home, and I worked on weekends. I did not have records from the Agency, but I worked extra hours each pay period and I estimated that the number of hours I worked was 12 hours every two weeks. I believe that my supervisors were aware of my working the extra hours because supervisors would see me leaving the office, with my case files each day.
>
> One case which caused me to work extra work hours, was a charge of discrimination against an airline. The charge involved a lot of individuals and I was required to go to the company to interview witnesses. It took a couple of years to process the case. The result was a cause finding.

The Union contends that Ms. Mora's sign-in/sign-out sheets (here, for selected pay periods in 2003) reveal that her supervisor, Holly Romero, was aware of her working without breaks, inasmuch as these documents bear Ms. Romero's signature. It asserts that the Agency has not been truthful about its practices and has withheld documents

which would permit the filing of an accurate claim, thereby requiring Ms. Mora to estimate her extra hours worked. It argues that the Agency has failed to submit evidence disputing Ms. Mora's claims and that "the supervisor declarations have no credibility."

It must be acknowledged that, in the case of Ms. Mora, her physical challenges have made the claims process more difficult. What I am left with, however, is a claim that, on its face, is difficult to credit, not only because of its regular claims of twelve hours every pay period, but because those claims appear to rest, at least in part, on a level of Investigator productivity that is, perhaps inadvertently, significantly inflated, when compared with Ms. Mora's IMS records, noted above.

As I have had occasion to note before, this process is not one that deals principally with the matter of productivity. Whether someone is an outstanding employee, with outstanding performance numbers, this does not lead to the conclusion that, invariably, that production must have been achieved through extra work hours. Such extra work hours must be proved through other means that have more to do with what tasks were performed at what times, and why those tasks were such that they caused extra work hours to be generated. Some showing of the amount and extent of Ms. Mora's work is needed in order to create the inference that is needed to suggest that extra hours were needed in order to perform such work. That showing falls short in this case.

Accordingly, I must deny Ms. Mora's claim.

Martha Muller

Ms. Muller worked as a Paralegal Specialist in the Denver Field Office from before the beginning of the claims period until pay period 200706. Her Claim Form asserts that she worked a basic schedule, a matter that is at issue here. In addition, her

Claim Form indicated that the office hours were 7:00 A.M. to 6:00 P.M. The office hours of the Denver Field Office, during the relevant period, were, in fact, 8:00 A.M. to 4:30 P.M. Ms. Muller claims 279 hours over 95 pay periods. With the exception of pay periods 200413 and 200414, where she claims 1.5 extra hours, every pay period reflects a claim of 3 hours. The Agency objects to all her claims because she was on a flexible schedule, that her claims are outside the scope, and that she did not submit sufficient evidence to create a just and reasonable inference that she worked all the overtime hours claimed.

The Agency first objects because, if Ms. Muller were actually on a basic schedule, her claim of "Different Hours" under "Time Of Day" would be insufficient to make out a valid claim.

The principal threshold issue here is whether, as Ms. Muller claims, she was on a basic schedule or, as the Agency claims, she was on a flexible schedule.

The Union contends that Ms. Muller worked a basic work schedule, noting that many claimants were unclear on the difference between a basic and flexible work schedule. It asserts that Ms. Muller did work extra hours and that Agency records support her claim. It deems Ms. Muller to have experienced the same obstructionist behavior by the Agency as have other claimants.

Ms. Muller's "Request for Leave or Approved Absence" records reveal that Ms. Muller's work schedule was not, in fact, a basic schedule. There is a "Request for Work Schedule" form, wherein Ms. Muller requests hours under "Gliding" with a starting and departing time of 7:15 A.M. and 4:00 P.M., respectively. This alone is not dispositive, since this form, which was approved by Mr. Muller's supervisor, Nancy Weeks, dates to

December 2002, before the claims period.

However, when Ms. Muller's leave records which do fall within the claims period are examined, the following information is found: numerous leave forms request daily leaves beginning at 7:30 A.M., or, in some cases, request end-of-day leave ending at 4:00 P.M. Some that request daily leaves beginning at 7:30 A.M. are for the entire day and state: 7:30 to 4:00. Examples of this are found for December 30, 2004 and January 10 and 11, 2005. The starting times sometimes are noted as 7:15 A.M. and the departing time sometimes at 3:45 P.M. The schedule that appears most frequently is 7:30 A.M. to 4:00 P.M. This pattern reveals a gliding flexible schedule. The Union correctly states that claimants may be mistaken about the distinction between a flexible and a basic schedule. However, the Notice to Claimants explains both the Flexitour and Gliding work schedules.

Therefore, based on the above, I must deny Ms. Muller's claim as she was on a flexible work schedule.

Sandra Nakata

Ms. Nakata worked as an Investigator in the Denver Field Office throughout the claims period. She indicated that, at various times, she was on a gliding, 5/4/9 and 4/10 compressed schedule. She claims 1,095 hours over 142 pay periods. The Agency objects to all her claims on grounds that her claim may be untimely, that she worked a flexible schedule for part of the claims period, that she provided insufficient evidence of the claimed overtime work, that her supervisor could not have known of her claimed overtime, and that her claims are outside the scope.

The Agency's threshold objection is untimeliness. The Claim Form bears no

finalized date, and Ms. Nakata, in her statement below, states that she submitted the claim online on July 27, 2012. The statement is signed and bears the date of August 1, 2012, which is also the postmark date for the mailed documents.

The Agency further addresses the Declarations of Holly Romero, Enforcement Supervisor in the Denver Field Office; and Nancy Sienko, Director of the Denver Field Office. Ms. Romero declared that, from at least 2004 to at least 2009, supervisors in the Denver Field Office have had the discretion to work with Investigators to adjust their working hours informally when working on an assignment that required work outside their regular hours. She stated that advance management authorization was needed before these schedule adjustments could be made. She stated further that supervisors reminded staff that they were not to work overtime without prior approval. Ms. Sienko declared that she was unaware that Ms. Nakata had worked any overtime at any time. She stated further that she was unaware of how much time Ms. Nakata spent on her Union steward duties because she repeatedly failed to account for such time in the Agency's Quicktime time and attendance system.

Ms. Nakata submitted a statement which appears to have been sent following the submission of her Claim Form. It stated:

> I previously submitted my Claim online (July 27, 2012) and signed the Declaration "under penalty of perjury" but was unable to attach this affidavit.
>
> I have been employed by the Equal Employment Opportunity Commission since March of 1985. I have held the position of Investigator since 1986 at the Denver Field Office. On May 16, 2012 and May 17, 2012, I requested copies of my Cost Accounting Sheets and Leave records for April 7, 2003 to April 28, 2009 and copies of the intake rotation schedules for the same time period. I was given only a copy of the January 2009 to January 2010 Intake Schedule and rotation and told by Ms. Erica Gagne Glaze (Enforcement Manager) that was all they could find. Gary Wiedemer (a non-government employee from Seniors Inc.) gave me a stack of documents which contained originals of <u>some</u> of my time records and leave slips from 2003 to 2009. There were only four documents from all of 2003 and the documents were not in any order whatsoever. I was also given copies of

documents from other employees with their full social security numbers.

> During the subject time periods, the Investigators were on either a four, five or six week rotation on Intake where we were told to only work on Intake duties (taking charges, answering Officer of the Day calls, handling walk ins, etc). Although we were on Intake for one week, the paperwork and telephone calls usually ran over until Tuesday or Wednesday of the following week. The Investigators, myself included, were still expected to submit a certain number of resolutions per month so I would work during lunch while I was on intake and after my official quitting time and on weekends at home. During 2003 and 2004, I would also work at the office on Sundays while my daughters were at drum practice at the Buddhist Temple since it was close to the office. The last months of each quarter were especially busy and required working additional hours and the last three months of the fiscal year (July, August and September) were the busiest.
>
> During the first part of 2008, I was at home on bedrest and/or in the hospital and did not work overtime but when I recovered toward the end of 2008, it started back up again. In 2009, I was the Steward for the office and performed my union duties and held a full workload.
>
> I understand that should additional information become available, I may amend my EEOC Overtime Claim.

The Union contends that the Agency did have documents that could have assisted Ms. Nakata in filing her claim, but refused to provide them. These extra hours, worked by Ms. Nakata and others in the Denver Field Office, were, as argued by the Union, not recorded in the Agency's payroll records. It asserts that Ms. Nakata's claim was timely and that she had been granted a filing extension, and, as noted in Ms. Nakata's statement, she was having problems uploading her documents, and that Rust Consulting did not bring to the Agency's or the Union's attention any problems with Ms. Nakata's claim. Any inaccuracies in her claim, the Union argues, are owing to her being denied the documents she requested, and the Agency has produced no evidence to demonstrate that she did not worked the hours claimed.

I address first the issue of untimeliness. The Union maintains that she had been granted an extension of time to file. I assume this refers to the 60-day extension granted

to a number of claimants specifically identified in the record of these proceedings. There was first a group whose names and circumstances were set forth in the Union's May 18, 2012 Motion to extend the claim filing period to July 28, 2012. Added to this were a small number of additional names, whose extensions were granted until October 5, 2012. I am unable to see Ms. Nakata's name among these. However, there were e-mail exchanges between Union and Agency counsel that referenced certain other claimants, where the parties agreed that those others would likewise be granted extensions of time to file, based on their particular facts. I do not see a reference to Ms. Nakata among these documents either.

The Agency asserts its untimeliness claim without making reference to any possible prior grant of, or agreement to, an extension of time for Ms. Nakata. I also acknowledge the good faith assertion of the Union that Ms. Nakata was, in fact, one of the individuals granted an extension. I have searched the records of Ms. Nakata's claim that the parties have provided me, and have also searched my own e-mail records for evidence that Ms. Nakata was under an extension of time. By her online claim submission on July 27, 2012, this seems to suggest that it was close to the July 28, 2012 sixty-day extension period time, and that there is a correlation owing to Ms. Nakata's having such an extension. However, if there is documentation of it, I either do not have it or have not discovered it.

Therefore, I make the request of Union counsel that she provide me and Agency counsel (if Agency counsel has no such record himself) with any record she has that such an extension of time was, in fact, in place for Ms. Nakata. I will defer further action on Ms. Nakata's claim until this issue has been resolved.

Christopher Padilla

Mr. Padilla worked as an Investigator in the Denver Field Office from at least April 2003 until 2006, when he was promoted to Intake Supervisor. He worked a 5/4/9 compressed schedule, except for pay period 200311, when he notes he was on a Flexitour schedule. He claims 154 hours over 73 pay periods. In most pay periods, he claimed 2 extra hours (although in his statement, below, he stated "an average of 4 hours a pay period," a figure that does not appear at all in his Claim Form). The Agency objects to all his claims on grounds that he provided insufficient evidence of the claimed overtime work, that he did not work at least some of the claimed overtime, that his supervisors could not have known of or prevented any overtime work, and that his claims are outside the scope.

Mr. Padilla submitted the following statement with his Claim Form:

> This letter is to explain why I elected to pursue the on-Line Overtimes [sic] Claims form as requested. As demonstrated on my claims form during the pay periods of 2003 to 2006, I was employed as an investigator for EEOC, Denver Field Office. My dates of employment are from 1992 to the present, which is different from the dates on the claims form. The dates are different because I could not remember the specific dates when I was promoted to a GS 9, so I estimated.
>
> Sometime in 2006, I was promoted to Intake Supervisor, therefore, I was considered a management [employee] and was not entitled to overtime pay. That should explain why I completed the overtime claims form up until 2006.
>
> During my employment with EEOC, particularly during the period I identified, I definitely worked overtime to meet the office goals as expected from supervisors and other management personnel. Although EEOC will argue Investigators are not required to complete a specific number of cases per month, this is completely false. Each investigator is rated on his/her contribution to office goals. This is just another way of stating how many case[s] each investigator completed.
>
> As indicated on my on-line over time form I worked an average of 4 hours a pay period of overtime to keep up with my work and to meet deadlines. However, instead of taking work home, I preferred going to the office on Saturday mornings and working enough hours to ensure I met my numbers and completed and met required deadlines.

> In addition to investigation, EEOC investigators are also responsible for performing intake related duties that require more stringent deadlines. As a result, I as well as other investigators had no choice but to work overtime to complete this type of work. During the identified pay periods, I would most often work past my work schedule to complete this work. Intake work for the most part could not be carried over the following week because of statutory deadlines. Likewise, investigators were often reminded by supervisors and management staff they could not carry over their intake related work the following week because it would affect their other duties.

The Agency references the Declarations of Holly Romero, Enforcement Supervisor in the Denver Field Office; and Nancy Sienko, Director of the Denver Field Office. Ms. Romero declared that Mr. Padilla never informed her he was working past his regular hours, or coming in to work on Saturdays, and that she has no reason to believe that he did. Ms. Sienko declared that, from at least 2006 to at least 2009, Investigators have been permitted to complete Intake-related paperwork by Wednesday of the following week, so as to reduce their load on Intake week. She further declared that, as she observed, Mr. Padilla typically left the office promptly at the end of his regular hours, so that he could coach his children's sports teams after work. She stated that she has been at work frequently on Saturdays and has never seen Mr. Padilla.

The Union contends that the evidence relating to the Denver Field Office shows that supervisors were aware of extra hours worked, chose not to record them, and obstructed employees in filing their claims. It asserts that the Agency has produced no evidence to show that Mr. Padilla did not work the hours he claims.

A few factual issues are raised by Mr. Padilla's statement. One I mentioned above is that his Claim Form contains no pay periods when he claimed 4 hours of overtime, while noting in his statement that 4 was his average. In addition, although not likely significant, is his assertion that he preferred going into work on Saturdays, rather

than taking work home. In fact, in pay period 200311 (where he claimed he worked a flexitour schedule), according to Mr. Padilla's time records, he worked at home twice for a total of 18 hours.

Another is the matter of Intake. I note that the Agency argues that Mr. Padilla's Claim Form seems not to take into account any variance in his overtime hours from pay period to pay period to account for the impact of Intake on such hours. Also, he states that "Intake work for the most part could not be carried over the following week because of statutory deadlines." The Agency seeks to impeach that statement by noting claimant Sandra Nakata's statement that, when on Intake, "the paperwork and telephone calls usually ran over until Tuesday or Wednesday of the following week." It also notes Ms. Sienko's Declaration that Investigators were permitted to complete Intake work by the following Wednesday, so as not to overload them during Intake week. I note, in this respect, that by early 2006, Mr. Padilla had moved to supervision, and Ms. Sienko's statement on Intake did not refer back to a period earlier than 2006.

Bearing in mind where the burden of proof lies, I must be persuaded that Mr. Padilla has made some showing to support his claim of extra hours. His claim is not an extravagant one, but it still requires some showing that it is probably so. I will give him an opportunity to make such a showing, specifically as he attributes his extra hours to Intake. I will direct a hearing to receive testimony solely on whether Mr. Padilla's Intake duties caused him to work extra hours that would merit overtime payment.

Veronica Pedroza Quintana

Ms. Quintana worked as an Investigator in the Denver Field Office throughout the claims period. She indicates on her Claim Form that she worked a basic schedule. This

is so for her Intake weeks, but her normal work schedule was 4/10 compressed. She claims 284 hours over 71 pay periods (or 4 hours in every pay period). Her Claim Form misstates the official hours of the Denver Field Office, stating that they are 8:00 A.M. to 5:00 P.M. (rather that 8:00 A.M. to 4:30 P.M.). The Claim Form indicates that, in virtually all pay periods listed, Ms. Quintana's extra hours were "**LUNCH OR AFTER WORK**." The Agency objects to all her claims on grounds that she submitted insufficient evidence to create a just and reasonable inference that she worked all of the overtime hours claimed, and that they are outside the scope.

Ms. Quintana submitted a brief statement along with her Claim Form, which states:

> The claim submitted, via email on May 25, 2012, reflects overtime which I worked during each intake week during the relevant period 4/7/2003-4/28/2009. I worked an 8-hour per day schedule during intake weeks.
>
> On May 18, 2012, I requested but have not received, as of this date, cost accounting records, time sheets, leave records to include compensatory time taken for the period. Therefore, I request to amend my claim if any documents are provided.

The Agency offered the Declaration of Holly Romero, Enforcement Supervisor in the Denver Field Office. She declared that she supervised Ms. Quintana from 2002 to 2006 and that Ms. Quintana never informed her that she was either working hours beyond her regular tour of duty or that she was working through lunch, and that she had no reason to believe it had occurred. If Ms. Quintana had told her, she stated, she would have instructed her to stop.

The Agency challenges Ms. Quintana's claim on several grounds. One is that her claim of working the same number of extra hours during lunch or after work for every single pay period does not explain when those extra hours fell during any specific pay

period. Another is that she fails to explain why Intake uniformly generated four extra hours. The Agency also challenges Ms. Quintana's claim on the ground that Holly Romero's Declaration stated that she was not aware Ms. Quintana had ever worked extra hours during Intake. On this point, I remind the parties that Ms. Romero's Declaration is an assertion and not evidence.

In addition, the Agency points to Ms. Quintana's Intake weeks as basic, rather than 4/10 compressed, hours. Therefore, it argues, Ms. Quintana should logically be claiming her four extra hours during Intake weeks, rather than uniformly claiming them across the board. Here, the Agency asserts that, according to FPPS records, Ms. Quintana was making the same four-hour overtime claim during 16 pay periods when she was not assigned to Intake. It refers specifically to pay periods where FPPS records show she was working her 4/10 compressed schedule, rather than 8-hour days, for the entire pay period. Among these are pay periods 200318, 200324, 200406, 200408, 200410, 200414, 200415, 200418, 200508, 200620, 200626, 200708, 200714, 200716, 200722, 200726 and 200810.

The Union contends that Ms. Quintana's sign-in/sign-out sheets show her schedule was changed during Intake and that she worked beyond her scheduled work hours during Intake. It asserts that the Agency submitted no evidence to dispute the hours claimed by Ms. Quintana and withheld records that would have assisted Ms. Quintana in filing a claim.

Apart from the assertions of Ms. Quintana herself, I am able to see no clear evidence that she worked the extra hours she claims. To the extent we may rely on them, Ms. Quintana's FPPS records do show that, for a number of pay periods, she claims the

same overtime when she was on her 4/10 compressed schedule for the entire two-week period (and, therefore, clearly not assigned to Intake) as she does when she works her 8-hour days during Intake weeks. From this, it is difficult to explain just what impact working on Intake really has if it generates the same number of extra hours as a typical 4/10 compressed week.

Also, in examining the time records supplied by the Union (one from June 2003 and one from June 2005) and signed by Ms. Quintana, I agree that they show Ms. Quintana's schedule was changed during Intake (i.e., from 4/10 compressed the first week to basic the next). However, the Union states also that they show she worked beyond her scheduled hours during Intake. I do not see that. What it shows for Intake weeks is a straight eight-hour schedule.

I do not see enough in this record to create an inference that the extra hours claimed by Ms. Quintana, and particularly the uniformity in which they occur, were actually worked.

Accordingly, I must deny this claim.

Laura Weyna

Ms. Weyna worked as an Investigator in the Denver Field Office throughout the claims period on a 5/4/9 compressed schedule. She claims 70.75 hours over 36 pay periods. The Agency objects to all her claims on grounds that she did not submit sufficient evidence to create a just and reasonable inference that she worked all the overtime hours claimed and that these hours were suffered or permitted, and that they are outside the scope.

Ms. Weyna's hours were 7:30 A.M. to 5:00 P.M. She noted, in a statement

provided with her Claim Form, that "[w]hile looking how to prove that I worked overtime hours I realized that all my files are saved with time and date. I reviewed most of my records and all hours I indicated can be verified by my saved back-up on P: drive." A handwritten addition indicated that "I could not print the screen in support of my claim."

The Agency's response to this was that other Investigators apparently did not have that technical problem and found a way to print their computer screen shots when they needed to do so, adding that "directions for printing screen shots can be found online." In sum, the Agency asserts that, Ms. Weyna's merely stating that her hours can be verified proves nothing absent the verification itself. It states further that Ms. Weyna often arrived late and, rather than taking annual leave to cover the late arrival, would stay late to make up the time. This resulted, according to the Agency, in her records reflecting that she would be working after 5:00 P.M., but that this was effectively "make up" time, rather than extra hours worked. This presumably included a circumstance where a screen shot reflected that Ms. Weyna "worked on a document until 5:15 p.m." while not necessarily meaning that overtime was the result.

The Agency also suggests that, since her claimed extra hours per pay period are relatively small, Ms. Weyna took *de minimis* amounts of daily overtime and combined them.

The Agency references the Declaration of Holly Romero, Enforcement Supervisor in the Denver Field Office. She declared that Ms. Weyna had never informed her that she was working beyond her tour of duty and that, if she had observed her coming in early or working late, she would have instructed her to stop.

The Union contends that the Agency could easily have accessed the information that Ms. Weyna referenced, and that it made no attempt to verify whether the hours claimed by Ms. Weyna were actually worked, alleging only that sign-in/sign-out sheets do not reflect extra work hours. The Union says this is not surprising, inasmuch as the Denver Field Office did not record extra work hours, either for Ms. Weyna or for any of her co-workers. The Union asserts that the Agency may not argue that there is insufficient evidence for a claim when it fails to maintain accurate records.

Ms. Weyna referenced the documents she needed to support her claim as having been saved on her P: drive, the problem being that she did not know how to print the relevant screen shots. These are records most of which, according to Ms. Weyna, she had reviewed and presumably deemed helpful to her claim. A strict view of this "printout" problem might be that, if one has the opportunity to procure the needed records, then one should, by all means, be one's own advocate and do so. If the problem is solely an IT one, where she did not know the mechanics of printing a screen shot, this should have been easily solved. As the Agency suggests, she should have found a way to do this.

On the other hand, if the representation of the Union is correct, the information saved on Ms. Weyna's P: drive is accessible to the Agency. Granted it is not the Agency's burden to help make her case, but if there are documents that are relevant to a claim, regardless of which way they might cause a particular claim to go, and inasmuch as Ms. Weyna has already identified them as being potentially helpful, I would not want to see an IT issue (or Ms. Weyna's failure, for whatever reason, to overcome that issue) defining what evidence should properly be before me.

Anticipating that the Agency might argue that production of documents at this

point would be contrary to the manner in which the claims process is to function, I do not view this as anything like a late submission. Rather, I view it as having the opportunity to determine whether documents, or computer records, that have already been identified by a claimant as being relevant may be examined. I conclude this despite my belief that Ms. Weyna, possibly not being computer savvy, should have found her own way past this problem.

Accordingly, I direct that the Agency provide to Ms. Weyna and to the Union the records referenced by Ms. Weyna that may be reproduced from her P: drive. The Agency shall, within thirty (30) days of the production of these records, advise me and the Union of its position concerning their relevance, if any, to this claim. The Union will have thirty (30) days thereafter to respond, after which I shall make a final ruling on the disposition of Ms. Weyna's claim.

DETROIT

The Union notes generally that Gail Cober, Director of the Detroit Field Office, testified at the hearings in St. Louis, MO that the Paralegal Specialist is supervised by the Supervisory Trial Attorney who, in turn, is responsible to the Regional Attorney. It notes further that, except for a few claimants, the claimants from the Detroit Field Office submitted specific documents for the extra work hours on their claims. It references the Agency's objections generally as the following: insufficient evidence; noncompensable travel; breaks and lunches as not being overtime; claims being outside the scope; compensatory time received offset; compensatory time received and used in the same pay period; and lack of supervisory knowledge. Owing to the specificity of the claimants' information, the Union notes it will not be restating the Agency objections in its

individual position statements on behalf of individual claimants.

The Agency, in its argument on individual claims, sets forth its general summary of Ms. Cober's testimony, received at the hearings in St. Louis, MO, and her Declaration, offered in this claims process, as follows:

> During the claims period, Ms. Cober has occupied the positions of Enforcement Manager (March 2003 to December 31, 2005); Officer in Charge (January 1, 2006 to May 2006; and Director of the Detroit Field Office (May 2006 to the present). If Investigators and Mediators worked extra hours, they got the time back in the form of informal compensatory time. This occurred because an employee worked when they were not necessarily being directed to work, depending on the circumstances (e.g., case investigations, Intake, Outreach), and then they communicated the work to supervision, and the employee was given the time back.
>
> Intake, which Investigators performed about once every eighth day, would typically not require them to work overtime (or, as claimants might reference it, once a pay period). The Detroit Field Office takes walk-ins between 8:00 A.M. and 10:30 A.M. and then has appointments. The last appointment is at 2:30 P.M. and Intake service to the public ends at 3:30 P.M. If a walk-in would arrive at 3:25 P.M. (when Intake is conducted by appointment), the Investigator assigned to Intake would give the potential claimant a questionnaire and ask him or her to make an appointment for another day, unless the statutory limitations period was about to expire. Usually, individuals take a questionnaire and come back later. An Intake Committee, composed of management, a Union steward and others, makes decisions on how to conduct Intake.
>
> Outreach is voluntary and Investigators choose which Outreach events they want to do. They inform their supervisor if they worked beyond their schedule and get the time back as informal compensatory time. With respect to Onsites, they sometimes would cause an Investigator to work beyond his or her normal schedule, but that techniques were available to help Investigators limit their overtime. When Investigators traveled in hours beyond their schedules, they received compensatory time.

Unless there is a need for me to reflect additional general Agency arguments in my consideration of individual claims, it should be presumed that the above summary, as offered by the Agency, is replicated.

Frances Angiano

Ms. Angiano worked as an Investigator in the Detroit Field Office throughout the

claims period, working a 4/10 compressed schedule. She claims 282 hours over 151 pay periods. The Agency objects to most of her claims on grounds that she submitted insufficient evidence to support her claims that she worked overtime, that they are outside the scope, that she did not work the hours in overtime that she claims, and that they were not suffered or permitted by the Agency.

The Agency, after reviewing her claims, concludes that Ms. Angiano is entitled to payment of 2.5 hours for an Outreach event she attended on a Saturday for which the Agency believes she received compensatory time (not reflected in FPPS records) instead of overtime pay, assuming she did not use the compensatory time earned in the same pay period. The 2.5 hours equals $70.78, plus liquidated damages, for a total of $141.55. From Ms. Angiano's records, this event took place on Saturday, April 12, 2003 (the "Access" Anniversary Banquet).

For most pay periods, Ms. Angiano claims chiefly between 1 and 5 extra hours, but they spike occasionally up to 10 (in pay period 200314) and once to 17 (in pay period 200322).

More specifically, the Agency argues that other documents signifying travel do not indicate whether an Outreach is involved and that the travel has not been shown to fall within an exception permitting money payment for travel. Another Outreach event she documents for an event at Michigan State University lacks details concerning when it occurred and how many overtime hours were involved. Further, it notes that her statement, below, is insufficient to create a just and reasonable inference that she worked the claimed hours in overtime. It asserts that, inasmuch as Ms. Angiano worked ten hours a day, it is likely that she should have been able to complete her general duties

within regular work hours. It also disputes Ms. Angiano's claim that she always worked through lunch and breaks performing Intake, since Intake traffic was sometimes very light.

Ms. Angiano submitted the following statement with her Claim Form:

> One week each pay period, I am assigned Intake duties and would not take my lunch or breaks because the members of the public must be served. Intake consists of entire day with walk-in hours followed by appointments beginning at 11:30 a.m.
>
> There were times during these years when I was on leave, onsite, or outreach and could not perform my intake duties. However, when these occasions occurred, I would swap with another Investigator and take their assigned Intake Day. Additionally, there were times when I stay over to complete work assignments, return phone calls and or to conduct interviews.
>
> I do not have documentation or information for the exact days, but it comes out to one or two hours of overtime per pay period. Included with this Declaration, is documentation of Outreach conducted during the relevant period.

Ms. Angiano executed a Supplemental Affidavit, dated October 9, 2013, stating:

> …I have reviewed my claim form, filed on May 23, 2012. For pay periods 200407, 200408, and 200419, the amount, of compensatory time received, was entered in error. I did use the amount of compensatory time I entered in the pay periods, but did not receive any compensatory time in pay periods 200407, 200408, and 200419.

The Union contends that, on the strength of her documents for Outreach and travel, in addition to her other claims for extra hours worked, to which the Agency offered no contrary evidence, Ms. Angiano should be granted the relief requested.

Virtually all of the pay periods in Ms. Angiano's claim reflect no compensatory time earned. As I have noted, my ruling on the "outside the scope" argument of the Agency allows review for pay periods where no compensatory time has been earned.

Accordingly, in light of my ruling on that issue, I direct that a hearing be conducted for the purpose of determining whether bases exist such that the proposed Agency remedy should not be directed.

Joyce Dawkins

Ms. Dawkins worked as an Investigator in the Detroit Field Office from before the start of the claims period until pay period 200617, when she transferred to the Atlanta District Office, working for a short time before being promoted to a supervisory position. While in the Detroit Field Office, she worked a 5/4/9 compressed schedule and, beginning with pay period 200621, as reflected in her Claim Form, she worked three pay periods on a basic schedule. She claims 104.15 hour over 82 pay periods. She was among the claimants granted an extension of time to file.

Among the documents she submitted along with her Claim Form are a statement describing her work, computer screen shots of IMS Inquiry forms, and a document detailing an Outreach she performed on May 4, 2005 (a Wednesday) for the Mid-Michigan Regional Business Expo (for which she stated she worked 1 hour of development, 8 hours of presentation and 3 hours of travel).

The Agency objects to Ms. Dawkins' claims on grounds that she submitted insufficient evidence to create a just and reasonable inference that she worked more than 80 hours in a pay period and that any extra hours were suffered or permitted by the Agency, and because her claims are primarily based on working through breaks, which do not constitute overtime hours.

In addition, the Agency argues that, since Ms. Dawkins did not properly report the extra hours she allegedly worked in her last three claim periods (200621, 200623 and 200625), when working in the Atlanta District Office, the Claim Form is defective, or, in the alternative, it indicates she worked a flexible schedule during that time. On the matter of her Outreach, the Agency notes that it is unlikely that she would have earned

overtime for an eight-hour presentation on a weekday and, if the claim is for travel, it is not eligible for overtime compensation. The Agency references the Declaration of Ms. Cober, which notes, among other matters, that Investigators who worked extra hours on one day were permitted to take the same amount of time off without charge to their leave.

Ms. Dawkins submitted a detailed statement with her Claim Form, as well as computer screen shot of IMS Inquiry forms. I set forth her statement in full so as adequately to represent her position. It is as follows:

> **This is the Affidavit of Joyce Annette Dawkins**. It is prepared based upon an honest and best recollection of the dates that I worked hours in excess of a 40-hour (80-hour compressed) work week.
>
> During the period of the Union's Arbitration Claims, April 7, 2003 to April 28, 2009, I worked as an Investigator GS-1810, Grades 9-12 from the applicable period of April 7, 2003 until December 31, 2006 at the Detroit and Atlanta District Offices. In September 2006 I transferred from the Detroit to the Atlanta District Office and continued work as an Investigator until being placed in a supervisory role effective January 2007.
>
> At the Detroit Office (5/4/9 schedule) any overtime I accrued was limited to 1) Intake duties, 2) outreach and 3) days without lunch or breaks and/or working past my official duty with respect to quarterly MRG meetings (the review of an investigator's entire workload with management officials) each year. During my employment with the Agency, it was my usual practice to combine lunch and breaks and take one hour, daily. On Intake days at the Detroit office, I used approximately 25 minutes (only the amount of time to grab and eat a quick lunch) so as not to leave my Intake partner alone to handle Intake. Investigators at the Detroit Office, during the relevant time, did not work a "one week" Intake rotation or utilize a "team" of Investigators on Intake. An Investigator (along with his/her partner) is scheduled one (1) day of Intake at an interval of every so many days. While I can not remember the exact interval, the schedule usually amounted to no less than one (1), but no more than three (3) separate days of Intake each month –depending on the number of days in a month, federal holidays, the number of paired-Investigators in the rotation, switching an Intake day with another Investigator, (i.e., vacations, etc.), or being called at a moment's notice for Intake "back-up." *(Documents which identify Intake and/or outreach dates will be sent via US Mail.)
>
> At the conclusion of an Investigator's 1-2 day MRG meeting each quarter, s/he is given a list of tasks (i.e., draft/sent RFIs, conduct onsites, close files, prepare subpoenas, write-up cause findings, etc.) and due dates by the Director/Regional Attorney to complete before the next scheduled MRG. The timely completion of those tasks is reviewed at the next quarterly MRG. There was always periods in

> which I worked through lunch and breaks in the days/week leading up to MRG to complete any unfinished assignments from the previous MRG and to prep for (i.e., timely prepared/mailed RFI, etc., and the review of all position statements and facts about newly assigned cases in order to discuss and answer any questions posed at MRG by management). Assignments and the completion dates thereof for the 4th Quarter MRG were more crucial because the following three months in which to complete such assignments, and others, closed-out the fiscal year. It was common knowledge by everyone (including management) that closing out a fiscal year was a time in which every Investigator would employ various methods (skip lunch, breaks, work past their daily tour of duty and/or take work home to ensure meeting deadlines imposed at MRG and to close as many cases deemed appropriate by management before the close of the fiscal year. Without records to show exactly which date(s) I worked as such, I have to the best of my recollection and honest belief entered dates and overtime which reflect the dates I believe were worked in excess of 40/80 (via no lunch/breaks and/or working late) to meet deadlines and assignment[s] established by management at quarterly MRGs and to close before the fiscal year ended.
>
> At the Atlanta Office (Straight 8 schedule), my work as an Investigator was short-lived and any overtime I accrued was limited to Intake. To the best of my recollection, I had one (1) case management review, but worked no overtime (i.e., skipped lunch, breaks, etc.) in connection with it.
>
> During the relevant time, Investigators (in a varying team of 6-8) worked a "one week" per month Intake schedule. There were (4) Intake Units during the relevant time period. I was assigned to Unit 4. Atlanta's Intake crowds are large and customer service was/is deemed paramount. As such, I took brief lunches (foregoing breaks) to resume Intake duties. *(Documents which identify my Intake dates will be sent via US Mail.)

The Union contends that the Agency has submitted no specific evidence to dispute Ms. Dawkins' claims, including its assertion that Ms. Dawkins was on a flexible schedule in Atlanta.

I note first that Ms. Dawkins' Claim Form contains a few basic defects. One is that it incorrectly reflects the office hours of the Detroit Field Office (and, for that matter, the Atlanta District Office) as "6:30 A.M. to 6:00 P.M." I am not certain I agree with the Agency's view that that suggests a flexible schedule. It is simply an error. Second, her last three pay periods, which she lists as "Basic," and where she was then working in the Atlanta District Office, simply state, as the Agency has pointed out, days of the week, where it should indicate a time of day. For this second reason, I find that her claims for

the last three pay periods reported are essentially meaningless.

In addition, while there is considerable documentation relating to Ms. Dawkins' Intake activities, I do not see where, on their face, they make a case for these activities having caused, in part, working extra hours. The mere volume of these reports does not compel a conclusion that they were not accomplished during regular work hours. Further, the Outreach document referencing the May 4, 2005 Mid-Michigan Regional Business Expo reflects two relevant things: (1) it occurred on a Wednesday, so there is no real issue there concerning work that fell outside regular work hours; and (2) Ms. Dawkins' breakdown of the time spent (1 hour of development, 8 hours of presentation, and 3 hours of travel) likewise do not, by themselves, implicate extra hours. The one hour of development does not infer that it was done outside of regular work hours, the eight hours of presentation likewise does not suggest that the regular work day could not accommodate that work, and the three hours of travel does not suggest that it was travel that, under applicable regulations, requires monetary compensation.

Therefore, while I believe Ms. Dawkins was as attentive and careful as possible in submitting the best claim possible, I do not believe it carries her initial burden of raising a just and reasonable inference that they involved overtime hours.

According, I must deny her claim.

Doritha Brown

Ms. Brown worked as an Investigator in the Detroit District Office, working a 4/10 compressed schedule. She claims 30 hours over 15 pay periods. The Agency objects to all her claims because she failed to submit any explanation or evidence in support of her claims. In addition, the Agency notes that Ms. Brown denied on her Claim

Form that she earned and used compensatory time and that, therefore, her claims are outside the scope.

The Union contends that the amount of information submitted by claimants in the Detroit Field Office establishes that Intake, Outreach and completion of case assignments caused all employees to work beyond their scheduled work hours. Moreover, the Union notes, it is undisputed that extra hours were not recorded and employees can only estimate the hours worked, which is what Ms. Brown did in her claim. It asserts that the Agency has submitted no evidence that Ms. Brown did not perform the extra work hours for the pay periods she claimed.

Ms. Brown's Claim Form assigns 2 hours for each of the 15 pay periods in her claim. This is all the information reflected. I acknowledge the Union's representations with respect to the circumstances of all claimants in the Detroit Field Office. However, the fact remains that I have nothing to rely upon concerning the circumstances of Ms. Brown specifically. It is inappropriate, in my view, to extrapolate from what is asserted to be the general circumstances of all to those of Ms. Brown specifically. Even so, there remains an individual burden of proof that Ms. Brown herself must meet, with respect to establishing a just and reasonable inference of the amount and extent of extra work performed, even given issues of recordkeeping. Given the state of the record in this case, Ms. Brown has been unable to meet that burden.

Accordingly, I must deny Ms. Brown's claim.

Daron Lee Calhoun

Mr. Calhoun worked as an Investigator in the Detroit Field Office throughout the claims period, principally on a 5/4/9 compressed schedule. He claims 511 hours over 107

pay periods. The Agency asserts its assumption "pursuant to the policy in operation in Detroit" that Mr. Calhoun received informal compensatory time for Outreach events, even though he does not acknowledge receiving such compensation on his Claim Form. It concludes that Mr. Calhoun is entitled to payment for ½ hour for each hour he spent doing Outreach in overtime hours, which is 17.5 hours, or $634.16, plus liquidated damages, totaling $1,268.26. This presumes that Mr. Calhoun did not use the compensatory time he likely earned for Outreach in the same pay period.

The Agency objects to Mr. Calhoun's remaining claims because he has already been compensated with overtime pay for some, that he does not claim that he received compensatory time instead of overtime and that, therefore, they are outside the scope, that his claims for extra hours for Intake are not supported, that working through paid breaks does not generate overtime hours (and that, even if he did, he took time later), that his claims for travel are not compensable with overtime, that his claims were not suffered or permitted, and that he was paid overtime, as well as premium pay, while detailed to FEMA for assisting in the aftermath of Hurricane Katrina (and, therefore, was not in a covered position during the time of this detail), which payment was not suffered or permitted by Agency supervisors, who had no control or knowledge concerning such hours. The Agency also references the Declaration of Ms. Cober, which noted, among other matters, that Investigators who worked extra hours on one day would be permitted to take the same amount of time off without charge to their leave.

Included in Mr. Calhoun's Claim Form were documents referencing his Intake activities during the relevant time period (each year, from 2003 through 2009), including charge receipts. These referenced specific pay periods, indicating further that Intake

interviews typically lasted from one to two hours. He added that "[i]f an individual was late, but made it to the office before the doors closed, they were expected to be seen/served. Because members of the public must be served, we were expected to work through lunch and routinely kept beyond normal working hours." Mr. Calhoun also submitted documents relating to Outreach activities (with hours for development, presentation and travel itemized), and activities in which he engaged in aid of victims of Hurricanes Katrina and Rita (the latter activities being the subject of express objections by the Agency, as noted above).

The Union contends that, inasmuch as Mr. Calhoun submitted documents setting forth payments he received for working on Hurricane Katrina relief efforts, the extra work hours he listed for pay periods 200524, 200525 and 200526 are withdrawn from Mr. Calhoun's claim and should be deducted from any overtime amounts calculated by Rust Consulting.

Pay periods in which Mr. Calhoun earned no compensatory time are, by my ruling, not "outside the scope" and, thus, Mr. Calhoun is not precluded from recovery on that basis. Therefore, in light of my ruling on that issue, I direct that a hearing be conducted for the purpose of determining whether bases exist such that the proposed Agency remedy should not be directed.

Antoinette Coburn

Ms. Coburn was an Investigator in the Detroit Field Office, working a gliding flexible schedule. She claims 38 hours over 24 pay periods. The Agency objects to all her claims on the grounds that she worked a flexible schedule, that she failed to submit any explanation or evidence in support of her claims, and that all her claims are outside

the scope.

Ms. Coburn submitted a Supplemental Affidavit, dated October 18, 2013, stating:

> …I worked beyond my scheduled work hours performing Intake and conducting Investigations. I was on a gliding work schedule, but I did not use my work schedule to vary the length of my workweek and/or biweekly work hours. My workload was such that I came to work early and stayed late, because it was not possible to complete my work assignments during my regularly scheduled work hours of 8 hours per day, five days per week.

The Union contends that Ms. Coburn arrived at work before her scheduled arrival time and stayed after her schedule departure to complete Intake and her work assignments.

On the basis of Ms. Coburn's working a flexible schedule, I must deny her claim.

Janet Edwards

Ms. Edwards worked as an Investigator in the Detroit Field Office. During the pay period referenced on her Claim Form, she was working a 5/4/9 compressed schedule. Ms. Edwards has since passed away. Her daughter, Dominique Edwards, filed a Claim Form on Ms. Edwards' behalf, and claims 16 hours in pay period 200324. The Agency states that, based on the evidence presented, it appears Ms. Edwards may be entitled to 1.25 hours of overtime, or $44.25, plus liquidated damages, totaling $88.48, with this amount being less if she used any compensatory time earned in the same pay period.

It was during pay period 200324, specifically from Monday, November 3 to Wednesday, November 5, 2003, that Ms. Edwards attended the 2003 Michigan Rehabilitation Conference. In this regard, the Agency references Ms. Cober's Declaration, which addresses this event. While noting first that this Declaration is not evidence, Ms. Cober declared: "The annual Michigan Rehab Conference occurred Monday-Wednesday during regular business hours, except for a dinner in the evening on

the last day of the event which lasted about 2 ½ hours. Other than attending this dinner, there would be no reason for an investigator to work overtime hours attending this conference."

The Agency notes that, pursuant to Detroit Field Office policies, Ms. Edwards would have been granted compensatory time for attending the dinner event at the Conference. It presumes that the remainder of Ms. Edwards' claim is for travel time which, it asserts, is not compensable with overtime.

The Union contends that, according to Outreach forms from Agency records, Ms. Edwards participated in two events, both in 2003—the Michigan Rehabilitation Conference and the NAACP Freedom Weekend. The documents to which the Union refers are taken from the claim file of Johnnie Little-King, another Detroit claimant. According to these documents, Ms. Edwards participated in the NAACP Freedom Weekend on Friday, April 25, 2003 (pay period 200310). During that pay period, according to Agency records, Ms. Edwards was on a straight eight-hour schedule, having worked the full 80 hours in that pay period (which means that she was on either a basic or flexible schedule). Pay period 200310 was not a claimed pay period on Ms. Edwards' Claim Form. The records for the NAACP Freedom Weekend Outreach activity reflects Ms. Edwards having done 1 hour of development, 4 hours of presentation, and 1 hour of travel. In addition, the Union alleges that Ms. Cober is not a credible witness, inasmuch as she was engaged in the illegal conduct which resulted in employees' being prevented from receiving payment for extra hours worked.

Ms. Edwards' Claim Form must, in my view, be assessed with an eye less attuned to detail, inasmuch as her daughter was tasked with filling it out. It is a fair assumption

that she was not equipped to carry this out without committing technical errors along the way. Therefore, I will not bother itemizing what is not entirely correct in the execution.

In addition, the NAACP Freedom Weekend, which the Union has noted involved Ms. Edwards (with the aid of consulting the claim file of Johnnie Little-King), occurred in pay period 200310, a pay period not claimed by Ms. Edwards. Once again, this is something for which I would have been more inclined to hold Ms. Edwards accountable, had she been able to do this herself. It simply makes no sense to presume such knowledge on the part of her daughter. Therefore, I do not exclude the NAACP Freedom Weekend event from consideration.

While not knowing from the Claim Form whether compensatory time earned and used was in play here, I note that it is not relevant in light of my "outside the scope" ruling. In light of that ruling, and in light further of whether it may be possible, since Ms. Edwards is deceased, for the Union to offer testimony in support of asserting extra hours for the Outreach activities referenced, I will grant a hearing for the purpose of determining whether that basis exists such that the proposed Agency remedy should not be directed. It appears, from the information available, that any travel involved would not be compensable with overtime.

The Union is directed to inform Ms. Edwards' daughter of this ruling. I strongly believe a hearing can be avoided in this case, and I urge the parties to resolve the matter.

Mark Ellison

Mr. Ellison worked as an Investigator in the Detroit Field Office throughout the claims period. His Claim Form reflects his being on a basic schedule, to which the Agency objects (see below). He claims 229 hours over 117 pay periods.

The Agency objects to Mr. Ellison's claims, first because it contends he was on a flexible schedule for most of the claims period. In addition, it asserts that his claims lack credibility, that there is insufficient evidence to support them, that they are outside the scope, that they are not suffered or permitted by the Agency, and that they involve travel not compensable with overtime pay.

Along with his Claim Form (which bears an Irving, TX address and references the Dallas District Office), Mr. Ellison submitted the following statement:

> I swear or affirm that to the best of my knowledge, that I, in my capacity as an Equal Employment Opportunity Investigator for the Equal Employment Opportunity Commission, Dallas District Office (EEOC), and as a necessary and reasonable course and scope of my employment with EEOC, I worked the submitted overtime hours, as described in my Overtime Claims Documentation during the period of April 7, 2003 to April 28, 2009. In order to serve the public, I worked late performing intake duties, conducting on-site investigations, outreach services, and completion of work assignments in order to meet the goals set forth by the Commission.

Mr. Ellison's Claim Form is accompanied by documents that include his calendars, which notate Intake and Onsite activities, various e-mails that reference Outreach activities, travel records, Intake charge receipts and Onsite reports (those for fiscal years 2003 through 2009 being the extent of the relevance of these reports).

The Agency asserts that Mr. Ellison's calendars are not contemporaneous, only showing dates and pay periods that correspond with his claims. It alleges that some of the overtime he claims for Onsites (which, as the Agency notes, should normally be conducted during regular working hours) seems to include travel time, which is not compensable with money payment. It notes that two of Ms. Ellison's Onsite claims, for June 13, 2003 and July 5, 2006, are contradicted by his FPPS records, which reflect his being on leave both of those days. With respect to Mr. Ellison's Onsite claims in general, the Agency argues that he fails to identify, beyond the dates, where the Onsites occurred

and why they generated extra hours. The Agency challenges Mr. Ellison's overtime claims for Intake, since interviews were not scheduled after 2:30 P.M., and, particularly when he worked ten-hour days, there is no basis for arguing that extra hours were necessary, or that lunches and breaks generally had to be skipped. It argues further that Mr. Ellison's e-mails do not support the contention that extra hours were worked.

The Agency references Ms. Cober's Declaration, presumably in that she declares that Outreach presentations would normally be developed during working hours, and that there is no reason why Investigators should regularly be required to work through lunch and break time while performing Intake duties.

The Union contends that Mr. Ellison's documents demonstrate that he worked extra hours and traveled more than fifty miles beyond his duty station. It also disputes the Agency's allegations that Mr. Ellison did not actually perform Onsites on dates he asserted he did so. In addition, it notes that Mr. Ellison's claims concerning Outreach are fully supported by e-mails. Further, his Onsite reports show the date and charge number for both June 13, 2003 and July 5, 2006, dates challenged by the Agency on the ground that he was allegedly on leave. Also, it points out that Mr. Ellison's February 28, 2008 Outreach event was in the evening.

First, I am unclear on the basis for the Agency's claim that, rather than Mr. Ellison's having worked a basic schedule, he worked a flexible schedule for most of the claims period. In fact, the Agency's Objections Spreadsheet has that column blank for the entire period of his claims. That same document has Mr. Ellison's "Actual Schedule" to be a basic schedule, except for five periods when he worked a 4/10 compressed schedule.

With respect to the matter of whether Mr. Ellison was actually on leave, according to FPPS records, on June 13, 2003 and July 5, 2006, days when he claimed to be doing Onsites, the actual Onsite reports reflect that he did do Onsites on both of those days, with Charge Numbers referenced thereon. I am inclined to credit the Onsite reports over the FPPS records on this matter.

Based on all the above, I direct a hearing so that testimony may be received on material issues of fact on matters of Onsite and Outreach. Also, inasmuch as compensatory time earned is not reflected, my ruling on the "outside the scope" issue is in effect.

Marcia Hyatt

Ms. Hyatt worked as an Investigator in the Detroit Field Office throughout the claims period on a 4/10 compressed schedule. She claims 483 hours over 131 pay periods. The Agency objects to all her claims on the grounds that she has submitted insufficient evidence to support them, that they are outside the scope, that the work was not suffered or permitted by the Agency, and that her claims for travel are not compensable with overtime pay.

More specifically, the Agency argues that Ms. Hyatt's claims for one hour of overtime every time she is assigned to Intake, including, presumably, working through lunch and breaks and staying beyond her regular hours, is unclear with respect to what she is claiming on any given occasion. In addition, it argues, Ms. Hyatt's claims for travel do not agree with the documents on which she relies, and claims for weekend Outreach do not indicate whether she had received compensatory time. These documents, it asserts, do not create a just and reasonable inference that the claimed hours

were worked. Also, there is no reason to credit her claim that, on a 4/10 compressed schedule, she needed to work overtime on the one day a week she performed Intake. Nor, it argues, should she have had to work through lunch and breaks, since records reveal that Intake traffic was sometimes slow. It specifically challenges her claim of 5 overtime hours for doing Outreach in the evening during pay period 200308, after having worked a 10-hour day. Also, according to the Agency, she does not make adjustments for compensatory time earned and used in the same pay period. It particularly notes that Ms. Hyatt's travel claims are not valid, as they do not meet the exception to the rule that the proper compensation is travel compensatory time.

Along with her Claim Form, Ms. Hyatt submitted a statement as follows:

> The following are date[s] that I served on Intake. During Intake days I was not able to take breaks or lunch. Frequently, I was required to stay longer than my tour of duty. The dates are recorded by the year for efficiency…
>
> [Listing of Dates of Intake where extra hours are claimed for the years 2003 through 2007]
>
> On 3/28/2003 I attended an outreach after working hours for a total of 5 hours.
>
> Monday is my off day so whenever there is travel on a Monday, that is overtime. Additionally, many of the outreach events took place over the week end so each day would be overtime.
>
> Whenever possible the travel papers are attached to the appropriate pay period claim. The calendar used at work was scanned in and are saved by the calendar year.

Ms. Hyatt's Claim Form also includes numerous additional documents. These include travel vouchers and authorizations, Onsite documents, calendars from 2003 through March 2009 (as referenced in the Statement, above) notating principally Intake and Outreach activities, and Outreach reports for the periods 2003 through 2007.

The Union contends that Ms. Hyatt's extensive documentation, principally relating to Outreach and Onsites, which show she traveled more than fifty miles from her

duty station, fully support her claim. Specifically, these records support her claim for ten hours of overtime in pay period 200309 and for forty hours of overtime in pay period 200416. Further, the Union asserts that the Agency has submitted no specific evidence in support of its objections.

There is considerable evidence before me concerning particularly the matters of overtime for Intake and for travel while conducting Onsites and Outreach. Ms. Hyatt, as is the case with all such claims, bears the initial burden of demonstrating a just and reasonable inference, with respect to the amount and extent of such claims, that the extra hours were worked. The principal issue of proof on the matter of Intake is whether there is a showing that the claimed hours, or any portion of them, have been worked beyond Ms Hyatt's regular tour of duty. On this issue, while Ms. Hyatt was very explicit in setting forth specific dates, by year, of her Intake activity, these documents are not informative on the matter of what caused the claimed extra hours so consistently to be worked. Therefore, on the matter of Intake, Ms. Hyatt's proof is too general and inferential to be really probative.

On the matter of Outreach and Onsites, and specifically the travel asserted in connection therewith, Ms. Hyatt has made some showing that there may be instances where the travel falls within the exception to the general rule that the proper recompense is travel compensatory time. Her travel was extensive, normally over three days or more. That alone is not dispositive. However, numerous instances of travel included Mondays, which was Ms. Hyatt's 10/4 compressed schedule day off.

The Agency references what it deems Ms. Hyatt's mistaken belief that, merely because she traveled on her day off, overtime is triggered. Taken by itself, the Agency's

assertion is correct. However, the Agency assumes, based on these travel documents, that no exception generally applies so as to make the case for travel overtime, rather than travel compensatory time. I do not make that assumption, and I believe there is enough in the record to establish Ms. Hyatt's right to prove her overtime entitlement in this regard.

I will grant a hearing so that testimony may be received on this specific issue.

Sam Johnson

Mr. Johnson worked as an Investigator in the Detroit Field Office from before the start of the claims period until pay period 200603 (FPPS records show that, in the two pay periods immediately following, Mr. Johnson was on administrative leave). He worked an 8-hour-per-day, 5-day-per-week schedule. The Agency states this was a flexible schedule, based presumably on Ms. Cober's Declaration, which had Mr. Johnson working a 7:00 A.M. to 3:30 P.M. schedule, and which also states categorically that Mr. Johnson "did not work any overtime at all." He claims 566.5 hours over 72 pay periods.

The Agency objects to all his claims, contending that he is on a flexible schedule, that he failed to submit any explanation or evidence in support of his claims, and that FPPS records make clear that he did not work the hours of overtime that he claims. It asserts that, while Mr. Johnson claimed he worked far more hour of overtime than any other Investigator in Detroit, he was absent without leave and/or used leave without pay for many of these pay periods.

It notes specifically that Mr. Johnson has not produced sufficient evidence to create a just and reasonable inference that his claimed hours were actually worked, and that, in fact, he did nothing more than fill out the Claim Form and allege he worked either

7.5 or 8 hours of overtime in every claimed pay period. No description of the nature and time of this work, or any rationale for its extent, was offered, nor was any documentation included. In addition, the Agency asserts, he did not complete his Claim Form, stating he worked a basic schedule but rarely filling out when he claimed to have worked his extra hours.

While the Union acknowledges that Mr. Johnson's claim is not complete, it contends, based on what it deems the many discrepancies in the Agency's pay records, that he should be permitted to supplement his claim to correct any errors and inaccurate information.

Mr. Johnson's Claim Form is incomplete. There is no real issue on this point. I need not reach any other arguments that have been advanced by the Agency, despite the possible merits of its flexible schedule position. I can find no basis, despite the Union's assertion of inaccuracies in the Agency's pay records, to permit Mr. Johnson at this point to supplement his claim. The asserted shortcomings of the Agency's pay records are not a basis for permitting a defective claim to be cured.

Johnnie Little-King

Ms. Little-King worked as an Investigator in the Detroit District Office throughout the claims period on a 5/4/9 compressed schedule. She claims 276 hours over 151 pay periods. The Agency describes her claims as working through lunch during Intake and Outreach events, and assumes, "pursuant to the policy in operation in Detroit that Ms. Little-King received informal comp time for outreach events, even though she does not acknowledge receiving such compensation on her Claim Form." It asserts that, assuming she did receive compensatory time for Outreach events, she is probably entitled

to ½ hour for each hour she spent doing Outreach in overtime hours, which is 4.7 hours or $157.23, plus liquidated damages, totaling $314.45, assuming also that she did not use any of the compensatory time earned in the same pay period.

The Agency objects to Ms. Little-King's remaining claims on the ground that claims for working through breaks are not overtime claims, that some of her claims appear to be for travel time that is not compensable with overtime pay, that her claims are outside the scope, that some of her claimed Outreach hours are excessive, and that her supervisor could not have known she was working through lunch when on Intake.

The Agency also references the Declaration of Ms. Cober, particularly her declarations that reference Outreach presentations normally being developed during working hours, that the Michigan Rehabilitation Conference (which Ms. Little-King includes in her claim) is held during working hours during the week, with the exception of the 2.5 hour dinner Investigators are required to attend in the evening on the last day of the conference, and that, while Investigators might sometimes work through lunch during Intake, they did not generally report it and ask for compensatory time, meaning that such claims are outside the scope and do not constitute suffered or permitted hours.

Ms. Little-King submitted Outreach documents and charge receipts in support of her claim, as well as a statement, which noted the following:

> Attached, please find documentation that include an additional (1) hour worked on my assigned Intake day during each pay period. During that time, each Investigator would be assigned one day during each pay period to serve on Intake. However, during that time, I would not take any lunch or breaks until each member of the public was serviced on that day. The Detroit Field Office Intake hours were conducted throughout the entire work day.
>
> There were times during these years, I swapped intake days with another investigator and took one of their days. I have no documentation or information for the exact dates, however, it averages out to 1 hour per pay period worked.

The Union contends that the Agency has produced no specific evidence that Ms. Little-King did not work the extra hours she claims.

In light of my ruling on the "outside the scope" issue, I direct that a hearing be conducted for the purpose of determining whether bases exist such that the proposed Agency remedy should not be directed.

Rosalinda Martinez

Ms. Martinez worked as an Investigator in the Detroit District Office throughout the claims period. On her statement, below, she indicated she worked a 4/10 compressed schedule.

Ms. Martinez did not complete her Claim Form. Her only submission was an e-mail of April 23, 2012 from herself to Union counsel, stating the following:

> My service comp date was 7/20/1973 and I retired on 11/05/2010 as an Investigator GS-1810 grade 12 step 10. I held the positions of Investigator GS 1810 grades 9-12 throughout my career with the EEOC.
>
> During the period in question April 7, 2003 to April 28, 2009, I worked a Flexitour Work Schedule of 4-10. [M]y tour of duty was 4 days @ 10 hours per day with normally an off day during the week. On many occasions I did work beyond my normal 10 hours per day due [to] intake duties/responsibilities, on-[site] investigations which required over-night travel and/or the attempts meeting deadlines assigned. When I retired I did not take any government time sheets/records and or notes, travel documents that can support any claim of overtime worked hours and or compensatory time. I can not recall any time sheets submitted by me recording overtime/compensatory hours. I believe my requesting actual time sheets from the union or the field office wouldn't be of any assistance to me in this matter.

The Union indicated its belief that Ms. Martinez has declined to file a claim.

Spyridon Mellos

Mr. Mellos worked as an Investigator in the Detroit Field Office throughout the claims period, working a 4/10 compressed schedule. He claims 355 hours over 160 pay

periods. The Agency objects to his claim on grounds that he has submitted insufficient evidence to raise a reasonable inference that the alleged extra hours were worked, that his claims are outside the scope, that they are not suffered or permitted by Agency supervision, and that they involve travel that is not compensable with overtime pay.

More specifically, the Agency contends that the evidence does not support Mr. Mellos' working through breaks and lunch while on Intake (which it states Mr. Mellos wrongly stated below he performed for one week each pay period), since Intake was sometimes slow, and that his overtime claims for working Outreach are excessive. With respect to travel, he does not include sufficient detail to determine if any travel time qualifies for overtime payment. In addition, the Agency argues, Mr. Mellos makes no claim that his supervisor was aware of his overtime hours, with the possible exception of Outreach that occurred during the evening or on weekends. In this respect, the Agency believes that Mr. Mellos was awarded informal compensatory time for some of his evening and weekend Outreach, and that he used such time in the same pay period.

The Agency referenced the Declaration of Ms. Cober, in that she declared that Outreach development work was normally performed during normal working hours before the presentation, and declared further that, while Investigators might sometimes work through lunch during Intake, they did not generally report it and ask for compensatory time, and that, therefore, these claims are generally outside the scope and not hours that were suffered or permitted by the Agency.

Mr. Mellos included the following statement in his Claim Form:

> One week each pay period, I am assigned to Intake and would not take my lunch or breaks because the members of the public must be served. Intake consists of entire day with walk in hours followed by appointments beginning at 11:30 a.m. Broken down as follows: [breakdown not included]

> There were times during these years when I was on leave, onsite, or outreach and could not perform my intake duties, however, when these occasions occurred, I would swap with another Investigator and take their intake day. I do not have documentation or information for the exact days, but it comes out to one Intake day (l hour OT) per pay period.

Included also in Mr. Mellos' Claim Form is documentation reflecting numerous Outreach activities for which he claims overtime hours, along with handwritten annotations (presumably those of Mr. Mellos), reflecting the specific activities in which he engaged, as well as the overtime he claims for them. These are each accompanied with an attachment containing an explanatory narrative and are as follows:

PP 4/6-4/19/03: ACCESS Annual Meeting-4 hours OT-event date: 4/12. Also reports 1 hour for Intake during same period. Activity described in attached letter.

PP 6/1-6/14/03: Baraga Tribal Property-30 hours OT-event date: 6/2 (broken down to 2 days' travel + 6/2/03-4/10 day. Activity described in attached letter.

PP 6/1-6/14/03: Michigan Technological University-part of above.

PP 8/24-9/6/03: Arab American Anti-Discrimination Committee-4 hours OT-event date: 9/4. Also reports 1 hour for Intake during same period. Activity described in attached letter.

PP 7/11-7/24/04: Sugar Island Pow Wow (7/18), Bay Mills Indian Tribe (7/19), Gagaguwon Pow Wow (7/24), 34 hours OT-activity described in attached letter.

PP 3/6-3/19/05: Youth at Work Initiative (3/8). 10 hours OT + 1 Intake. Activity described in attached letter.

PP 5/1-5/14/05: Mid Michigan Regional Business Expo (5/4). 2 hours OT + 1 Intake. Activity described in attached letter.

PP 8/21/-9/3/05: 8th annual Rapid River Anishnabeg Pow Wow (8/27). Saginaw Chippewa Indian Tribe of Michigan (8/29). 30 hours OT + 1 Intake. Activity described in attached letter.

PP 2/19-3/4/06: Touch the Future Youth at Work Initiative (2/28). 10 hours OT + 1 Intake. Activity described in attached letter.

PP 6/11-6/24/06: Native American Conference: (6/18). 20 hours OT + 1 Intake. Activity described in attached letter.

PP 11/12-11/25/06: 2006 Michigan Rehabilitation Conference: (11/15 & 11/17). 4 hours OT + 1 Intake. Activity described in attached letter.

PP 4/29-5/12/07: Touch the Future: (5/8). 10 hours OT + 1 Intake. Activity described in

attached letter.

The Union contends that, inasmuch as the Agency has produced no specific evidence to dispute the extra hours claimed by Mr. Mellos, he should receive payment for the hours claimed.

Mr. Mellos' documents as they relate to Outreach are generally informative insofar as they address the proper factors with respect to whether such time, and the associated travel, should be compensable with overtime. His case for the Intake hours he claims is less compelling, as they are somewhat anecdotal and intended to apply to his entire Intake process, rather than attempting to key his activities to specific pay periods, as he is much better able to do with his Outreach activities.

I believe his Outreach documentation is sufficiently detailed to merit a hearing to determine, with the aid of testimony, whether these specific activities (both the Outreach events themselves and the associated travel) may merit overtime pay. The Agency, in this regard, believes that Mr. Mellos was awarded informal compensatory time for some of his evening and weekend Outreach, and that he used such time in the same pay period. This is for the Agency to prove.

I will, therefore, direct a hearing to examine this specific issue.

Kimberly Nicholson

Ms. Nicholson worked in the Detroit Field Office, and occupied three separate positions during the period of time encompassed by her Claim Form. She claims 303.82 hours over 81 pay periods. The Agency objects to her claims on the grounds that she was not in a covered position for most of the pay periods for which she makes claims, that she was on a flexible schedule, that she has submitted insufficient evidence to support her

claims, that her claims are outside the scope, that her claims are not suffered or permitted by the Agency, that they involve travel that is not compensable with overtime pay, and that she did not work the hours claimed in overtime. It also challenges Ms. Nicholson's claim of 4.05 hours in pay period 200903 (January 22, 2009) for performing offsite Intake at the NAACP, as it would have been performed during normal working hours.

Ms. Nicholson's claims begin with pay period 200609 and continue through pay period 200910. For the first four of these pay periods (200609 to 200612), she reports working a basic schedule. For the remainder of her claimed pay periods, she reports working a flexitour schedule.

More significantly, however, FPPS records reflect her occupying a Budget Analyst position (a position not covered in these proceedings) from pay period 200308 through pay period 200615; a Program Resources position (also not covered in these proceedings) from pay period 200616 through pay period 200723; and an Investigator-GS 7 (also not covered in these proceedings, inasmuch as only Investigators GS-1810, grades 9-12 are included) from pay period 200724 through pay period 200802. Only with pay period 200803 does she assume a covered position, when she becomes a GS 9 Investigator.

Therefore, all pay periods in her claim from pay period 200609 through 200802 may not be considered in these proceedings. Only those pay periods beginning with pay period 200803 are covered.

Ms. Nicholson provided with her Claim Form numerous screen shots, indicating documents on which she worked outside her regular work hours, along with Outreach documents.

The Union contends that, on the basis of computer screen shots she submitted, she has documented cases she worked on for extra work hours, as well as Outreach documents. It challenges the Agency's characterization of the work claimed during pay period 200903, and notes that, based on computer screen shots, Ms. Nicholson worked on case assignments after 3:00 P.M. The Union argues that the Agency has submitted no evidence demonstrating that Ms. Nicholson did not work the extra hours claimed.

In assessing the pay periods that are eligible to be considered – namely, pay periods 200803 until 200910 – Ms. Nicholson worked during every one of these, as she reported (although noting her hours in error as the office hours), on a 7:00 A.M. to 3:00 P.M. flexitour schedule, as the office hours of the Detroit Field Office were 8:00 A.M. to 4:30 P.M.

Based on the above, therefore, Ms. Nicholson's claim must be denied for all pay periods during which she was a covered employee.

Sheri Nixon

Ms. Nixon worked as an Investigator in the Detroit Field Office from before the beginning of the claims period until she was promoted to Supervisory Investigator in pay period 200612. She worked a 5/4/9 compressed schedule. She claims 189 hours over 159 pay periods. The Agency objects to her claims because she was not in a covered position for many of her claims, that they are outside the scope, that they were not suffered or permitted by the Agency, that they involve travel not compensable with overtime pay, and that she did not work the hours claimed in overtime.

The details concerning Ms. Nixon's assuming the Supervisory Investigator position are not disputed. Therefore, I will set them out here and dispose of that issue.

Ms. Nixon's FPPS records reveal that, as of May 14, 2006 (pay period 200612), she assumed the position of Supervisory Investigator and remained in that position for the remainder of the claims period. (These records reflect her name as Sheri Lynn Rockymore.) Therefore, inasmuch as she no longer occupied a covered position, for purposes of this case, any claims for pay period 200612 (beginning May 14, 2006) and thereafter, as the Union agrees, may not be considered. The range of eligible pay periods thus becomes pay periods 200309 to 200611.

Ms. Nixon includes with her claim a statement concerning her Intake work. Referencing numerous attached Charge Receipts she notes:

> Attached, please find documentation that include an additional (1) hour worked on my assigned Intake day during each pay period. During that time, each Investigator would be assigned one day during each pay period to serve on Intake. However, during that time, I would not take any lunch or breaks until each member of the public was serviced on that day. The Detroit Field Office Intake hours were conducted throughout the entire work day.

In addition to the above, Ms. Nixon includes with her claim numerous documents reflecting Outreach work. These include the following:

PP 10/5-10/18/03: Zeta Phi Beta Sorority (Event date: 10/11 (Saturday)-6 hours OT + 1 Intake.

PP 10/5-10/18/03: Disability CLASS Committee/FEB National Employment Disability Awareness Month (Event date: 10/16 (Thursday)-5 hours OT.

PP 10/5-10/18/03: Disability CLASS Committee/Resource Fair-Michigan State University (Event date: 10/17 (Friday)-5 hours OT.

PP 2/5/-2/18/06: African American CLASS Committee/Community Mobilization Forum (Event date: 2/18 (Saturday)-5 hours OT + 1 Intake.

PP 4/16-4/29/06: Disability CLASS Committee/American Sign Language (Event date: 4/20 (Thursday)-4 hours OT + 1 Intake.

PP 4/16-4/29/06: Disability CLASS Committee/American Sign Language (Event date: 4/27 (Thursday)-4 hours OT.

PP 4/25-4/28/07: African American CLASS Committee/NAACP Jobs Fair (Event date: 4/27 (Friday)-1 hour OT + 1 Intake. [This last event is during the period when Ms. Nixon was no longer in a covered position.]

The Agency, in referencing the Charge Receipts submitted by Ms. Nixon, asserts that, for many dates, she only saw one or two claimants and that, therefore, it is difficult to presume that she was required to take an additional hour for Intake for each pay period of her claim, and that it was necessary for her consistently to skip lunch and breaks. It also challenges the development time for Outreach Ms. Nixon claims, arguing that such time would not likely have been spent in overtime (referencing here the Gail Cober Declaration), as well as her travel time for Outreach which would not have been compensable with overtime.

The Union contends that she has worked extra hours that the Agency has not rebutted, representing Intake and Outreach, with supporting documentation for both.

Ms. Nixon's documentation for Outreach is, in my view, sufficiently detailed to suggest activity that, for two such events, may merit overtime payment. They attempt to address the proper factors with respect to the time spent in these activities, as well as the travel. They are not conclusive, on their face, but, in my view, they form the proper basis for determining overtime eligibility. Ms. Nixon's case for the Intake hours she claims is more general, and address themselves to his entire Intake process, rather than attempting to key her activities to specific pay periods. In addition, the Charge Receipt data do not, in my view, support the consistency of extra hours that she asserts.

I believe Ms. Nixon's Outreach documentation, with the exception of the last, when she was no longer in a covered position, is sufficiently detailed to merit a hearing to determine, with the aid of testimony, whether these specific activities may merit overtime

pay. Virtually all these events is either a Saturday or an evening event. FPPS records show pay periods of leave taken, and also those where the full 80 hours were worked. I will, therefore, direct a hearing to examine this specific issue.

Stephanie Perkins

Ms. Perkins worked as an Investigator in the Detroit Field Office from before the beginning of the claims period until August 2007 (pay period 200717), at which point she became a Mediator. She continued to work as a Mediator beyond the end of the claims period. She worked throughout her claimed pay periods on a gliding flexible schedule. She was among those claimants who received an extension of time to file her claim. She claims 389 hours over 189 pay periods.

The Agency objects to her claims on the grounds that she worked a flexible schedule, that she has submitted insufficient evidence to support them, that they are outside the scope, that they were not suffered or permitted by the Agency, that they involve travel that is not compensable with overtime pay, and that she did not work more than 80 hours in a pay period. It argues that Ms. Perkins' Intake claim (set forth below) is not supported by the record and, further, that her Outreach documents are unexplained and likely inflated.

Ms. Perkins included in her Claim Form a statement, with documentation, concerning her Intake and Outreach activities. It stated:

> We were assigned to Intake during the relevant period on eight (8) day rotations—this means that every pay period, I was on Intake. The Detroit Field office has very heavy foot traffic (walk-ins) and to serve the public efficiently, I would never take breaks, in addition to working over my tour-of duty hours. A minimum of one hour has been inserted for every pay period to reflect this (although it would very often be more than one hour). This one hour addition to reflect Intake drops after August 2007, when I was promoted to a Mediator and was not required to participate in the Intake rotation.

2009 OT Hours Claimed:

> This is the only Outreach I attended—the NAACP banquet held every year in Detroit.
> [Emphasis supplied]

In addition to the above, Ms. Perkins included numerous documents relating to her Outreach activities, as well as an Onsite Activity Report.

The Union contends that Ms. Perkins' flexible schedule does not prevent payment for extra work hours.

It is correct that an individual who works on a flexible schedule may, under limited circumstances, be eligible for overtime payment (referencing here Section 30.07 of the Collective Bargaining Agreement, which speaks to such hours as overtime that is authorized to be worked). Such overtime, as earlier noted, would not be "suffered or permitted."

Therefore, owing to Ms. Perkins' flexible schedule, I must deny her claim.

Joseph Romero

Mr. Romero worked as an Investigator in the Detroit Field Office throughout the claims period on a basic schedule. He claims 172 hours over 161 pay periods. The Agency objects to his claims on the grounds that he has submitted insufficient evidence to raise a reasonable inference that he worked the extra hours claimed, that his claims are outside the scope, and that they were not suffered or permitted by the Agency.

In addition to numerous calendar entries, Mr. Romero included a letter addressed to Rust Consulting along with his Claim Form, which states:

> During the period **April 7, 2003, to January 15, 2004**, I did not claim any overtime as I was mobilized by the U.S. Marine Corps in support of Operation Enduring Freedom. Likewise, from **July 15, 2004, to February 28, 2005**, I was mobilized in support of Operation Iraqi Freedom.

> In calculating the overtime worked, I was assigned Intake duty twice per month or about once per pay period. Servicing the public required not taking the usual one-hour lunch and at times, remaining after the regularly-scheduled workday (Friday Intakes were not claimed as you were pretty much on standby or in an officer of the day mode).
>
> Further, I claimed less than 50% of the days worked at home or on flexiplace. On numerous occasions, besides working the regularly-scheduled workday, the commuting and work prep time was applied to working my caseload.
>
> Overall, I believe I short-changed myself, but due to the circumstances and my inability to pinpoint exact dates on other overtime worked, I resorted only to the information recorded on my calendars. [Emphasis supplied]

The Agency disputes that, when Mr. Romero worked on Intake, he always worked through his lunch and breaks, except for Fridays, as it states that Intake traffic was sometimes very light with Investigators conducting perhaps only one or two interviews. It also disputes that Intake caused him to work late, referencing the hearing testimony of Ms. Cober to the effect that, if a potential Charging Party arrived late, they would be given a questionnaire, have them schedule an appointment and return later, unless the statutory limitations period were about to expire. It also alleges that Mr. Romero's claims referencing his working at home, along with his calendar notations, unclear and often incomplete, do not suggest extra hours worked.

The Union contends that Mr. Romero could not be exact and that, therefore, he relied on his calendar notations. It states that the Agency has submitted no specific evidence to dispute Mr. Romero's claim, and that he is entitled to the requested payments.

Mr. Romero's claims, while not excessive on their face when taking a pay-period-by-pay-period view, are generally lacking in support, especially as these claims have to be assessed in terms of individual pay periods. This is what the claims process requires. I acknowledge Mr. Romero's statement and his Intake claims. It is true that he notates

Intake on his calendar entries, but they establish Intake as a fact, not as an event that generates extra work hours, particularly on a recurring basis. Unfortunately, these calendar entries, by themselves, apart from being somewhat incomplete, do not suggest other than that the activities noted were not only scheduled, but accomplished, within Mr. Romero's regular work day. Without more, it is difficult to conclude that the burden (which initially rests with Mr. Romero) of proving, at least inferentially, that these extra hours claimed were actually beyond Mr. Romero's regular work schedule, has been carried.

Accordingly, I must deny Mr. Romero's claim.

Cynthia Samuel-Baker

Ms. Samuel-Baker worked as an Investigator in the Detroit Field Office throughout the claims period. She worked a 4/10 compressed schedule through pay period 200720 and worked a 5/4/9 compressed schedule thereafter. She claims 209 hours over 160 pay periods. The Agency objects to her claims on the grounds that she has submitted insufficient evidence to support them, that they are outside the scope, that they were not suffered or permitted by the Agency, and that they involve travel not compensable with overtime pay.

Along with her Claim Form, Ms. Samuel-Baker submitted the following statement:

> One week each pay period, I am assigned Intake duties and would not take my lunch or breaks because the members of the public must be served. Intake consists of entire day with walk-in hours followed by appointments beginning at 11:30 a.m.
>
> There were times during these years when I was on leave, onsite, or outreach and could not perform my intake duties. However, when these occasions occurred, I would swap with another Investigator and take their

> assigned Intake day. Additionally, there were times when I stay over to complete work assignments, return phone calls and or to conduct interviews.
>
> I do not have documentation or information for the exact days, but it comes out to one to two hours of overtime per pay period. Included with this Declaration, is documentation of Outreach conducted during the relevant period.

The Agency views the above statement as insufficient to create a just and reasonable inference as to the amount and extent that Ms. Samuel-Baker worked extra hours. It asserts that the references are too vague to establish specific days when overtime is claimed, and likewise too vague to establish the amount and extent of such overtime. It also challenges Ms. Samuel-Baker's claim for extra hours working Intake and not taking lunch and breaks during this time, noting that the records demonstrate that Intake did not uniformly produce heavy traffic, and that some days required very few interviews.

The Agency also points to Ms. Samuel-Baker's FPPS records which, as it argues, reflect that she used leave without pay in nine pay periods – namely, pay periods 200310, 200322, 200323, 200326, 200409, 200413, 200416, 200426 and 200615. These prove, as the Agency argues, that Ms. Samuel-Baker's claim to have worked more than 80 hours in these pay periods, and therefore meriting overtime pay, is not accurate.

Ms. Samuel-Baker's Claim Form likewise includes numerous Outreach records. They may be summarized as follows:

> 5/14/03 (Wednesday)-Lansing, MI
> Annual Asian Pacific American Heritage Celebration
> 9 hours claimed (1-Development; 1-Presentation; 1-Travel)
>
> 11/18/03 (Tuesday)-Detroit, MI
> Council of Baptist Pastors of Detroit
> 4 hours claimed (1-Development; 2-Presentation; 1-Travel)

3/22/03 (Saturday)-Southfield, MI
Korean Journal Michigan Edition
1 hour claimed (Development)

4/5/03 (Saturday)-Troy, MI
Korean Journal Michigan Edition
1 hour claimed (Development)

4/19/03 (Saturday)-Southfield, MI
Korean Journal Michigan Edition
1 hour claimed (Development)

5/4/04 (Tuesday)-Lansing, MI
Asian Pacific Heritage Celebration
9 hours claimed (1-Development; 4-Presentation; 4-Travel)

3/23/04 (Tuesday)-Lansing, MI
Building Cultural Competency Training
6 hours claimed (2-Development; 1-Presentation; 3-Travel)

2/10/04 (Tuesday)-Detroit, MI
MDCR Liaison Meeting
4 hours claimed (1-Development; 2-Presentation; 1-Travel)

8/5/04 (Thursday)-Detroit, MI
NAACP Detroit Branch
8 hours claimed (1-Development; 6-Presentation; 1-Travel)

3/2/05 (Wednesday)- Detroit, MI
United Sikh Community
2 hours claimed (1-Development; 1-Presentation)

7/20/06 (Thursday)-Detroit, MI
Detroit TAPS Program
4 hours claimed (2-Development; 2-Presentation)

10/20/06 (Friday)-Southfield, MI
SMILG Quarterly Meeting
4 hours claimed (1-Development; 2-Presentation; 1-Travel)

4/27/07 (Friday)-Detroit, MI
NAACP Freedom Institute
6 hours claimed (1-Development; 4-Presentation; 1-Travel)

5/25/07 (Friday)-Detroit, MI

International Detroit Black Expo
9 hours claimed (8-Presentation; 1-Travel)

4/27/07 (Friday)-Detroit, MI
NAACP Jobs Fair
9 hours claimed (8-Presentation; 1-Travel)

6/20/07 (Wednesday)-Detroit, MI
DHS Immigration Swearing In Ceremony
5 hours claimed (4-Presentation; 1-Travel)

10/23/07 (Tuesday)-Detroit, MI
Henry Ford Health Systems 4th Annual Diversity Celebration
5 hours claimed (1-Development; 3-Presentation;1-Travel)

The Agency challenges these Outreach claims as well. It argues that the records in support of these Outreach events do not support an overtime claim. Rather, it notes, they indicate daytime workday Outreach.

The Union contends that Ms. Samuel-Baker worked weekends for Outreach. In addition, it notes that, with respect to the Agency's questioning Ms. Samuel-Baker's use of Leave Without Pay for certain pay periods, the FPPS records for pay period 200615 show that Ms. Samuel-Baker used no Leave Without Pay, the record showing zero hours and the remaining amounts being for 5 or fewer hours. It states that the Agency has not submitted any leave slips to show the purpose of the Leave Without Pay, and that employees are permitted to take Leave Without Pay, Annual Leave, or Sick Leave for serious medical or family related illnesses. The above leave records, the Union submits, do not diminish the extra hours claimed by Ms. Samuel-Baker.

In this regard, while it is correct that pay period 200615, as the Union points out, shows no hours of Leave Without Pay used, not all the remaining amounts were for 5 hours or fewer. Pay period 200322 shows 16 hours taken and pay period 200326 likewise shows 16 hours taken (designated as FMLA). The Union is also correct in

pointing out that the Agency does not submit any leave slips to reflect the purpose of the Leave Without Pay. All we do know is the FMLA designation for the 16 hours taken in pay period 200326. The Union asserts here that leave alone does not diminish the extra hours claimed by Ms. Samuel-Baker. I do not believe that position is supported, given 5 CFR §551.401(c).

As has been seen in other claims, the issue of extra hours claimed for Intake, although the individual numbers in each pay period are small, presents a challenge when it comes to establishing at least a reasonable inference that this time was worked. I find the justification for such time here not to be sufficient to reach such an inference.

On the matter of Outreach, I have numerous records, all of which have been summarized above. They are not accompanied by any explanatory narrative, as we have seen in other claim files, but, as far as these records show, the vast majority occurred on weekdays, and I do not see any reflection of their having occurred outside regular work hours (or that they extended beyond such hours). More specifically, of the sixteen Outreach events identified, only three (March 22, 2003; April 5, 2003; and April 19, 2003) occurred on a weekend (all three on Saturdays). Ms. Samuel-Baker claimed only 1 hour, that being for Development, in all three of these Saturday events. As far as the rest of the Outreach events, all on weekdays, only two claimed as much as 8 hours for Presentation (Friday, April 27, 2007 and Friday, May 25, 2007). Further, insofar as travel is concerned, there is nothing I am able to note that would suggest that such travel is such that it would be compensable with overtime pay.

In any event, I am unable to identify sufficient evidence to cause a just and reasonable inference that Ms. Samuel-Baker's claim should be granted. Accordingly, it

must be denied.

Charmin Talley-Houie

Ms. Talley-Houie worked as an Investigator in the Detroit Field Office throughout the claims period on a 5/4/9 compressed schedule. She claims 213 hours over 134 pay periods. The Agency objects to her claims on grounds that she has submitted insufficient evidence to support them, that they are outside the scope, that they were not suffered or permitted by the Agency, and that they involve travel not compensable with overtime pay.

Ms. Talley-Houie attaches the following statement to her Claim Form:

> One week of each pay period, I was assigned to Intake, and would not take my lunch or breaks because members of the public must be served. Intake consists of an entire day with walk in hours followed by appointments beginning at 11:30 a.m.
>
> There were times during these years when I was on a leave of absence, an onsite, or outreach and could not perform all or some of my intake duties, however, when these occasions occurred, I would swap intake days with another investigator and take one [of] their intake days. I have no documentation or information for the exact dates, but it averages out to (1) hour per pay period worked.

Ms. Talley-Houie also includes detailed Charge Records in support of her claimed Intake hours, as well as records of her Outreach activities. The latter include records of Outreach events, some on evenings or weekends, as well as Ms. Talley-Houie's own summary of the nature of the events and when they occurred.

The Agency objects to Ms. Talley-Houie's assertion above that she worked through her lunch and breaks, noting that the records reflect that Intake traffic was inconsistent and often slow. It also objects to Ms. Talley-Houie's contention that she worked overtime during Outreach to the extent she claims, and that her claimed travel was eligible for overtime payment or outside the category of local or home-to-work

travel.

The Union contends that Ms. Talley-Houie worked on weekends and traveled more than fifty miles outside her duty station to perform Onsites. It asserts that the Agency has submitted no specific evidence to show Ms. Talley-Houie did not work the extra hours she claimed.

Ms. Talley-Houie's claim for Intake is supported by numerous Charge Receipts that are able to give a sense of the volume of such traffic at different point in time. They are not consistent, and surely some times were busier, or more heavily trafficked, than others. The problem of proof, however, remains. There is, in my view, no reliable way to infer whether, at any given point, or on any given day, the number of potential Charging Parties Ms. Talley-Houie met with actually caused her to generate extra work hours. I find it difficult to reach such an inference, even given these Charge Records.

On the matter of Outreach, Ms Talley-Houie's documentation is substantial and, in my view, does create an inference that, particularly with work that appeared to be performed in the evenings, weekends and scheduled days off, overtime hours may have been generated. FPPS records do show that not all pay periods were a full 80 hours, but there is sufficient evidence to require examination. While the Agency believes Ms. Talley-Houie was awarded informal compensatory time for some of this evening and weekend Outreach, such informal compensatory time is the Agency's burden to show.

Accordingly, I am prepared to grant a hearing on the matter of Ms. Talley-Houie's Outreach activities.

Stephen Weber

Mr. Weber worked as an Investigator in the Detroit Field Office from pay period

200716 through the end of the claims period, working a 4/10 compressed schedule. He claims 59 hours over 21 pay periods. The Agency objects to his claims because he has submitted insufficient evidence to support them, that they are outside the scope, that they were not suffered or permitted by the Agency, and that they involve travel not compensable with overtime pay.

Mr. Weber submits the following statement with his Claim Form:

> I have claimed 1 hour of OT each pay period, as I am assigned to Intake and would not take my lunch or breaks because the members of the public must be served. Intake consists of the entire day with walk-in hours followed by appointments beginning at 11:30 a.m. Broken down as follows: [no breakdown included]
>
> There were times during these years when I was on leave, onsite, or outreach and could not perform my intake duties; however, when these occasions occurred, I would swap with another Investigator and take their intake day, thus sometimes performing intake for two days in a set pay period. I do not possess documentation or information for the exact days, but our intake schedule averages out to approximately one Intake day (1 hour OT) a pay period.

In addition, Mr. Weber submits statements documenting several Onsites. They are as follows (representing pay periods 200819, 200825 and 200910, respectively):

> I have included documentation for the Onsite performed during the 09/10/2008 pay period. This was an onsite at Patton Archery and Sunrise Café with interviews which took place in the evening (Lupton, Vulcan, Norway and Iron Mountain, MI). Further, I drove home the 10 hours on my day off. It was 16 hours of OT. In addition, I worked 1 hour of OT for the intake during this pay period. The total of OT for this pay period was 17 hours of OT.
> ---
> I have included documentation for the Onsite performed during the 12/03/2008 pay period. This was an onsite at General Motors with interviews which took place in the evening (Cuyahoga County, OH.) It was 6 hours of OT. In addition, I worked 1 hour of OT for the intake during this pay period. The total of OT for this pay period was 7 hours of OT.
> ---
> I have included documentation for the Onsite performed during the 05/04/2009 pay period. This was an onsite at Patton Archery with interviews which took place in the evening (Vulcan, Norway and Iron Mountain, MI.). Further, I drove home the 10 hours on my day off. It was 16 hours of OT. In addition, I worked 1 hour of OT for the intake during this pay period. The total of OT for this pay period was 17 hours of OT.
> ---

The Agency contends that Mr. Weber's Intake claims, as set forth in his statement, above, do not indicate that he was required to work through lunch and breaks on every occasion, particularly since records show that Intake traffic varied and sometimes was very light. In so noting, it refers again to the Declaration of Ms. Cober, who stated that, if an Investigator did work through lunch on Intake, he or she would typically not ask for compensatory time but would instead make up for it on another day.

The Union contends that the Agency has submitted no specific evidence to dispute Mr. Weber's claims for extra work hours, documented in his written statements.

Apart from three pay periods where Mr. Weber claimed multiple hours of overtime performing Onsites, his claims consist solely of Intake claims of one hour each, or, as he deemed it, an average figure per pay period. Mr. Weber's Intake claims are similar to many others, in their extent and in their reasons, and I am not persuaded that they reasonably infer that overtime hours were required to perform this work.

The Onsite claims, as I view them, are different in character. It is not only because they are less regular, but they frequently involve a greater variety of circumstances, hours, potential travel implications, and generally, therefore, a greater likelihood that extra hours may be involved. Mr. Weber's descriptions of Onsites, as related above, are specific as far as the nature, location and time of the Onsites, and attempts further to describe why the nature of this work required extra hours. However, after reviewing his FPPS records, along with the travel time he claims that is not eligible for overtime, the Onsite claims for pay periods 200819 (where FPPS records show him working 70 hours), 200825 (where FPPS records show him working 70 hours), and 200910 (where FPPS records show him working 69.5 hours), ultimately, in my view, do

not generate overtime hours.

Accordingly, Mr. Weber's claim must be denied.

Deanna Wooten

Ms. Wooten worked as an Investigator in the Detroit Field Office beginning with pay period 200811, and continued through the end of the claims period. She claims 30 hours over 19 pay periods.

Ms. Wooten claimed on her Claim Form that she was on a gliding flexible schedule. However, the Agency notes, FPPS records reflect that she worked 5/4/9 compressed and 4/10 compressed schedules during the relevant period (in this case, from June 2008 to April 2009).

The Agency objects to all her claims on the grounds that she failed to submit any explanation or evidence in support of her claims, and that her claims are outside the scope. It states that, other than filling out her Claim Form and submitting Intake records, she provided nothing.

Along with her Claim Form, Ms. Wooten submitted charge receipts to support her Intake duties.

The Union notes that Ms. Wooten has been employed with the Agency since April 2003 in positions other than that of Investigator. It contends that Ms. Wooten's inadvertent error in notating her work schedule does not invalidate her claim. It notes that the Agency has submitted no specific evidence to show that Ms. Wooten did not work the hours she claims.

Apart from some Charge Receipts and a few handwritten notations thereon, there is nothing before me that can create a just and reasonable inference that Ms. Wooten may

have worked extra hours, either during Intake or any other activity, during the pay periods she claims.

Accordingly, I must deny this claim.

Patricia Jo McNeil

Ms. McNeil worked as a Mediator in the Detroit Field Office from before the beginning of the claims period until her retirement on May 31, 2008. According to FPPS records, she worked a 5/4/9 compressed schedule. She was among the claimants who received an extension of time to file.

Ms. McNeil did not submit a completed Claim Form. She did sign and date a Claim Form on May 17, 2012. She added a statement as follows:

> I am a former employee of the Detroit Field Office. I retired on May 31, 2008. My Classification was Mediator GS-301, grade 13/7.
>
> When I retired in 2008, all of my records were destroyed. The Union sent me records that the EEOC had provided them, which did not contain any useful information to establish my claim. On April 4, 2012, I requested information from the Detroit Field office, to date nothing has been received. SEE ENCLOSURE [which is addressed to Ms. Cober, requesting Biweekly Cost Accounting Sheets, SF-71 Leave Request Forms, and Agency Compensatory Records, including request forms and e-mails submitted to her supervisor]
>
> I worked a lot of overtime to accommodate the needs of Charging Parties and Respondents to have mediations at various hours and locations. On the days I held a mediation in the office I usually worked through my lunch hour to complete the mediation. As I was instructed by my supervisor and per the office policy, I was told not to record anything but my regular hours. I always verbally informed my supervisor when I had worked overtime and was told to take compensatory time.
>
> To the best of my memory and recollection I worked at least 2 hours of overtime each pay period, during the relevant time frame of April 7, 2003 through May 31, 2008.

The Agency contends that she has failed to file a valid Claim Form. It goes on to make other objections for the record, but this is its principal one.

The Union contends that, inasmuch as Ms. McNeil requested and did not receive

her records, she submitted the above statement. It argues that the Agency may not use its refusal to provide records as a reason to defeat her claim, which she submitted to the best of her recollection. It notes that the evidence revealed that Mediators were working extra work hours conducting mediations and Outreach. The Union describes her claim, in accordance with her statement, to be for 272 hours for the pay periods from April 7, 2003 through May 31, 2008. The Agency, it asserts, has submitted no specific evidence to dispute Ms. McNeil's extra work hours.

This is a circumstance where I am required to resort to the parties' understandings with respect to the filing of a valid claim. The parties were at great pains to negotiate a claims process whereby certain steps had to be followed and certain information provided in a format that was specific and well defined.

I must point out that, had Ms. McNeil filled out a Claim Form so as to reflect the very same overtime information she sets forth in her statement, she would, at the very least, have filed a valid claim, irrespective of its ultimate merits. Indeed, while she submitted her information in the form she did on May 17, 2012, she could well have taken until July 28, 2012 to do so, as she had been granted an extension until that time.

Unfortunately, I am unable to consider the merits of Ms. McNeil's claim because it has been presented to me in a form other than what the parties themselves jointly deemed necessary to this process.

Accordingly, the claim must be denied.

EL PASO

The Union notes generally, with respect to El Paso claimants, that supervisors in the El Paso Area Office reviewed claimants' sign-in/sign-out sheets and that, therefore,

extra hours claimed that are supported by sign-in/sign-out sheets were worked with supervisory approval.

As the parties are aware, I have made a ruling on the "outside the scope" issue earlier in this Report and I incorporate it by reference, as appropriate, into my analysis of these claims.

Georgia Cathy Blanco

Ms. Blanco worked as an Investigator in the El Paso Area Office throughout the claims period on a 5/4/9 compressed schedule. She claims 83.75 hours over 59 pay periods. The Agency objects on grounds that her claims are outside the scope.

Ms. Blanco, as the Agency correctly notes, relies exclusively on a series of sign-in/sign-out sheets in support of her claims. While, as the Agency states, Ms. Blanco did not explain the relationship between the amount of overtime she claims and the sign-in/sign-out sheets, it assumed that she arrived at her claimed hours on the amount of time she worked each day after 6:00 P.M. It concludes, therefore that "[t]hese records create a just and reasonable inference that Ms. Blanco worked overtime," and, in addition, that her claim of 83.75 overtime hours seems "reasonably accurate." The Agency also presumes that her supervisor reviewed these records and, thus, was at least constructively aware of their contents.

The Agency referenced hearing testimony to the effect that supervisors did not frequently grant compensatory time off, and that, therefore, this may represent the circumstances of other Investigators in the El Paso Area Office as well. For this reason, the Agency argues that, inasmuch as Ms. Blanco did not reflect in her Claim Form any compensatory time having been earned or granted in any pay period, her claim is,

therefore, outside the scope of these proceedings.

The Union contends that Ms. Blanco merits the relief she seeks because the Agency admits the hours on her sign-in/sign-out sheets are accurate extra work hours.

Inasmuch as there need not be, pursuant to my ruling, compensatory hours earned in a pay period in order for a claim to be potentially payable, I find that Ms. Blanco's extra work hours, as set forth in her Claim Form, are payable, along with an equal amount of liquidated damages. Had there been compensatory time earned and used, this would operate as an offset. There is no evidence here that such is the case.

Accordingly, the Agency is directed to pay this claim. Rust Consulting will perform the necessary calculations and the Agency shall pay Ms. Blanco, in care of the Union, within sixty (60) days of the parties' receipt of this Report.

Mary Christi Bobadillo

Ms. Bobadillo worked as an Investigator in the El Paso Area Office throughout the claims period, working a 5/4/9 compressed schedule. She claims 150.19 hours over 70 pay periods. Ms. Bobadillo testified at the hearings in St. Louis, MO. The Agency objects on the ground that Ms. Bobadillo's claims are outside the scope.

The Agency presumes, based on her Claim Form, that Ms. Bobadillo relies exclusively on a series of sign-in/sign-out sheets in support of her claims. While it does not believe Ms. Bobadillo explains the relationship between the amount of overtime she claims and the sign-in/sign-out sheets, it believes she calculated her overtime based on the amount of extra time she worked each day in excess of her scheduled hours. The Agency concludes that these contemporaneous records create a just and reasonable inference that Ms. Bobadillo worked overtime hours. While the Agency states it is

unable to discern how accurate these claimed hours are, it believes these numbers are "within the realm" of what can be reasonably determined from the time records. The Agency presumes that Ms. Bobadillo's supervisor reviewed the sign-in/sign-out sheets and is, thus, at least constructively aware of their contents.

The Agency concludes from Ms. Bobadillo's testimony (although her Claim Form also suggests) that she did not receive compensatory time. It therefore believes her claim is outside the scope of these proceedings. In the alternative, it claims that, if she did receive and use compensatory time, this would operate as an offset.

The Union notes that the Agency admits the hours reflected in Ms. Bobadillo's claim are accurate extra work hours from the sign-in/sign-out sheets.

Inasmuch as there need not be any compensatory hours earned in a pay period in order for a claim to be potentially payable, I find that Ms. Bobadillo's extra work hours, as set forth in her Claim Form, are payable, along with an equal amount of liquidated damages. Had there been compensatory time earned and used, this would operate as an offset. There is no evidence here that such is the case.

Accordingly, the Agency is directed to pay this claim. Rust Consulting will perform the necessary calculations and the Agency shall pay Ms. Bobadillo, in care of the Union, within sixty (60) days of the parties' receipt of this Report.

Arturo Carrion

Mr. Carrion worked as an Investigator in the El Paso Area Office throughout the claims period on a 5/4/9 compressed schedule. He claims 117.87 hours over 103 pay periods. Mr. Carrion testified at the hearings in St. Louis, MO. The Agency objects to his claims as outside the scope. The Agency further objects to all his claims from pay

period 200703 through 200910 on grounds that he did not work the claimed overtime. In addition, it asserts that he has already been fully compensated for his overtime work in pay period 200706.

More specifically, the Agency, addressing Mr. Carrion's claims through pay period 200701, notes that his sign-in/sign-out sheets from 2003 until March 2006 create a just and reasonable inference that Mr. Carrion worked overtime in the amounts he claims for that period. In addition, the Agency presumes that Mr. Carrion's supervisor reviewed the sign-in/sign-out sheets and would, therefore, have at least constructive knowledge of their contents. With respect to the period from March 2006 through December 2006, Mr. Carrion stated that he worked 30 minutes per pay period owing to "intake and other duties assigned beginning with pay period 8." The Agency deemed this reasonable as well. However, the Agency asserts its "outside the scope" argument for these periods.

Beginning with pay period 200703, however, the Agency challenges Mr. Carrion's claims. Beginning with the year 2007, Mr. Carrion submitted a declaration in which he claimed:

> One week each month I am assigned to intake. During my intake week, because members of the public must be served, I would stay late 3 hours during that week to complete my work. [Listing 12 pay periods during 2007] [Emphasis supplied]

Mr. Carrion submitted similar declarations for 2008 and 2009.

In addition, Mr. Carrion submitted a Declaration describing an Outreach event on Saturday, February 24, 2007 in Roswell, NM (pay period 200706). He asserted the following with respect to this activity:

> During Pay Period six (6) of 2007 (02-18-07/03-03-07); as part of a community based outreach program throughout the State of New Mexico by EEOC, I was assigned to travel to Roswell, New Mexico on February 24, 2007 (Saturday) "to

> present information about the EEOC and the federal civil rights statutes to attendees, as part of a panel discussion with other agencies and organizations."
>
> Although, the event was scheduled to last approximately four (4) hours, this was an all-day event that included travel from my place of residence to the scheduled event in Roswell, New Mexico.
>
> The total time: The time spent to travel to the event, attend the event, and travel back was nine (9) hours.
>
> Travel from residence to office is 30 minutes.
>
> Please see the attached e-mail(s) that confirm that the event was scheduled and that attendance (work) to the event was completed.
>
> Note: unofficial compensatory time of approximately twelve-hours (12) was provided by Area Director Teresa Anchondo.

The Agency contends, for pay periods 200703 and following, that Mr. Carrion did not work the claimed overtime. It argues further that Mr. Carrion was already fully compensated for his overtime work relating to the Roswell, New Mexico activity. It challenges Mr. Carrion's assertion with respect to his being assigned to Intake one week per month and that he worked 3 hours late in each of these weeks, and deems them not credible. In addition, it asserts that Mr. Carrion's claims for these pay periods are far greater than his claims for the earlier pay periods for which he had contemporaneous documentation and six times greater than his Intake-related claims in the year 2006, for which he provides no explanation.

With respect specifically to pay period 200706, for which he claims 9 hours (the Roswell, New Mexico Outreach), Mr. Carrion had testified in the hearings that his supervisor had given him unofficial compensatory time at the rate of time-and-one-half for his Outreach work on that date. As noted first above, it argues thus that Mr. Carrion has been fully compensated for this work.

The Union contends that the Agency's assertions objecting to Mr. Carrion's

claims are incorrect, and the Agency has failed to produce evidence to dispute these claims. It notes specifically that Mr. Carrion noted on his Claim Form the compensatory time used during pay period 200706 for the Roswell, New Mexico Outreach, and that the Agency is not entitled to a credit for compensatory time received. It asserts further that the Agency erroneously states that Mr. Carrion claimed to have stayed 3 hours late on Intake, and that Mr. Carrion, having noted 3 hours for the pay period, was not claiming he worked 3 hours past his scheduled departure time.

I incorporate my "outside the scope" ruling by reference into my analysis of Mr. Carrion's claim, through pay period 200701. Inasmuch as there need not be any compensatory hours earned in a pay period in order for a claim to be potentially payable, I find that Mr. Carrion's extra work hours, as set forth in his Claim Form through pay period 200701, are payable, along with an equal amount of liquidated damages. Had there been compensatory time earned and used, this would operate as an offset. There is no evidence here that such is the case.

With respect to pay periods 200703 and thereafter, I address the matter of Mr. Carrion's Intake claims. These, as the Agency notes, steadily caused a three-hour-per-pay-period claim beginning in 2007. This pattern was not present in prior years. If there were a plausible reason for it, beyond the declarations themselves, I would be inclined to weigh them accordingly. However, I do not find such support.

On the matter of the Roswell, NM Outreach in pay period 200706, Mr. Carrion's testimony appeared to support his having received compensatory time at the rate of time-and-one-half for that event. Crediting that assertion, Mr. Carrion was fully compensated therefor.

Accordingly, consistent with my "outside the scope" ruling, the Agency is directed to pay this claim for all pay periods through 200701. Rust Consulting will perform the necessary calculations and the Agency shall pay Mr. Carrion, in care of the Union, within sixty (60) days of the parties' receipt of this Report. For all pay periods thereafter, Mr. Carrion's claim is denied.

Gustavo Hernandez

Mr. Hernandez worked as an Investigator in the El Paso Area Office throughout the claims period on a 5/4/9 compressed schedule. He claims 104.6 hours over 70 pay periods. The Agency objects on grounds that his claims are outside the scope, and that one claim is for noncompensable travel time.

The Agency notes Mr. Hernandez' reliance on a series of sign-in/sign-out sheets, along with travel documents. While, according to the Agency, Mr. Hernandez does not explain the relationship between the amount of overtime he claims and the sign-in/sign-out sheets, it concludes that he calculated his overtime based on the amount of extra time he worked each day after 4:30 P.M. or before 7:00 A.M. It views these records as sufficient to create a just and reasonable inference that Mr. Hernandez worked overtime, and that, comparing his sign-in/sign-out sheets with the amount of hours he claims per pay period, it deems the amount of overtime he claims as reasonably accurate. It also presumes that Mr. Hernandez' supervisor reviewed the sign-in/sign-out sheets, suggesting at least constructive knowledge of their contents.

In addition, for pay period 200805, Mr. Hernandez claims overtime for his travel time between El Paso and Dallas in the amount of 4 ¾ hours. His travel was from Monday, February 18 to Tuesday, February 19, 2005. The Agency views this travel time

as noncompensable, as it occurred after working hours. In addition, it notes that Mr. Hernandez indicated in writing, along with his computation of hours, that "I did receive comp. time" for the travel which, as the Agency asserts, is the appropriate form of remuneration.

The Union contends that, while Mr. Hernandez noted on his Claim Form that he received compensatory time for pay period 200805, FPPS records also do not reflect that he used that time (and that, therefore, no offset is appropriate). It argues that Mr. Hernandez' travel is compensable, inasmuch as he traveled overnight as a passenger. In addition, the Agency admits the hours claimed by Mr. Hernandez are accurate from the sign-in/sign-out sheets.

Inasmuch as there need not be any compensatory hours earned in a pay period in order for a claim to be potentially payable, I find that Mr. Hernandez' extra work hours, as set forth in his Claim Form, are payable, along with an equal amount of liquidated damages. Rust Consulting will perform the necessary calculations and the Agency shall pay Mr. Hernandez, in care of the Union, within sixty (60) days of the parties' receipt of this Report..

Finally, Mr. Hernandez acknowledged having received 4 ¾ hours of travel compensatory time for the Dallas trip. The Union is correct in noting that Mr. Hernandez' FPPS records do not reflect any compensatory time used during pay period 200805. However, these hours are not compensable as overtime, consistent with Mr. Hernandez' notes of his travel. Travel overnight as a passenger is only one element needed for eligibility for overtime payment. (See discussion of this in **LEGAL ISSUES**.)

Jesse Ramiro Hernandez

Mr. Hernandez worked as an Investigator in the El Paso Area Office from March 2, 2008 through March 28, 2010, working a 5/4/9 compressed schedule. He claims 9 hours over 9 pay periods. The Agency objects to his claims on grounds that he submitted insufficient evidence to support a claim, that his supervisor could not have known of any overtime worked, and that his claims are outside the scope.

The Agency notes that Mr. Hernandez provided no information about the type of work he was performing for this one-hour period in nine pay periods, the time of day the work was performed, or why such work required extra hours. In addition, considering the brief periods claimed, it is highly unlikely that his supervisor would have known about its occurrence unless Mr. Hernandez so informed him.

The Union contends, in response to the Agency's argument that no documentation of Mr. Hernandez' alleged extra work hours accompanies his Claim Form, that the claims process does not require documentation, asserting that "[t]he employee's claim is submitted under penalty of perjury and additional documentation is not required." It points out that, as two other El Paso claimants testified, when on Intake, members of the public come in at close to 5:00 P.M. and must be seen, the result being that work after hours is necessary to complete this work. It notes that the Agency failed to keep accurate records of employees' work hours and has submitted no specific evidence to demonstrate that Mr. Hernandez did not work or could not have performed work for the benefit of the Agency during the pay periods claimed.

While I acknowledge the Union's arguments here concerning what may or may not be required in the claims process, the fact is that the claimant bears the initial burden of proof in this process. If I am given no idea what kind of work allegedly merits

overtime payment, no idea when this work was performed, and no idea whether such work was, in fact, performed outside regular work hours, I am not inclined to be persuaded that that initial burden of proof has been carried.

Such is the case here. Accordingly I am required to deny this claim.

Sylvia Richards

Ms. Richards worked as an Investigator in the El Paso Area Office from June 2001 to February 28, 2005 on a 5/4/9 compressed schedule. She claims 57.5 hours over 28 pay periods. The Agency objects on grounds that her claims are outside the scope. It notes Ms. Richards' reliance principally on a written statement and a series of sign-in/sign-out sheets to support her claims.

Ms. Richards submitted the following statement with her Claim Form:

> The Agency did not record extra hours worked and we were discouraged by our Supervisor, Terry Anchondo and Area Director, Robert Calderon from recording extra hours. I worked over 80 hours a week every pay period, except when I was out on leave due to my own illness, my parents' illness, or bereavement after my parents passed away in 2003 and 2004.
>
> While in Intake, I was told to come in to the office on my days off and was expected to work overtime when the Charging Party and the public were served at their own convenience. I would stay late during the week of Intake to accommodate their needs and complete my work.
>
> I worked on Compressed Time 5/4/9, and NEVER took any break time off. My normal hours were 8:30-6:00 pm. Office hours, if I remember correctly were 8:30-5:00 pm. I worked late daily, and nightly was the last employee in the office. If I was ever offered compensation for working over my regularly worked schedule, it was never in the manner of over time pay. I received compensatory time for time worked on rare occasions.
>
> I left the Agency not of my own accord due to the hostile work environment. I was originally hired in the Dallas District Office, where I was the 2nd best settlement negotiator. I requested a hardship transfer due to my parents' sudden illness and was allowed to transfer back home to El Paso, TX at the recommendation of the Acting District Director and Manager, Alma Anderson.
>
> Despite my parents' grave illness, I worked diligently and closed as many cases as anyone else in the office. I was told that in El Paso, TX again I was the 2nd

> highest in settlement closures. I have a number of emails to support my statements and will be made available upon request.
>
> I have submitted my Claim Sheets with pay period and hours worked to the best of my ability referring back to the Time Sheets attached. Thank you for your assistance with this claim. [Emphasis supplied]

The Agency deems Mr. Richards' sign-in/sign-out sheets to be a reasonably complete and accurate record of all extra hours she worked between pay periods 200311 and 200423. It notes that the records do not indicate when Ms. Richards was assigned to Intake, and it found no indication that she worked on days when she was not scheduled, but that the sign-in/sign out sheets do show many days on which she worked late. It concludes that these records create a just and reasonable inference that Ms. Richards worked extra hours. Despite some computational errors and noncompensable *de minimis* work, it find Ms. Richards' 57.5 hours of overtime to be a reasonably accurate claim. In addition, it notes that the sign-in/sign-out sheets are signed by a supervisor, suggesting at least constructive knowledge of the hours worked.

However, the Agency asserts its "outside the scope" argument for these periods, noting, in this regard, that Ms. Richards acknowledged in her statement: "I received compensatory time for time worked on rare occasions," and noting further that other Investigators in the El Paso Area Office testified that they received no compensatory time for their extra hours.

The Union contends that Ms. Richards is entitled to the relief she requests, inasmuch as the Agency admits the hours on her Claim Form are accurate.

Inasmuch as, consistent with my "outside the scope" ruling, there need not be any compensatory hours earned in a pay period in order for a claim to be potentially payable, I find that Ms. Richards' extra work hours, as set forth in his Claim Form, are payable,

along with an equal amount of liquidated damages. Rust Consulting will perform the necessary calculations and the Agency shall pay Ms. Richards, in care of the Union, within sixty (60) days of the parties' receipt of this Report.

Rollin Wickenden

Mr. Wickenden worked as an Investigator in the El Paso Area Office throughout the claims period, working a 5/4/9 compressed schedule. He testified at the hearings in St. Louis, MO. He claims 456 hours over 71 pay periods. The Agency objects on grounds that he did not work many of the claimed overtime hours, that he has already been given overtime pay for some of the claimed hours, and that his claims are outside the scope.

Mr. Wickenden provided a series of sign-in/sign-out sheets, along with a spreadsheet that reflects his calculation of extra minutes per day and per pay period, based on the sign-in/sign-out sheets. The Agency agrees that these records create a just and reasonable inference that Mr. Wickenden worked overtime, and presumes that his supervisor reviewed these records, suggesting at least constructive knowledge of the extra hours worked. However, as the Agency explains in detail, it believes Mr. Wickenden's calculations are "significantly flawed" and that, therefore, there can be no just and reasonable inference that he worked 456 hours in overtime.

The Agency's analysis of Mr. Wickenden's claim is, in summary, as follows:

Under the Collective Bargaining Agreement, all employees are required to take a 30-minute lunch break. With the inclusion of the 30-minute lunch break, the time between his scheduled start and end times is 9.5 hours per day, and 8.5 hours per day on his 5/4/9 "short" day. Mr. Wickenden, in calculating his daily overtime, failed to take

into account that he had a 30-minute lunch break and, thus, his calculations include all times in excess of 9 hours rather than 9.5 hours (citing examples). Therefore, it contends, for each day on which Mr. Wickenden claims overtime, his claim is inflated by 30 minutes. (There appears be no claim in the record that Mr. Wickenden worked through his lunch.) It observes that his spreadsheet reflects that he claims overtime on approximately 7 to 8 days per pay period, meaning that virtually all his claims are inflated by 3.5 to 4 hour per pay period, and that, therefore, his total claim of 456 overtime hours is roughly twice what it would be had his extra hours been tallied correctly.

In addition, the Agency notes that, in pay periods 200524, 200525 and 200526, Mr. Wickenden, on his Claim Form, states he worked 11 ¼ , 4 ¼ and 5 hours of overtime, respectively. He submitted applications for overtime pay that were approved by his supervisor. For the first, he noted 8 hours of work on Sunday, November 6, 2005; for the second, he noted 4 ¼ hours of work (2 ¼ the first week of the pay period and 2 for the second); and for the third, he noted 5 hours of work (2 ½ the first week of the pay period and 2 ½ for the second). The Agency, referring to FPPS records, states that Mr. Wickenden received overtime premium pay for all these hours, thus proving that he already received overtime pay for the overtime work he performed during the above three pay periods.

Furthermore, the Agency contends that, since Mr. Wickenden had suggested he received no compensatory time for any of these extra hours, his claims are outside the scope of my findings in the 2009 Opinion.

While the parties disagree on the extent to which Mr. Wickenden's Claim Form

accurately reflects qualifying extra hours worked, they agree that Mr. Wickenden failed to account for the daily thirty-minute lunch period.

The Union contends that the time sheets show Mr. Wickenden did not receive the correct amount of premium pay for the hours he worked. It cites the following: For pay period 200522, he worked 8 hours on a Sunday and 5 days form 8:00 A.M. to 8:00 P.M. Mr. Wickenden was paid for 8 hours of overtime. He worked 23 hours of overtime for that pay period and is, therefore, entitled to payment for 15 hours. For pay period 200523, Mr. Wickenden worked 8:00 A.M. to 6:00 P.M. for 7 days; one day from 8:00 A.M. to 5:30 P.M.; one day from 7:45 A.M. to 6:00 P.M.; and one day was a Federal holiday, with 1 hour for lunch. Mr. Wickenden was paid for 4 ¼ hours of overtime, whereas the actual overtime was 8 ¼ hours. For pay period 200524, Mr. Wickenden worked 10 days from 8:00 A.M. to 6:00 P.M with 1 hour for lunch. He was paid for 5 hours of overtime and is due payment for 5 hours of overtime.

Inasmuch as, consistent with my "outside the scope" ruling, there need not be any compensatory hours earned in a pay period in order for a claim to be potentially payable, I find that Mr. Wickenden's claim is payable, along with an equal amount of liquidated damages.

As the parties disagree on some of the details of this claim and, therefore, on the amount owing Mr. Wickenden, I direct the parties jointly to audit this claim so as to agree on its accuracy. If the parties, after attempting in good faith to do so, cannot agree, I will make a decision on the matter. I do not believe a hearing should be necessary. I strongly urge the parties to resolve this matter between themselves.

GREENSBORO

Paula Janney

Ms. Janney worked as an Investigator in the Greensboro Local Office from January 21, 2007 through the end of the claims period. She claims 103.25 hours over 27 pay periods. She was among the claimants who received an extension of time to file their claims. The Agency objects to all her claims on the ground that she worked a flexitour schedule throughout the relevant time period. In addition, the Agency contends principally that it is entitled to an offset for claimed overtime work where she received and used compensatory time off, that she did not work the claimed extra hours, that management could not have known or prevented her from working overtime, that she is not entitled to any compensation for noncompensable travel time, that she provided insufficient evidence to show that she worked the claimed extra hours, that for part of the relevant period she worked in a position that is outside the scope of this proceeding, and that most of her other claims are outside the scope.

The Agency offered the Declaration of José Rosenberg, Director of the Greensboro Local Office and Ms. Janney's supervisor. He declared as follows: Ms. Janney was hired at the GS-7 pay grade in January 2007, was promoted to the GS-9 pay grade in May 2008 (pay period 200811), and was promoted to the GS-11 pay grade on or about June or July 2009. Her employment in the Greensboro Local Office ended in August 2009. From January through May 2007, Ms. Janney worked a basic schedule, with her hours the same as the official 8:30 A.M. to 5:00 P.M. hours of the Greensboro Local Office. She then switched to a compressed schedule, with her work hours normally 8:00 A.M. to 5:30 P.M., remaining on that schedule the remainder of her time in the Greensboro Local Office. It was his policy to ensure that all compensatory time earned

and used by employees be recorded in FPPS, and he believed Ms. Janney complied with that, particularly with reference to the compensatory time she earned in pay periods 200705 and 200813. He did not recall denying any additional requests by Ms. Janney to authorize compensatory time for extra hours of work, and he believed Ms. Janney did not work the additional overtime hours she has claimed.

Based on what I am prepared to credit from Mr. Rosenberg's Declaration, I have no further need to address the Agency's objection to Ms. Janney's claims on the basis that she worked a flexible schedule in all relevant pay periods.

The Agency contends further that, since Ms. Janney knew how to use the system of recording extra hours and receiving compensatory time, any time not so reflected in FPPS was likely not worked, nor would she have so notified supervision. Further, it notes that Ms. Janney's earning 5 ¼ hours of travel compensatory time in pay period 200813 represents travel that is not eligible for money payment.

In addition, the Agency notes generally that Ms. Janney provided no information, outside of the FPPS records provided to her and a handwritten notation of work performed after 5:30 P.M., that bears on the nature of the work she asserts she performed or when during the specified workweeks she performed it. It notes this with particular attention to her "reflexively" claiming 4 hours of overtime in virtually every pay period.

Finally, the Agency deems certain of Ms. Janney's claims outside the scope of this case – namely, any claim prior to May 11, 2008 when she became a GS-9 Investigator, as well as any claim for which Ms. Janney did not receive extra hours off for extra hours worked during or after pay period 200811.

Ms. Janney submitted a Supplemental Affidavit, dated October 16, 2013, which

stated:

> …When I was employed with the Agency, I believe I was promoted in the position of Investigator on two occasions. I do not have the SF-50 form to show when I was promoted and I do not recall the dates of the promotions. I filed my claim based upon my best recollection and cannot verify without the SF-50 form the date I was no longer an Investigator GS-1810-7.
>
> The extra work hours, I claimed, were for investigating cases, conducting onsites, and Outreach. Any training I attended was at the direction of my supervisors and managers. I was not offered the opportunity to elect to receive money payment and to take compensatory time for an[y] extra hours I worked beyond my scheduled work hours.

The Union contends that the manner in which Ms. Janney completed her Claim Form is owing to the Agency's not supplying her the records she requested. Ms. Janney would agree to the accuracy of her promotion data if an SF-50 were to reflect it. The Union notes further that the FPPS data provided by the Agency, which is all she received, did not include information on her grade and, therefore, the records may not be correct. It asserts that Ms. Janney's extra work hours are estimated for the very reason that she had not been provided with the records she requested, and the Agency has not submitted any specific evidence that Ms. Janney did not work the extra work hours she claims. Further in this regard, it notes that the Agency submitted no evidence that Ms. Janney's travel was such that it should be noncompensable.

In one sense, Ms. Janney's Claim Form is difficult to follow, partly because it is replete with crossouts and question marks. However, this does not, by itself, necessarily diminish the *bona fides* of her claim.

In this case, not only was Ms. Janney only provided with FPPS records, but these did not even inform Ms. Janney in what pay periods she would be eligible to file a claim, and in what pay periods she was not. Had Ms. Janney been provided with the same FPPS records with which I was provided, she would plainly have seen that she was not in a

covered position for purposes of this case until pay period 200811. Thus, she might have been spared the unnecessary burden of attempting to supply information for the ineligible pay periods of 200713 to 200810. The claims process is not simple. If a claimant does not know which pay periods matter and which do not, the process is made more difficult.

For this reason, I find it appropriate to grant Ms. Janney a hearing for the purpose of permitting her to offer testimony with respect to the nature and extent of the work she deems relevant to supporting her claims from pay period 200811 forward.

GREENVILLE

Phyllis Jackson

Ms. Jackson worked as a Mediator in the Grenville Local Office throughout the claims period. She worked a 5/4/9 compressed schedule. She claims 75.5 hours over 19 pay periods. The Agency objects to most of her claims on grounds that the Agency is entitled to an offset for claimed overtime work where she received and used compensatory time off, that she sometimes both earned and used her compensatory time during the same pay period, that she did not work some of the claimed extra hours, that she is not entitled to any compensation for noncompensable travel time, that she provided insufficient evidence to show she worked some of the claimed extra hours, and that some of her claims are outside the scope.

The Agency concludes, however, that Ms. Jackson is entitled to compensation for an additional 0.5 hours for each of 20 hours of overtime worked and claimed in 7 pay periods, where she did not earn and use compensatory time in the same pay period, and where the extra hours worked did not involve noncompensable travel time. The Agency concludes that that Ms. Jackson is entitled to payment for 10 hours, which equals

$401.20, plus liquidated damages, totaling $802.40.

More specifically, the Agency contends that, in 9 of the 19 pay periods in which she asserts claims, Ms. Jackson is not entitled to any compensation for 30.25 hours of overtime worked, on the ground that she both earned and used compensatory time in the same pay period. She also, as the Agency argues, is not entitled to any overtime for travel, amounting to 52.5 of the total 75.5 hours of overtime claimed, nor has she documented her claim for 5 hours of overtime in pay period 200421.

Ms. Jackson's Claim Form is accompanied by leave forms, some of which notate "credit time."

Ms. Jackson submitted a Supplemental Affidavit, dated either October 10 or October 11, 2013, which states:

> …When I was filing my claim, I inadvertently scanned documents 18, 31, 32, 32…1, and 35 in the wrong pay periods. I have attached a chart to this affidavit showing the corrections for my claim. The table shows the pay period, the document for the applicable pay period, the extra hours worked, and any compensatory time received and used. The corrections are highlighted.
>
> On my claim form, in pay period 200706, I incorrectly claimed I used four (4) hours of compensatory time. Document 33, which supports pay period 200706 shows I worked four (4) extra hours, but did not use any compensatory time. I wish to amend my claim form to remove the four (hours) of compensatory time used and claim zero (0) hours of compensatory time used. I had incorrectly scanned documents 31, 32, and 32…1, in this pay period.
>
> Document 35 is correctly scanned in as supporting documentation for pay period 200715, with my submitted claim form.
>
> Because I scanned document 18 in the wrong pay period, I failed to include on my claim form, the eight (8) extra work hours I worked in pay period 200819. I wish my claim amended to include the eight hours I worked in pay period 200819.
>
> When I worked extra hours, I was told that I could only receive credit time. I did not request credit time and did not know that it was illegal for an employee on a compressed work schedule to receive credit time.

The Union contends that, in Ms. Jackson's Supplemental Affidavit, she explained

that some of her documents had been scanned to the wrong pay periods, and requests to amend her claim to make these pay period corrections, and that the amount of overtime payment due be calculated in accordance with the chart attached to her Supplemental Affidavit, and to add 8 extra work hours to pay period 200819. It notes further that Ms. Jackson was not aware that credit time was illegal for employees on a compressed work schedule. It contends that the Agency's objections are unsupported, stating that Ms. Jackson was submitting all extra work hour requests to her immediate supervisor and that this time was approved, including approval for her to travel more than fifty miles from her duty station driving on overnight travel on work days and weekends. It asserts that her documents establish extra hours worked, and that these hours were approved by the Agency, which has offered no specific evidence showing that Ms. Jackson did not work the extra hours.

In examining Ms. Jackson's Supplemental Affidavit, I find it appropriate to permit corrections so as simply to cause the record to make more sense. These include the inadvertent scanning of documents to the incorrect pay periods and corrections to compensatory time used. I do not, however, believe these adjustments to her claim should include the addition of extra work hours, as Ms. Jackson wishes to do to pay period 200819, which is not a pay period otherwise reflected on her Claim Form.

In addition, to the extent my ruling on the "outside the scope" issue may bear on pay periods that do not include the use of compensatory time, I am prepared to direct a hearing for the purpose of determining whether bases exist such that the proposed Agency remedy should not be directed. Should such a hearing be conducted, Ms. Jackson shall be permitted to explain (without limit to these issues specifically) why she

should have received monetary payment for travel time and should likewise be able to refer, as needed, to the chart she attached to her Supplemental Affidavit.

Beth McGill

Ms. McGill worked as an Investigator in the Greenville Local Office from before the claims period until June 1, 2007 on a 5/4/9 compressed schedule. She claims 725 hours over 88 pay periods. The Agency objects to most of her claims on grounds that she provided insufficient evidence to show she worked most of the claimed extra hours, that the Agency is entitled to an offset for claimed overtime work where she received and used compensatory time off, that she earned and used compensatory time during the same pay period, that she is not entitled to any compensation for work performed during breaks, that she did not work most of the claimed extra hours, that management could not have known or prevented her from working overtime, that she is not entitled to any compensation for noncompensable travel time, and that most of her claims are outside the scope.

The Agency believes Ms. McGill is entitled to be compensated for an additional 0.5 hours for each of 4 hours of overtime worked in one pay period, where she did not earn and use compensatory time in the same pay period, and where the extra hours worked did not involve noncompensatory travel time. It concludes, therefore, that Ms. McGill is entitled to payment for 2 hours, equaling $73.52, plus liquidated damages, totaling $147.02.

The Agency notes that a significant portion of Ms. McGill's claim constitutes working through her lunch breaks (frequently noting on her Claim Form "1-2 pm lunch"), claiming that, over 86 pay periods, her claim in this regard totals approximately 352.2

hours of overtime. In addition, most pay periods also carry the designation "6-7 pm," which is claimed after-hours work. The Agency deems this not a credible claim from one whom it describes as "a highly experienced GS-12 investigator," who makes the claim over such a long span of time. It references a "Report of Overtime Worked" for a training session on MS Word in pay period 200510, listing six GS-12 Investigators from the Greenville Local Office, none of whom besides Ms. McGill is a claimant in these proceedings.

Ms. McGill's Claim Form is accompanied by various overtime authorization forms (including those referencing "credit time"), Cost Accounting Bi-weekly time sheets, and e-mails referencing MS Word Training.

Ms. McGill executed a Supplementary Affidavit, dated October 16, 2013, stating:

> …During my employment in the Greenville Office of the Agency, we had on average five Investigators. The extra hours I submitted for my claim were for work I performed in Intake, investigating cases, conducting onsites, and performing Outreach. We were required to interview individuals who arrived to file charges and on most days, I would miss taking lunch. The amount of the workload was such that the work could not be completed in my scheduled work hours. We were not permitted to record extra work hours on our time sheets or in the agency payroll records.
>
> I was told that overtime money was not available. There was no consistent policy of awarding compensatory time and I remember only receiving compensatory time once or twice. I was not aware that I could not receive credit time, if I was on a compressed work schedule.

The Union contends that the Agency has mistakenly referenced, in five pay periods (200508, 200509, 200510, 200513 and 200609), compensatory time earned and used by Ms. McGill, which do not apply to her. The Union points to her FPPS records, which reveal that, in pay periods 200508 and 200509, no compensatory time was received. In three pay periods, Ms. McGill had entered on her Claim form that she received and used compensatory time in pay periods 200508, 200509 and 200520, but for

different amounts than reflected in the Agency's objections. The Union asserts that the Agency's files on its illegal system of compensatory time received is not evidence that Ms. McGill did not work the hours she claimed, and this is no basis for the Agency's attempt to defeat Ms. McGill's claim, particularly where the Agency's records are not accurate.

This is a claim for a significant number of hours over a period of approximately four years. The regular amounts of overtime claimed per pay period appear to be explained, at least in part, by Ms. McGill's reference in her Supplemental Affidavit that the Greenville Local Office was short on Investigators. I am not persuaded that the documents provided are sufficiently supportive of such a consistent pattern of extra hours claimed. In particular, I am not persuaded that the record makes a reasonable inferential case that Ms. McGill's claims for working through lunch are supported.

Nonetheless, a large number of pay periods reflect no compensatory time earned. In light of my ruling on the "outside the scope" issue, I direct a hearing be conducted for the purpose of determining whether bases exist such that the proposed Agency remedy should not be directed.

HOUSTON

Shirley Almaguer

Ms. Almaguer worked as an Investigator in the Houston District Office from July 15, 2008 through July 15, 2009. She claims 2 hours during pay period 200815 (July 6 to 19, 2008), in which she reports on her Claim Form she worked a 5/4/9 compressed schedule. The Agency objects to her claim on grounds that she worked a flexible schedule, that she provided insufficient evidence to support her claims, that her

supervisor could not have known of any overtime worked, and that the practice in the Houston District Office was that Investigators received informal compensatory and/or credit time when requested, some of which may have been used during the same pay period. The Claim Form has no accompanying documentation.

The Agency references the Declaration of Deborah Foster, District Resources Manager in the Houston District Office. She notes her duties as comprising "human capital, budgetary and administrative functions" as well as being "the custodian of attendance and schedule records for employees, including Preferred Work Schedule forms submitted by employees." She declared that, on reviewing the records of Ms. Almaguer, that Ms. Almaguer was on a gliding schedule until September 1, 2008, at which time she changed to a compressed schedule. Ms. Foster references two attachments to her Declaration (neither of which is attached to Ms. Foster's Declaration or otherwise included in the claims file). One ("Attachment A") she describes as a Preferred Work Schedule form dated August 28, 2008, completed by Ms Almaguer and approved by Enforcement Supervisor Joseph DeLeon, where she requested that her schedule be changed to a compressed schedule. The other ("Attachment B") she describes as an undated Preferred Work Schedule form, signed by Mr. DeLeon, indicating that Ms. Almaguer was on a gliding schedule.

The Union contends that the Agency's FPPS records reflect that Ms. Almaguer was a Grade 7 during pay period 200815, and that Grade 7 employees are not at issue in this case. It notes that the Agency appears to state that Ms. Almaguer was eligible for the claims process beginning July 15, 2008, and, in light of its clearly inaccurate records, the Union here requests that Ms. Almaguer's SF-50 be produced to determine when Ms.

Almaguer became eligible to submit a claim. Moreover, it notes that an employee on a flexible work schedule does not bar an employee from receiving money payment for extra work hours, and that the affidavit of Deborah Foster, which references two attachments that are not produced, contains no information that reveals Ms. Almaguer was on a flexible work schedule.

What the record before me appears to show (without considering the Declaration of Ms. Foster) is that Ms. Almaguer, during pay period 200815, was a Grade 7 Investigator (referencing not the FPPS records specifically in this file, but the omnibus FPPS records for all claimants). Those same FPPS records reflect that she became a Grade 9 Investigator in the very next pay period, pay period 200816. I cannot tell from this whether Ms. Almaguer may have misstated the pay period she was claiming, or whether she did not realize that she was not a proper claimant in pay period 200815.

In any event, it appears from either set of FPPS records that Ms. Almaguer was not on a 5/4/9 compressed schedule in pay period 200815. The complete FPPS records reflect that she changed to a 5/4/9 compressed schedule in pay period 200819 (August 31 to September 13, 2008).

Furthermore, it is unclear whether Ms. Almaguer made an error on her Claim Form by notating "7:00 A.M. to 4:30 P.M." as the office hours for the Houston District Office, or whether she meant those to be her hours. The office hours for the Houston District Office were 8:00 A.M. to 4:30 P.M.

These records, as a whole, do suggest a flexible work schedule. However, this takes us beyond where the real threshold question is – namely, whether Ms. Almaguer was an eligible claimant in the first instance. The Union correctly suggested that Ms.

Almaguer's SF-50 be produced so that counsel for both parties might consult it and thus determine the actual posture of this claim. This document was produced by the Agency as part of an unsolicited submission on January 17, 2014. It does, in fact, reflect that Ms. Almaguer became a Grade 9 Investigator in pay period 200816. Inasmuch as this document does nothing more than state a fact that both parties surely wanted confirmed, I accept it. The remainder of the Agency's January 17, 2014 submission plays no part in this Report.

Based on the above, I must conclude that Ms. Almaguer was not a proper claimant during the pay period for which she filed.

Pamela Edwards

Ms. Edwards worked as an Investigator in the Houston District Office throughout the claims period, her Claim Form reflecting she worked a basic schedule. She claims 248 hours over 52 pay periods, all of which extra hours she states occurred in the evenings. She testified at the hearings in St. Louis, MO. The Agency objects to her claims on grounds that she provided insufficient evidence to support her claims, that she did not work overtime (in particular during pay periods 200409, 200415 and 200611), that she received compensatory time off and/or credit time, some of which may have been used during the same pay period, and that her supervisor could not have known of any overtime work. In virtually all the pay periods included, Ms. Edward claims 4 or 5 extra hours worked. While the Union, in its Brief, referenced Ms. Edwards' schedule as a flexible schedule, all the records I have reviewed suggest that this is not the case.

The Agency's specific objections, noted above, with respect to pay periods 200409, 200415 and 200611 rest on the following: For pay period 200409, where Ms.

Edwards claims 5 hours, the Agency references FPPS records, which reflect that Ms. Edwards used 8 hours of compensatory time and earned none. For pay period 200415, where Ms. Edwards claims 5 hours, FPPS records reflect her using 71 hours of annual leave, along with 9 hours for an unworked holiday. For pay period 200611, where Ms. Edwards claims 5 hours, FPPS records reflect her being on sick leave for the entire pay period.

The Agency asserts that Ms. Edwards' claim lacks any documentary support, and thus offers no showing of what work her claimed hours represent, or when (other than the general "Evenings" reference) this work was performed, or why the work caused the amount of extra hours claimed. It also contends that, to the extent extra hours claimed by Ms. Edwards were spent on Union work, these are not qualifying hours inasmuch as they do not involve work for the benefit of the Agency.

The Agency offers the Declarations of R. J. Ruff and Rosa Delacruz. Mr. Ruff, District Director of the Houston District Office, declared as follows: He was well aware of the overtime arbitration between the parties and, shortly after he assumed his position in October 2006, he met with all his staff and ordered that no overtime be worked by employees without advance approval, instructing managers to watch for employees who were working past their regular hours. He instructed District Resource Manager, Deborah Foster, to send out periodic notices regarding unauthorized overtime/compensatory time. He referenced further a District-wide e-mail sent on his behalf stating that employees were not to be in the office before 7:00 A.M. or after 6:00 P.M. and that employees need express approval from management to work extra hours. (This e-mail is referenced as "Attachment A" but does not appear as an attachment to the

Declaration.) Ms. Delacruz had informed him that she had seen Ms. Edwards working late on several occasions, and she sent him an e-mail in August 2009 that this continued to occur. (This e-mail is referenced as "Attachment B" but likewise does not appear as an attachment to the Declaration.) He denied any claim that Ms. Edwards may have been forced to work overtime.

Ms. Delacruz, Enforcement Manager in the Houston District Office, declared as follows: She was typically the last Enforcement Supervisor/Manager to leave the office at the end of the day by roughly 6:00 or 6:30 P.M. and it was her task to make sure no one was still in the office. She and other managers routinely advised employees that they were not to stay beyond their regular work hours without advance approval. Ms. Edwards never informed her that she was performing any work outside regular work hours, including lunch, breaks and weekends, and has no reason to believe that Ms. Edward would have worked the hours claimed here. A couple of times a month, she encountered Ms. Edwards in the office after regular work hours and instructed her to leave, and Ms. Edwards informed her that she was not working. She reported this to Mr. Ruff and to Ms. Edwards' supervisor, Joseph DeLeon.

The Union contends that, consistent with Ms. Edwards' testimony at the St. Louis hearings (referenced also in the 2009 Opinion), she did, in fact, work extra hours, and that those hours were not recorded, and that the Agency did not keep records of compensatory time. Further, she testified that she would tell her supervisor about her extra work hours, and would be told that she could take the time off at a later date. She testified that these extra work hours were frequent when she was assigned to Intake. The Union notes further that e-mails referenced in Mr. Ruff's Affidavit were not attached. It

states that, to the extent FPPS records can be verified by leave slips or support documents, the Agency should receive credit for compensatory time used by Ms. Edwards, and agrees that those pay periods when Ms. Edwards used annual and sick leave for the entire pay period (pay periods 200415 and 200611) should be deducted from Ms. Edwards' claim.

I do not view Ms. Edwards' claim solely by reference to what may be reflected in the Claim Form. In addition, there are certain pay periods referenced by the Agency where the claim appears incorrect on its face and possibly others where the use of compensatory time by Ms. Edwards may be an offset to the claim, even though the Claim Form itself reflects no grant or use of compensatory time.

There are material inconsistencies between assertions Ms. Edwards made in her previous testimony and both the arguments and Declarations currently offered by the Agency. They offer very different views of how the matter of extra work hours and the handling of compensatory time was administered. In my view, these matters can not be disposed of merely by assessing the Claim Form in contrast with FPPS records, the latter, as I have noted in the 2009 Opinion, not always being entirely reliable.

I direct a hearing to examine these inconsistencies through testimony.

Elizabeth Henderson

Ms. Henderson worked as an Investigator in the Houston District Office from September 25, 2007 through December 1, 2011. She submitted a Claim Form but asserted no claims for any pay periods.

The parties agree that Ms. Henderson has not filed a valid claim.

Eduardo Sanchez

Mr. Sanchez worked as a Mediator in the Houston District Office from before the claims period until April 30 2007. He reports working a gliding flexible work schedule. He claims 255 hours over 89 pay periods, each with a claim of 2 or 3 extra hours worked. He was amont those claimants who received a 60-day extension of time to file. The Agency objects to his claims on grounds that he continuously worked a gliding schedule, that he has provided insufficient evidence to support his claims, that his supervisor could not have known of any overtime worked, and that his claims are outside the scope.

The Agency asserts specifically that, apart from Ms. Sanchez's flexible work schedule, he has provided no detail of any kind in support of his claim, and that, therefore, no just and reasonable inference may be raised for the existence of overtime work, or the nature and extent of such work.

The Union contends that, as Deborah Urbanski, ADR Coordinator for the Houston District Office, and Mr. Sanchez's supervisor until his retirement in 2007, testified, Mediators under her supervision were professionals, and that, if needed, they could finish a mediation and take time off later, although extra work hours were not recorded. It stresses that the Agency has produced no specific evidence to dispute Mr. Sanchez's extra work hours, or that the work claimed was not performed.

Mr. Sanchez' claim must be denied as he was working a flexible schedule.

Ronald Wideman

Mr. Wideman identified himself on his Claim Form as an Investigator in the Houston District Office from before the claims period. He became the Intake Supervisor in 2008. FPPS records indentify Mr. Wideman as a GS-12 Supervisory Investigator for

the entire claims period.

Mr. Wideman filed a Claim Form but, as he made clear in a handwritten statement thereon, he makes no claim.

INDIANAPOLIS

Aaron Price

Mr. Price worked as an Investigator in the Indianapolis District Office and stated his time worked was from January 3, 2008 through the end of the claims period. He worked a 4/10 compressed schedule. He claims 45 hours over 13 pay periods. The first pay period on his claim is pay period 200801, where he claims 6 extra hours worked. The Agency objects first to a claim for this pay period on the ground that Mr. Price was then a GS-7 Investigator, a position not covered in these proceedings. FPPS records reflect that to be the case, and that Mr. Price became a GS-9 Investigator in the very next pay period, 200802.

The Agency objects to all Mr. Price's claims on grounds that they are for travel time which is not compensable with overtime pay, that his claims are outside the scope, that he has submitted insufficient evidence to create a just and reasonable inference that he worked more than 80 hours in a pay period which were suffered or permitted by the Agency, and that he was not in a covered position for one of the pay periods for which he makes a claim. The last of these I have already addressed, above.

Mr. Price provided a statement along with his Claim Form, which stated:

> This letter details my best estimate of hours worked in excess of eighty per pay period between January of 2008 and April 28, 2009, when I worked as an Investigator, GS-1810, Grades 09 and 11 for the U.S. Equal Employment Opportunity Commission, Indianapolis District Office. My work schedule was ten hours per day, four days per week. I started work at 6:00 AM and ended work at 4:30 PM.

> In the Indianapolis District Office, we were instructed that overtime pay was not available because of the flexibility that we were allowed in conducting our everyday duties. As a result, there is no documentation in the form of time sheets.
>
> The only time that I would have worked in excess of eighty hours per pay period were certain days that I conducted intake interviews and on days when I conducted on-site investigations. While it is difficult for me to know which days I conducted intake interviews outside of my scheduled work hours, I have been able to identify all of the days when I conducted on-site investigations within the applicable time period. The dates are as follows:
>
> 1-2-08, 1-3-08, 1-16-08, 1-23-08
> 2-27-08
> 4-23-08
> 5-15-08
> 7-14-08, 7-29-08
> 8-13-08
> 10-8-08, 10-23-08
> 12-16-08, 12-17-08
> 4-21-09
>
> My best estimate for the overtime worked during these days is one hour before and two hours before my scheduled work hours. That amounts to an estimated forty-five hours of overtime across fifteen work days. This overtime was incurred due to travel outside of the office. As we were instructed not to log such overtime on our vehicle logs, those documents will not reflect the extra time either.
>
> This letter serves as the only documentation that is available for me to demonstrate overtime hours worked during the applicable time period. This information is as accurate of an estimate as I can give, considering my memory and the on-site investigation notes that are available to me.

The Agency contends that Mr. Price, whose claims, by his own description, were "incurred due to travel outside of the office," has been very unclear as to why he claims, in virtually every pay period claimed, three extra hours. As the Agency suggests, the phrasing of working "one hour before and two hours before my scheduled work hours," is vague. The Agency speculates on what else he might mean, but notes the unlikelihood that every Onsite should require the same travel time, as well as why such extra time was constantly needed in view of Mr. Price's 4/10 compressed schedule.

The Union contends that Mr. Price's written statement, set forth above, is

consistent with the testimony of Joseph Tedesco at the hearings in St. Louis, MO, about the practice in the Indianapolis District Office – namely, that overtime was not available "because of the flexibility that we were allowed in conducting our everyday duties," and that no record was kept of extra work hours beyond an employee's keeping his own unofficial record, where extra hours would be used when needed. In addition, it notes that, while the Agency is aware of the dates of Onsites for which Mr. Price claims overtime, it produced no evidence that Mr. Price did not perform that work. Finally, the Union asserts that the Agency may not complain that Mr. Price's claim of extra work is estimated when it has failed to keep records of employees' work hours.

The nature of Mr. Price's claim must be recognized. I do not believe any of the claimed extra hours constitute work conducted on his Onsites themselves, since his statement appears to make clear that he does not make such a claim. This means that there is no suggestion here that Mr. Price did not perform the actual Onsite work from which his travel claim is derived. What he claims is "travel outside of the office." Therefore, it is this representation that I must rely upon in assessing whether Mr. Price's claims for travel time may have merit.

Based on all indications, I must conclude that there is no probative evidence that this travel time, however it may have been phrased in Mr. Price's statement, merits overtime payment. What it appears to involve is travel to and from his Onsites, time which would not typically be compensable with overtime. Further, all the dates Mr. Price listed in his statement are weekdays and there is no suggestion that any of them fell outside his 4/10 compressed schedule, inasmuch as FPPS records reflect that his day off was Friday, and none of the dates of his Onsites fell on a Friday.

Accordingly, I must deny Mr. Price's claim.

Lolita Davis

Ms. Davis worked as an Investigator. The Agency places her in the Indianapolis District Office, but this appears to be in error. Her Claim Form reflects her residing in Oak Park, Michigan and reflects her claim for 129 hours over 78 pay periods (200607 to 200908). In addition, the Union produced time records placing her in Detroit in pay periods 200607 and 200608 (Ms. Davis' first two claimed pay periods), as well as an IMS Staff Initials document, dated July 3, 2007, that placed her in the Detroit Field Office.

Ms. Davis occupied covered positions from pay period 200607 through pay period 200910. She worked a gliding flexible schedule.

The Agency objects to all Ms. Davis' claims because she was on a flexible schedule and submitted only the Claim Form without any explanation or evidence in support of her claims.

The Union contends, as noted above, that, when Ms. Davis became an Investigator, GS-9 in pay period 200607, she was assigned to the Detroit Field Office. In addition, the Union notes that the Agency produced virtually no payroll or time and attendance records to the Union for Ms. Davis, and the Agency has produced no evidence disputing Ms. Davis's extra work hours. Finally, the Agency has wrongly placed Ms. Davis in the Indianapolis District Office, whereas the Agency's own records have her located in Detroit. In both of these locations, the Union asserts, the Agency has failed to keep accurate records of employees' work hours.

Notwithstanding the apparent error in placing Ms. Davis in the proper work

location, I must deny her claim by virtue of her working a flexible schedule.

Thomas Murdock

Mr. Murdock worked as an Investigator in the Indianapolis District Office throughout the claims period, working a gliding flexible schedule. He claims 217.5 hours over 160 pay periods. The Agency objects to all his claims because he was on a flexible schedule and submitted only the Claim Form without any explanation or evidence in support of his claim, and because his claims are outside the scope.

Mr. Murdock submitted a Supplemental Affidavit, dated December 13, 2012, stating:

> 1. I was on a gliding work schedule, during the period from pay periods 2003 to 2009. I checked "basic," on my claim form, because I did not understand the instructions for the work schedules. I was not on a basic work schedule.
> 2. The official hours of the Indianapolis office were 8:00 a.m. to 4:30 p.m. These were the hours the office was open to the public. The core work hours for employees were 6:30 a.m. to 5:00 p.m. Employees could have flexible work hours, from 6:00 [a.m.] to 5:00 p.m. I worked 7:30 a.m. to 3:30 p.m. The extra work hours I claimed, on my claim form, were not hours used to vary my arrival and departure times or to adjust my forty hour work week or 80 hours per pay period.
> 3. From 2003 until approximately 2007, I had a caseload of approximately 270 cases. In order to complete the investigation of my cases, I would work extra work hours beyond my scheduled 40 hours per week and 80 hours per pay period. I worked weekends to complete my case work.
> 4. In 2006, I was one, of three Investigators assigned to a Special Project. On the Special Project we were mandated to complete thirty (30) cases per month. I stayed on the Special Project through pay period 20091 [sic-possibly pay period 200910, his last claimed pay period and the last covered pay period]. I worked extra work hours to complete the cases under the Special Project.

The Union contends that the Agency has not produced any specific evidence showing that Mr. Murdock did not work the hours claimed. Further, it notes, the

Indianapolis District Office did not record extra work hours.

I must deny Mr. Murdock's claim because he was on a flexible schedule.

Sharon Poindexter

Ms. Poindexter worked as an Investigator throughout the claims period. She claims 23.93 hours over 17 pay periods. She reported working a 4/10 compressed schedule. While the Agency has identified her as being employed in the Indianapolis District Office for all the relevant time, there are records reflecting her assignment also to the Nashville District Office (see references to "Sharon F. Dickerson"). Her Claim Form shows an Indianapolis address. The time period of her claim is from pay period 200308 to 200426. The Agency objects to her claims on grounds that she was on a flexible schedule and did not submit sufficient evidence to create a just and reasonable inference that she worked all the overtime hours claimed.

Documents variously refer to this claimant as "Sharon F. Poindexter" on her Claim Form and in the FPPS records, and "SFD" (Sharon F. Dickerson), which appears to be how she is identified in time records she submitted along with her Claim Form. While Ms. Poindexter's Claim Form covers pay periods 200308 to 200426, the time records she submitted (where she is referenced as "SFD") contain no entries for calendar year 2003. Moreover, her time records for 2004 reveal that, during the days she worked (either in the office, at home or elsewhere), her work hours, for the most part, were either eight hours or some fraction between eight and nine hours per day. This is not consistent with her claim that she worked a 4/10 compressed schedule, nor do her FPPS records so reflect.

These records reveal that, in 2004, there were numerous occasions when Ms.

Poindexter's hours varied greatly, including starting after 8:00 A.M. and ending before 4:30 P.M., working 7:30 A.M. to 4:00 P.M., 8:15 A.M. to 4:45 P.M., 9:00 A.M. to 5:30 P.M., 7:15 A.M. to 3:45 P.M., 8:30 A.M. to 5:00 P.M., 7:45 A.M. to 4:15 P.M., and 7:00 A.M. to 3:30 P.M., among others. These are strong indicators that Ms. Poindexter worked a gliding flexible schedule.

The Union contends that Ms. Poindexter was initially assigned to the Nashville Area Office, referencing the Agency IMS Staff Initials sheet. (The Sheet bears a July 2007 date, well past the time frame of this claim.) It states that the "SFD" initials correspond to the time record documents Ms. Poindexter submitted in support of her claim, which, the Union asserts, represent time records of employees in the Nashville Area Office, and which corresponds with records submitted by Nashville claimant Curtis Brooks and documents hours worked, annual leave, sick leave, Onsites and overtime. In fact, for 2004, this appears to be so. There are also time records reflecting her working in the Nashville Area Office at least in the early part of 2006 (beyond Ms. Poindexter's claimed pay periods). The Union notes that Ms. Poindexter's time records show that employees in the Nashville Area Office regularly worked extra hours, the Agency maintaining the records in unofficial records of time and attendance. The Union asserts that the Agency fails to acknowledge that the time records were kept by the Nashville Area Office, and that, while it acknowledges that Ms. Poindexter was "SFD" on the time records, it seeks to avoid its liability by claiming a lack of knowledge. It argues that Ms. Poindexter has submitted sufficient evidence in support of her claim.

It seems unclear, based on the records before me, that the Agency should maintain that Ms. Poindexter worked in the Indianapolis District Office throughout the claims

period (pay periods 200308 through 200426) when I have records before me as noted above. The fact that, on the IMS Staff Initials sheet has her in Nashville may not be an issue, since this sheet bears a July 2007 date. However, in the time records referenced above, which cover 2004, Ms. Poindexter's initials appear next to those of Nashville claimant, Curtis Brooks.

For the above reasons, I must conclude that Ms. Poindexter worked a flexible schedule and that, accordingly, her claim must be denied.

KANSAS CITY

Penny Sue Horne

Ms. Horne worked as a Paralegal Specialist in the Kansas City Area Office throughout the claims period. She worked a 5/4/9 compressed schedule. She claims 45.45 hours over 3 pay periods. While a total of 7 pay periods (200704 to 200808) appear on the Claim Form, the other four indicate no extra hours worked, but, rather, compensatory time used. She attached pay and leave statements, reflecting compensatory time earned and used. The Agency states that it generally agrees that Ms. Horne worked the hours claimed and that her supervisor was so aware. It notes one error, that being in pay period 200707 where it states that Ms. Horne mistakenly claimed 9 extra hours worked, whereas it should have reflected 9 hours of compensatory time used.

The Agency states, therefore, that Ms. Horne is entitled to payment for 18.375 hours, or $435.27, plus liquidated damages, totaling $870.53.

The Union notes the Agency's acknowledgment of Ms. Horne's claim, with the exception of pay period 200707, and the Union agrees, noting that Ms. Horne mistakenly assigned these nine hours to extra work hours, whereas the claim should reflect nine

hours of compensatory time used.

Ms. Horne's claim is granted, consistent with the above. Rust Consulting will perform any further necessary calculations, and the Agency shall pay Ms. Horne, in care of the Union, within sixty (60) days of the parties' receipt of this Report.

Nicole McCubbin

Ms. McCubbin worked as an Investigator from before the claims period until October 12, 2003. She submitted a Claim Form but made no claims for any pay periods. The Agency contends, therefore, that she has not filed, nor did she intend to file, a valid claim.

The Union agrees that Ms. McCubbin has filed no claim.

LAS VEGAS

Eranio Dolores

Eranio Dolores worked as an Investigator, according to his incomplete Claim Form, from before the beginning of the claims period, until September 10, 2007. He is referenced by the Agency as having worked in the Las Vegas Field Office. However, the Union identified him as having worked in the Agency's Cleveland, OH Office, an office not represented in this claims process.

The parties agree that Mr. Dolores has filed no claim.

Francine Schlaks

Ms. Schlaks worked as a Mediator first in the Detroit District Office and later in the Las Vegas Field Office. At least during her time in Las Vegas, she worked on a 4/10 compressed schedule. She claims 60 hours over 7 pay periods (from 200711 to 200719).

The Agency contends that Ms. Schlaks has already been compensated for any claims she has against it because she accepted a monetary payment in exchange for a signed waiver and release in connection with another matter.

In addition, the Agency objects on grounds that Ms. Schlaks did not attach any explanation for any of the overtime hours she claims, nor did she provide any supporting documents, and that her FPPS records do not show that she earned compensatory time instead of overtime pay. It objected further, for the record, to the extent that Ms. Schlaks claims overtime for work performed during paid breaks, that she claims overtime for travel time, that she did not actually work the extra hours she claims, and that she earned and used compensatory time in the same pay period.

With respect to the Agency's waiver argument, the Union references its October 31, 2013 response to the Agency's general claims objections, wherein it rejects the Agency's argument that Ms. Schlaks' claims here are barred because she entered into a Settlement Agreement with the Agency on an unrelated matter under Title VII. The Union there asserts that neither Ms. Schlaks' Settlement Agreement nor those of two other claimants – Victor Galvan (Dallas) and Lwanda Okello (Seattle) – were executed with the Union, and the Union was not a party to any of the actions covered by these Settlement Agreements. Moreover, it notes that all three Settlement Agreements were executed after the Union filed its grievance in this case. It stresses the Union's right as the exclusive representative to act on its own behalf and on behalf of groups of employees, and that "[n]o individual employee can invoke and/or relinquish the Union's rights, since individual employees do not have status to act for the Union, under the law." This matter is referenced and a ruling thereon made in the "**LEGAL ISSUES**" section of this

Report. That ruling declines to invalidate Ms. Schlaks' claim on the basis of the Agency's waiver argument.

Ms. Schlaks submitted a Supplemental Affidavit, dated October 12, 2013, which states:

> …I was employed, as a Mediator for the Agency, in the Detroit and Las Vegas offices. When I worked in Las Vegas, I was the only Mediator in the office. I performed mediations and the mediations, based upon the nature of the work, would not conclude during my scheduled work hours. I was not permitted to record any extra work hours in my official reports of my time and attendance. My supervisors were aware of my extra work hours and I was encouraged to complete a mediation, even if it meant working beyond my scheduled work hours.

The Union, having previously addressed the Agency's argument on waiver, contends that the Agency's FPPS records reveal that Ms. Schlaks was working in the Detroit Field Office from April 2003 to April 2006. In addition, it notes that the Agency has no basis on which to argue that it has insufficient evidence concerning Ms. Schlaks' claim, since it engaged in litigation with her and should have had ample information about her work and time and attendance. The Agency, it states, has produced no specific evidence that Ms. Schlaks did not work the extra hours claimed.

Ms. Schlaks' Claim Form is not accompanied by any supporting documents nor by any explanation of the significance of the extra hours she claims. It is she who bears the initial burden of supporting these claimed hours. Without more, I must conclude that Ms. Schlaks has not met her initial burden of proof with respect to her eligibility to overtime.

Accordingly, her claim must be denied.

LITTLE ROCK

The Union notes generally, with respect to Little Rock claimants, that the Little Rock Area Office maintained a record of unrecorded extra work hours, that an employee was reported in the official records as being at work when the employee used the unrecorded hours, and that running balances were kept of compensatory time and credit time.

Johnny Glover

Mr. Glover worked as an Investigator in the Little Rock Area Office throughout the claims period, working a 5/4/9 compressed schedule. He claims 60.78 hours over 20 pay periods. The Agency objects to all his claims on the ground of insufficient evidence, having attached no documentation in support of his claims. It cites the following exceptions, viewing FPPS data as reflecting that Mr. Glover earned 4.20 hours of overtime in three pay periods: 200418 (3.7 hours); 200420 (.15 hours) and 200421 (.45 hours). Based on this evidence, according to the Agency, Mr. Glover may be entitled to payment for 2.1 hours, or $58.75, plus liquidated damages, totaling $117.50.

The Agency objects further to the extent that Mr. Glover is claiming overtime for work performed during paid breaks, that he is claiming overtime for travel time, that he did not actually work the extra hours he claims, and to the extent Mr. Glover received informal compensatory time in exchange for any additional hours worked, or did not receive any compensatory time, making his claims outside the scope.

The Agency believes Mr. Glover has not produced sufficient evidence to demonstrate by just and reasonable inference that his claimed hours reflect actual time worked. It argues that Mr. Glover failed to provide any explanation of the nature and

extent of his claimed hours, the timing of these hours or why they were performed in extra hours.

The Union contends that Mr. Glover, in his claim, reported the compensatory time received and used, and that his records of extra work hours were maintained in the Agency's Little Rock Area Office, as a "Compensatory/Overtime Log," the entries approved by his supervisor, Wanda Milton. Those hours, as noted in Mr. Glover's compensation/overtime log (representing 2004 plus individual entries in December 2003 and January 2005), were for working on case inventory, Outreach and Onsites. The Union states that the Agency is in no position to object on the basis that Mr. Glover submitted insufficient evidence, since the Agency is aware of the Little Rock Area Office's records, and Mr. Glover listed all the compensatory time he used.

I take up first the matter of the limited basis on which the Agency appears prepared to acknowledge Mr. Glover's claim with monetary payment. As the Agency set forth its basis, covering pay periods 200418, 200420 and 200421, I believe its calculation of hours is incorrect.

For example, in pay period 200418, it assigned 3.7 hours. This should be the sum of "2.15" and "1.45." These are hours and minutes, not decimals, as I understand it. Therefore, the total here should be 4 hours. Similarly, in pay period 200420, "0.15" is a quarter hour, not fifteen hundredths of an hour. In pay period 200421, "0.45" is forty-five minutes, or three quarters of an hour, not 45 hundredths of an hour. If I have misread this, I trust the parties will so inform me, as this minutes/decimals matter arises elsewhere as well.

On the remaining matters, I conclude that more information by way of testimony

must be received with respect to the contents of Mr. Glover's Compensatory/Overtime Log and its impact, if any, on a monetary remedy. In addition, in light of my ruling on the Agency's "outside the scope" assertion, and in light of those pay periods in Mr. Glover's claim that may implicate that ruling, I direct that a hearing be conducted for the purpose of determining whether bases exist such that the proposed Agency remedy should not be directed.

Brian Mitchell

Mr. Mitchell worked as an Investigator in the Little Rock Area Office from April 2006 through the end of the claims period. He reports on his Claim Form that he worked a basic schedule, an assertion challenged by the Agency. He claims 24.5 hours over 12 pay periods (200625 to 200723). Included with his claim are a number of Cost Accounting Bi-weekly time sheets, which, as the Agency notes, are unsigned. The Agency objects to one claim of 10 hours for pay period 200625, which Mr. Mitchell identifies as "Travel Time to Dallas," on the ground that it constitutes noncompensable travel time. The Agency objects to Mr. Mitchell's remaining claims on the ground that he worked a flexible schedule.

On the matter of Mr. Mitchell's work schedule, the Agency deems it a flexible schedule, in part, because FPPS records reveal that in virtually every pay period claimed, Mr. Mitchell earned credit hours. In addition, it notes that Virginia Pollard, Enforcement Supervisor in the Little Rock Area Office, declared that Mr. Mitchell worked a flexible schedule in 2006 and 2007, and did not work the official hours of the office, which were 8:00 A.M. to 4:30 P.M. Further, it points to the Claim Form, where Mr. Mitchell reports that the office hours are 7:30 A.M. to 4:30 P.M. but the Agency suggests that Mr.

Mitchell was instead referring to his own work schedule.

Ms. Pollard declared as follows: She was Mr. Mitchell's first line supervisor and, from the time of his hire in April 2006 until November 2007, he worked a flexitour schedule. During this time period, it was the practice in the Little Rock Area Office to grant credit time for any extra hours worked for all employees on a flexitour schedule. With regard to travel on non-work days or for travel related to training, the Little Rock Area Office granted travel compensatory time.

On the matter of travel time with respect to the 10 hours claimed by Mr. Mitchell for pay period 200625, the Agency states it is not compensable with overtime pay. However, it notes, since this was an overnight assignment on a non-scheduled work day, some portion of the claim might be compensable, but there is insufficient information to determine this.

With respect to claims for work in the "evening," the Agency contends that no information is given about the nature of the work and that there is no reason to believe Mr. Mitchell's supervisor was aware that such work was performed.

The Agency also asserts a credit time offset of 16 hours received and used by Mr. Mitchell, that he earned and used compensatory time in 5 pay periods, and that any pay periods in which he did not receive credit time are outside the scope.

The Union contends that Mr. Mitchell did, in fact, as he noted on his Claim Form, work a basic schedule. It points further to his Cost Accounting Bi-weekly time sheets, which show the extra hours worked. It notes that Mr. Mitchell's basic work schedule is confirmed by the unofficial logs signed by Ms. Pollard in July 2006, which show further that Ms. Pollard was aware of his extra work hours. It alleges that Ms. Pollard's affidavit

is false, and that the Agency illegally entered credit time for Mr. Mitchell in the FPPS records, who was working a basic work schedule. This further proves, as the Union alleges, that the FPPS records are inaccurate and false, and that the Agency has continued, in Mr. Mitchell's case, to engage in conduct in violation of law. It asserts that Mr. Mitchell's travel overtime claim is correct, in that he was more than fifty miles from his official duty station. It notes that, given the evidence available concerning the Little Rock Area Office, the Agency clearly knew its objections to Mr. Mitchell's claim were untrue.

First, on the matter of Mr. Mitchell's work schedule, there are a few elements that must be addressed. One is Mr. Mitchell's reporting on his Claim Form of what appears to be his own work hours, which do differ from the official hours of the Little Rock Area Office. Another is the FPPS records, that reflect multiple credit time entries, which time is only available to employees on a flexible schedule. On this, I note, and indicated this in the 2009 Opinion (as well as elsewhere in this Report), that FPPS records are not unfailingly accurate. Thus, an entry of "Credit Time" does not, by itself, equate with a flexible schedule, although, if properly entered, it should. Next is the matter of Ms. Pollard's Declaration, which stated that, from the time of Mr. Mitchell's hire in April 2006 until November 2007, he was on a flexitour schedule. The Union deems this "a false affidavit," the Agency illegally entering credit time in the FPPS records for an employee who was on a basic work schedule.

Yet another matter is the July 2006 "Credit Time Log," which, as the Union argues, shows Mr. Mitchell was on a basic work schedule at that time. Actually, this same log also has a September 8, 2006 entry, likewise reporting his hours as 8:00 A.M. to

4:30 P.M. This is not entirely dispositive for two reasons: (2) some of these entries have "Intake" designations, which alone may account for Mr. Mitchell's having worked the official office hours at that time; and (2) this document covers a period of time that entirely predates the pay periods for which Mr. Mitchell makes claims here.

This issue, in my view, clearly raises material issues of fact. Unless the parties can report to me their agreement on the issue of Mr. Mitchell's work schedule during the periods of his claims, I will direct a hearing, first, to determine the *bona fides* of Mr. Mitchell's claim that he worked a basic schedule during the period of time covered by his claims. Second, I want to receive testimony on the details of Mr. Mitchell's travel to Dallas so that I may determine whether there is a valid claim for travel overtime.

LOS ANGELES

The Union states that, according to the Los Angeles, CA hearing testimony of Timothy Riera, Director of the Honolulu Local Office, he was under the immediate supervision of the Los Angeles and San Francisco District Offices, that he had been informed by his immediate supervisors that no overtime money was available, and that employees could therefore work for compensatory time. The Union makes reference to Deborah Lichten, an Investigator in the Los Angeles District Office (but not a claimant in these proceedings), who entered on her weekly time sheets that she worked through her breaks, that her supervisor signed the time sheets, and that no records were kept of her extra work hours.

Donna Marie Cutley

Ms. Cutley (formerly Donna Kite) worked as an Investigator in the Los Angeles District Office. She became a GS-9 Investigator (and, therefore, eligible in this claims

process) in pay period 200319 and remained an Investigator (eventually as a GS-12) for the remainder of the claims period. She worked a 4/10 compressed schedule. She claims 576 hours over 36 pay periods, claiming 16 extra hours in each of those pay periods. The Agency objects to all her claims on the ground that there is insufficient evidence to support them.

For the record, the Agency also objects to the extent that Ms. Cutley claims overtime for work performed during paid breaks, that she claims overtime for travel time, that she did not actually work the claimed hours, that she received informal compensatory time in exchange for any additional hours worked, or did not receive any compensatory time, thereby rendering such claims outside the scope.

The Union contends that Ms. Cutley had checked on her claim forms that no records were kept of her extra work hours. It asserts that the Agency has, as a general matter, failed to record employees' extra work hours and has kept false and inaccurate time and attendance records on employees. The Union argues, therefore, that the Agency may not complain that Ms. Cutley has estimated the extra hours she worked. It asserts that the practice in the Los Angeles District Office was to withhold payment for extra work hours and to not record the hours.

One of the Union's assertions is that Ms. Cutley had checked on her Claim Form "that no records were kept of her extra work hours." I presume this refers to Ms. Cutley's having noted thereon that, in addition to not having uploaded any documents, she did not indicate that there were any supporting e-mails for her claim.

I understand the Union's argument as to why there was no specific information on Ms. Cutley's Claim Form, apart from the assertion of 16 extra work hours in each

claimed pay period. However, there is no sense of what efforts she might have made in order at least to offer a general statement of the nature and extent of the work she performed during these hours and why they might have merited extra pay. I note that she is not among the claimants who requested extra time to file her claim.

Unfortunately, I have no basis on which I may grant all or part of this claim, nor to direct that a hearing be scheduled. Accordingly, Ms. Cutley's claim must be denied.

Diana Franklin

Ms. Franklin worked in the Los Angeles District Office as an Investigator throughout the claims period, working a 4/10 compressed schedule. She claims 480 hours over 30 pay periods, claiming 16 extra hours in each of those pay periods. The Agency objects to all her claims because they are outside the scope and because she has submitted insufficient evidence to support her claims.

The Agency maintains that, inasmuch as Ms. Franklin has submitted no documentation apart from her Claim Form, there is insufficient evidence to demonstrate by just and reasonable inference that the hours she claims reflect actual hours worked. It asserts that there is no indication of the nature of the work claimed, or of the amount and extent of the claimed extra hours, in addition to no indication of what would cause such work to generate extra hours.

For the record, the Agency also objects to the extent that Ms. Franklin claims overtime for work performed during paid breaks, that she claims overtime for travel time, that she did not actually work the claimed hours, that she received informal compensatory time in exchange for any additional hours worked, or did not receive any compensatory time, thereby rendering such claims outside the scope.

The Union contends that Ms. Franklin had checked on her claim forms that no records were kept of her extra work hours. It asserts that the Agency has, as a general matter, failed to record employees' extra work hours and has kept false and inaccurate time and attendance records on employees. The Union argues, therefore, that the Agency may not complain that Ms. Franklin has estimated the extra hours she worked. It asserts that the practice in the Los Angeles District Office was to withhold payment for extra work hours and to not record the hours.

As in the claim of Donna Marie Cutley, above, one of the Union's assertions is that Ms. Franklin had checked on her Claim Form "that no records were kept of her extra work hours." As before, I presume this refers to Ms. Franklin's having noted thereon that, in addition to not having uploaded any documents, she did not indicate that there were any supporting e-mails for her claim.

As I also noted in the claim of Ms. Cutley, I understand the Union argument as to why there was no specific information on Ms. Franklin's Claim Form, apart from the assertion of 16 extra work hours in each claimed pay period. However, once again, there is no sense of what efforts she might have made in order at least to offer a general statement of the nature and extent of the work she performed during these hours and why they might have merited extra pay. Ms. Franklin is also not among the claimants who requested extra time to file her claim.

For these reasons, I am able to find no basis on which to grant all or part of this claim, nor to direct that a hearing be scheduled. Accordingly, Ms. Franklin's claim must be denied.

Elisa Makunga

Ms. Makunga worked as a Mediator in the Los Angeles District Office, noting on her Claim Form that she worked a basic schedule. She claims 27.5 hours over 3 pay periods in early 2009. The Agency objects to her claims on grounds that she was on a flexible schedule, that she claimed and received compensatory time for extra hours worked, and that she has submitted insufficient evidence to raise a reasonable inference that she worked the extra hours claimed.

On the matter of the Agency's assertion that Ms. Makunga claimed and received compensatory time for extra hours worked, it references a Declaration from Cherry Destura, ADR Coordinator in the Los Angeles District Office to the effect that Ms. Makunga "routinely claimed and used comp time whenever she worked extra hours." This Declaration is not included among the materials submitted by the Agency, although it quotes numerous passages from it, one of which references an e-mail attachment that is also not included.

On the matter of Ms. Makunga's work schedule, the Agency asserts that she worked a flexible schedule because her Claim Form and FPPS records reflect that she worked a schedule different from the official 8:00 A.M. to 4:30 P.M. hours of the Los Angeles District Office.

The Agency, again referencing the Declaration of Ms. Destura, stated that, partly in light of Ms. Makunga's failure to adhere to the policy of the Los Angeles District Office that all mediations were to conclude within scheduled work hours, she was terminated in December 2009.

Ms. Makunga submitted the following statement along with her Claim Form:

I submit this sworn statement as a means of explaining the pattern and practice of

how overtime hours were handled in the [EEOC] LADO (Los Angeles District Office) Mediation Unit.

I was employed as a bi-lingual mediator from 1/05/2009 to 12/09/2009. Prior to working for the EEOC I worked for the US Department of Justice as a mediator and the LA County Human Relations Commission as a Senior Intergroup Relations Specialist. I have nine years of experience mediating between parties, training mediators, developing conflict resolution materials, and working with community-based organizations to address equity issues.

I worked in the Los Angeles District Office (LADO) [and] my supervisor was Cherry Marie Rojas. My duties were numerous, but my main function was to mediate EEOC claims and settle cases. I worked primarily with Spanish speaking charging parties - but given the workload in the Unit, I would also mediate English speaking sessions. To that end, I handled all aspects of the mediation process from contacting parties, educating parties on the mediation process, scheduling mediations, mediating between parties and their representatives, and settling claims. As EEOC employees we were also responsible for "doing the paperwork" entering our settlements in the database, and keeping track of our cases. When I first arrived, the Mediation Unit was completely backed-up and understaffed. We had a temporary assistant, but it was not enough to deal with the backlog. The LADO office at the time had two mediators [-] myself (Elisa Makunga) and Brian Nelson as full time staff.

During February 2009, I co-mediated several cases with "outside" EEOC contractors. During pay period 200905 I worked with EEOC contract mediator Linda Kilbanow on a mediation that finally reached settled at 10 p.m. in the evening. The charging party worked for a local Latino television station. She was present with her friend as support. The respondent was the new general manager. The respondent brought both in-house counsel and an attorney for hire with her. We settled the case, both parties signed the agreement. The agreement was entered into the EEOC database and the charging party received compensation for her claim.

The following day Ms. Kilbanow told my supervisor that we were there till 10pm working on the agreement. My supervisor told me that she did not *pre-authorize* the extra work hours, and therefore I could not claim them. She initially gave me comp-time but then asked me to revise my time and attendance sheet and just put down "straight time" meaning regular 40 hours and instead I could take a day off. So during pay period 200907 I took 8 hours of sick time.

This was the practice – if the mediation session ran over, meaning we reached settlement at say 7pm or 9pm in the evening which was often the case, my supervisor would say "I did not *pre-authorize* your overtime – you cannot claim it – if you need some time off you can take a sick day."

Please keep in mind that we were evaluated by the number of cases you settled. In other words, it is not enough to simply hold a mediation session, your *settlement rate* – the ratio of cases mediated to cases settled determines your efficacy as a mediator. It is the prime factor by which your performance is judged. EEOC contract mediators were routinely "dropped" if their settlement

> rate was too low. So we worked the extra hours to get the job done, to settle claims.
>
> Also, please keep in mind that bi-lingual mediation sessions take more time. Translating between languages by nature requires more time. In addition, since LADO covers the Western District (California, Nevada, Hawaii and Guam) many charging parties and respondents would travel long distances to get to the LADO office so we could resolve the issue, settle the claim and move on.
>
> From February 2009 – May 2009 I averaged about three mediation sessions a week. During that time I routinely worked into the evening to reach settlement and provide both charging parties and respondents with a fair mediation session.
>
> During pay period 200906 I worked 12 hours in excess of 40 hours a week. During pay period 200909 I worked 10 hours in excess of 40 hours a week. The extra hours were worked in the evening conducting mediation sessions.
>
> Those hours were spent reaching agreements and those agreements are part of the EEOC record. The agreements reached and the awards to charging parties were all entered into the EEOC database. [Emphasis supplied]

In addition to the above, Ms. Makunga submitted several briefer statements, intended to document her excess hours performing mediation activities in specific pay periods – namely, pay periods 200906 (where she stated she worked 12 excess hours), 200907 (where, in one statement, she stated she worked 12 excess hours and, in another statement, 14 excess hours), 200909 (where, in one statement, she stated she worked 12 excess hours and, in another statement, 15 excess hours) and 200910 (where she stated she worked 12 excess hours). These statements uniformly referenced her work hours as being 8:00 A.M. to 5:00 P.M., not the same as the official 8:00 A.M. to 4:30 P.M. hours of the Los Angeles District Office.

I note here that, not only are these statements not entirely consistent as between themselves (the two different figures submitted for the same pay periods – 200907 and 200909), but they are likewise not consistent with the excess hours that appear on Ms. Makunga's Claim Form itself. For one, the Claim Form notes only three pay periods – pay periods 200905, 200906 and 200909. Further, where her brief statement, referenced

above, covering pay period 200909, claimed 12 or 15 excess hours, her Claim Form reflected only 10 hours. Her Claim Form does not reflect excess hours worked in pay periods 200907 or 200910.

The Union contends that Ms. Makunga worked a basic schedule and has supporting documents for pay period 200910 for 12 additional extra work hours, and that Rust Consulting was to relock her claim manually and the claim was not relocked. It notes further, as stated above, that the referenced Declaration of Ms. Destura was not included in the Agency's submission, nor were there any records showing compensatory time received and used. It argues that the Agency has produced no evidence showing that Ms. Makunga did not work the hours she claims (including the 12 extra hours in pay period 200910), and that being on a flexible schedule is not a bar to payment for extra work hours.

The evidence, in my view, strongly supports Ms. Makunga's working a flexible schedule during the relevant time period. Her Claim Form references the hours of the Los Angeles District Office as being 9:00 A.M. to 4:30 P.M. I cannot be certain whether she claims these to be her own work hours, but, at any rate, the official office hours were 8:00 A.M. to 4:30 P.M. If she actually worked 9:00 A.M. to 4:30 P.M., this would vary from the official office hours.

In addition, Ms. Makunga did not claim that her extra hours worked began until 5:00 P.M. This likewise militates against a finding that Ms. Makunga worked a basic work schedule.

Accordingly, for these reasons, I must deny Ms. Makunga's claim on the basis that she worked a flexible schedule.

Maria Marquez

Ms. Marquez worked as an Investigator in the Fresno Local Office from August 2007 until her transfer to the Los Angeles District Office after the claims period. She reports having worked a basic schedule. She claims 14.5 hours over 4 pay periods. The Agency objects to her claims on grounds that she was on a flexible schedule, that she is claiming overtime for work performed during breaks, that she is not entitled to any compensation for noncompensable travel time, that she received compensatory time for all hours claimed, that she earned and used compensatory time in the same pay period on at least one occasion, and that she did not work the overtime hours claimed.

Specifically, on the matter of Ms. Marquez' work schedule, the Agency states that the evidence reflects her being on a flexible schedule because she did not work the official hours of the Fresno Local Office (8:30 A.M. to 5:00 P.M.). It refers to the Declaration of Melissa Barrios, Director of the Fresno Local Office and Ms. Marquez' first line supervisor, which states, among other matters, that the official office hours were 8:30 A.M. to 5:00 P.M. and that Ms. Marquez' hours were 9:00 A. M. to 5:30 P.M., Monday through Friday. (The Claim Form indicates that the official office hours were 8:00 A.M. to 5:30 P.M., which appears to be incorrect.)

Along with her Claim Form, Ms. Marquez submitted several short statements representing various pay periods. They state the following:

> Pay Period: 4/13/2008-4/26/2008
>
> My name is Maria R. Marquez, during the pay period I was assigned to work at the Fresno Local Office as an Investigator GS 9. My work schedule was Monday thru Friday, 9:00 a.m. to 5:30 p.m., 40 hour work week. I traveled out of town starting early in the morning at 8:00 a.m. to Paso Robles where I checked in at the Paso Robles Inn. I conducted the following interviews along with others. I

concluded the interviews on April 17, 2008, and checked into the hotel at approximately 10:00 p.m. and continued to work until April 18, 2008, the next day. My work hours were from 9:00 a.m. to 5:30 p.m. On April 14, 2008, I worked from 8:00 a.m. to 10:00 p.m. and the next day from 8:00 a.m. to 8:00 p.m. I returned to the office after conducting additional interviews. The Respondent was Courtside Cellars and Contractor Jose Rendon. I worked a total of 9 hours overtime.

Pay Period: 10/14/2007 – 10/27/2007

I worked outreach from 12-5 p.m. [T]he event was Feria Binacional de Salud Sequoia. The Feria ended at 5:00 p.m. and items were collected and returned to the office. I worked through my lunch break and did not leave the office until 6:00 p.m. for a total of 1 hours and 30 minutes over my daily work hours.

Pay Period: 3/6/200[8] – 3/19/2008

3/18/2008, I worked with CRLA to give a presentation and skit in Woodlake California for Farm Workers. The presentation and travel resulted in approximately 3 hours of overtime. I believe there are emails to support this claim.

3/6/2008, I also worked a presentation in Firebaugh this pay period that required me to report to work at 8:00 a.m. instead of 9:00 a.m. to travel and give a presentation to migrant farm workers.

Note:

I also worked over my scheduled hours on other occasions. I am attaching documents for comp time that was not used for payment. Please see attachments.

I also worked over my schedule other hours but the comp time was used. I do not recall the payperiods [sic]. Please see below.

I made a quick accounting of the comp. time accumulated as [a] result of our interviews, reviews and on-sites. Please check them for accuracy and let me know if you have the same accounting. I have 15 minutes remaining of comp. time for SK Foods, Jose Villanueva, 30 minutes for review with Sylies of Jose Villanueva file, 45 minutes in the morning and an 1 hour in the afternoon for Almond Growers on-site and 1 hour interview of Maria Davis on the Almond Growers file. The total comp time accumulated is 3 hours and 30 minutes.

I would like to see if it is okay to use 30 minutes today and the remainder on March 25, 2009, so that I would leave the office on that day at 2:30 p.m.

It is appropriate here to set out the remainder of the substance of Ms. Barrios'

Declaration, as it makes express reference to matters in Ms. Marquez' statement. Ms. Barrios declared as follows: It was the practice in the Fresno Local Office to give compensatory time for extra hours worked, and she was not aware of any extra hours worked by Ms. Marquez for which she did not receive and use compensatory time. She would grant Ms. Marquez travel compensatory time for travel on non-work days or for travel related to training. She had no knowledge or record of the Outreach claimed by Ms. Marquez in pay period 200723. She had no knowledge of Ms. Marquez' working through her lunch break and was very careful to see that this did not occur. In addition, where Ms. Marquez referenced an Outreach in pay period 200807, Ms. Barrios stated that e-mails she attached show that Ms. Marquez took compensatory time for this. Finally, with reference to pay period 200809, and the interviews Ms. Marquez referenced she conducted, Mr. Barrios declared that the attached e-mail from Ms. Marquez established how she had used or was planning to use the compensatory time she received.

The Union contends that Ms. Marquez worked a basic schedule. It noted further that the Agency's FPPS records do not show any compensatory time used by Ms. Marquez. The Union states that the unofficial time used on Ms. Marquez's e-mail shows that she had a total of 17.5 hours as of May 14, 2008, that she had used 12 hours and that she had 5.5 hours remaining. It notes that the Agency has produced no records to show that these hours were not in addition to those on Ms. Marquez's Claim Form, and that her Claim Form reflects that e-mails exist that support her claim. Her written statement, the Union asserts, is very specific, and her documentation support overtime payments totaling 32 hours, minus 12 hours of compensatory time used, and an equal amount of liquidated damages.

The record clearly reflects, in my view, that Ms. Marquez worked a flexible schedule. I do not rely, in this regard, on the Declaration of Ms. Barrios regarding Ms. Marquez' work hours of 9:00 A.M. to 5:30 P.M. Ms. Marquez' own statement says that, as well as indicating that hers was not a compressed schedule, her reference being to a Monday through Friday 40-hour work week.

Furthermore, I can find no evidence that any other entitlement to overtime, specifically for travel, is established in the record.

Accordingly, on the basis of Ms. Marquez' flexible schedule, I must deny this claim.

Joyce Mills

Joyce Mills, who is deceased, worked as an Investigator in the Los Angeles District Office throughout the claims period. She indicated on her Claim Form that she worked a gliding schedule, but this is disputed. She claims 45 overtime hours over 18 pay periods. The Agency contends that Ms. Mills worked a flexible schedule for 4 of her 18 claimed pay periods, while the Union contends that she worked a 4/10 compressed schedule and, when assigned to Intake, she worked a basic schedule, consistent with office policy. Ms. Mills' Claim Form reflects a claim of 2.5 extra hours in each pay period.

The Agency objects to Ms. Mills' claims on grounds that she worked a flexible schedule for 4 of her 18 claimed pay periods, that management could not have known of or prevented the claimed overtime work, that she received compensatory time for all hours claimed, and because she has submitted insufficient evidence to raise a reasonable inference that she worked the extra hours claimed.

Specifically, the Agency contends that, consistent with FPPS data, Ms. Mills was on a gliding schedule for pay periods 200413, 200415, 200417 and 200421, and Ms. Mills admitted on her Claim Form to being on a gliding schedule. This is supported also, as the Agency contends, by the sign-in/sign-out sheets of the Los Angeles District Office during this time.

The Agency offered the Declaration of Patricia Kane, Enforcement Supervisor in the Los Angeles District Office and Ms. Mills' first line supervisor. She declared as follows: She instructed Investigators to document all their hours worked and, during 2003 and 2004, all Investigators were assigned to Intake one week per month. During Intake, potential Charging Parties were interviewed on a first-come, first-served basis beginning at 8:00 A.M. and arrivals would be cut off by 2:00 or 2:30 P.M. so that interviews could be concluded before the end of official working hours at 4:30 P.M. Working beyond 4:30 P.M. to complete an Intake interview or to complete Intake paperwork was extremely rare, and not the common occurrence claimed by Ms. Mills. Investigators would have no reason to arrive in the office before the official opening hour of 8:00 A.M. during Intake, since the office was not yet open to the public, and she had no knowledge that Ms. Mills arrived before that time. It was office practice to grant compensatory time for extra hours worked, and she knew of no time Ms. Mills did not receive compensatory time for extra hours worked.

Along with her Claim Form, Ms. Mills submitted the following statement to document her hours claimed, which she stated were worked on Intake:

> My name is Joyce Mills and at all times during the period between April 7, 2003 and April 28, 2009, I occupied the Investigator position at Grade Level 12 (GS-12) at the Los Angeles District Office. I can only recall working overtime during my week long assignments on Intake that occurred once a month. Due to customer service needs during Intake, I averaged 2.5 hours of overtime per week

> during each of my Intake rotations, which were scheduled once a month, in order to finish servicing a Charging Party or to complete paperwork. I averaged about 30 minutes of overtime before Intake started at 8:00 am and/or I worked about 30 minutes after closing time at 4:30 pm to catch up on Intake paperwork. I was not compensated for the overtime worked beyond my 40 hour tour of duty for each week and I have no documentation to prove my claim because I, along with other Investigators, were told to record hours worked as normal open business hours despite the fact that I and other Investigators worked beyond normal business hours. The pay periods I worked overtime while on Intake are as follows:
>
> [Citing 18 pay periods and claiming 2.5 hours of overtime in each, consistent with her Claim Form.]
>
> I am confident that I did not work any overtime in relation to Intake after October 1, 2004 because office management instituted some intake schedule changes in October of 2004 due [to] low staffing that persisted for 4 years that left me with no desire and no energy to work beyond my 40 hours a week.

The Union contends that Ms. Mills worked a 4/10 compressed schedule and, as required by the office (and as typical for Intake) switched to a basic work schedule when assigned to Intake. Her written statement documented each pay period for which she claimed extra work hours. Her designation on her Claim Form that she was on a flexible schedule may, as the Union notes, have been because she stated all of her extra work hours occurred when she worked Intake and she was not permitted to record her hours, a practice of the Los Angeles District Office. The Union notes further that the Agency relies upon a false affidavit from Patricia Kane, in which Ms. Kane, the approving supervisor on Ms. Mills' work schedule, attested there was no reason for Ms. Mills to come to work before 8:00 A.M., although the approved starting time for Ms. Mills was 7:30 A.M. Further, it asserts that the Agency's claim that Ms. Mills was on a flexible work schedule is false and contrary to available records. It argues that Ms. Mills has submitted sufficient evidence to support her claim, and that payment should be made to Ms. Mills' estate.

On the matter of Ms. Mills' work schedule, I have examined her sign-in/sign-out

sheets for pay periods 200413, 200415, 200417 and 200421. For each, the second week of the pay period shows Ms. Mills working the regular office hours, and I take it, therefore, that those were Ms. Mills' Intake weeks.

The first weeks of these pay periods show a varying pattern. In pay period 200413, the first week shows that she worked 7:30 A.M. to 4:00 P.M., except for one day when she worked 7:30 A.M. to 4:30 P.M. In pay period 200415, the first week shows that she worked 8:00 A.M. to 4:30 P.M. on 2 days, 7:30 A.M. to 4:00 P.M. on two days, and 7:00 A.M. to 3:30 P.M. on one day. In pay period 200417, the first week shows that she worked either 7:30 A.M. to 4:00 P.M. or 7:00 A.M. to 3:30 P.M. Finally, in pay period 200421, the first week shows that she worked 7:30 A.M. to 4:00 P.M.

Granting that Ms. Mills' approved start time was 7:30 A.M., this pattern still makes for a gliding schedule during these four pay periods. Therefore, I deem these four pay periods ineligible for purposes of this claim.

With respect to the other 14 pay periods in Ms. Mills' claim, the matter of proof is clearly made more difficult by the fact that Ms. Mills is deceased. Moreover, as I have explained earlier in this Report, I do not take Ms. Kane's Declaration as evidence. I find that I am required to direct a hearing so that the circumstances surrounding work performed by Ms. Mills may be identified to the extent possible.

Christine Park-Gonzalez

Ms. Park-Gonzalez worked as an Investigator in the Los Angeles District Office from prior to the claims period until February 28, 2009. Ms. Park-Gonzalez filed a Claim Form but made no claims for any pay periods. The Agency objects on the ground that she failed to file a valid claim.

The Union agrees that Ms. Park-Gonzalez has no claim.

Tommy Watkins

Mr. Watkins worked as a Mediator in the Los Angeles District Office from before the claims period to July 22, 2005. The matter of whether he worked a basic schedule, as he reflects on his Claim Form and as the Union contends, or whether he worked a 5/4/9 compressed schedule, as the Agency contends, is in dispute. Mr. Watkins claims 994 hours over 50 pay periods from March 2003 (pay period 200308) to February 2005 (pay period 200506). He was among those claimants who received a 60-day extension of time to file.

The Agency objects to all his claims on grounds that he provided insufficient evidence to raise a reasonable inference that he worked the extra hours claimed, that they are outside the scope, that he received informal compensatory time for all overtime hours claimed, and that management could not have known or prevented him from working the claimed additional overtime hours.

Mr. Watkins submitted a statement with his Claim Form, in which he stated:

> I participated in the Los Angeles District Office (LADO) 5-4-9 flex program until it was discontinued. I am uncertain of the date the programs ended but believe it to be end of fiscal year 2002 or beginning of fiscal year 2003 when district director, Olophius Perry announced all flex programs per Head Quarters are immediately discontinued. After the announcement my participation in the LADO flex program immediately ceased.
>
> As follow up the Alternative Dispute Resolution (ADR) Coordinator, Douglas Herrera posted a memorandum in the ADR unit. The memorandum read: All flex programs are immediately discontinued. Compensatory time is no longer offered for work performed. The ADR unit will assume the LADO basic office work schedule 8:00 am to 4:30 pm. Mediators classified GS-13 are required to work two additional hours each day because of their GS-13 exempt status. I was a GS-13 Mediator assigned to the ADR Unit under the supervision of Douglas Herrera, Coordinator.
>
> The ADR secretary (time keeper) Ms. Rachel Lopez confirmed Mr. Herrera's

> instructions. Ms. Lopez further stated even though I worked an additional two hours each day only regular work hours (8 hour shift) will be reported as a result of the GS-13 exemption.
>
> I attach my Mediator and Time and Attendance Records in support of my Overtime Claim. Although the records indicate I was on a compressed work schedule I disagree. In my defense neither record reports compensatory time during the period of my Overtime Claim. It is my belief I did not request compensatory time during this period of my employment.
>
> After review of my Mediator and Time and Attendance Records January 8, 2003 through July 23, 2005 I respectively claim one hour (7:00-8:00 am) each day in preparation of mediation and the two additional hours required to work each day in addition to the basic eight hour shift because of my GS 13 exempt status. No one informed me of the GS 13 re-classification to non-exempt status.

The Agency references the Declarations of Rachel Lopez, ADR Assistant and timekeeper for the Los Angeles District Office's ADR Unit from 1997 to 2008; and Patricia Kane, Enforcement Manager in the Los Angeles District Office. Ms. Lopez, whose supervisor was Douglas Herrera, ADR Enforcement Manager, declared as follows: She performed a variety of duties for Mr. Herrera, including the preparation of unit-wide announcements and memoranda, and entering time and attendance data for the Mediators in the FPPS system. All Mediators while she was in her position, including Mr. Watkins, worked compressed schedules. To the best of her knowledge, at no time during the end of fiscal year 2002 or the beginning of fiscal year 2003 were flex schedules for the ADR Unit discontinued, and she had no record or recollection of a memorandum from Mr. Herrera discontinuing flex schedules and requiring GS-13 Mediators to work two additional hours each day, and declared that such a requirement would be "outrageous." She stated her belief that Mr. Herrera did not at any time order Mediators to perform overtime, and that if Mediators wanted to work beyond their regular hours to finish mediations, it was their choice. She further stated her belief that any such extra work hours were credited as compensatory time that was to be used during the next two weeks.

Ms. Kane, currently Enforcement Manager in the Los Angeles District Office, declared that she worked in the Los Angeles District Office's Mediation Unit from 1998 until late 2000 or early 2001. She declared further as follows: At no time did District Director Olophius Perry suspend flexitour or compressed schedules for any of the units in the Los Angeles District Office. When she was a Mediator, she had discretion to begin a mediation at any time during her regular hours and, thus, would have no need to come in early to prepare. She did not schedule mediations on a daily basis and knew of no other Mediators who did so, and she could generally complete a mediation in five or six hours, without the need to stay beyond her regular hours. If extra hours were required, the office practice was to grant compensatory time which she would use within the same pay period. In this respect, there was no formal system of reporting or recording compensatory time, and she would verbally inform her supervisor, Mr. Herrera, if she stayed late to complete a mediation.

Based on the above, the Agency asserts an overtime offset for 994 hours of compensatory time that would have been received and used by Mr. Watkins. In addition, it notes that Mr. Watkins has not produced the memorandum that allegedly required him to work an extra two hours per day because of his GS-13 exempt status. Were this the case, there would be no way his supervisor could have known about it unless Mr. Watkins told him. Further, the Agency argues that Mr. Watkins' claim and his assertions in his statement are uniformly contradicted by Agency statements and records, which establish that he worked a 5/4/9 compressed schedule.

The Union contends that, with respect to the Declarations of Ms. Kane and Ms. Lopez, Ms. Kane's lacks credibility and makes no reference to the suspension of

compressed work schedules, while stating that Mediators did, in fact, work past scheduled work hours, and that the affidavit of Ms. Lopez is not accompanied by any time and attendance records, sign-in/sign-out sheets or other documentation showing Mediators' work hours. It notes that, while Ms. Lopez's affidavit stated she believed Mediators received compensatory time, no records were produced in support of her claim. It asserts that the Agency has failed to submit any specific evidence to dispute Mr. Watkins' claim.

The above recitation of the parties' respective positions, as well as the totally irreconcilable facts each has offered, principally through competing hearsay declarations, present multiple material issues of fact. These issues cannot, in my view, be resolved in any practicable way other than through a hearing. I will direct such a hearing so that testimony may be received from Mr. Watkins and relevant Agency representatives.

LOUISVILLE

Marian Ahl

Ms. Ahl worked as an Investigator in the Louisville Area Office throughout the claims period, working a 4/10 compressed schedule. She claims 52 hours over 15 pay periods. The Agency objects to most of her claims on grounds that she earned and used compensatory time in the same pay period, that some of her claims are outside the scope, and that she provided insufficient evidence to raise a reasonable inference that she worked the extra hours claimed.

The Agency acknowledges the validity of some of her claims and concludes that she is entitled to payment of $672.62 (representing 18 hours), plus liquidated damages, totaling $1,345.23.

The Agency points to Ms. Ahl's Claim Form and identifies that she received and used 8 hours of compensatory time in pay periods 200317, 200423 and 200626. She did, in fact, both receive and use 2 hours of compensatory time in pay period 200317, and 1 hour of compensatory time in pay period 200423. In pay period 200626, she claims 5 hours received and 2.5 used, whereas FPPS records reflect only the 5 hours received. The Agency points also to pay period 200825, where she received and used 2 hours of compensatory time. This latter, however, is beyond the range of her claim, which ends in pay period 200817.

The Agency challenges Ms. Ahl's claim on other grounds. It identifies pay periods 200405, 200606, 200618 and 200725 as outside the scope, inasmuch as she claims extra hours but did not receive compensatory time. It further challenges Ms. Ahl's claim for 6 extra hours in pay period 200618, asserting that she failed to identify the work performed and how the hours were calculated, noting that the only support she offers is a 2006 Leave Calendar which it claims is inconsistent with FPPS records. In addition, it notes that she earned no compensatory time in pay period 200618, arguing that all overtime hours approved by a supervisor in the Louisville Area Office were entered into FPPS, referencing the Declaration of Susan Ryan.

The Declaration of Susan Ryan, former Enforcement Supervisor in the Louisville Area Office and Ms. Ahl's direct supervisor, asserts the following: The standard office practice regarding extra hours was for the employee to fill out and submit EEOC Form 327 before working the hours, and that, once approved, compensatory time would be granted and entered into FPPS. If extra hours had been worked before being reported, compensatory time could still be requested so long as the reporting was prompt. She had

personally observed the Director of the Louisville Area Office instruct staff not to work through lunch breaks even during Intake, nor to stay beyond their regular hours.

I note here, as I note in other claims referencing this Declaration, that it is evidence of the Agency's position, and I do not take it as testimony. Therefore, for example, I do not accept as fact, on this basis of this Declaration alone, that all claimants' compensatory time was necessarily accurately reflected in FPPS.

The Agency further objects to the 30 minutes Ms. Ahl claims on her Claim Form in pay period 200725 on two grounds: (1) that it is noncompensable travel time; and (2) that it was not approved by her supervisor since it is not in FPPS. It makes an alternative argument that, if this same claim is for working through lunch, it is likewise not valid.

Accompanying her Claim Form, Ms. Ahl included, for her claimed pay periods, time records, earnings and leave statements, leave calendars, and e-mails informing Ms. Ryan of Onsite activities and interviews with potential Charging Parties.

The Union contends that Ms. Ahl's extra hours, as witnessed by her documents, were approved by her supervisor, and the compensatory time she used is reflected on her Claim Form. The Agency is unable to show that Ms. Ahl did not work the extra hours claimed and admits to 18 hours of her claim. Regarding Ms. Ahl's claim for 6 extra hours in pay period 200618, which the Agency disputes, the leave calendar in support of this claim is an Agency document, reflecting leave use and compensatory time, and that all Ms. Ahl's supporting documents are Agency records.

There are certain problems of proof that arise here, one being that I am expected to accept as fact the assertion that all overtime hours approved by a supervisor in the Louisville Area Office were entered into FPPS. While Ms. Ryan so declared, I may not

accept that as fact; this is so for evidentiary reasons, not necessarily for reasons of credibility. I also need to hear about certain matters that are unclear in the record. One is the challenge to Ms. Ahl's claim for 6 hours in pay period 200618. Another is the Agency's alternative explanations for its rejection of Ms. Ahl's 30-minute claim in pay period 200725. In addition, the compensatory time calculation for pay period 200626 in unclear with respect to Ms. Ahl's claim to have used 2.5 hours and FPPS records not so reflecting.

Finally, in light of my ruling on the "outside the scope" issue, I direct a hearing on the matters already outlined above, and to determine as well whether bases exist such that the proposed Agency remedy should not be directed.

Alan Anderson

Mr. Anderson worked as an Investigator in the Louisville Area Office throughout the claims period. He worked a 5/4/9 compressed schedule. He claims 58 hours over 24 pay periods. The Agency acknowledges that, based on a review of his claim, he may be entitled to payment of 10.25 hours, or $330.09, plus liquidated damages, totaling $660.18. The Agency objects to his remaining claims on grounds that he provided insufficient evidence that he worked the hours claimed and that they were suffered or permitted by the Agency, and that his claims are outside the scope.

Mr. Anderson accompanied his Claim Form with various supporting documents. These included sign-in/sign-out sheets, documents referencing various Onsites (and related travel), Outreach, Intake, training activities, and evidence of authorized compensatory time hours.

The Agency offered the Declaration of Susan Ryan, former Enforcement

Supervisor in the Louisville Area Office. It asserts the following: The standard office practice regarding extra hours was for the employee to fill out and submit EEOC Form 327 before working the hours, and that, once approved, compensatory time would be granted and entered into FPPS. If extra hours had been worked before being reported, compensatory time could still be requested so long as the reporting was prompt. She declared that she had personally observed the Director of the Louisville Area Office instruct staff not to work through lunch breaks even during Intake, nor to stay beyond their regular hours.

I note here, as I note in other claims referencing this Declaration, that it is evidence of the Agency's position, and I do not take it as testimony. Therefore, for example, I do not accept as fact, on this basis of this Declaration alone, that all claimants' compensatory time was necessarily accurately reflected in FPPS.

The Union contends that Mr. Anderson's supervisor approved his Outreach and travel. It asserts that the Agency has failed to produce evidence showing that the time worked and claimed by Mr. Anderson was not worked, and Mr. Anderson's own supporting documents are evidence that this work was, in fact, performed.

Specifically, the Agency questions why Mr. Anderson claims to have skipped lunch on an average one day for each week he worked Intake. It also identifies a few discrete activities in a few pay periods that it believes do not support Mr. Anderson's claims. One is for pay period 200311, the first of his claims, where Mr. Anderson claims one hour of overtime for an Onsite investigation. While the sign-in/sign-out sheet identifies the activity as an Onsite, on a day when he stated he worked from 8:15 A.M. to 5:45 P.M., the Agency challenges the claim on the basis that, in any event, he was

scheduled to work a 9-hour day. I agree that there is insufficient evidence to support this claim.

Another is Mr. Anderson's claim, for one hour in pay period 200511 via e-mail to Area Director, Marcia Hall-Craig, representing compensatory time Mr. Anderson requested for traveling to an Onsite in Paducah, Kentucky, where the Agency indicates that there is no showing that the request was approved or whether the compensatory time was granted. The Claim Form would suggest that it was not, but FPPS records reflect 1 hour of compensatory time earned. Other travel claims may be eligible for overtime payment if certain conditions are met. The claim in pay period 200604 for an Onsite overnight, and that in pay period 200805 requiring travel to Nashville, Tennessee are among these. So is the Outreach in Frankfort, Kentucky in pay period 200613. This event, a presentation for the Cabinet for Health and Family Services, matches with a claim for 0.5 hours, which is likely a lunch claim. Numerous other lunch-related claims, dealing with both Intake and Outreach activities, are too general on their face to be credited.

In sum, I note numerous pay periods where Mr. Anderson did not earn compensatory time. In light of my "outside the scope" ruling, I am prepared to hear testimony on whether bases might exist in such pay periods such that the Agency's proposed remedy should not be directed. In addition, I want to hear testimony on Mr. Anderson's travel that required an overnight stay, so that I may be able to determine whether it qualifies for travel overtime.

Darrick Anderson

Mr. Anderson worked as an Investigator in the Louisville Area Office throughout

the claims period. His Claim Form reflects that he worked a gliding flexible schedule. He claims 257.4 hours over 129 pay periods. The Agency objects to all his claims on the ground that he worked a flexible schedule for all his reported pay periods. In addition, the Agency objects on grounds that, inasmuch as, in most pay periods, he did not report compensatory time earned or used on his Claim Form, his claims are outside the scope, that his sign-in/sign-out sheets do not reference entire pay periods and, thus, do not demonstrate work over 80 hours in a pay period, that working through breaks is not overtime, that he earned and used compensatory time in the same pay period, and that supervision did not know of, nor could they prevent, his claimed extra hours.

In support of his claim, Mr. Anderson submitted numerous documents, among these supervisory authorizations, sign-in/sign-out sheets, explanations of Intake activities, on-site investigations (including claims of working through breaks) and settlement conferences.

The Agency offered the Declaration of Susan Ryan, former Enforcement Supervisor in the Louisville Area Office and Mr. Anderson's first line supervisor. She declared the following: The standard office practice regarding extra hours was for the employee to fill out and submit EEOC Form 327 before working the hours, and that, once approved, compensatory time would be granted and entered into FPPS. If extra hours had been worked before being reported, compensatory time could still be requested so long as the reporting was prompt. She had personally observed the Director of the Louisville Area Office instruct staff not to work through lunch breaks even during Intake, nor to stay beyond their regular hours.

I note here, as I note in other claims referencing this Declaration, that it is

evidence of the Agency's position, and I do not take it as testimony. Therefore, for example, I do not accept as fact, on this basis of this Declaration alone, that all claimants' compensatory time was necessarily accurately reflected in FPPS.

The Union contends that Mr. Anderson's documentation demonstrates that his supervisors approved extra work hours and compensable travel. It states that the Agency has no evidence to counter this.

Mr. Anderson's claim must be denied by virtue of his working a flexible schedule.

Kimberly Anderson

Ms. Anderson worked as an Investigator in the Louisville Area Office throughout the claims period, working a 5/4/9 compressed schedule. She claims 52.75 hours over 20 pay periods. The Agency objects to most of her claims on grounds that they are outside the scope, that she has provided insufficient evidence that she worked more than 80 hours in a pay period, that those hours were not suffered or permitted by the Agency, that she earned and used compensatory time in the same pay periods (i.e., pay periods 200314 and 200806 – 4 hours and 2 hours, respectively), that working through paid breaks is not overtime, that her extra hours worked are offset by compensatory time already received, and that her travel time does not constitute overtime.

The Agency acknowledges that, based on Ms. Anderson's FPPS records, she is probably entitled to 3.1 hours of pay (for 6.2 hours of overtime worked), or $100.47 which, including liquidated damages, totals $200.94.

Ms. Anderson's claim is accompanied by numerous supporting documents. These include, principally, the following: (1) memoranda from Ms. Anderson to Susan Ryan,

then Enforcement Supervisor for the Louisville Area Office, and Ms. Anderson's first line supervisor, in which she outlines work performed at Onsites, Outreach and related travel; (2) sign-in/sign-out sheets; (3) Intake activities for calendar years 2004 to 2008; (4) selected pay records; and (5) statements setting forth three specific instances of travel in calendar years 2003, 2004 and 2008, claiming extra hours beyond her regular work day.

The Agency offered the Declaration of Ms. Ryan. She declared the following: The standard office practice regarding extra hours was for the employee to fill out and submit EEOC Form 327 before working the hours, and that, once approved, compensatory time would be granted and entered into FPPS. If extra hours had been worked before being reported, compensatory time could still be requested so long as the reporting was prompt. She declared that she had personally observed the Director of the Louisville Area Office instruct staff not to work through lunch breaks even during Intake, nor to stay beyond their regular hours.

I note here, as I note in other claims referencing this Declaration, that it is evidence of the Agency's position, and I do not take it as testimony. Therefore, for example, I do not accept as fact, on this basis of this Declaration alone, that all claimants' compensatory time was necessarily accurately reflected in FPPS.

Ms. Anderson submitted various pay-period-specific documents in support of her claim, among these memoranda granting compensatory time, travel documents, sign-in/sign-out sheets, statements referencing Intake and Outreach activities and overtime authorization forms.

Ms. Anderson's Intake activities, in particular, were documented in separate

statements covering the 2004 to 2008 time period. These statements, I note here, were not contemporaneous but were prepared at the time her claim was filed. In addition to outlining the number of Investigators assigned to the Louisville Area Office during the relevant years, they estimated Ms. Anderson's spending between roughly nine and fourteen weeks a year performing Intake. Common to all these statements was the declaration that "[d]uring the weeks that I performed intake duties I would regularly be forced to skip my lunch periods in order to complete the intake process with Potential Charging Parties and Charging Parties," estimating that she would be required to skip lunch on an average of once every week that she performed Intake.

The Union contends that the documents submitted, which are Agency documents, demonstrate that her supervisor was aware of and approved her extra work hours.

From an evidentiary standpoint, I may grant that certain of these activities are likely to have generated hours that may be extra hours in the context of extra hours in a day. However, the proof that must be shown is that these extra hours were extra hours in the context of a given pay period. This is the test. Many of the records here referencing Intake and Outreach, for example, while *bona fide*, do not necessarily make the case for a pay period in excess of 80 hours, even in light of Ms. Ryan's hearing testimony to the effect that some Outreach activities have no flexibility in their scheduling and, therefore, have to occur after hours or on weekends. In addition, some examples, such as the Evansville, IN Onsite in pay period 200314, and the Sunday Onsite preparation work in pay period 200806, while generating compensatory time, also resulted in the use of that compensatory time in the same pay period.

Inasmuch as there are numerous pay periods where compensatory time was not

received, and in light of my "outside the scope" finding, I direct a hearing for the purpose of determining if bases exist such that the proposed Agency remedy should not be directed.

Edward Bagley

Mr. Bagley worked as an Investigator in the Louisville Area Office from before the claims period through September 30, 2007. His FPPS records reflect his working a 5/4/9 schedule. His Claim Form, signed, dated and mailed on May 29, 2012, was not filed in accordance with the instructions in the Notice to Claimants.

Mr. Bagley wrote on the face of the Claim Form estimates of the overtime he believed he worked and should be paid for the years 2003 through 2006, each at the then applicable hourly rate. For 2003, he claimed $736.50; for 2004, he claimed $1,262.25; for 2005, he claimed $707.00; and for 2006, he claimed $655.50. His total claim, therefore, as he stated it, was for $2,661.32. (Actually, these four add up to $3,361.25.)

The Agency objects to all Mr. Bagley's claims, as stated here, on the ground that he did not file a valid claim, and that he provided insufficient evidence to support his claims.

With this submission, Mr. Bagley included numerous documents, among them sign-in/sign-out sheets, e-mail requests to supervision for compensatory time, and at least one compensatory time authorization.

The Agency's threshold objection, the failure to submit a valid Claim Form, notes that Mr. Bagley's submission is inadequate for many reasons, among them that he did not indicate the number of overtime hours claimed by pay period, what schedule he worked, when the overtime was worked, and when he earned and used compensatory time. It

maintains this despite acknowledging that documents he submitted support the conclusion that, in five pay periods in 2003, 2004 and 2005, he earned and received compensatory time, and that FPPS records confirm the same.

Mr. Bagley submitted a Supplemental Affidavit, dated October 31, 2013, along with a Claim Form. The Supplemental Affidavit states:

> …When I filed my claim, I did not understand that I had to return the self-duplicating claim form to submit my claim. I did not realize I had filled out and submitted my claim incorrectly, until I spoke with Barbara B. Hutchinson, the Union's attorney, on October 14, 2013. I thought the forms, I submitted, which I received from the Union representative, at the EEOC's Louisville office, were authorized forms for the Overtime Claims Process. Based on Ms. Hutchinson's information, I am requesting to amend my claim by submitting the completed claim form, through the Union's attorney, within ten calendars [calendar days?], from the date of this Supplemental Affidavit. The completed authorized claim form, will be based upon the documents I submitted with my original claim dated May 29, 2012.

The Claim Form included with Mr. Bagley's Supplemental Affidavit, apart from the timing of its submission, is, in my view, itself incomplete. While Mr. Bagley signed each page, many of the required fields are either rarely filled in or not at all.

The Union contends, consistent with the above statement, that Mr. Bagley did not know he had used the wrong form in filing his claim. The Union points out that Mr. Bagley believed the form he filed was an authorized form, and he requests the Claim Form submitted with his Supplemental Affidavit be considered accepted as his claim and his claim be amended to include the work hours on the claim form attached to his Supplemental Affidavit. The Union asserts that the documents submitted, which are Agency documents, demonstrate that Mr. Bagley's supervisor was aware of and approved his extra work hours, and that the Agency is unable to prove Mr. Bagley did not work these extra hours.

I acknowledge the Union's good faith efforts to cure the timeliness issue.

However, the parties know that the claims process, which they very painstakingly negotiated, is one that they intended be adhered to. Here, while I acknowledge also the records Mr. Bagley submitted, I cannot ignore that, while each page is signed, it is still ultimately undated, and surely untimely by any measure.

I simply have no basis to treat this as a valid claim. It must, therefore, be denied.

Sharon Baker

Ms. Baker worked as a Mediator in the Louisville Area Office throughout the claims period. She worked a 4/10 compressed schedule. She claims 608.45 hours over 146 pay periods. The Agency objects to her claims on grounds that she provided insufficient evidence to create a just and reasonable inference that she worked the hours claimed, that her claims are outside the scope, that she claims hours that were for travel, that she claims hours for noncompensable breaks, and that she did not work more than 80 hours in the same pay period.

Ms. Baker produced a significant amount of documentation with her Claim Form, including calendar notations (which appear, on their face, to be contemporaneous) in which dates and identities of mediations are notated (along with references that typically reflect no lunch and no break period), resolutions reports, reports of daily hours worked, travel authorizations and vehicle logs, and e-mails and other forms granting compensatory time.

For each year during the claim period, Ms. Baker submitted a statement (incorporating also her accounting of compensatory time earned and used). The following is representative of these:

> I am claiming overtime hours worked for the following listed payperiods. This work was either done in my traveling to mediation locations outside of the city,

> some as far as 4 hours driving time away. Overtime worked and not recorded is also a result of performing my job duties as a Mediator. It is a know practice throughout the Commission that most Mediators do not have a lunch break nor breaks during the mediation process. In my office there is only one conference room and one caucus room. The senior Mediator started his mediations at 9:00 A.M. and I started mine at 10:00 A.M. so that we could both use the area and our offices for caucusing. We therefore had no place to even sit for a break and also did not take breaks along with not taking lunch. When I worked outside the cities I took several cases in connecting cities. Once mediation was concluded in one city I went to the next. I informed all parties that mediation goes until we get a resolution or an impasse or if by request a continuance for consideration of a proposal. The average mediation time is 5 hours but often goes longer. Therefore, by starting at 10:00 A.M. my average mediation would go to 3:00 P.M. without lunch and a break if local and when out of the city the locations that are available for mediation do not have eating facilities and most do not even have vending so there would be no lunch and no breaks. I normally schedule mediations in a region together and would be out a week. Mediations in different cities require one to two hours travel between cities after mediation which I did not capture in this claim. I also would represent the Agency at Outreach functions some which occurred on the weekends, some on my schedule[d] day off and some after hours which will be reflected in my claim. I will be sending additional supporting documents under separate cover as the information is volumous [sic] and the scanner kept messing up due to the number of pages. I am attaching a calendar for each fiscal year which has the charge numbers of the cases that I am claiming no lunch and no break and travel for the respective periods. In some cases you will also have the Charging Party and Respondent's name.
>
> This statement and the information being submitted that follows is based on payroll records, Agency catalog sheets, and travel orders and compensatory request form.

Specifically, the Agency notes pay period 200408, where Ms. Baker claims 6 hours of overtime, in which pay period she also earned and used 9 hours of compensatory time. It suggests that she might be claiming she worked a total of 15 extra hours, working 6 hours that were not compensated. If so, the Agency argues, such time is not compensable with compensatory time or overtime and is outside the scope. It also argues that travel time for mediations is not compensable with overtime, and that it cannot be discerned from Ms. Baker's general statement what hours she claims for lunch, Outreach and travel. As for skipping lunch breaks, in light of her travel, it is unlikely she would have informed her supervisor she was not taking this time.

The Union contends that Ms. Baker's documents demonstrate that her supervisor was aware of and approved her extra work hours. It notes the Agency's challenge to Ms. Baker's entry in pay period 200408 that she worked six extra hours, received nine hours of compensatory time and used nine hours of compensatory time, and, in fact, worked four extra hours on March 25, 2004 and nine hours on March 27, 2004 (totaling thirteen, both in pay period 200408, on Outreach). The Union maintains that Ms. Baker may have erroneously entered six hours instead of thirteen). It argues that the Agency has produced no evidence that Ms. Baker did not work the extra hours she claims.

Apart from noting that, consistent with my "outside the scope" ruling, it is necessary to consider extra hours that may have been worked during those pay periods implicated by that ruling, I find two areas where I am prepared to grant a hearing and hear testimony. The reason is that I find these most likely by their nature to have created extra hours that may be payable with overtime. Based on the documentation that has been provided, there is, in my view, an inference that these are Outreach activities on weekends, after hours and on days off, and potentially compensable travel for mediations. As it appears from Ms. Baker's FPPS records, her 4/10 compressed schedule days off varied typically between Mondays and Fridays, and this will have to be examined as well.

John Bayne

Mr. Bayne worked as a Paralegal Specialist in the Louisville Area Office throughout the claims period. He worked a 5/4/9 compressed schedule. He claims 30 hours over 6 pay periods. The Agency objects to all his claims on the grounds that he does not provide sufficient evidence to support his claims, or to raise a just and reasonable inference that he worked more than 80 hours in a pay period which was

suffered or permitted by the Agency, that his claims are outside the scope, and that his claims are for noncompensable travel time. It asserts that, except for pay period 200412, his claims do not raise a just and reasonable inference that the time claimed was actually worked.

The Agency references here the Declaration of Susan Ryan, former Enforcement Manager in the Louisville Area Office. I do not cite it at length in this case, inasmuch as Ms. Ryan supervised Investigators, not Paralegal Specialists. It appears that Ms. Ryan's connection with this case may be limited to her role as a supervisory approving official who signed Government Vehicle Authorization forms.

Mr. Bayne's Claim Form is accompanied by such forms. These document travel in a Government vehicle on May 17 and 22, 2007 (pay period 200712), November 7, 2007 (not a pay period covered by the claim), January 10, 2008 (pay period 200802) and April 21, 2008 (pay period 200809).

In addition, Mr. Bayne submitted a statement dated April 3, 2012, in which he claims nine hours of overtime payment for pay period 200412. He states:

> …Request 9 hours overtime for the pay period Number 12 of 2004. This case was a large class case involving the failure of Wal-Mart to hire female applicants at its warehouse in London, Kentucky. This case was filed in 2002 out of the Louisville Office. Bobby Simpson and I were the trial team at that time in this case. Through discovery, we received approximately 58 legal size boxes of applications. In May of 2004, I was tasked with moving the boxes of applications to a storage office in the basement in the Federal Court House, across from our building. I coordinated with the security personnel and moved those boxes on a Saturday in May of 2004. I had to carry by dolly, four at [a] time, and each box had to be scanned by security through their scanner which meant unloading each trip of 4 boxes and placing them through the scanner and then loading them back onto the dolly and then into the basement, and into our secure storage facility.

The Union contends that Mr. Bayne's documents demonstrate that his supervisor was aware of and approved his extra work hours and that Susan Ryan, on whose

Affidavit the Agency here relies, supervised Investigators and not Paralegal Specialists. It notes that, while Ms. Ryan signed the Government vehicle authorization forms, Mr. Bayne's immediate supervisor is a Supervisory Attorney or the Regional Attorney. It asserts that the Agency has submitted no evidence demonstrating that Mr. Bayne did not work the extra hours claimed.

It appears that, of the 30 hours claimed by Mr. Bayne, only the 9 hours he claims in pay period 200412 is really relevant. The other hours appear to be dedicated to travel activities, none of which appears to be compensable with money payment.

The activity in pay period 200412, described in Mr. Bayne's April 3, 2012 Memorandum, is a reasonable account of the activity on that Saturday in May 2004 when he was required to undertake significant activity to move 58 legal size boxes as part of discovery in a major piece of litigation involving Wal-Mart. To the extent that these 9 hours may represent, in whole or in part, extra hours during pay period 200412, I find them payable. According to FPPS records, Mr. Bayne worked that entire pay period with the exception of five hours of sick leave used.

I find, therefore, that 4 hours are payable as overtime to Mr. Bayne, minus compensatory time used, and an equal amount of liquidated damages. Rust Consulting will perform the necessary calculations and the Agency shall pay Mr. Bayne, in care of the Union, within sixty (60) days of the parties' receipt of this Report.

Ralph Calvin

Mr. Calvin worked as an Investigator in the Louisville Area Office throughout the claims period, working a 5/4/9 compressed schedule. He claims 45 hours over 24 pay periods. The Agency objects to all his claims on grounds that his claims are outside the

scope, that they are for noncompensable travel time, that they are for noncompensable breaks, and that his supervisor could not have known or prevented him from working unauthorized overtime.

Mr. Calvin's Claim Form was accompanied by documents referencing various Onsite and Outreach activities. In addition to these, he submitted a statement declaring that, in pay periods 200616 and 200617 (July 17 to 27, 2006), he attended training at the Federal Law Enforcement Training Center in Glynco, GA. In this statement, he claimed the following:

> In preparation for taking two (2) exams that were required to pass the course and receive my Certificate of Training, I had to study & attend computer lab after my normal working hours (7:30 a.m. to 4:00 p.m.). I worked overtime at a minimum of three (3) hours each evening for a total of 24 hours (3x8 days=24).
>
> I did not receive any compensatory time for studying in the evenings after my normal work hours.

These represent by far the largest pay period claims Mr. Calvin submitted, representing 12 hours each in pay periods 200616 and 200617. The issue here, as raised by the Agency, is that it deems the activity described as one that is not compensable overtime work under the FLSA – namely, off-duty training and off-duty study in conjunction with such training, citing the U.S. Court of Federal Claims decision in *Bull v. U.S.*, 68 Fed. Cl. 212 (2005). Susan Ryan, former Enforcement Manager in the Louisville Area Office, essentially tracked the language in this case, when she stated in her Declaration:

> Regarding Investigator Ralph Calvin and his claim for overtime during pay periods 200616 and 200617 for studying at training in Georgia, this training was not required for his continued retention as an Investigator, nor was it required for his improved performance. This training was not required or necessary for him to perform his duties as an Investigator. No other Investigators in the Louisville Area Office were selected or required to attend this training.

Mr. Calvin claimed that he received 11.5 hours of compensatory time for his

travel time on Sunday, July 16, 2006 "during the pay period #0617." In fact, these hours were authorized by Ms. Ryan.

The Union contends that Mr. Calvin's documents, which are Agency documents, demonstrate that his supervisor was aware of and approved his extra work hours. It asserts that the Agency has submitted no evidence that Mr. Calvin did not work the hours claimed.

Mr. Calvin's claims for Onsite and Outreach are numerous. They generally claim that Mr. Calvin did not receive compensatory time for these activities. With respect to the Onsites, the claims, numbering 15 in total, are uniformly for the half-hour lunch he did not take while traveling to the Onsites. There is no indication in Mr. Calvin's documentation why lunch was not taken; all it states is that "I did not take a lunch break (30 minutes) on the above day(s) while traveling to my [destination]." Without more, or without some sense of why lunch could not have been taken at another time during these days, I cannot credit these claims for missed lunches.

In addition, Mr. Calvin's Outreach activities constitute two occasions where he assisted at the Louisville Defender Expo and five where he assisted at a Black History Committee Luncheon. Both occasions where he assisted at the Louisville Defender Expo (pay periods 200401 and 200423) were on weekends, and he was formally approved for compensatory time on each of these, totaling 5 ½ hours. As reflected by FPPS records, neither of these occasions would have implicated overtime hours. The five occasions where he assisted at the Black History Committee Luncheon were on scheduled work days, Mr. Calvin asserting that he worked one additional hour on each of these. He received no compensatory time for any of these. As reflected by FPPS records, in none

of these pay periods (200405, 200605, 200705, 200805 and 200905) did he work over 80 hours.

I come now to the 24 hours he claims for his activities at the Federal Law Enforcement Training Center in Glynco, GA in pay periods 200616 and 200617, 12 hours being claimed in each pay period. While he was authorized by Ms. Ryan for 11 ½ hours of travel compensatory time (earned in pay period 200616, 8 hours of which were used in pay period 200617), the Agency argues that this activity constitutes off-duty training and off-duty study which, under the *Bull v. U.S.* case, is not compensable with overtime. Ms. Ryan, as noted above in her Declaration, deemed this training not necessary either for Ms. Calvin's retention as an Investigator nor was it relevant to his job performance.

In this respect, I do not quarrel with the propositions set forth in *Bull*. However, consistent with my view on hearsay declarations and statements, explained earlier in this Report, I am not prepared to take the premises of Ms. Ryan's Declaration as fact.

Accordingly, I am prepared to grant a hearing on this discrete issue, that being the matter of the potential job-relatedness of the training he took in Glynco, GA. Since this issue is both discrete and narrow, the parties should attempt to resolve this in lieu of a formal hearing.

Larry Fannin

Mr. Fannin worked as a Mediator in the Louisville Area Office throughout the claims period. He worked a 4/10 compressed schedule. He claims 175 hours over 88 pay periods. The Agency objects to all Mr. Fannin's claims on grounds that he seeks noncompensable travel time for all the hours on his Claim Form, that he has not

submitted sufficient evidence that he worked more than 80 hours in a pay period which were suffered or permitted by the Agency, and that his claims are outside the scope.

Specifically, the Agency believes Mr. Fannin never informed his supervisor that he was working any hours beyond his regular 10-hour day while on his out-of-town mediations. In addition, it notes that Mr. Fannin did not explain why, as he wrote in his handwritten notes accompanying each claim, he was required to leave home an hour earlier than his "basic work schedule" (unclear since his schedule was 4/10) particularly since many of his mediations included overnight travel, and why, in some cases, he arrived home after the end of his schedule. Further, since it appears he does not seek overtime pay for anything other than travel, such activity is not compensable with overtime pay.

Mr. Fannin's documentation, organized by pay period, typically include travel authorization and expense forms, and calendar notations indicating his destination, the distance traveled and whether the travel was overnight. It included also a handwritten statement setting forth, with minor variations, the following:

> I swear under penalty of perjury that on [date] I left the office 1 hour before basic work schedule and on [date] I returned [typically 1 or 2] hour[s] past regular work schedule. I drove to [various locations on Kentucky].

The Union contends that Mr. Fannin's statements, travel documents and calendars demonstrate the extra hours he worked traveling more than fifty miles outside his duty station to perform mediations. It is clear, the Union asserts, that the documents, which are Agency documents, demonstrate his supervisor was aware of and approved the extra work hours, and that the Agency has produced no evidence to show that Mr. Fannin did not work the hours claimed.

The issue here is not one involving an issue of credibility concerning whether

certain claimed hours are not likely to have been worked in the general manner contended by a claimant. Here, the issue is plainly one of travel time and whether such time is payable with overtime.

I dealt with Federal travel regulations in the "**LEGAL ISSUES**" section of this Report. As I read Mr. Fannin's FPPS records, his 4/10 compressed schedule typically had Friday as his day off. Of all the travel records included among his documents, I was able to note only one day – Friday, August 5, 2005, when he was returning home from Prestonburg, KY – that may qualify for travel overtime by virtue of being a nonscheduled work day. The parties will advise me if, in fact, this was a qualifying day.

With the possible exception of the above, I must deny Mr. Fannin's Claim.

MEMPHIS

The Union asserts generally that the Memphis District Office had a practice of approving employees' working hours as credit time and recording extra work hours as credit hours, and that such hours were not entered in the official time and attendance records of the Agency.

Irma Boyce

Ms. Boyce worked as a Mediator in the Memphis District Office throughout the claims period. She worked a 4/10 compressed schedule. She claims 24.55 hours over 15 pay periods. Ms. Boyce was a witness at the hearings in Atlanta, GA. The Agency objects to all her claims on the ground that there is insufficient evidence that she worked hours greater than 80 per pay period. In addition, the Agency objects to most of her claims on grounds that she earned and used compensatory time in the same pay period or that her claims are outside the scope.

Specifically, the Agency argues that she does not describe the actual work she performed, when it was performed, or how she calculated her total hours. It notes that her only supporting documents are screen shots of her work computer files, and that those do not show that she worked more than 80 hours in a pay period. It argues that the times identified in the screen shots appear consistent with someone who worked 10-hour days. It points further to Ms. Boyce's Claim Form, which reflects that, in 12 pay periods she earned and used the same amount of compensatory time in the same pay period.

In the remaining three pay periods (200415, 200604 and 200623) Ms. Boyce neither earned nor used any compensatory time but claims 4.3 extra hours worked. Therefore, consistent with the Agency's position throughout these proceedings, the Agency asserts that those remaining 4.3 hours are outside the scope, in addition to their not being sufficient evidence to support them.

The Union contends that, among the documents listed on Ms. Boyce's computer screen shots is an entry for pay period 200414 reflecting Ms. Boyce's work on revising a mediation document on June 22, 2004 at 5:44 P.M. In addition, an e-mail dated January 26, 2006 references an Outreach activity (a health fair) on January 28, 2006 (pay period 200604), a Saturday. The Union asserts that supervisors where thus aware of approved employees' extra work hours. It points to the Agency's failure to record employees' extra work hours in its time and attendance records, its illegally giving employees credit time, and its informing employees that overtime was not available.

Along with her Claim Form, Ms. Boyce included the numerous screen shots, which reference work performed on various cases, all but four of which fall within the April 7, 2003 to April 28, 2009 claims period for this case. Of those that do, this list

numbers, by my count, 287 documents. However, of those 287, only 51 were "Last Modified" within the 15 pay periods during which Ms. Boyce claims extra work hours. As already noted, during 12 of those 15 pay periods, Ms. Boyce earned and used the same amount of compensatory time in the same pay period.

In pay periods 200415, 200604 and 200623, where Ms. Boyce neither earned nor used any compensatory time (and which I do not, *per se*, exclude from consideration), the total number of screen shot references is 6. Only 2 of those 6 might arguably be outside her regular work hours (July 1, 2004 at 5:45 P.M. and January 26, 2006 at 7:34 A.M.). The screen shot activity from June 22, 2004 at 5:44 P.M. (pay period 200414), referenced by the Union, fell within a pay period during which Mr. Boyce earned and used compensatory time in the same period. Also, like all the others, the time period devoted by Ms. Boyce to this screen shot is not known.

The Outreach activity on Saturday, January 28, 2006 (pay period 200604) was referenced, as noted above, in an e-mail dated January 26, 2006. This document, which does not expressly reference Ms. Boyce, indicated an activity that was to last for two hours (the number of hours Ms. Boyce claimed for pay period 200604). The extent of Ms. Boyce's participation in this event, so far as I can see, is not known, unless I am to conclude that Ms. Boyce was one of the Memphis District Office "coordinators…in attendance." If, in fact, she was, which I presume to be the case, I view the 2 hours she claims as qualifying for payment, less compensatory time used, and an equal amount of liquidated damages, inasmuch as her FPPS records show she worked a full 80 hours in pay period 200604. Rust Consulting will perform the necessary calculations, and the Agency shall pay Ms. Boyce, in care of the Union, within sixty (60) days of the parties'

receipt of this Report.

In sum, with the exception of 2 hours in pay period 200604, I find there is insufficient evidence to support Ms. Boyce's claim for extra hours. Accordingly, I must deny the remainder of her claim.

Earl Everett

Mr. Everett worked as an Investigator in the Memphis District Office from before the claims period until April 1, 2005. He worked a 4/10 compressed schedule. He claims 160 hour over 31 pay periods. The Agency objects to all his claims on the ground that they are outside the scope and that there is insufficient evidence to create a just and reasonable inference that he worked hours in excess of 80 per pay period that were suffered or permitted by the Agency. It asserts that Mr. Everett does not describe the actual work performed, when it was performed, or how he calculated the 160 hours. It makes all other "potentially applicable objections" for the record.

On May 7, 2012, Mr. Everett wrote to Edmond Sims, District Resource Manager of the Memphis District Office. In this letter, Mr. Everett requested "documentation which will assist me in filing my overtime claim," and, more specifically, "copies of the daily sign in/out sheet for the time period April 7, 2003 through April 1, 2005 [Mr. Everett's retirement from the Agency]. These documents will reflect the actual arrival and departure time for each workday." In Mr. Sims' May 21, 2012 response to Mr. Everett, he forwarded Mr. Everett's FPPS records. Then, on May 29, 2012, when Mr. Everett submitted his Claim Form, he attached a letter to Rust Consulting, wherein he noted that "[a] request was made for daily attendance records (sign-in sign-out sheets); however, these documents have not been produced. They will show the actual time

worked each day." No additional records are included with Mr. Everett's claim. On Mr. Everett's Claim Form, he notates on each page: "The Agency has daily time sheets which will support my claim."

The Union contends that the Agency submitted no evidence in support of its objections and, in addition, failed to provide Mr. Everett with the records he requested to assist him in filing his claim. Mr. Everett was therefore required to estimate his extra work hours, and the undisputed testimony of the Memphis District Office is that supervisors were aware of the extra hours worked by employees, and maintained records of those hours.

I am presented here with a circumstance, seen elsewhere as well, where a claimant has made a good faith assertion that he or she has been hampered in the filing of a claim by reason of the lack of relevant records. In these cases, as I have discussed in the introductory section of this Report, this issue has been met with the opportunity to request additional time in order to receive records believed by a claimant to be relevant to his or her claim. In the case of Mr. Everett, I am left with a Claim Form that has insufficient support to create the necessary inference to meet his initial burden of proof.

Accordingly, I must deny Mr. Everett's claim.

Esther Walker

Ms. Walker worked as a Mediator in the Memphis District Office throughout the claims period. She worked a 4/10 compressed schedule. She claims 117.5 hour over 70 pay periods. The Agency objects to all her claims on grounds that there is insufficient evidence that she worked hours in excess of 80 hours per pay period, and that, to the extent she earned compensatory time, she used it in the same pay period and, thus, did

not work more than 80 hours a pay period. It also objects to any travel claim for a Health Fair in pay period 200604 which, it argues, would not be compensable with overtime pay.

Specifically, the Agency argues that Ms. Walker does not describe the actual work performed, when it was performed, or how she calculated her asserted extra hours. It notes that all Ms. Walker submitted were screen shots, designed to demonstrate her working beyond her regular hours.

The Agency notes further that, in all but 2 of the 70 pay periods for which she makes claims (pay period 200503 and 200604), she received and used compensatory time for the same number of extra hours she claimed to have worked in that pay period. Some of the entries, the Agency notes, only suggest small amounts of overtime of which her supervisor would likely be unaware. In each of pay periods 200503 and 200604, she claims 4 hours of overtime. The Agency argues that both of these claims should fail, for two reasons: (1) insufficient evidence; and (2) outside the scope.

The Union contends that Ms Walker's computer evidence reveals applicable entries, for each pay period, where she was working extra hours. In addition, it notes that Ms Walker indicated that the Agency possesses e-mails supportive of her claim and that, from the evidence, supervisors were aware of and approved extra hours for employees in the Memphis District Office. It argues that the Agency submitted no evidence that Ms. Walker did not work the extra hours claimed and emphasizes that the practice in the Memphis District Office is likewise not consistent with the Agency's assertions.

Except for two e-mails, Ms. Walker's documentation consists of her computer screen shots. The asterisks beside the times of day appear to suggest that her work day ended at 4:30 P.M. (some of those entries only a few minutes past 4:30 P.M.), although

some asterisks are beside times of day earlier than 4:30 P.M. Others highlight screen shots near or after 4:30 P.M. during pay periods not included in this claim. Among these are: 4/1/03-4:38 P.M.; 9/17/03-4:26 P.M.; 11/15/04-4:36 P.M.; 11/3/05-5:12 P.M. and 1/17/07-4:42 P.M.

As stated above, in all but 2 of the 70 pay periods for which she makes claims (pay period 200503 and 200604), she received and used compensatory time for the same number of extra hours she claimed to have worked in that pay period. I look particularly, therefore, at the two pay periods where Ms. Walker did not earn or use compensatory time – pay periods 200503 and 200604. In pay period 200503, there are 4 screen shots but only one has an asterisk – that of 1/19/05-4:41 P.M. In pay period 200604, there are 7 screen shots but only one has an asterisk – that of 1/25/06-5:13 P.M. On this evidence, it does not appear that a strong case can be made for 4 hours of overtime for this activity.

Taking into account the Health Fair on Saturday, January 28, 2006 (which I will assume Ms. Walker attended, from the Timothy Williams e-mail of January 26, 2006), it was scheduled for 2 hours. If there was any preparatory time needed for this event by Ms. Walker, or, as the Agency surmises, the claim includes travel time, this would be simply an assumption. In any event, I believe more than this would be needed to support a claim for 4 hours of overtime. However, as I view the record, she would be eligible for 2 hours of overtime, representing the scheduled duration of this event, for the same reason as claimant Irma Boyce, less compensatory time used, and an equal amount of liquidated damages. Also, like Ms. Boyce, Ms. Walker, according to her FPPS records, had otherwise worked a full 80 hours in pay period 200604. Rust Consulting will perform the necessary calculations, and the Agency shall pay Ms. Walker, in care of the

Union, within sixty (60) days of the parties' receipt of this Report.

I must deny the remainder of Ms. Walker's claim.

MIAMI

The Union argues generally, with respect to claimants from the Miami District Office, that they completed sign-in/sign-out sheets that were reviewed by the supervisor, that extra work hours are reported to the supervisor, that no recording of the extra hours is permitted, and that, during Intake, employees are required to see members of the public who may arrive at the end of an employee's work day.

Gloria Koon Allen

Ms. Allen worked as an Investigator in the Miami District Office from before the claims period until May 2, 2011. As reflected on her Claim Form, she worked a basic schedule until pay period 200902, when she changed to a flexible schedule. She claims 316 hours over 125 pay periods. The Agency objects to all her claims on the ground that her claim is untimely. In addition, it asserts that she provided insufficient evidence of any overtime worked, that her supervisor could not have known of any of her claimed overtime work, that she was on a flexible schedule for some of the pay periods covered by her claims, and that all of her claims are outside the scope.

Ms. Allen notes on her Claim Form that, when she was on a basic schedule, her extra work hours occurred "after 4:30pm." Along with her Claim Form, Ms. Allen submitted a "**STATEMENT OF EXPLANATION FOR WORKING AT HOME ON SCHEDULED OFF DAY AND AFTER WORK HOURS**," in which she stated:

> More often than not, it is necessary to perform investigative work outside of the assigned tour of duty. The investigative duties include analyzing documents, preparing request[s] for information, writing cause investigative memos and

> letter[s] of determinations, and on occasion interviewing witnesses, etc. Because members of the public must be served and due to overwhelming case inventories (backlog), internal expectations resulting in pressure from management and meeting deadlines, working extra hours is imperative to the success of the investigator….

The Agency argues as a threshold matter that Ms. Allen's claim in untimely, in that her Claim Form, signed July 15, 2012, was mailed on July 20, 2012.

The Agency argues that the generalized nature of the information she provides is insufficient to demonstrate a just and reasonable inference of overtime work and that, unlike may other Investigators in the Miami District Office, Ms. Allen does not reference Intake as causing her to work extra hours. It notes additionally, as noted above, that she worked a flexible schedule from pay periods 200902 through 200910.

The Agency offered the Declarations of Juan Gonzalez, former Enforcement Supervisor in the Miami District Office and Ms. Allen's first line supervisor from 2003 to 2006; and Ozzie Black, former Enforcement Manager and currently Deputy Director of the Miami District Office. Mr. Gonzalez declared as follows, as it references Ms. Allen: From at least April 2003 to at least April 2009, employees were expected to take lunch between 11:00 A.M. and 2:00 P.M., but if the employee was unable to do so due to work needs, lunch could be taken outside that window. During that same time period, Mr. Gonzalez was unaware of any employee working a full day without taking a lunch break. During that same time period, Mr. Gonzalez frequently reminded Investigators that they were not to work beyond their scheduled hours and, if they wanted to do so, they needed advance approval. He stated that Ms. Allen was careful about leaving on time, as she depended on others for a ride home, and he had no reason to believe she was working extra hours to meet deadlines, prior to her starting time or working at home or over the weekend, nor had she so informed him. He likewise was not aware, during that same

time period, that Ms. Allen worked extra hours when conducting an Onsite, nor did she ever so inform him.

Mr. Black declared as follows, as it references Ms. Allen: He is Ms. Allen's second line supervisor. The official hours of the Miami District Office are 8:00 A.M. to 4:30 P.M. In 2009, Ms. Allen worked a flexitour schedule from 7:30 A.M. to 4:00 P.M., Monday through Friday. Employees were expected to take lunch between 11:00 A.M. and 2:00 P.M., but if the employee was unable to do so due to work needs, lunch could be taken outside that window. At employee meetings, Mr. Black frequently reminded all bargaining unit employees that they were not to work beyond their scheduled hours and, if they wanted to do so, they needed advance approval. If an employee is involved in an after-hours or weekend Outreach event, the office policy has continuously been to grant the employee an equal amount of unofficial time off to be used within the next few pay periods.

The Union contends that it was owing to the practice in the Miami District Office that Ms. Allen had no record of the extra hours she worked. In addition, it notes, Ms. Allen had retired and her name had erroneously been placed on the current employee list. The Agency had agreed to extend Ms. Allen's time to file her claim because she had not received proper notice. Further, the Union points out, Mr. Gonzales's Declaration is contrary to his testimony at the hearing that he gave employees credit time when an employee had to stay beyond scheduled work hours. The Union argues that a flexible work schedule does not bar money payment for extra work hours, and the Agency submitted no evidence that Ms. Allen did not work those extra hours.

On the threshold issue of timeliness, Ms. Allen was not on the original list of

claimants granted an extension of time to file their claims. However, there was a notice issue, inasmuch as Ms. Allen's name was apparently on the list of current employees, even though she had separated. When the change was made, she did not receive the notice and hardcopy forms. Agency counsel agreed on June 1, 2012 to mail her the forms and extend her time.

Thus, Ms. Allen's claim is timely filed.

On the merits of Ms. Allen's claim, I note first that she worked a flexible schedule from pay periods 200902 through 200910, the final claims pay period. By virtue of her being on a flexible schedule, her claims for these pay periods must be denied. While the Union maintains that a flexible work schedule does not bar money payment for extra work hours, I have earlier explained in this Report that, under limited circumstances set forth in Section 30.07 of the Collective Bargaining Agreement, whatever overtime payment may be due an employee who works on a flexible schedule represents hours authorized to be worked. There is no basis here for relief for pay periods 200902 through 200910.

Ms. Allen's support for her hours claimed for pay periods prior to 200902 is not compelling. I do recognize her Statement, which she submitted with her Claim Form. That, however, is, in part, a generalized description of the Investigator's job, intended, on its face, to apply to every pay period, and also, in part, a generalized argument for the need to work extra hours owing to pressure from management. While I understand this argument, I also must note that no connection is made at any time here between specific hours claimed in specific pay periods (each of which, as I have also noted numerous times, constitutes a separate claim before me), the amount and extent of duties that are

performed during these times, and why such duties caused work outside regular work hours. The just and reasonable inference that such work has been performed remains the claimant's burden, even where the issue of records is present. I am not persuaded that that initial burden has been met by Ms. Allen.

Accordingly, I must deny her claim.

Latoya Allen

Ms. Allen worked as an Investigator in the Miami District Office throughout the claims period. As she reflects in her Claim Form, she worked a flexitour schedule in all claimed pay periods. She claims 638 hours over 136 pay periods. The Agency objects to her claims on grounds that her claim is untimely and that she worked a flexible schedule. In addition, the Agency argues that she provided insufficient evidence to support the large amounts of overtime claimed, that her supervisor could not have known of or prevented the claimed overtime work, that she seeks overtime compensation for paid breaks, that all her claims are outside the scope, and that some of her claims, representing her attempt to supplement her claim with claims for additional pay periods, are untimely.

The Agency references the Declarations of Ozzie Black and Mellanese Jones, Ms. Allen's first line supervisor from 2003 to 2009 and former Enforcement Director in the Miami District Office. Mr. Black, former Enforcement Manager and currently Deputy Director of the Miami District Office, declared as follows: He is Ms. Allen's second line supervisor. The official hours of the Miami District Office are 8:00 A.M. to 4:30 P.M. From at least April 2003 to at least April 2009, Ms. Allen worked a flexitour schedule from 9:00 A.M. to 5:30 P.M., Monday through Friday. Employees were expected to take lunch between 11:00 A.M. and 2:00 P.M., but if the employee was unable to do so due to

work needs, lunch could be taken outside that window. At employee meetings, Mr. Black frequently reminded all bargaining unit employees that they were not to work beyond their scheduled hours and, if they wanted to do so, they needed advance approval. If an employee is involved in an after-hours or weekend Outreach event, the office policy has continuously been to grant the employee an equal amount of unofficial time off to be used within the next few pay periods.

Ms. Jones, now retired, declared as follows: While under her supervision, Ms. Allen continuously worked a flexitour schedule from 9:00 A.M. to 5:30 P.M. and, from April 2003 to April 2009, employees were expected to take lunch between 11:00 A.M. and 2:00 P.M., but if the employee was unable to do so due to work needs, lunch could be taken outside that window. From April 2003 to at least April 2009, she had no personal knowledge of any Investigator she supervised working an entire day without taking a lunch break, and Ms. Allen never informed her she had worked through lunch. In that same time frame, she had reminded all Investigators that they were not to work beyond their scheduled hours without authorization. All requests for compensatory time had to be approved in advance, and Ms. Allen never informed her that she had to stay beyond her regular hours to complete a walk-in, or to work extra hours before her tour, at home or on a weekend. She had occasion to witness Ms. Allen working beyond her scheduled hours without approval and she advised Ms. Allen she was not to be in the office after hours. Ms. Allen sometimes waited in her office with the door closed for her ride home to arrive, but that it was difficult to tell whether she was performing work or merely waiting.

Along with her Claim Form, Ms. Allen submitted the following declaration:

I, Latoya T. Allen, have been employed by the U.S. Equal Employment

> Opportunity Commission (or "EEOC") from July 19, 1999 to present. During the relevant period, April 7, 2003 to April 28, 2009, I was employed by the EEOC as an Investigator, GS-1810, grades 11-12, and I worked extra hours beyond my beyond my scheduled work hours without added compensation. My daily work schedule was from 9:00 a.m. to 5:30 p.m., Monday to Friday. During the relevant period, I worked extra hours prior to my scheduled start time (9:00 a.m.), after my scheduled end time (5:30 p.m.), on weekends, and did not take a 30 minute lunch break or my two fifteen minute breaks on many occasions in order to complete my EEOC assignments. This declaration is submitted to support my claim for overtime.
>
> I had two consecutive weeks of Intake/Charge Receipt duty that occurred about every 8-10 weeks. During my two weeks of Intake/Charge Receipt duty, I worked through lunch and/or stayed late on many occasions about 1-2 hours a week to complete my intake work and provide service to the public. To the best of my recollection and knowledge, I was assigned to Intake during the following pay periods: 2003-12 & 2003-13; 2003-17 & 2003-18; 2004-21 & 2004-22; 2005-05 & 2005-06; 2005-10 & 2005-11; 2005-15 & 2005-16; 2005-20 & 2005-21; 2006-04 & 2006-05; 2006-10 & 2006-11; 2006-16 & 2006-17; 2006-22 & 2006-23; 2007-02 & 2007-23; 2007-08 & 2007-09; 2007-14 & 2007-15; 2007-20 & 2007-21; 2007-26 & 2007-27; 2008-05 & 2008-06; 2008-11 & 2008-12; 2008-17 & 2008-18; 2008-26 & 2009-01; 2009-03 & 2009-[0]4; and 2009-11 & 2009-12.
>
> In July/August 2007, I began working on a wide-spread, pattern and practice employment discrimination case against an employer that developed into two Commissioner's Charges and multiple individual charges (a class case). I was the only investigator assigned to investigate this class case that contained multiple bases and issues, in addition to my existing workload of other cases. The time and effort required to investigate systemic and pattern and practice cases are considerable and labor-intensive. Between 2007 and 2009 particularly, I worked many overtime hours at night and on weekends researching, conducting interviews and reviewing/analyzing hundreds of pages of data and documents relating to these class cases as well as my other cases.
>
> During the relevant period, I worked extra work hours beyond my scheduled tour of duty to complete my assignments on many occasions. I worked as little as a few minutes extra some days to several hours on other days, as evident by the supporting documents attached to my overtime claims. Absent any other supporting records, the information and documents provided demonstrates overtime hours I worked but is not meant to be a total account of all the extra hours I worked.

The Agency further argues that, while Ms. Allen's significant documentation, consisting of screen images and hard drive contents, does suggest that Ms. Allen did perform extra work before and after her hours, and while at home, these data, by the Agency's analysis, do not support the large amounts of overtime hours she claims. It also

challenges Ms. Allen's claim for 2 overtime hours in pay period 200822, inasmuch as she was on sick leave for 72 hours and on holiday leave for 8 hours, according to her FPPS records. Further, she does not indicate how many extra hours she claims for allegedly having worked through breaks.

The Union contends that Ms. Allen's supporting documents support her assertion that, contrary to the Agency's position, she did, in fact, perform work in pay period 200822 (referencing evidence from two computer screens that are evidence of her working on a Sunday), and that, further, the Agency has not submitted any evidence that Ms. Allen did not work her claimed extra hours. In addition, the Union notes that, in light of Ms. Allen's statement that the Agency had e-mails relating to her extra work hours, it presented no evidence that it sought to retrieve any such e-mails.

I turn first to the Agency's untimeliness claim. This issue was resolved when the Agency, through counsel, agreed on June 1, 2012 that Ms. Allen could reopen her claim.

On the merits of Ms. Allen's claims, they must be denied on the basis of her having worked a flexible schedule throughout all her claimed pay periods.

Robert Blomberg

Mr. Blomberg worked as an Investigator in the Miami District Office throughout the claims period. As his Claim Form reflects, he worked a gliding flexible schedule through all his claimed pay periods. He claims 57 hours over 95 pay periods. The Agency objects to all his claims on grounds that he worked a flexible schedule, that he did not provide sufficient evidence of overtime work, that his supervisor could not have known of any alleged overtime work, that he failed to assert more than a *de minimis* claim, and that his claims are outside the scope.

The Agency points to Mr. Blomberg's claiming 0.6 hours (or 40 minutes) of overtime in each of 95 consecutive pay periods (from pay period 200308 to 200624), as noted in his affidavit, set forth below. It deems this *de minimis*, as it averages to 5 minutes per day, arguing that, under *Mt. Clemens*, this does not amount to more than negligible overtime. As such, the Agency contends, Mr. Blomberg's claim, below, of "unrelenting, constant pressure" and an "extraordinary backlog" is not consistent with his actual claimed hours. In addition, it notes that Mr. Blomberg provides no indication of the nature of the work he was performing or the circumstances under which he performed it.

Referencing the Declaration of former Enforcement Manager and currently Deputy Director of the Miami District Office Ozzie Black, the Agency asserts that, at employee meetings between April 2003 and April 2009, Mr. Black frequently reminded all bargaining unit employees in the Miami District Office that they were not permitted to work in excess of their scheduled hours without approval and that all requests for compensatory time must be approved in advance.

Along with his Claim Form, Mr. Blomberg submitted two affidavits, one of which is effectively subsumed in the other. The latter states:

> I Robert Blomberg do swear, under oath and under penalty of perjury, that I worked, on average, .6 of an hour per pay period from 04/07/2003 through 04/28/2009 and as a result of the extraordinary back log of cases well known to the EEOC and the unrelenting, constant pressure by management to *close cases*. [Emphasis supplied]

Mr. Blomberg submitted a Supplemental Affidavit, dated October 11, 2013, in which he stated:

> …When I filed my claim, because myself and other Investigators in Miami all worked extra hours to complete our work and records were not kept of our extra work hours, I estimated the amount of time. I did not have records, so I

> could not be accurate and I know I spent much more time than I submitted as a claim. However, I submitted forty minutes per pay period, to be fair. I did not work the time on each day of the pay period, but during each pay period, I estimated I would spend at least an extra forty minutes performing my work of investigating cases, conducting onsites, and other duties required because of my work assignments.

The Union contends that, as reflected in a sign-in/sign-out sheet for September 25, 2006, Mr. Blomberg accumulated unrecorded compensatory time. It challenges the Agency's argument that Mr. Blomberg filed a *de minimis* claim, since, as reflected in his Supplemental Affidavit, above, he acknowledged not having worked extra time every day, but that, owing to the Agency's failure to keep records, he was left with no choice but to estimate these hours.

Mr. Blomberg's claim must be denied by virtue of his having worked a flexible schedule.

Rose Marie Boykin

Ms. Boykin was an Investigator in the Miami District Office from before the claims period until October 8, 2003. Her Claim Form did not reflect any extra hours worked in any pay period.

The Union agreed that Ms. Boykin failed to submit a claim.

Sylvia Brazeal

Ms. Brazeal worked as an Investigator in the Miami District Office from before the claims period until June 30, 2006. She worked a 4/10 compressed schedule. She claims 332 hour over 65 pay periods. The Agency objects to all her claims on grounds that she failed to provide sufficient evidence of any overtime worked, that her supervisor could not have known of any of her claimed overtime work, and that all her claims are

outside the scope.

The Agency contends that Ms. Brazeal has supplied no information to explain her hourly overtime totals. Further, it asserts that she provided no indication of the type of work these hours represent, the time of day the work was performed, or what caused her to claim up to 8 hours in many pay periods. It notes that, since Ms. Brazeal did not reflect the receipt or use of compensatory time in any of her claimed pay periods, there is no reason her supervisor should have been aware of, or that he could have prevented, any extra hours worked.

Referencing the Declaration of former Enforcement Manager and currently Deputy Director of the Miami District Office Ozzie Black, the Agency asserts that, at employee meetings between April 2003 and April 2009, Mr. Black frequently reminded all bargaining unit employees in the Miami office that they were not permitted to work in excess of their scheduled hours without approval and that all requests for compensatory time must be approved in advance. Mr. Black's Declaration made no express reference to Ms. Brazeal.

The Union contends, as stated above, that Mr. Black's Declaration makes no reference to Ms. Brazeal. It notes that, consistent with the practice in the Miami District Office, records of employees' extra work hours were not recorded, and that Ms. Brazeal submitted her claim under penalty of perjury. It argues that the Agency submitted no evidence that Ms. Brazeal did not perform work for the benefit of the Agency, and that an employer who does not record an employee's accurate work hours must produce specific evidence to dispute an employee's claim.

Ms. Brazeal's Claim Form is not accompanied by any documentation. I

acknowledge the Union's position here that this may be explained by the practice the Union asserts prevailed in the Miami District Office that records of employees' extra work hours were not recorded. Nonetheless, as I have stated earlier in this Report (see "**LEGAL ISSUES**"), *Mt. Clemens* does not stand for the proposition that an insufficient records production, or the lack of records, from the Agency means that a claim must be honored. A somewhat relaxed burden still exists such that a claimant must show by just and reasonable inference the amount and extent of overtime monies owing. I must conclude, based on the record here, that such an inference has not been created.

Accordingly, I must deny this claim.

Linda Rose Byars

Ms. Byars worked as an Investigator in the Miami District Office throughout the claims period. Her Claim Form reflects her working a basic work schedule. She claims 68 hours over 30 pay periods. The Agency objects to all her claims on grounds that she worked a flexitour schedule, that she seeks compensation for work performed during breaks, that her supervisor could not have known of any overtime work, that she worked through lunch and breaks, and that her claims are outside the scope.

On the issue of Ms. Byars' work schedule, the Agency identifies it as a flexitour schedule. It points to Ms. Byars' indicating, on her Claim Form, that some of her extra work hours began "after 3:30 P.M." Inasmuch as the official hours of the Miami District Office are 8:00 A.M. to 4:30 P.M., and by examining her documentation as well, in particular her Intake logs, it is apparent Ms. Byars worked a flexitour schedule. The Union, as noted below, agrees.

The Agency references the Declarations of Juan Gonzalez, former Enforcement

Supervisor in the Miami District Office and Ms. Byars' first line supervisor from 2007 to 2009, and Ozzie Black, former Enforcement Manager and currently Deputy Director of the Miami District Office. Mr. Gonzalez declared as follows: While under his supervision, Ms. Byars worked a flexitour schedule from 7:00 A.M. to 3:30 P.M. Monday through Friday. From at least April 2003 to April 2009, the policy in the Miami District Office was to allow Investigators on a flexitour schedule to maintain those schedules in weeks when they are assigned to Intake so long as one or two Investigators were available to handle walk-ins during the official hours of the office. Ms. Byars and other employees were generally expected to take lunch between 11:00 A.M. and 2:00 P.M., but if that could not be done due to work issues, lunch could be taken outside that window. He had no personal knowledge of Ms. Byars' having failed to take a lunch break, or working outside of regular hours, including working at home and on the weekends, or working extra hours while on an Onsite.

Mr. Black declared that, from April 2003 to April 2009, Ms. Byars steadily worked a flexitour schedule from 7:00 A.M. to 3:30 P.M. Monday through Friday.

The Union contends that Ms. Byars mistakenly reflected on her Claim Form that she worked a basic schedule and did, in fact, work a flexible schedule. It notes that Ms. Byars' written documentation accompanying her Claim Form, included, for each pay period, a written affidavit, Intake call logs, Intake schedules and calendars, demonstrating the work she performed. In addition, the Union states that Ms. Byars, along with other Miami District Office employees, was required to change to an eight-hour-per-day, five-days-per-week schedule for at least two days during the assigned Intake week, during which times she worked through her lunch and breaks. With respect to the Agency's

Declarations, the Union asserts that that of Mr. Gonzalez is contrary to his hearing testimony, and that that of Mr. Black does not state that Ms. Byars did not perform the work and work the hours she claimed. The Agency, it argues, has produced no specific evidence to dispute Ms. Byars' claim.

Inasmuch as Ms. Byars worked a flexitour schedule throughout the pay periods set forth in her Claim Form, her claim must be denied.

Rosemary Caddle

Ms. Caddle worked as an Investigator in the Miami District Office throughout the claims period. She reported on her Claim Form that she worked a flexitour schedule for all her claimed periods except for pay periods 200903 to 200909, where she reported working a 5/4/9 compressed schedule. She claims 1,250.75 hour over 102 pay periods. She testified at the hearings in Atlanta, GA. The Agency objects to most of her claims on grounds that she worked a flexible schedule in almost every pay period, that she provided insufficient evidence to support some of her claims, that she claims overtime for paid breaks and for noncompensable travel time, that her supervisor could not have known of or prevented almost all of her claimed overtime work, and that her claims are outside the scope.

Ms. Caddle submitted considerable documentation along with her Claim Form. These included, principally:

(1) Print screens setting forth dates and times documents were accessed and modified. In these statements, she added that "many others are unaccounted for since we have had new computers and/or have had to clean up our directories and thereby destroyed supporting documentation";

(2) Statements reflecting that, "[d]ue to the increase in mail, EASs [EEOC Assessment System, a form used to assess whether an individual may have grounds to file a charge of discrimination], and walk-ins, I had to work extra hours to stay abreast of my cases and to avoid being removed from flexiplace and/or being placed on a PIP [Performance Improvement Plan]. In 2008, I worked through my lunch, did not take breaks, accessed files after normal work hours, conducted interviews after work hours, etc. I estimate that I worked at least 30 additional hours more per month in 2007 and 2008.

(3) A statement reflecting two Outreach activities in pay periods 200720 and 200721, both on Saturdays. She noted here: "The event began at 8:30 a.m. and ended at 5:30 p.m. The event was almost 31 miles (each way), and required the use of a populated highway. I left my home at 7:30 a.m., and returned home at 6:30 p.m." This event was the Hispanic Leadership Training Program.

(4) Statements reflecting Intake activities, wherein she indicated: "Two weeks every three months or so, I am assigned to Intake. During my Intake week/s, because members of the public must be served, I would stay late 3 hours those weeks to complete my work. During [various pay periods], I was assigned to intake and worked through lunch and did not take any breaks….Although I requested documents from the Human Resources Manager which would support my statement, none were provided."

Reference to documents requested by Ms. Caddle appear on a May 14, 2012 e-mail from Ms. Caddle to Union counsel. These included "[c]opies of sign in sheets, cost and accounting forms, intake schedules and calendars, travel documents, and any and all material used to document hours worked for the specified period." In this

correspondence, she advised Union counsel that some, but not all, of this information was provided by the Agency.

Ms. Caddle also requested overtime for her travel to Atlanta to give testimony in these proceedings.

While the Agency acknowledges that some of the print screens Ms. Caddle submitted generally support her having worked beyond her scheduled departure time of 3:30 P.M., it argues that she does not indicate whether the reason may have been owing to her late arrival at work and that her staying slightly past 3:30 P.M. may have been Ms. Caddle's using the office's "slide and glide" system. In addition, it asserts that Intake logs do not support a conclusion that Ms. Caddle more than rarely handled a walk-in that lasted past her regular hours.

The Agency also challenges Ms. Caddle's Saturday Outreach activities in pay periods 200720 and 200721 on the basis that they claim more overtime hours that justified by the length of the events, and that this training did not appear to be related to her job duties, or that management either approved or was aware of her attendance.

With respect to Ms. Caddle's claims from pay period 200903 forward (when she was on a 5/4/9 compressed schedule), it challenges these claims because screen shots do not establish more than a minimal amount of overtime, because of noncompensable travel time, lunch and break time while out of the office on an Onsite, and because of lack of proof of Intake overtime.

The Agency references the Declarations of Juan Gonzalez, former Enforcement Supervisor in the Miami District Office and Ms. Caddle's first line supervisor from 2003 to 2007, and Ozzie Black, former Enforcement Manager and currently Deputy Director of

the Miami District Office. Mr. Gonzalez declared as follows: During the above time frame, Ms. Caddle worked a flexitour schedule, 7:00 A.M. to 3:30 P.M. Monday through Friday (a matter not in contention). At least from April 2003 to at least April 2009, the policy in the Miami District Office was to permit Investigators on a flexitour schedule to remain on their schedules when performing Intake, so long as one or two Investigators were available to handle walk-ins during the official hours of the office. If an Investigator had to stay late to complete a walk-in, that time would be made up by that Investigator coming in late or leaving early for the same amount of time within the next few days. He had no personal knowledge of Ms. Caddle's failing to take a lunch break, or working beyond her regular hours, or at home or on the weekend or at an Onsite, except for his testifying to Ms. Caddle's once having conducted a weekend Outreach. He was not familiar with the 2007 Hispanic Leadership Training Program, referenced above by Ms. Caddle, and he did not approve the attendance or participation of any Investigator at this program. On this last matter, Mr. Black declared the same.

The Union contends that the documents submitted by Ms. Caddle reveal that her supervisors were aware of and approved her extra work hours, including time during which she conducted Onsites in Jacksonville, FL in pay period 200904. While the Union agrees that Ms. Caddle is not entitled to overtime for her attendance as a witness at the hearings in Atlanta, GA, it argues that, with respect to the Agency's remaining objections, it has not submitted any specific evidence to refute the documents Ms. Caddle has included in support of her claim, while it has refused to provide any records to employees except for FPPS records.

By reason of Ms. Caddle's having worked a flexible schedule through pay period

200902, her claims for those pay periods must be denied. With respect to claims falling within pay periods 200903 to 200909, I examine the specific issues raised.

In pay period 200903, Ms. Caddle claims 5 hours of overtime, referencing computer screen shots of documents viewed on January 20, 2009 at 9:03 P.M. and on January 28, 2009 at 4:42 P.M. FPPS records reflect her having used 9 hours' holiday leave. Therefore, these 5 hours would not have generated overtime.

In pay period 200904, Ms. Caddle claims 22.25 hours of overtime. I am prepared to receive testimony on matters relating to computer screen shots, Onsite activity and overnight travel. FPPS records reflect her having worked a full 80 hours.

In pay period 200905, Ms. Caddle claims 19.75 hours of overtime. I am prepared to receive testimony on all matters with the exception of travel, which, on its face, appears noncompensable with overtime. If proved, these hours would have to be adjusted, as FPPS records reflect her having used 9 hours' holiday leave.

In pay period 200906, I find that the 1.75 hours claimed is for travel in connection with a Hollywood, FL Onsite and, on its face, appears not compensable with overtime. In any event, FPPS records reflect her having used 23 ¼ hours of sick leave.

In pay period 200907, Ms. Caddle claims 19.5 hours of overtime. I am prepared to receive testimony on all matters, referencing the asserted Intake activity as well as the computer screen shots. FPPS records reflect her having worked a full 80 hours.

In pay periods 200908 and 200909, I see no supporting documentation and therefore do not consider further these claims for 10.25 hours and 16.25 hours, respectively.

José Cruz

Mr. Cruz worked as a Mediator in the Miami District Office from before the claims period until June 1, 2007. As his Claim Form reflects, he worked a flexitour schedule throughout the pay periods claimed. He claims 160 hours over 40 pay periods. Mr. Cruz was among the claimants who received an extension of time to file. The Agency objects to all his claims on grounds that he worked a flexitour schedule, that he seeks compensation for work performed during paid breaks, that he did not provide sufficient evidence of overtime work, that his supervisor could not have known of any of the claimed overtime and that his claims are outside the scope. It notes specifically that all Mr. Cruz's claimed overtime took place during lunch and breaks.

The Agency references the Declarations of Gilbert Carrillo, Mediation Supervisory Attorney in the Miami District Office and Mr. Cruz's direct supervisor since at least April 2003, and Ozzie Black, former Enforcement Manager and currently Deputy Director of the Miami District Office. Mr. Carrillo declared that, from at least April 2003 to at least April 2007, Mr. Cruz worked a flexitour schedule from 7:00 A.M. to 3:30 P.M. Monday through Friday. He stated that Mr. Cruz never informed his that he did not work through his lunch breaks when he was conducting out of town mediations.

Mr. Black declared that, in addition to Mr. Cruz's flexitour schedule, employees in the Miami District Office are expected to take lunch breaks between 11:00 A.M. and 2:00 P.M. but, if there are work needs, lunch may be taken outside this window. He declared further that he frequently reminded all bargaining unit employees in the Miami District Office not to work beyond their regular work hours without approval and that all requests for compensatory time must be approved in advance.

Mr. Cruz accompanied his Claim Form with statements referencing each pay period in which he "did not take any time out for lunch nor any breaks during mediations while traveling away from the Miami District Office." In addition, he provided a statement that noted the Agency had not provided him with certain documents for 2004, as well as travel vouchers and time sheets for the period of April through December 2006.

The Union contends that the Agency failed to provide Mr. Cruz and the Union with records he needed to assist him in filing his claim and, therefore, estimated his extra work hours to the best of his recollection. It asserts that the Declaration of Mr. Carrillo is not credible in view of the practice in the Miami District Office, and the fact that Mr. Cruz conducted mediation assignments in San Juan, Puerto Rico.

For the reason that Mr. Cruz worked a flexitour schedule during every pay period claimed, I must deny his claim.

Donn Dernick

Mr. Dernick worked as an Investigator in the Miami District Office throughout the claims period. As his Claim Form reflects, he worked a flexitour schedule. He claims 279 hours over 160 pay periods. Mr. Dernick was among those claimants who received an extension of time to file. The Agency objects to all his claims on grounds that he worked a flexible schedule, that he provided insufficient evidence of overtime work, that his supervisor could not have known of or prevented his claimed overtime work, and that his claims are outside the scope.

Mr. Dernick accompanied his Claim Form with statements applicable to each claimed pay period that he generally did not take lunch, estimating that he typically

worked through four lunch periods for a total of one hundred and twenty minutes (and, less frequently, through two lunch periods for a total of sixty minutes) in order to complete his work during the claimed pay period.

The Agency asserts that Mr. Dernick's statements do not reference the type of work he was performing during this time or the circumstances that caused him to do this work instead of taking lunch. It notes further that, for all the years covered by his claims, Mr. Dernick worked a schedule of four days per week at home and one day per week in the office, and there is no indication that his supervisor was ever so aware. In addition, since nothing in Mr. Dernick's statements reveal that he received compensatory time in exchange for his asserted extra hours (which likewise is not reflected in his Claim Form), all his claims are outside the scope.

The Agency references the Declarations of Juan Gonzalez, former Enforcement Supervisor in the Miami District Office and Mr. Dernick's first line supervisor from 2007 to 2009, and Ozzie Black, former Enforcement Manager and currently Deputy Director of the Miami District Office. Mr. Gonzalez declared as follows: Mr. Dernick was not subject to the policy in the Miami District Office that permitted Investigators on a flexitour schedule to remain on their schedules during weeks when they were assigned to Intake, inasmuch as he was permitted to work at home four days a week, including weeks when other Investigators in his work unit were assigned to Intake. Mr. Dernick never advised him that he was working through lunch. He had no personal knowledge that Mr. Dernick worked excess hours while at home or on the weekend or at an Onsite. Mr. Black declared that Mr. Dernick's flexible work hours were 7:30 A.M. to 4:00 P.M. or 8:00 A.M. to 4:30 P.M.

The Union contends that the Declaration of Ozzie Black, which alleged that Mr. Dernick was in the office only one day per week, was untrue and that sign-in/sign-out sheets for Mr. Dernick's unit reveal that he came to the office and signed in four days of the week. It alleges further that the Agency has submitted no specific evidence that Mr. Dernick did not work the extra hours claimed.

On the basis of his flexible work schedule, I must deny Mr. Dernick's claim.

Socorro (Doris) Feliciano

Ms. Feliciano worked as a Mediator in the Miami District Office throughout the claims period. She reported on her Claim Form that she worked a basic schedule in all claimed pay periods. She is one of the claimants who received an extension of time to file. She claims 1,511.5 hours over 160 pay periods. The Agency objects to all her claims on grounds that she continuously worked a flexitour schedule, that many of her claims are for paid breaks, that some of her claims are for noncompensable travel time, that she did not work many of the claimed overtime hours, that her supervisor could not have known of or prevented the claimed overtime, and that all her claims are outside the scope.

Specifically, the Agency contends that Ms. Feliciano's was a flexitour schedule, inasmuch as records consistently show that her schedule was 7:00 A.M. to 3:30 P.M., whereas the official hours of the Miami District Office were 8:00 A.M to 4:30 P.M.

Numerous documents accompanied Ms. Feliciano's Claim Form. Among these was a statement attesting to her working through lunch and breaks during mediations. She claimed the following:

> As a general rule I conduct an average of 4 mediations per week either in the MDO [Miami District Office] or onsite. The mediation either starts at 9:00 AM

> or 10:00 and run an average of 5 to 6 hours. I rarely or almost never take lunch or any type of break during the course of the mediation. The participants are informed by way of a Mediation Confirmation Notice that "sometimes breaking for lunch is not possible" so they are asked to "bring a brown bag lunch or snack"….
>
> Because we were prohibited from indicating any type of OT on the sign in sheets I do not have any hard evidence of all the lunches and breaks I missed.
>
> OT claiming based on 30 minutes lunch and two 15 minute breaks = 1 hr per mediation based on an average of 4 mediations per week-total of 8 hours per pay period.
>
> [Listing the eight hours per pay period claimed.]

Ms. Feliciano also claimed overtime for travel, in addition to referencing various travel authorization forms, hotel receipts, schedules of expenses and calendar entries, as well as sign-in/sign-out sheets and vehicle authorization forms.

The Agency notes further that IMS records do not support Ms. Feliciano's claim, above, that she conducted an average of 4 mediation sessions per week, lasting 5 to 6 hours each, over all 160 pay periods. Nor, it asserts, does Ms. Feliciano's leave record reflect the likelihood of such a volume of mediation activity. Moreover, even those of her travel claims that might otherwise qualify for monetary payment are inapplicable here, owing to Ms. Feliciano's flexible schedule.

The Agency references the Declarations of Gilbert Carrillo, Mediation Supervisory Attorney in the Miami District Office and Ms. Feliciano's direct supervisor since at least April 2003, and Ozzie Black, former Enforcement Manager and currently Deputy Director of the Miami District Office. Mr. Carrillo, declared that, from at least April 2003 to April 2009, Ms. Feliciano worked a flexitour schedule from 7:00 A.M. to 3:30 P.M. Monday through Friday. Mr. Black, who was Ms. Feliciano's second line supervisor, declared the same, in addition to stating that employees in the Miami District Office are generally expected to take lunch between 11:00 A.M. and 2:00 P.M., but if

they cannot do so due to work needs, they can take lunch outside this window. He declared further that he frequently reminded bargaining unit employees at meetings that they were not to work outside their regular hours without approval, and that all requests for compensatory time must be approved in advance.

The Union contends that Ms. Feliciano's travel documents reveal that she traveled overnight, driving and as a passenger, more than fifty miles from her duty station, and demonstrated that her supervisor was aware of and approved her extra work hours. It points out further that, consistent with the practice in the Miami District Office, Ms. Feliciano's extra work hours were not recorded. It asserts that the Agency, in attempting to discredit Ms. Feliciano's claims of her number of mediations, failed to take into account the Mediation Reports from the San Juan, Puerto Rico office, and that it has presented no specific evidence showing that Ms. Feliciano's extra hours were not worked.

Due to Ms. Feliciano's flexible work schedule, I must deny her claim.

Laverne Foreshaw

Ms. Foreshaw worked as an Investigator in the Miami District Office throughout the claims period. From the information that has been submitted, she worked a flexible schedule, inasmuch as she notes in her statement, below, that her normal tour of duty was 7:00 A.M. to 3:30 P.M., the official office hours of the Miami District Office being 8:00 A.M. to 4:30 P.M. It cannot be determined, based on what is currently before me, what amount of overtime hours she claims, or over what specific pay periods.

The Agency contends that, although Ms. Foreshaw received notice of the claims process and instructions on how to file her claim, no proper claim was submitted. It

asserts its objection that Ms. Foreshaw failed to file a claim. In addition, it objects on grounds that she worked a flexible schedule, that she may be claiming overtime for paid breaks, that her supervisor could not have known of or prevented much of her claimed overtime work, and that her claims are outside the scope.

In view of the Agency's threshold objection that Ms. Foreshaw has failed to follow a claim in accordance with the parties' agreed-upon Claim Form Instructions, I first set forth what Ms. Foreshaw did submit. She did not submit a Claim Form in the manner required. Although a current employee, she submitted a document by mail entitled "CLAIM FORM," which, while including certain instructions that appear on the actual Claim Form, provided essentially starting and ending dates (January 26, 2003 until approximately January 20, 2010) for the five periods in which she occupied different grades in her Level 12 Investigator position. Ms. Foreshaw reproduced the instructions in the Claim Form requiring claimants to fill in the extra hours she claimed to have worked for each pay period in each calendar year, but did not then provide the information as requested. The page on which this information is included does not bear a date.

Ms. Foreshaw did provide a statement, dated May 22, 2012, in which she stated the following:

> My name is Laverne Jennifer Foreshaw. I work for the Miami District EEOC. I am currently employed as an Investigator. During the period of January 2003 until April 2009, I worked as an Investigator. In 2003 I was a Grade 12 Step l. In 2004, I was a Grade 12/2. In 2005, I was a Grade 12 Step 3. In 2006, I was a Grade 12 Step 4 and in 2008, I was a Grade 12 Step 5. I worked Monday through Fridays except federal holidays. I work 2 days from at home on flexi place. Sometimes, when I work from home, I work at least one to two hours past my work time. It is difficult to say exactly which days because I wasn't keeping track. However, I often like to complete whatever I am working on. So, when I am concentrating at home, I work until I am finish[ed] with whatever I am working on.

> Also, at times, I got to work at or about 6:40. When I arrive at work, the Security Guards in the lobby required me to sign in since it was too early. They took my ID and log it in a computer and opened the elevator floor [door?] for me. Sometimes, I got a ride with Mr. Jimmy Mack (investigator) and we would arrive at the office same time 6:30 to 6:40. My start time is 7:00 a.m.
>
> During 2003, while working as an investigator, I was required during my intake rotation, which occurred at least 4 times a year (2 weeks at a time), to complete my walk-in and serve members of the public, even if it meant I had to work past my normal tour of duty, which was 7:00 a.m. to 3:30 p.m. While it didn't frequently caused [sic] me to work past my normal tour of duty, I would say that at least one day out of my rotation, I had to work a half hour to hour later than normal. I remember this because my youngest son was about 6 years old and it was my responsibility to pick him up from school and I would have to often call the school or put my husband on notice since I took public transportation. However, after my son got older, I didn't have to rush to pick him up or discuss it with my manager any longer. However, I often had this conversation with my manager when I had to stay late and most of my team knew because I was often upset when I had to stay late because I had to pick my son up from school.
>
> In addition, during my intake rotation, I often worked through my lunch break. Most of the time when I was on intake, I couldn't have a set lunch time and I often had late lunches. However, even if and when I signed out for lunch, I was often at my desk doing my mail in order to complete my mail during the ten days allotted to complete the mail. Also, if I did eat lunch at my desk, I would eat my sandwich while I typed my mail. I would estimate that during my intake rotation, I perhaps went out to lunch maybe once during the week, if at all because of the volume of mail and the pressure to complete the mail before the deadline. As I became more senior, I learned to manage my mail a little better, but during the earlier years, it was very hectic. Other than my intake rotation, I try my best to leave on time. However, at times when we had training in the office, I sometimes worked past my tour of duty because training normally began at 8:00 or 9:00 and I came in at 7:00. I came in at 7:00 so I could get something done prior to the training. Again, during lunch I often stopped to check emails and phone messages while eating a sandwich before returning to training. It is almost impossible to complete our work without doing some form of overtime. We have heavy caseloads and in order to serve the public, it sometimes meant putting in extra hours. I swear that this statement is made to the best of my recollection and is true and correct.

The Agency references the Declaration of Ozzie Black, former Enforcement Manager and currently Deputy Director of the Miami District Office, and Ms. Foreshaw's direct supervisor from 2004 to 2006. He declared that he had no personal knowledge that Ms. Foreshaw stayed beyond her regular hours, including during Intake weeks, or working through lunch, and she never advised him she was doing so.

I note here, in furtherance of the Union's position in this case, that Rust Consulting, in response to an inquiry from Union counsel, had received claim information from Ms. Foreshaw on May 29, 2012 and had not so notified the Union, through counsel, until July 20, 2012. Rust Consulting forwarded the scanned information to the Union on July 27, 2012.

The Union contends that Ms. Foreshaw, despite having filed her claim incorrectly, did submit sufficient information to show that she intended to file a claim and that, but for the failure of Rust Consulting to give prompt notice, Ms. Foreshaw would have had an opportunity to file a claim during the extension period. The Union accordingly requested that the most equitable remedy would be that Ms. Foreshaw be provided with hard copy claim forms and that she be directed to complete a claim form within thirty days thereafter. It asserts that Ms. Foreshaw did not fail to provide claim information, but rather provided it in the wrong format.

There is no question, based on Ms. Foreshaw's submission, that she did intend to file a claim. However, not only was the information provided in the wrong format, but Ms. Foreshaw's narrative had none of the pay-period-specific information expressly required under the claim form process the parties had very painstakingly negotiated. This was not a situation where the information required was there but simply not in the right place; it was not provided at all. I acknowledge the Union's good faith effort to advocate on Ms. Foreshaw's behalf, but I do not agree that the fault lies in the first instance with Rust Consulting. Claimants were not to be dependent on Rust Consulting for carrying out their claim filing responsibilities.

Accordingly, I am required to deny this claim.

Marvin Frazier

Mr. Frazier worked as a Mediator in the Miami District Office throughout the claims period, working, as his Claim Form reflects, a flexitour schedule. He claims 314.4 hours over 30 pay periods. The Agency objects to all his claims on grounds that he was on a flexible schedule, that almost all his claimed overtime is noncompensable travel time, and that his claims are outside the scope.

Virtually all of Mr. Frazier's documentation references occasions where he has been required to travel in order to conduct mediations. For the relevant pay periods, this documentation includes travel vouchers and authorization forms, hotel receipts, Cost Accounting Bi-weekly Time Sheets, and related materials, including schedules of expenses. Accompanying statements for these pay periods, in addition to setting forth the extra hours he claims for each, and, in many cases, the locations where the mediations took place, set forth the following, claiming "travel time" and "excess work hours":

> As an ADR Mediator, I am assigned cases outside the office's local commuting area that require travelling to conduct mediations with the parties who are unwilling and/or economically unable to afford travel costs to the office. Because the parties agreeing to mediation must be accommodated to accomplish EEOC's mediation mission and goals, I would travel during pay periods to conduct mediations after normal work hours, Saturdays and Sundays….

The Agency notes that most, although not all, of Mr. Frazier's travel is clearly noncompensable, the rest being difficult to quantify, as the total hours do not clearly demarcate what travel may be an exception to the general rule.

The Agency references the Declaration of Gilbert Carrillo, Mediation Supervisory Attorney in the Miami District Office and the direct supervisor of Mr. Frazier since at least April 2003. He declared that, from at least April 2003 to at least April 2009, Mr. Frazier continuously worked a flexitour schedule from 9:00 A.M. to 5:30 P.M. and from

9:30 A.M. to 6:00 P.M. Monday through Friday.

The Union, which agrees that Mr. Frazier worked a flexible schedule, contends that Mr. Frazier documented his having engaged in compensable overnight travel as a passenger throughout the state conducting mediations, and that this documentation shows that Mr. Frazier's supervisor was aware of and approved his extra work hours. It further notes that, in one case where the Agency challenges a claim on the ground that the mediation ended at 4:30 P.M., travel records do not support it.

Mr. Frazier's claim must be denied on the basis of his having worked a flexible schedule.

Jacqueline Gabriel

Ms. Gabriel worked as an Investigator in the Miami District Office throughout the claims period. She reported on her Claim Form that she worked a basic schedule throughout the claims period. This is not entirely accurate and will be explained below. She claims 73 hours over 30 pay periods, beginning with pay period 200314 and ending with pay period 200902. The Agency objects to all her claims from pay periods 200608 through 200902 on grounds that she continuously worked a flexible schedule during this period. However, the Agency concludes that Ms. Gabriel is entitled to compensation for all her 35 claimed overtime hours from pay periods 200314 through 200502, subject to an offset of 17.5 hours for compensatory time used, plus liquidated damages, totaling $1,222.79.

Along with her Claim Form, Ms. Gabriel submitted a statement entitled "**AFFIDAVIT INTAKE ROTATION**," which said, in relevant part:

> …During the period of April 7, 2003 through April 28, 2009, I was working as a GS-12 Systemic Investigator. Attached are documents which

reflect some of my Intake Rotation…

It should be noted that during that time, **I was the only Creole and French speaking investigator in the entire Miami District Office. Due to the large Haitian community that resides in Florida, I was constantly being called upon to serve as Interpreter for the other investigators during their intake duties. I was serving as Interpreter for all the Units; but that information was never recorded by the Agency. In essence I was involved in Intake duties all year around.** In fact, one time, I was called upon by the North Carolina office to serve as French interpreter during their intake rotation.

The attached documents show an "L" or the word "Lunch" when I take lunch during intake rotation. Wherever my name or initials appear and it does not show "L" or "Lunch" on that line, it means I did not have an opportunity to take lunch.

Based on my own Intake Rotation from April 7, 2003 through April 28, 2009, and based on the number of times that I have assisted other investigators with French and Creole speaking Charging Parties, I have conservatively estimated that I have put about 80 hours of lunch or other additional times during Intake. [Emphasis supplied]

Ms. Gabriel filed a Supplemental Affidavit, dated March 26, 2013, which stated:

…When I sent in my form to Rust Consulting, I had not received the Intake logs, when I initially filed my claim. When I received the Intake logs, I requested to supplement my claim and my request to supplement was granted.

On May 29, 2012, I filed an affidavit, which showed an additional eighty (80) hours of overtime I worked. I discovered the additional hours when I reviewed the Office Intake logs. The Intake logs I submitted with my May 29, 2012 affidavit support the additional eighty (80) hours I am claiming as extra hours I worked during my employment as an Investigator, during the claims period for the Overtime Claims Process.

The Agency references the Declarations of Mellanese Jones, former Enforcement Supervisor in the Miami District Office and Ms. Gabriel's supervisor from 2003 to 2009, and Ozzie Black, former Enforcement Manager and currently Deputy Director of the Miami District Office. Ms. Jones declared as follows: Ms. Gabriel was on a flexible schedule, working 7:30 A.M. to 4:00 P.M., for several years up until at least 2009, although she was not certain when Ms. Gabriel began her flexitour schedule. Between April 2003 and April 2009, employees were expected to take lunch between 11:00 A.M. and 2:00 P.M., but if work prevented that, they could take lunch outside that window. She reminded all Investigators that they were not to work beyond regular work hours and

that all requests for compensatory time must be approved in advance. Ms. Gabriel never informed her that she worked beyond her schedule to complete a walk-in, or that she worked early before her scheduled hours. She was aware that Ms. Gabriel sometimes conducted Outreach events after hours or over the weekend, and she received compensatory time for this work on an hour-for-hour basis. She was also aware that Ms. Gabriel received assignments that caused her to work extra hours due to her ability to speak Creole, and she received compensatory time for this work on an hour-for-hour basis.

Mr. Black declared that Ms. Gabriel's flexible schedule began in early 2006. He stated further that he frequently reminded all bargaining unit employees that they were not to work beyond their scheduled hours and that all requests for compensatory time must be approved in advance.

The Union contends that Ms. Gabriel's request, above, is supported by FPPS records, Cost Accounting Sheets, Intake logs and Intake schedules that she submitted, and that her supervisors were aware of and approved her extra work hours. It points out that the Agency acknowledges Ms. Gabriel's having performed overtime work in carrying out her duties, and argues only that some activities may have been performed during working hours. One such event, referenced by the Union, was a May 19, 2005 Outreach, where the activity, according to a May 17, 2005 e-mail from District Director Federico Costales, expressly reflects that the Outreach took place from 6:00 to 8:00 P.M. The Union maintains that Ms. Gabriel is entitled to have the additional 80 hours added to her claim.

My examination of the record and the parties' positions leaves me with some

questions. I understand that the Agency is prepared to compensate Ms. Gabriel with her 35 claimed overtime hours from pay periods 200314 through 200502, less an offset for 17.5 hours of compensatory time used, plus liquidated damages. With respect to the additional 80 hours Ms. Gabriel requests, the Union states that she sent a supplement to her claim after receiving additional Agency documents, although her May 29, 2012 affidavit indicates that these additional 80 hours are supported by Intake documents that accompany her May 29, 2012 affidavit. Her March 26, 2013 Supplemental Affidavit indicated that, when she received the Intake logs, she requested to supplement her claim and that claim was granted. However, the Union takes the position that she now requests to supplement her claim with these additional 80 hours, which clearly were not included in her original claim, which only totaled 73 hours. I need to be advised if the Agency now contests these additional 80 hours, if, in fact, that request to supplement her claim was not granted and/or not previously asserted.

In addition, there are four pay periods that are not covered either by the Agency's objection to claims from pay periods 200608 through 200902, or pay periods 200314 through 200502. These are pay periods 200506, 200508, 200512, and 200520. I note in the record that, with respect to pay period 200512, the claim is for a May 19, 2005 Outreach at the Public Forum on Discrimination Issues in Florida City, FL, which took place from 6:00 to 8:00 PM. (a 2-hour claim). With respect to pay period 200520, the claim is for a September 8, 2005 Outreach at the Public Hearings on Discrimination, held at Miami Dade College from 4:00 to 7:00 P.M. (likewise a 2-hour claim). I need clarification, if the record reflects it, on the Agency's position on the 2-hour claims for pay periods 200506 and 200508.

Therefore, noting that pay periods 200608 through 200902 are not cognizable owing to Ms. Gabriel's working a flexible schedule, and acknowledging the Agency's obligation for pay periods 200314 through 200502, I need to know if the Agency is also acknowledging its liability for pay periods 200512 and 200520.

With respect to pay period 200512, I note that the Agency, in its response to the claims of Investigator Mercedes Rojas Ricardo, acknowledges an overtime liability for the Public Forum on Discrimination Issues Outreach, held in Florida City, FL on Thursday, May 19, 2005 from 6:00 to 8:00 P.M., an event at which Ms. Gabriel and Ms. Rojas Ricardo were invited to particpate.

I direct that the parties advise me on the above.

Katherine Gonzalez

Ms. Gonzalez worked as an Investigator in the Miami District Office throughout the claims period. Her Claim Form reflects her having worked a basic schedule. However, as noted below, she actually worked a flexitour schedule. She claims 90 hours over 34 pay periods. The Agency objects to all her claims on grounds that she worked a flexitour schedule, that she seeks compensation for work performed during breaks, that she did not work some of the claimed hours, that her supervisor could not have known of or prevented her from working overtime, and that all her claims are outside the scope.

On the matter of her work schedule, Ms. Gonzalez noted under the "Time Of Day" column in her Claim Form numerous evening hours, along with afternoon hours beginning at 3:30 P.M., as well as a few beginning at 4:00 P.M. She further references some weekend hours, as well as instances where she took no lunch while serving on Intake. Under the "Office Hours" column are a few different entries, among them 7:00

A.M. to 3:00 P.M., 8:00 A.M. to 4:00 P.M. (one 8:00 A.M. to 2:00 P.M.), and 7:30 A.M. to 4:00 P.M. As suggested (correctly, I believe) by the Agency, these hours actually reflect her work schedules, inasmuch as the official hours of the Miami District Office were 8:00 A.M. to 4:30 P.M. Not being a compressed schedule, it must be concluded that it was a flexitour schedule. The Union agrees, stating that Ms. Gonzalez had mistakenly notated a basic schedule.

The Agency notes that the work Ms. Gonzalez references through computer screen shots was a home computer, not an Agency one, inasmuch as the "X" drive notation is one not found on Miami District Office computers (as the Declaration of Ozzie Black, former Enforcement Manager and currently Deputy Director of the Miami District Office, states). It further asserts that the overtime claimed by Ms. Gonzalez for working at home is inflated, and unknown to supervision, and appears to include time beginning from the end of her tour (thus including commuting time), rather than time beginning when the work at home began. It also challenges Ms. Gonzalez' reference to Outreach at the Hispanic Leadership Training Program on September 8, 2007 (pay period 200720) and September 22, 2007 (pay period 200721) on the grounds that her overtime claims for these two events are excessive and that it is an event not clearly relevant to the job of an Investigator.

The Agency references the Declaration of Mr. Black, where, apart from stating that Miami District Office computers have no "X" drive, declared as follows: Ms. Gonzalez consistently worked a flexitour schedule, from 7:00 A.M to 3:30 P.M. and from 7:30 A.M. to 4:00 P.M. Monday through Friday at various times. Employees in the Miami District Office were generally expected to take lunch between 11:00 A.M. and

2:00 P.M. but, if that was not possible due to work needs, lunch could be taken outside that window. Employees are not permitted to work beyond their regular hours, and any requests for compensatory time must be approved in advance. He was not familiar with the Hispanic Leadership Training Program held in 2007, and did not approve any Investigator to attend or participate in that program.

The Union, while acknowledging that Ms. Gonzalez worked a flexible schedule and mistakenly had checked on her Claim Form that she worked a basic schedule, contends that her documentation reflects pay periods where she took no lunch period because of Intake. These documents, it points out, include handwritten notes, Intake schedules, and computer screen shots of documents lists with handwritten notations of date and time worked. The Union asserts that, while the Agency questions whether Ms. Gonzalez's notes are contemporaneous, its own records of employees' work hours are not accurate, and the Agency has submitted no specific evidence to dispute her claim of extra hours worked.

I must deny Ms. Gonzalez's claim because she worked a flexible schedule.

Delia Hernandez

Ms. Hernandez worked as an Investigator in the New York and Miami District Offices throughout the claims period. The Agency contends that, although Ms. Hernandez received notice of the claims process and instructions on how to file her claim, no proper claim was submitted. It asserts its objection that Ms. Hernandez failed to file a claim. In addition, it objects on grounds that she worked a flexible schedule from pay periods 200510 through 200910, that she may be claiming overtime for paid breaks, that her supervisor could not have known of or prevented much of her claimed

overtime work, and that her claims are outside the scope.

The Agency contends that Ms. Hernandez's letter, set forth below, while describing generally the circumstances under which she worked overtime hours, the methodology used, and the total hours claimed, she failed to indicate her work schedule and failed also to provide a breakdown of claimed hours by pay period. It asserts that the documents Ms. Hernandez submitted clearly show that she received the proper notice and instructions, but failed to follow it, including failing to sign the Claim Form under oath.

Referencing Agency FPPS records, the Agency identified Ms. Hernandez's having worked on a compressed schedule between 2003 and pay period 200509, and that, beginning with pay period 200510, she worked 9:30 A.M. to 6:00 P.M. five days a week, making for a flexible schedule, inasmuch as the official hours of the Miami District Office were 8:00 A.M. to 4:30 P.M. Therefore, it notes that any claims falling within these pay periods must be denied. It also challenges Ms. Hernandez's methodology for calculating the frequency with which she purported to work through lunch.

The Agency referenced the Declarations of Juan Gonzalez, former Enforcement Supervisor in the Miami District Office and first line supervisor of Ms. Hernandez from 2003 to 2007, and Ozzie Black, former Enforcement Manager and currently Deputy Director of the Miami District Office. Mr. Gonzalez declared as follows: From at least April 2003 to April 2009, Investigators on a flexitour schedule were permitted to remain on their schedules when they performed Intake so long as one or two Investigators were available to handle walk-ins during the official hours of the office. During that same time frame, employees in the Miami District Office were generally expected to take lunch between 11:00 A.M. and 2:00 P.M. unless there were work needs, in which case lunch

could be taken outside that window. He had no personal knowledge that Ms. Hernandez worked through her lunch break, noting specifically that Ms. Hernandez routinely told him that she was taking her lunch break. He had no personal knowledge that Ms. Hernandez ever worked beyond her regular hours, or at home, on weekends or at Onsites.

Mr. Black declared that, from at least late 2007 until at least April 2009, Ms. Hernandez worked a flexible schedule of 9:30 A.M. to 6:00 P.M. Monday through Friday. He stated that he routinely reminded all bargaining unit employees in the Miami District Office that they were not to work beyond regular hours without approval and that all compensatory time must be approved in advance.

Ms. Hernandez submitted numerous documents. These include bi-weekly Intake reports, her own tally of extra work hours, FPPS records and Cost Accounting Bi-weekly time sheets. She also provided a lengthy statement in support of her claim. As I believe Ms. Hernandez's position should be fully and accurately represented, I set it forth here in full:

> Attached I have prepared a chart for each fiscal year associated with the issue of overtime which is presently at hand. Each chart covers fiscal years 2003, 2004, 2005, 2006, 2007, 2008 and 2009. From 2003 to 2006 I can only provide charts based on what was given to me by the Human Resources office at the Miami District Office (a list of dates worked and time used which was received from Washington, D.C.). Regardless, each year will be identified, separately, in each chart. For the years 2007 to 2009 I have been given bi-weekly time sheets that I submitted at the Miami District Office. I have also prepared a chart for each of these years. In addition, I would like you to know that Fiscal Year 2003 begins in April and that Fiscal Year 2009 ends in April. Furthermore, 2004, 2005, 2006, 2007 and 2008 are the only years that show all of the 26 pay periods. This is based on the time requirements that have been dictated at the time period to be covered. Each chart provided is attached to the documentation that was received for each of the years in question.
>
> I want you to know that from April, 2003 to the end of October, 2004, I worked at the New York District Office. I started at the Miami District Office on or about the second week of November, 2004. I have been at the Miami District Office ever since.

I also want you to know that I have always been the type of person that generally does not go out for lunch. I generally don't go out to lunch and I eat at my desk. The only time I take lunch is usually when I am on Intake Duty. If I don't take lunch I will never be able to rest due to the constant visitors and need to conduct interviews. Since everyone else takes a break I also need one or I will be used more because I stay in. So, I have to sign that I go to lunch so I will have a break from the general public like everyone else. Sometimes I still don't go anywhere but I don't get called for that one hour and am able to get more work done. I have also prepared a separate list of times that I have been on Intake since I have been at the Miami District Office. The Intake schedules from New York were never made available to me. I do recall that in New York Intake Duty occurred every two months because we had a lot of investigators. So the chart[s] prepared are for 2005 to 2009 and those hours should be deducted from the initial bi-weekly chart for those years. I will not do a chart for the months of November and December, 2004 because I [sic] when I came to the Miami District Office I was unable to do Intake work due to the fact that this office did not have a computer for me nor did one get installed for about 2 months (the IT guy went out on vacation and took his time to install my computer). As you can imagine this set me back tremendously. After two months they began to give me work and I had to get ahead and work extra hours to get caught up and to be able to produce numbers. I cannot prove that I worked extra hours. And, although I know I did…I am not claiming anything other than lunch hours that I worked on many occasions (1/2 hour per day). A lot of people know that I hardly ever go out to lunch (and I mean hardly ever). I am a workaholic. Unfortunately, there are not enough hours in the day to do the amount of work that an investigator must accomplish in only 8 hours in the day. Besides I am not the type of person that likes to go out much nor hang out with people at work. I am a loner and don't mind staying in because in reality I love what I do.

So, all I can say is that **this is the truth to the best of my knowledge and belief** and that the documentation I am submitting (charts and attachments are as real a recollection….of the extra time that I worked) is being submitted for your review. My salary has fluctuated and I felt that it was fair to bring the hourly rate to $40.00 per hour (and of course the overtime amount needs to be added to each extra hour worked).

When reviewing the charts you will see two (2) rows (the first row….on the left is for the first week of each pay period and the second row…to the right is for the second week of each pay period. The lunch hours are added up for each week. So, if I worked two days….the amount would be based on ½ hour each day and it will equal 1 hour, etc). The total will appear (for each row) at the very bottom and to the right of the final figures (for each row) will appear the final figure for both rows together and the total amount of lunch hours for each year. The final figures added up shows that I am claiming a total of 568.5 hours.

Finally, the Intake chart shows that I did use lunch on a total of 186 days for a total of 93 hours. [Handwritten addition: 186 x .5 hours for each day equals 93 hours (deduct from 568.5 hours).] When you deduct the 93 hours from 568.5 hours you are left with a total of 475.5 hours that I belief [sic] I am due (**to the best of my knowledge and belief**). So, 475.5 time[s] an approximate hourly rate of $40.00 equals $19,020.00 plus the overtime rate due. [Emphasis supplied.

Referenced charts are not reproduced.]

The Union contends that Ms. Hernandez, despite having filed her claim incorrectly, did submit sufficient information to show that she intended to file a claim and that, but for the failure of Rust Consulting to give prompt notice, Ms. Hernandez would have had an opportunity to file a claim during the extension period. The Union accordingly requested that the most equitable remedy would be that Ms. Hernandez be provided with hard copy claim forms and that she be directed to complete a claim form within thirty days thereafter. It asserts that Ms. Hernandez did not fail to provide claim information, but rather that it was provided in the wrong format.

This matter presents very nearly the same circumstance as that of Laverne Foreshaw, above. The only differences, as I see it, apart from the precise nature of their claims, are that Ms. Hernandez did not work a flexible schedule for the entire period for which she claims overtime compensation, whereas Ms. Foreshaw did, and that Ms. Hernandez was more attentive in attempting to break down her claimed extra hours.

As with the claim of Ms. Foreshaw, there is no question, based on Ms. Hernandez's submission, that she did intend to file a claim. However, her submission, the details of which fell materially short of the information required in the Claim Form, was not in conformity with the carefully agreed-upon claims process. This was not a situation where the information required was there but simply not in the right place. As in the claim of Ms. Foreshaw, I acknowledge the Union's good faith effort to advocate on Ms. Hernandez's behalf, but I do not agree that the fault lies in the first instance with Rust Consulting. Claimants were not to be dependent on Rust Consulting for carrying out their claim filing responsibilities.

Accordingly, I am required to deny this claim.

Jimmie Mack

Mr. Mack worked as an Investigator in the Miami District Office throughout the claims period, working a 4/10 compressed schedule. He claims 1,945 hours over 149 pay periods. The Agency objects to all his claims on grounds that he failed to provide sufficient evidence of any overtime worked, that he did not work some of the claimed overtime, that his supervisor could not have known of any of his claimed overtime work, and that all of his claims are outside the scope.

The Agency contends that, whereas Mr. Mack claims by far the most overtime among all Miami District Office claimants, he has produced no supporting documentation, nor any explanatory statements. In addition, it notes that, in three claimed pay periods (200401, 200501 and 200610), where he claims a total of 28 hours of overtime, he was on leave for the entire pay periods.

The Agency referenced the Declarations of Mellanese Jones, former Enforcement Supervisor in the Miami District Office, and Mr. Mack's first line supervisor from 2004 to 2009, and Ozzie Black, former Enforcement Manager and currently Deputy Director of the Miami District Office. Ms. Jones declared as follows: Mr. Mack never informed her that he worked through lunch or stayed past regular hours to complete a walk-in during Intake, or worked excess hours early in the morning, at home or over the weekend. Employees were generally expected to take lunch between 11:00 A.M. and 2:00 P.M. but, if there were work requirements, they could take lunch outside that window. Mr. Mack never informed her he was working through lunch.

Mr. Black, who directly supervised Mr. Mack from 2004 to 2006, declared as follows: Employees are generally expected to take lunch between 11:00 A.M. and 2:00

P.M. but, if there are work needs, lunch may be taken outside that window. He regularly reminded employees that they were not to work beyond regular hours without approval and that all requests for compensatory time must be approved in advance. Mr. Mack never informed him he was working outside regular hours or during lunch, and that he never observed Mr. Mack doing so.

Mr. Mack submitted a Supplemental Affidavit, dated October 18, 2013, in which he stated:

> …When I filed my claim, I did not have all the records which I needed to support my claim. The hours I submitted on my claim form are for work I performed in investigating my cases. During my employment I did not receive any instruction from my supervisors about working beyond my scheduled work hours or how to report extra hours I worked for the Agency.
>
> The large caseload I had caused me to work extra hours, at home during the workweek; on weekends; and during times when I was in a leave status. If I did not complete my work assignments, it would affect my work performance, so it was necessary to work extra hours to complete the assignments.
>
> I believe my supervisors were aware of my working the extra hours. On occasions, when I stayed after my scheduled work hours, my supervisors would be leaving the office and see myself and coworkers continuing to work.

The Union contends that Mr. Mack stated he believed his supervisors were aware of his working after his regular work hours. It acknowledges that Mr. Mack's claims for four hours of overtime in pay period 200401 and eight hours in pay period 200501 are likely in error with respect to the pay periods at issue, and that his entries may have been in the incorrect pay period. It further agrees that Mr. Mack cannot claim sixteen extra work hours for pay period 200610, and thus would exclude these sixteen hours from Mr. Mack's claim, and contends that, but for these hours, the claim should be paid.

It is true that Mr. Mack claims a large number of overtime hours. This, however, does not mean his claim is to be discredited for that reason alone. In this respect, it may be argued (as the Agency has, in fact, done) that Mr. Mack's claim is by far the largest

from a claimant in the Miami District Office (with the possible exception of claimant Monica Smith, whose claimed hours are also significant). In fact, Mr. Mack noted in his Supplemental Affidavit that, when supervisors would be leaving the office, they would sometimes see him and his co-worked continuing to work. One might argue, therefore, that there must be an explanation why Mr. Mack's claimed hours so exceeded those of others.

The real issue, as I view it, is one of burden of proof. That always rests initially with the claimant. Part of the burden here is that Mr. Mack is required to demonstrate, by just and reasonable inference, that the amount and extent of his claimed overtime hours may be supportable. In this case, not only are no supporting documents offered for this claim, but there is also no statement or other narrative that might have given some context to what kind of work was being performed, when it was being performed, and why it caused the extra hours claimed. Viewing Mr. Mack's claim in this manner, particularly in the context of its lack of even colorable support, I cannot conclude that it is sufficient.

Accordingly, I must deny Mr. Mack's claim.

Nilia Marti

Ms. Marti worked as an Investigator in the Miami District Office from January 4, 2009 through the end of the claims period. Her Claim Form reflects her having worked a basic schedule. However, as explained below, she actually worked a flexible schedule. She claims 63.8 hour over 9 pay periods. The Agency objects to all her claims on grounds that she worked a flexitour schedule, that she seeks compensation for work performed during paid breaks, that she provided insufficient evidence of overtime work,

that her supervisor could not know of any claimed overtime work, and that her claims are outside the scope.

On the matter of Ms. Marti's work schedule (which the Union agrees was a flexible schedule), she noted on the Claim Form that the office hours of the Miami District Office were 7:00 A.M. to 3:30 P.M. As has often been seen, this entry was surely intended to reflect Ms. Marti's own work hours, and not the official hours of the Miami District Office, which were from 8:00 A.M. to 4:30 P.M. In addition, some of her claimed overtime hours began at 3:30 P.M., and there is no evidence that her schedule was compressed.

The Agency references the Declarations of Mellanese Jones, former Enforcement Supervisor in the Miami District Office, and Ms. Marti's first line supervisor in 2008 and 2009, and Ozzie Black, former Enforcement Manager and currently Deputy Director of the Miami District Office. Ms. Jones declared, as did Mr. Black, that Ms. Marti continuously worked a flexible schedule of 7:00 A.M. to 3:30 P.M. Monday through Friday. She stated further as follows: Ms. Marti never informed her that she worked through lunch or stayed past regular hours to complete a walk-in during Intake, or worked excess hours early in the morning, at home or over the weekend. Employees were generally expected to take lunch between 11:00 A.M. and 2:00 P.M. but, if there were work requirements, they could take lunch outside that window. Ms. Marti never informed her she was working through lunch.

Ms. Marti submitted statements representing each of the pay periods for which she claims to have worked extra hours. In some of these (pay periods 200902 to 200905), she stated that she "would work through my lunch and breaks approximately two to three

days of the week in order to complete my work assignments. The extra hours worked were not recorded by my Agency." Her estimate of hours worked in each pay period "takes into account the fact that lunch is officially thirty (30) minutes and that we are allowed two fifteen (15) minute breaks and also takes into account any holiday, annual, and sick leave taken during this pay period…." In pay periods 200906 to 200910, she stated, in addition, that, beginning on or about March 10, 2009, she and co-worker Omayra Rodriguez, with whom she commuted, began keeping a daily log of their arrival and departure times, based on which she estimated additional overtime "in order to complete my work assignments…." In addition, Ms. Marti submitted bi-weekly time records, leave forms, Intake schedules and daily arrival and departure logs.

The Union contends that the Agency has not submitted any specific evidence showing that Ms. Marti did not work the extra hours claimed, and that the practice in the Miami District Office supports her claim.

Ms. Marti's claim must be denied because she worked a flexible schedule.

Consuelo Nodar

Ms. Nodar worked as an Investigator in the Miami District Office throughout the claims period. Her Claim Form reflects that she worked a basic schedule. She claims 191 hours over 20 pay periods. The Agency objects to all her claims on grounds that she failed to provide sufficient evidence of any overtime worked, that her supervisor could not have known of any of her claimed overtime work, and that all of her claims are outside the scope.

Specifically, the Agency argues that Ms. Nodar submits no explanation of her claims, instead producing annual charge resolution reports, pages from her personal

calendar (some blank but with references to other documents), handwritten lists of charges and new assignments, and a brief description of the overtime work she claims she was performing over a two-week period. It also notes a form Ms. Nodar produced that intends to explain the nature of the work she performed beyond regular work hours, but that, for most of her claims, as the Agency asserts, Ms. Nodar fails to do so. It argues that Ms. Nodar's records generally fail to establish that she worked overtime, do not relate to specific time periods, and are not contemporaneous.

The Agency references the Declarations of Mellanese Jones, former Enforcement Supervisor in the Miami District Office, and Ms. Nodar's first line supervisor from 2004 to 2008, and Ozzie Black, former Enforcement Manager and currently Deputy Director of the Miami District Office, and Ms. Nodar's direct supervisor from 2004 to 2006. Ms. Jones declared as follows: Ms. Nodar never informed her that she worked through lunch or stayed past regular hours to complete a walk-in during Intake, or worked excess hours early in the morning, at home or over the weekend. Employees were generally expected to take lunch between 11:00 A.M. and 2:00 P.M. but, if there were work requirements, they could take lunch outside that window. Ms. Nodar never informed her she was working through lunch. Mr. Black declared that Ms. Nodar never informed him she was working extra hours, and that he never saw her coming in early, working late or working through lunch.

The Union believes that, while Ms. Nodar checked a basic work schedule on her Claim Form, she may have worked a flexible work schedule. While Ms. Nodar submitted her claim, along with supporting documents, the Union acknowledges that it is not clear to which pay periods the supporting documents apply, as there is not a clear

relationship between the pay period and the documents. The Union requests, therefore, that Ms. Nodar be given the opportunity to supplement and clarify her claim, with an explanation of the applicability of the documents. It argues that, apart from the Agency's questioning the relationship of her documents to the extra hours claimed, it presented no specific evidence that Ms. Nodar did not work the extra hours.

The difficulty with this claim on its face is that the documents submitted, for the most part, have no rational relationship with specific overtime hours claimed in specific pay periods. If there is a description of work performed, it is not possible to match that work with a specific pay period overtime claim. Some pages are blank, including numerous pages from the form Ms. Nodar created, entitled "**TIME WORKED BEYOND NORMAL WORK HOURS**." Her "**NEW CASE ASSIGNMENTS**" documents, while sometimes dated, display information that, while sometimes referencing a "Tab," likewise do not relate to specific time frames, nor are they accompanied by any explanation of how these numbers, sometimes relating to an "IP Plan," are derived. Even Ms. Nodar's attached calendars from January to April 2009 that are annotated with some notations are not helpful. These notations do not connect work tasks with specific time periods, nor do they tend to suggest or establish that there was work performed in these time frames that would have generated extra hours.

In light of this difficulty, which the Union forthrightly acknowledges, it asks that Ms. Nodar be given the opportunity to supplement and clarify her claim, so that she might provide an explanation of how these documents are to apply to her assertion of overtime hours.

Unfortunately, I find that I cannot grant this request. The claims process, as I

have had occasion to state before, is a very specific roadmap that the parties themselves, not without much difficulty, managed to negotiate. Granting the relief that the Union now requests on Ms. Nodar's behalf would, in my view, run directly counter to the specific aim of this claims process – namely, to require that claims, and their supporting documents, relate to claimed extra hours by pay period, and that they should be presented so that each pay period, as a separate claim, may be viewed on its merits.

Furthermore, granting this request would undercut the goal of their being specific time limits within which these claims must be submitted. Surely, other claimants might also have wished to have the opportunity to improve on their submissions. The claims process provides needed time limits and is intended to provide finality.

Accordingly, for these reasons, I must deny Ms. Nodar's request to supplement and clarify her claim, and must deny her claim as submitted.

Fernella Peters

Ms. Peters worked as an Investigator in the Miami District Office from before the claims period until May 2008, when, as she wrote on her Claim Form, she "[t]ransferred to CRTIU as Intake Supervisor at GS12 level." She worked a flexitour schedule throughout her claimed pay periods (200308 to 200813). She claims 1,022 hours over 134 pay periods. She also wrote on her Claim Form: "Please note that attachments are not a complete representation of all overtime completed. A detailed discussion would provide a better testimony of overtime hours expensed during the relevant period." She also wrote on her Claim Form a notation of her work schedule of 9:00 A.M. to 5:30 P.M.

The Agency objects to all her claims on grounds that she continuously worked a flexible schedule, that she provided insufficient evidence of overtime, that her supervisor

could not have known of or prevented her claimed overtime work, and that all her claims are outside the scope.

The Agency contends that Ms. Peters provides no explanation of her generally large hourly overtime totals and, therefore, fails to establish a just and reasonable inference that such overtime was actually worked. As the Agency noted, Ms. Peters submitted the search results of a "Word Perfect Audit" of her Agency computer, and revealed 15 instances over 13 pay periods where she modified a work document after the 5:30 P.M. end of her regular work day. The Agency, by its own calculations, concluded that, except for pay period 200506, her documents do not support the overtime hours she claimed, even assuming she was working with a given document at all times from 5:30 P.M. to the moment she last accessed it.

The Agency references the Declarations of Juan Gonzalez, former Enforcement Supervisor in the Miami District Office, under whose supervision, he declared, Ms. Peters continuously worked a flexitour schedule from 9:00 A.M. to 5:30 P.M.; Mellanese Jones, former Enforcement Supervisor in the Miami District Office, and Ms. Peters' first line supervisor from 2003 to 2006; and Ozzie Black, former Enforcement Manager and currently Deputy Director of the Miami District Office, who also declared that Ms. Peters worked a 9:00 A.M. to 5:30 P.M. flexitour schedule.

Mr. Gonzalez declared as follows: From at least April 2003 to April 2009, Investigators on a flexitour schedule were permitted to remain on their schedules when they performed Intake so long as one or two Investigators were available to handle walk-ins during the official hours of the office. During that same time frame, employees in the Miami District Office were generally expected to take lunch between 11:00 A.M. and

2:00 P.M. unless there were work needs, in which case lunch could be taken outside that window. He had no personal knowledge that Ms. Peters worked through her lunch break. He had no personal knowledge that Ms. Peters ever worked past 5:30 P.M., since he usually left the office much earlier, nor did he know if she worked extra hours at home, on weekends or at Onsites.

Ms. Jones declared as follows: Ms. Peters never informed her that she worked through lunch or stayed past regular hours to complete a walk-in during Intake, or worked excess hours early in the morning, at home or over the weekend. Employees were generally expected to take lunch between 11:00 A.M. and 2:00 P.M. but, if there were work requirements, they could take lunch outside that window. Ms. Peters never informed her she was working through lunch. Ms. Peters may have had occasion to work past her regular hours, as she sometimes arrived to work late, but she was not aware that Ms. Peters worked more than 8 hours on such days.

Ms. Peters accompanied her Claim Form with computer screen shots with pay period notations for work intended to represent extra hours worked.

The Union contends that the Agency has submitted no evidence that Ms. Peters did not work the extra hours claimed, particularly in light of the Agency practice in the Miami District Office.

On the basis that Ms. Peters worked a flexible schedule, I must deny her claim.

Yolanda Ramirez

Ms. Ramirez worked as an Investigator in the Miami District Office throughout the claims period, working a flexitour schedule. She claims 505.75 hours over 96 pay periods. The Agency objects to all her claims on grounds that she continuously worked a

flexible schedule, that she provided insufficient evidence to support some of her claims, that she claims overtime for paid breaks and noncompensable travel time, that her supervisor could not have known of or prevented almost all of her claimed overtime work, and that all her claims are outside the scope.

These include a large number of computer screen shots (annotated by pay period and time of day outside Ms. Ramirez' regular work hours, usually after 3:30 P.M.), statements by pay period relating to her Intake activity, Intake time logs and schedules, overtime statements for Onsites and lunch, Onsite activity reports, Charge Detail reports, Outreach statements, programs from the September 8 and 22, 2007 Hispanic Leadership Training Programs (including Ms. Ramirez' registration therefor), claims for travel reimbursement, and statements explaining extra hours worked and claimed.

The Intake documents reveal principally that, as she stated, "[t]wo weeks every three months or so, I am assigned to Intake. During my Intake week/s, because members of the public must be served, I would stay late [typically noting either 3 or 5 hours] those weeks to complete my work." She noted further that she "worked through lunch and did not take any breaks," stating also that "[a]lthough I requested documents from the Human Resources Manager which would support my statement, none were provided." She included documents of Onsites, for which she claimed overtime for such work, including travel. In 2008, specifically, she noted that, "[d]ue to the increase in mail, EASs [referencing the EEOC Assessment System], and walk-ins, I had to work extra hours to stay abreast of my cases and to avoid being removed from flexi-place." She claimed that, "[i]n 2008, I worked through my lunch[,] did not take any breaks, accessed files after normal hours, conducted interviews after work hours, etc. I estimate that I worked at

least 20 additional hours more per month in 2008."

The Agency contends that the computer screen shots are not explained and, although they reference documents accessed and worked on after 3:30 P.M., they do not, as the Agency purports to illustrate graphically, support the amount of overtime claimed, and sometimes amount to *de minimis* claims.

The Agency references the Declarations of Juan Gonzalez, former Enforcement Supervisor in the Miami District Office; Mellanese Jones, former Enforcement Supervisor in the Miami District Office; and Ozzie Black, former Enforcement Manager and currently Deputy Director of the Miami District Office. Mr. Gonzalez, the first line supervisor of Ms. Ramirez from 2003 to 2007, declared as follows: From at least April 2003 to April 2009, Investigators on a flexitour schedule were permitted to remain on their schedules when they performed Intake so long as one or two Investigators were available to handle walk-ins during the official hours of the office. Ms. Ramirez was on a flexitour schedule of 7:00 A.M. to 3:30 P.M. and 7:30 A.M. to 4:00 P.M. During that same time frame, employees in the Miami District Office were generally expected to take lunch between 11:00 A.M. and 2:00 P.M. unless there were work needs, in which case lunch could be taken outside that window. He had no personal knowledge that Ms. Ramirez worked through her lunch break. He had no personal knowledge that Ms. Ramirez worked extra hours at home, on weekends or at Onsites. He was not familiar with the Hispanic Leadership Training Program held in 2007 and did not approve any Investigator's attending or participating in that program.

Ms. Jones, Ms. Ramirez' first line supervisor in 2008 and 2009, declared as follows: During that period, Ms. Ramirez continuously worked a flexible schedule of

7:00 A.M. to 3:30 P.M. or 7:30 A.M. to 4:00 P.M. Monday through Friday. Ms. Ramirez never informed her that she worked through lunch or stayed past regular hours to complete a walk-in during Intake, or worked excess hours early in the morning, at home or over the weekend. Employees were generally expected to take lunch between 11:00 A.M. and 2:00 P.M. but, if there were work requirements, they could take lunch outside that window. Ms. Ramirez never informed her she was working through lunch. She accompanied Ms. Ramirez and other Investigators in 2007 to Jacksonville, FL on a three-day Onsite, and none worked in excess of 8 hours on any day.

Mr. Black declared as follows: Employees are generally expected to take lunch between 11:00 A.M. and 2:00 P.M. except if work must be performed, in which case lunch may be taken outside that window. Employees are not permitted to work outside of regular hours without approval and all requests for compensatory time must be approved in advance. If an employee is involved in an after-hours or weekend Outreach, the office policy is to grant the employee an equal amount of unofficial time off to be taken within the next few pay periods. He was not familiar with the Hispanic Leadership Training Program held in 2007 and did not approve any Investigator to attend or participate.

The Union contends that Ms. Ramirez' documents show that her supervisors were aware of and approved her extra work hours. It asserts that the Agency, by relying on a chart reflecting its belief of how much extra work Ms. Ramirez actually performed, has no documentary evidence to support its belief, and wrongly assumes further that Ms. Ramirez's computer screen shots represent the end of the time she worked on a file. It argues that Ms. Ramirez' claim is amply supported by the evidence.

Ms. Ramirez' claim must be denied on the basis of her working a flexible

schedule.

Mercedes Rojas Ricardo

Ms. Rojas Ricardo worked as an Investigator in the Miami District Office throughout the claims period. As reflected in her Claim Form, she worked a 5/4/9 compressed schedule from her claimed pay periods 200421 through 200717, and a flexitour schedule from pay periods 200722 through 200906. She claims 53.3 hours over 44 pay periods. The Agency objects to some of her claims on grounds that she worked a flexitour schedule, that she seeks compensation for work performed during paid breaks, that she seeks compensation for noncompensable travel time, and that her supervisor could not have known of or prevented the claimed overtime work. The Agency concludes that the evidence is sufficient to establish a viable claim for 1 hour of overtime work in pay period 200512, totaling $60.68.

In pay period 200512, Ms. Rojas Ricardo claims 3.82 hours of overtime, 2 hours of which represent an Outreach event at which she and her colleague Jacqueline Gabriel were invited to participate. It was a Public Forum on Discrimination Issues, held in Florida City, FL on Thursday, May 19, 2005 from 6:00 to 8:00 P.M. and Ms. Rojas Ricardo and Ms. Gabriel were informed of their selection by District Director Federico Costales. The remaining 1.82 hours claimed was for out-of-hours travel to and from the event, which is not compensable with overtime.

Ms. Rojas Ricardo submitted, along with her Claim Form, affidavits for all applicable pay periods that stated:

> During my Intake weeks when I was scheduled for phone duty, I worked through my lunch and breaks to catch up with Intake mail and answers [sic] calls. The Intake Logs are provided as evidence. Additionally, there were days where I would not take lunch or breaks either due to the amount of interviews being done

> coupled with processing mail in a timely fashion. This information is provided to the best of my ability.

The Agency references the Declarations of Juan Gonzalez, former Enforcement Supervisor in the Miami District Office, Mellanese Jones, former Enforcement Supervisor in the Miami District Office, and Ozzie Black, former Enforcement Manager and currently Deputy Director of the Miami District Office. Mr. Gonzalez, the first line supervisor of Ms. Rojas Ricardo from 2007 to 2009, declared as follows: From at least April 2003 to April 2009, Investigators on a flexitour schedule were permitted to remain on their schedules when they performed Intake so long as one or two Investigators were available to handle walk-ins during the official hours of the office. Ms. Rojas Ricardo was on a flexitour schedule of 7:00 A.M. to 3:30 P.M. and 7:30 A.M. to 4:00 P.M. During that same time frame, employees in the Miami District Office were generally expected to take lunch between 11:00 A.M. and 2:00 P.M. unless there were work needs, in which case lunch could be taken outside that window. He had no personal knowledge that Ms. Rojas Ricardo worked through her lunch break. He had no personal knowledge that Ms. Rojas Ricardo worked beyond her regular hours, or worked extra hours at home, on weekends or at Onsites.

Ms. Jones, Ms. Rojas Ricardo's first line supervisor from 2003 to 2006, declared as follows: During that period, Ms. Rojas Ricardo continuously worked a flexible schedule of 7:00 A.M. to 3:30 P.M. or 7:30 A.M. to 4:00 P.M. Monday through Friday. [I note this is incorrect, if Ms. Jones refers to the 2003 to 2006 period during which she supervised Ms. Rojas Ricardo]. Ms. Rojas Ricardo never informed her that she worked through lunch or stayed past regular hours to complete a walk-in during Intake, or worked excess hours early in the morning, at home or over the weekend. Employees

were generally expected to take lunch between 11:00 A.M. and 2:00 P.M. but, if there were work requirements, they could take lunch outside that window. Ms. Rojas Ricardo never informed her she was working through lunch.

Mr. Black declared as follows: Employees are generally expected to take lunch between 11:00 A.M. and 2:00 P.M. except if work must be performed, in which case lunch may be taken outside that window. Employees are not permitted to work outside of regular hours without approval and all requests for compensatory time must be approved in advance. If an employee is involved in an after-hours or weekend Outreach, the office policy is to grant the employee an equal amount of unofficial time off to be taken within the next few pay periods.

The Union notes that Ms. Rojas Ricardo's supporting documents include a written affidavit for Intake (set forth above), as well as Intake schedules, e-mails on Outreach, computer screen shots with pay period notations, and these show her supervisors were aware of her extra work hours. In particular, Mellanese Jones was copied on a May 17, 2005 e-mail from Mr. Costales to Ms. Rojas Ricardo and Ms. Gabriel concerning the Outreach event in Florida City, FL. The Agency, it notes, has submitted no evidence to show that Ms. Ricardo did not work the claimed extra hours.

Ms. Rojas Ricardo is not entitled to overtime payment for the pay periods during which she was on a flexitour schedule. These are pay periods 200722 to 200906. For pay periods 200421 to 200717, during which Ms. Rojas Ricardo was on a 5/4/9 compressed schedule, she remains eligible to recover.

The Agency has offered payment for 1 hour of overtime plus liquidated damages, totaling $60.68, for the Public Forum on Discrimination Issues Outreach, held in Florida

City, FL on Thursday, May 19, 2005 from 6:00 to 8:00 P.M. While the Agency has stated its bases for why no further payment is appropriate, I have made no findings on such matters, inasmuch as the issue of supervisory knowledge is not disposed of on the basis of the offered Declarations. I am therefore prepared to grant a hearing for the purpose of determining whether the proposed Agency remedy should not be directed.

Omayra Rodriguez

Ms. Rodriguez worked as an Investigator in the Miami District Office from October 28, 2007 through the end of the claims period. She indicated on her Claim Form that she worked a basic schedule. She claims 59.9 hours over 10 pay periods in 2009 (200901 to 200910). The Agency objects to all her claims on grounds that she worked a flexitour schedule, that she seeks compensation for work performed during paid breaks, that she provided insufficient evidence of overtime work, that her supervisor could not have known of any claimed overtime work, and that her claims are outside the scope.

On the matter of Ms. Rodriguez' work schedule, it is clear, and not genuinely in dispute, that it was not a basic schedule, but a flexible schedule. Whereas the official hours of the Miami District Office were 8:00 A.M. to 4:30 P.M., all the relevant documents support the conclusion that Ms Rodriguez' work schedule was from 7:00 A.M. to 3:30 P.M. As examples, her leave slips show a 7:00 A.M. to 3:30 P.M. work schedule, and when leaves are only for part of a day, her day still ends at 3:30 P.M. If she takes half an hour for sick leave at the end of the day, it shows a departure at 3:00 P.M. Her Intake schedules reveal the same. While this will be likewise seen below in the Declarations of Mellanese Jones and Ozzie Black, I need place no reliance on those.

Ms. Rodriguez submitted, along with her Claim Form, written statements for the

relevant pay periods, in which she stated she "would work through my lunch and breaks approximately two to three days of the week in order to complete my work assignments. The extra hours worked were not recorded by my Agency." Additionally, in some of these statements, she noted that, "beginning on or about March 10, 2009, I began to keep a daily log of my time of arrival and departure," based on which she estimated the overtime she worked during that pay period in order to complete her work assignments. Ms. Rodriguez' Claim Form was also accompanied by Cost Accounting Bi-weekly time sheets, Intake schedules and personal daily accounts of hours worked.

The Agency views Ms. Rodriguez' statements as lacking in the detail required to reflect the nature of the work she performed and any explanation of the circumstances that caused her to have to work through lunch or to remain beyond her regular work hours. It concludes, therefore, that she has failed to demonstrate by just and reasonable inference that her claimed hours reflect actual time worked.

The Agency references the Declarations of Mellanese Jones, former Enforcement Supervisor in the Miami District Office, and Ozzie Black, former Enforcement Manager and currently Deputy Director of the Miami District Office. Ms. Jones, Ms. Rodriguez' first line supervisor in 2008 and 2009, declared as follows: During that period, Ms. Rodriguez continuously worked a flexible schedule of 7:00 A.M. to 3:30 P.M. Monday through Friday. Ms. Rodriguez never informed her that she worked through lunch or stayed past regular hours to complete a walk-in during Intake, or worked excess hours early in the morning, at home or over the weekend. Employees were generally expected to take lunch between 11:00 A.M. and 2:00 P.M. but, if there were work requirements, they could take lunch outside that window. Ms. Rodriguez never informed her she was

working through lunch.

Mr. Black declared also that Ms. Rodriguez worked a 7:00 A.M. to 3:30 P.M. flexible schedule in 2008 and 2009. He declared further as follows: Employees are generally expected to take lunch between 11:00 A.M. and 2:00 P.M. except if work must be performed, in which case lunch may be taken outside that window. Employees are not permitted to work outside of regular hours without approval and all requests for compensatory time must be approved in advance. If an employee is involved in an after-hours or weekend Outreach, the office policy is to grant the employee an equal amount of unofficial time off to be taken within the next few pay periods.

The Union contends that the Agency has submitted no specific evidence to show that Ms. Rodriguez did not work the extra hours claimed, and, therefore, may not defeat Ms. Rodriguez's claim in light of hearing testimony that the Miami District Office failed to record extra work hours.

Based on Ms. Rodriguez' flexible work schedule, I am required to deny her claim.

Monica Donastorg-Smith

Ms. Donastorg-Smith worked as an Investigator in the Miami District Office throughout the claims period. Her Claim Form reflects that she worked a basic schedule for all pay periods for which she makes claims. She claims 1,765.5 hours over 132 pay periods. The Agency objects to all her claims on grounds that she worked a flexible schedule from 2006 to 2009, that she provided insufficient evidence of overtime work, that she was on leave or holiday status for a full 8 hours on 174 specific days for which she claims overtime, that her supervisor could not have known of or prevented her claimed overtime work, and that all of her claims are outside the scope.

On the matter of Ms. Donastorg-Smith's work schedule, it was clearly not a basic schedule through the periods for which she claims relief. Her own submission confirms that. Among the documents she submitted, along with Intake schedules and sign-in/sign-out sheets, was a detailed breakdown by day of her work hours and her claimed overtime hours. In that documentation, Ms. Donastorg-Smith sets out her work schedule from 2003 through 2005 as being a basic schedule (8:00 A.M. to 4:30 P.M.); from 2006 through 2008 as being a flexible schedule (9:00 A.M. to 5:30 P.M.); and, beginning in 2009, also a flexible schedule (9:30 A.M. to 6:00 P.M.). That same detailed document reflects her beginning her 9:00 A.M. to 5:30 P.M. work hours in the week of January 2, 2006, and continuing with that schedule until the week of January 5, 2009, when she began her 9:30 A.M. to 6:00 P.M. flexible schedule. Accordingly, for essentially the entire years from January 2006 to the end of the claims period, Ms. Donastorg-Smith worked one of two variations of a flexible schedule.

The Agency goes on to assert that Ms. Donastorg-Smith's claim provides no indication of the nature of the work she was performing, an explanation of the circumstances that required the claimed extra hours, or how she derived her daily overtime figures. It argues, therefore, that she has produced insufficient evidence to demonstrate by just and reasonable inference that the hours claimed reflect actual hours worked.

The Agency also produced a document that charts what it represents are a large number of days where she claimed overtime but on which, according to FPPS records, she was either on leave or on Federal holiday status for those full days. On the basis of this, therefore, the Agency argues that Ms. Donastorg-Smith's own daily breakdown of

her claimed overtime work is not credible.

The Agency references the Declaration of Ozzie Black, former Enforcement Manager and currently Deputy Director of the Miami District Office. Mr. Black declared as follows: From at least January 2006 to at least April 2009, Ms. Donastorg-Smith worked a flexible schedule of 9:00 A.M. to 5:30 P.M., and 9:30 A.M. to 6:00 P.M. at various times, Monday through Friday. Employees are generally expected to take lunch between 11:00 A.M. and 2:00 P.M. except if work must be performed, in which case lunch may be taken outside that window. Employees are not permitted to work outside of regular hours without approval and that all requests for compensatory time must be approved in advance. If an employee is involved in an after-hours or weekend Outreach, the office policy is to grant the employee an equal amount of unofficial time off to be taken within the next few pay periods.

The Union noted that Ms. Donastorg-Smith submitted sign-in/sign-out sheets, Intake schedule, and memoranda to her supervisor on flexiplace work completed. It contends that Ms. Smith had requested her time and attendance records, but did not receive them until after she filed her claim. It notes, in response to the Agency's allegation that Ms. Smith's claims are inaccurate, that Ms. Smith had filed her claim based on calculations she had made prior to receiving the Agency records, and that, therefore, the Agency itself is responsible for any inaccuracies in her claim. It asserts that the Agency has produced no evidence that Ms. Smith did not work the extra hours claimed.

As I have already found, the periods from January 2006 to the end of Ms. Donastorg-Smith's asserted claims are not cognizable by virtue of her being on a flexible

schedule.

Insofar as the 2003 through 2005 time frame, detailed documents submitted by Ms. Donastorg-Smith respecting her claimed daily overtime hours appear inconsistent with Agency FPPS records and its own analysis of those records. I am not prepared in this case to make a fundamental finding on an issue of credibility based solely on two sets of competing documents, both of which may merit further scrutiny.

Accordingly, I will direct a hearing on the matter of Ms. Donastorg-Smith's claimed overtime hours from 2003 through 2005 only.

MINNEAPOLIS

Stacey Bolton

Ms. Bolton worked as an Investigator in the Minneapolis Area Office throughout the claims period, working both basic and 4/10 compressed schedules. She claims 162 hours over 48 pay periods. The Agency objects to all her claims on ground that they are untimely, that she earned and used compensatory time during the same pay period, that her claims are outside the scope, that she seeks compensation for work performed during breaks and for noncompensable travel time, that management could not have known of or permitted the claimed overtime work, that she received time off for the overtime hours she claims, and that she did not work the claimed overtime hours.

The threshold issue submitted by the Agency is its assertion that Ms. Bolton's claim is untimely. It states that, based on the documents submitted by Ms. Bolton, it cannot be determined whether the claim was, in fact, timely filed, noting that, if the claim was filed after the May 29, 2012 deadline, it is untimely. It was confirmed, through a June 1, 2012 e-mail between Agency and Union counsel, that Ms. Bolton was on the

extension list.

I will proceed to summarize the state of the record on the merits. The Agency asserts, based on the Claim Form itself, that, in six pay periods, Ms. Bolton earned and used the same amount of compensatory time within those pay periods, totaling 15 hours. It therefore asserts that these 15 claimed overtime hours are not payable, inasmuch as Ms. Bolton ultimately did not work more than 80 hours during these six pay periods. The Agency goes on to object to any travel compensation that may be asserted by Ms. Bolton in conjunction with her Onsites, and lack of supervisory knowledge of her working through lunch breaks, a matter addressed in a Declaration of Wendy Reiner, former Supervisory Investigator in the Minneapolis Area Office.

Ms. Reiner declared, in relevant part, as follows: She was Ms. Bolton's first line supervisor from December 2005 to August 2007. It was the office's practice to provide compensatory time for extra hours worked, and, although the system was informal, she did not direct Ms. Bolton or any other employee not to track their extra hours. She had no personal knowledge of Ms. Bolton's asserted 162 hours of overtime worked, and that any extra hours would have been acknowledged with compensatory time pursuant to office practice. Such requests for compensatory time, she stated, were infrequent. She never denied any request of Ms. Bolton for compensatory time nor did she recall Ms. Bolton's having worked any extra hours for which compensatory time was not given. She was not aware of Ms. Bolton's stated practice of working through lunch and beyond her scheduled hours or spending hours at home on powerpoint presentations for Onsite visits, and, if she did so without receiving compensatory time, it was without her knowledge or prior authorization. With regard to Intake, the Minneapolis Area Office

changed its system to require appointments for potential Charging Parties, whereas appointments were previously not necessary. Two appointments were scheduled in the morning and two in the afternoon. Ms. Reiner did not recall, when she was an Investigator, having to work beyond her regular hours on Intake under either system, and it was rare for an Investigator to request compensatory time for extra hours worked in Intake.

The Agency also presented the Declaration of Julie Schmid, Acting Area Director of the Minneapolis Area Office. She was Ms. Bolton's second line supervisor from December 2005 through at least September 2007, and her first line supervisor after Ms. Bolton was promoted to Enforcement Supervisor. She declared as follows: At least as far back as December 2005, the office practice has been to provide employees with compensatory time for extra hours worked. Such requests were generally granted and, although the process was informal, no employees were instructed not to track their extra hours worked. She had no personal knowledge that, from December 2005 to September 2007, Ms. Bolton worked extra hours without receiving compensatory time, if her supervisor was so aware.

Along with her Claim Form, Ms. Bolton submitted numerous Intake schedules, Onsite documents (including correspondence with counsel on various charges), and Outreach documents and reports. The Onsite documents included statements from Ms. Bolton in which she indicated that, from 2003 to 2007, "I conducted at least 10-15 on-sites per year. Many on-sites required travel and preparation time that was not compensated by overtime. Sometimes, I would receive comp time, but it was unofficial and we were encouraged not to officially track this time…." With respect to her

Outreach activities, Ms. Bolton submitted statements reporting that, "[w]hen conducting outreach, it was required to create and prepare a powerpoint presentation. In addition, hours were spent at home working on and practicing the presentation. This additional time was not compensated. To the best of my knowledge, I worked extra hours when conducting outreach without compensation."

In addition to the above, it appears that Intake statements were submitted by Ms. Bolton as well. However, it likewise appears, based on the representations of both parties, that neither was able to open these documents owing to a password protection feature. Should this become relevant from an evidentiary standpoint, I presume the parties will so advise me and proceed appropriately. I note, in this regard, that the Union submitted an Intake statement by Ms. Bolton dated May 27, 2012. I cannot be certain if this is the same as the one the parties state they are unable to access, although I presume it is not. It states: "During intake, it was common to work through lunch and/or past office close to assist customers, return telephone calls, and complete mail in questionnaires. This time was not recorded and was considered part of being assigned to intake. To the best of my knowledge, I worked extra hours on intake weeks without compensation."

Ms. Bolton submitted a Supplemental Affidavit, dated October 18, 2013, stating:

> …When I conducted onsites, I would work beyond my scheduled work hours to prepare and travel to the location, especially when I had to travel more than fifty miles beyond my duty station. Outreach caused me to work extra hours due to the preparation time required for outreach as well as the travel time. When I traveled to conduct an onsite and an outreach, I would generally drive the government car. I did request the records for the government car, but I was told the Agency did not keep the records.

The Union contends that Ms. Bolton's documents show her supervisors were aware of her extra work hours and approved the work. With respect to the Agency's

allegation that Ms. Bolton's claim may have been untimely, the Union states that Ms. Bolton was on the list of employees seeking an extension of time to file their claims, and that the parties agreed to Ms. Bolton's extension request. In addition, with respect to the Agency's assertion that employees received unofficial compensatory time, the Union objects to the validity thereof if the compensatory time is not recorded, arguing that the Agency can only receive an offset for compensatory time proved to have been used. Ms. Bolton's documents, the Union argues, support her claim.

As noted above, I await advice from counsel on the status of the Intake Statement that the parties have been unable to access. This is evidence that, having been submitted by Ms. Bolton, would have to be given its due weight in evaluating this claim on its merits.

Petrona Melgarejo

Ms. Melgarejo was an Investigator in the Minneapolis Area Office throughout the claims period. Her Claim Form reflects that, except for four of her claimed pay periods on a basis schedule, she worked a 4/10 compressed schedule. She claims 134 hours over 26 pay periods. The Agency objects to her claims because they are outside the scope, that she makes claims for working through lunch, and for travel which are not compensable with overtime pay, that she provides insufficient evidence in support of her claims, that she did not work the hours claimed in overtime, and that her supervisor was not aware she was working all the extra hours she claims.

While Ms. Melgarejo claims, as noted above, that she worked primarily a 4/10 compressed schedule, except for four pay periods on a basic schedule, the Agency contends that, in light of her complaint that she was unable to work the 8:00 A.M. to 4:30

P.M. official hours of the Minneapolis Area Office, she was given a flexible schedule during Intake weeks to work from 8:15 A.M. to 4:45 P.M. The reference here is to e-mails between Ms. Melgarejo and Julie Schmid, Acting Area Director of the Minneapolis Area Office, in which Ms. Melgarejo has asked to arrive during Intake weeks either at 6:30 or 8:15 A.M. Ms. Schmid approved the 8:15 A.M. to 4:45 P.M. schedule for Intake weeks.

The Agency asserts that, in support of most her claims, Ms. Melgarejo submitted Outreach forms or an Intake schedule, but that some claims are not supported by documentation at all, citing 5 hours claimed in pay periods 200318, 200412 and 200611, nor does she assert that she received compensatory time for extra hours during these pay periods. It also challenges her claim of 14 extra hours for pay period 200426 for attending a Human Rights Day Conference in St. Paul, MN from 7:30 A.M. to 4:00 P.M. The Agency asserts that, according to FPPS records, Ms. Melgarejo worked 10 hours that Friday and, therefore, could hardly have claimed 14 extra hours for that same day. It also claims, generally, that Ms. Melgarejo's Outreach documentation does not explain the overtime hours she asserts in connection with these activities.

The Agency further maintains that, while Ms. Melgarejo denies earning or receiving compensatory time in most of her claimed pay periods, it believes she would have received informal compensatory time for extra time traveling and working during Outreach and Onsites, and that she would have used such compensatory time in the same pay period. It also generally challenges her apparent claims for travel in conjunction with her Outreach events. Even her Saturday Outreach activity, the Agency states, was likely addressed with informal compensatory time that she likely used during the same pay

period.

Along with her Claim Form, Ms. Melgarejo included a May 23, 2012 e-mail to "Overtime Claim Management, " in which she stated:

> The attached 26-page document includes emails from me to management, Employee Accomplishment report, on-site conducted on selected cases, 2007 District Litigation cases of which four were mine, pending inventory reports, and resolution reports for the relevant period.
>
> In the attached mail dated 3/21/06 and 4/12/06, I specifically informed management that "during intake in the past, I consistently worked overtime,"…"Most of my overtime work hours come from working during intake, conducting on-sites, and conducting settlement or conciliation conferences." The email neglected to include outreach as one of the activities that consistently required overtime as shown in the outreach reports submitted.
>
> The attached resolution reports show that I consistently completed investigation of about 100 plus cases each year and conducted onsites on 5-12 cases per year. Conciliation and settlement conferences were conducted on at least…10-22 or more of the cases that resulted in merit resolution. Also, the attached intake schedule shows I was scheduled for intake duties every six weeks average.

The Union contends that Ms. Melgarejo's documents show that her supervisors were aware of and approved her extra work hours. It points to certain of the Agency's challenges to her claim that she had worked extra hours and asserts that they are incorrect. It notes that the Agency challenged Ms. Melgarejo's claim of 14 hours of extra hours in pay period 200426, ending on December 11, 2004, and her own documents show she worked on Friday, December 3, 2004, her day off. It references the Agency's assertion that the FPPS records show Ms. Melgarejo worked on the Friday and had an alternative day off on Monday, November 29, 2004. While the FPPS records do, in fact, so reflect, Ms. Melgarejo's Cost Accounting sheet for the pay period show that she worked Monday through Thursday, with Friday as her day off.

This record presents numerous factual issues that it fails to resolve. One involves the Agency's argument that, when Ms. Melgarejo asked to work an 8:15 A.M. to 4:45

P.M. shift during Intake, which was accommodated by Ms. Schmid, this made her schedule a flexible one for Intake weeks and thus, as I understand the Agency's position, for the entire pay periods in which these Intake weeks fell. As I read the available Intake schedules, Ms. Melgarejo was assigned to Intake one week a month (and sometimes, such as in April 2006, not at all). In other claims, the Agency has made the argument that, if a claimant is on a flexible schedule, the fact that that individual may work the official hours of the office during an Intake week does not change the basic character of that individual's flexible schedule. I question why the same approach should not apply in the reverse situation, which seems to be the case here.

Another issue is that involving the Friday, December 3, 2004 Outreach (pay period 200426) for the Human Rights Day Conference in St. Paul, MN. While I understand the Agency's argument that Ms. Melgarejo could hardly be owing 14 hours of overtime if she was working a 10-hour day, the fact that her Cost Accounting Bi-weekly time sheet for this period appears to show that day as her day off makes this a different matter. My question here is whether this remains relevant in light of Ms. Melgarejo's expressly indicating on her Claim Form that she both received and used 14 hours of compensatory time in pay period 200426.

Yet another issue is the Agency's assumption that, while Ms. Melgarejo denied earning or using compensatory time for many of her claims, "she would have received informal comp time for extra hours she traveled and worked doing outreach and onsites and would have used that informal comp time in the same pay period in which she is claiming she worked extra hours." This assumption is just that. I can hardly endorse the grant of an offset without more of a showing that there is a basis for it.

Finally, there is the issue of travel and after-hours and/or weekend Outreach. I have set forth earlier in this report what is necessary under applicable law and regulations in order to establish travel that is compensable with overtime, and will not do so here. I want to hear testimony on weekend Outreach that may qualify for travel overtime.

Accordingly, I will direct a hearing in order to determine whether, based on these matters, there is a viable claim for overtime.

Paul Milhaupt

Mr. Milhaupt worked as an Investigator in the Minneapolis Area Office from March 19, 2007 until March 6, 2008. His Claim Form reflects his having worked a basic schedule. He claims 227 hours over 8 pay periods. The Agency represents that Mr. Milhaupt was discharged, in part, for working extra hours at home without approval. It objects to all his claims because the extra hours he claims are outside the scope and were not suffered or permitted by the Agency.

Mr. Milhaupt reflects in his Claim Form that he did not receive compensatory time for his alleged extra hours, and the Agency agrees, noting that his extra hours working at home were without the knowledge or approval of his supervisor. When, as the Agency states, it was discovered that he was working at home, he was instructed to stop.

Accompanying his Claim Form is a large number of documents, representing e-mails mostly addressed to himself (appearing to be sent from his home account to his Agency account) dealing with cases on which he was working while at home, as well as Agency correspondence, principally with Charging Parties, addressing the status or disposition of cases on which he apparently was working.

The Agency maintains that these documents fail to reflect when or for how long he worked on these documents at home, and how much of this work may actually have been conducted in the office. The Agency asserts that, from the hours he claims and the supporting documents, it is apparent that Mr. Milhaupt's claim is for working overtime at home.

The Agency references the Declaration of Julie Schmid, Acting Director of the Minneapolis Area Office. She declared as follows: Since at least the time she became Acting Director in December 2005, it has been the practice of the Minneapolis Area Office to provide employees with compensatory time for any extra hours worked, and that requests for such time were generally granted. She was Mr. Milhaupt's second line supervisor from March 2007 until the termination of his employment effective March 18, 2008. She learned that Mr. Milhaupt had been working unauthorized overtime and taking files home without approval. As soon as she learned of this, she and Mr. Milhaupt's supervisor instructed him to stop, but he disregarded those instructions and continued to work unauthorized overtime. Among the reasons Mr. Milhaupt was terminated was his refusal to discontinue working unauthorized overtime.

Mr. Milhaupt's cover letter accompanying his Claim Form, was addressed to Union counsel and to Rust Consulting. It stated:

> Thank you for this opportunity to participate in the EEOC Overtime Claims Process. Because I am unable to re-produce email attachments as PDF documents, I have chosen to submit my claim both electronically (w/o such attachments) and by U.S. Mail (w/ such attachments).
>
> Throughout my tenure with the EEOC's Minneapolis office, I was an Investigator GS-1810, grade 9. As a new employee (especially one with an approaching anniversary date of employment – March 19), I worked an ever-increasing amount of overtime, including some all night shifts.
>
> While there are many more overtime hours I worked, I am submitting only those

> overtime hours that can essentially be corroborated by some form of work product (e.g. file review, analysis, interview summaries, investigative memorandum, information requests, dismissal letters, etc.). In doing so, I have redacted such documents wherever appropriate. I have also enclosed a billing statement detailing my time and costs in the preparation of this claim.
>
> Please feel free to contact me regarding the next step in the claims process.

The Union contends that, owing to Mr. Milhaupt's having submitted Agency e-mails in support of his claim for extra hours worked, the Agency was aware of these extra work hours. It states that, regardless of the Agency's position, reflected in the Declaration of Ms. Schmid, that Mr. Milhaupt was discharged during his one-year probationary period for working unauthorized overtime, it produced no evidence showing that Mr. Milhaupt was advised to stop working extra hours. Absent accurate records, the Agency must produce specific evidence that such time was not worked or was unauthorized, and it has not done so.

The initial burden in all these cases rests with the claimant. While I see a significant number of documents on which Mr. Milhaupt states he worked, many of which he e-mailed to himself outside of his work hours, this does not have a tendency to show that Mr. Milhaupt was spending the considerable amounts of time he reflects on his Claim Form actually performing Agency work during extra hours that were suffered or permitted. I am able to discern no evidence that Mr. Milhaupt has been able to establish a just and sufficient inference as to the amount and extent of this claimed overtime. This burden has not been carried.

Accordingly, Mr. Milhaupt's claim must be denied.

NASHVILLE

The Union makes a submission for Nashville Area Office filed claims (those of Curtis Brooks and Dorothy Rogers) that consists of an excerpt of the supporting documentation submitted by Sharon Poindexter, a claimant from the Indianapolis District Office. In pertinent part, the Union continues with its submission as follows:

> The Union's exhibit titled "Overtime Records" is the first two months and last two months of a record maintained in Nashville that tracked overtime hours worked by employees for 2004 [included in the Union's "Nashville" folder]. Ms. Poindexter, formerly Sharon F. Dickerson, submitted fifty seven pages with her claim which represented the 2004 calendar year [referenced as "Claimant Docs" in Ms. Poindexter's Claim File]. The document submitted, in support of the Nashville claimants, has the official agency IMS initials of Curtis Brooks (CLB) and Dorothy Rogers (DHR), who have submitted claims in this process. The Agency withheld these records from the Union and Ms. Rogers, although Mr. Brooks's claim has portions of the records….The Agency, by withholding records, has obstructed employees in the filing of their claims. The Union seeks payment for the extra hours claimed by Mr. Brooks and by Ms. Rogers with an equal amount of liquidated damages. The Union seeks with the filing of this response the payment of extra work hours for 2004, for Lu Ann Hawk (LAH) for a total of 31.64 hours; for Ann Martin (ARM) for a total of 55.29 hours; for Chris Wing (CEW) for a total of 38.03 hours; for Rhonda J. Ellison (RJE) for a total of 84.22 hours; and for Vickie Seat (VBS) for a total of 50.42 hours. The Memphis [I believe the reference here is intended to be Nashville and/or Indianapolis – see below] office Overtime records shows these are the total amount of overtime hours for the individuals, who were all employed as Investigators….

The Union requests that each employee noted above receive, along with the hours claimed, an equal amount of liquidated damages. Finally, it asserts that, based on the evidence for the Nashville Area Office, the Agency's objections are moot.

In an attempt to replicate the extra work hours claimed above by the Union on behalf of Ms. Hawk, Ms. Martin, Mr. Wing, Ms. Ellison and Ms. Seat, I ran a check of the overtime hours reflected for Ms. Hawk using the pay period data for calendar year 2004 (which included pay period 200501) found in the Nashville portfolio of Dorothy Rogers (also provided by the Union in its Nashville folder). The same document, with 2004 total overtime hours for all the above employees, appearing at the end, is found in

the "Claimant Docs" section of Ms. Poindexter's Indianapolis claim, referenced above. The Union claims 31.64 extra hours for Ms. Hawk. My calculation came to 31.55, the 0.09 hour difference explainable, in my view, by the inadvertent addition (or exclusion) of one unit of 0.09 hours (a common entry in Ms. Hawk's record). Based on this calculation, I credit the accuracy of the extra hours claimed above on behalf of Ms. Martin, Mr. Wing, Ms. Ellison and Ms. Seat. These totals correspond with the "Claimant Docs" section of Ms. Poindexter's Indianapolis claim.

The Union's position, as referenced above, is incorporated by reference with the entries below reflecting the Agency's arguments in the claims of Curtis Brooks and Dorothy Rogers.

Having noted the above, and having acknowledged the Union's explanation for its requests for payment for the five Investigators identified above, none of these five individuals is a claimant in these proceedings. For that reason alone, I am without authority to direct the relief requested. Should counsel wish to meet *in camera* on this matter, I am prepared to have such a meeting.

Curtis Brooks

Mr. Brooks worked as an Investigator in the Nashville Area Office from before the claims period until May 8, 2008. As reflected on his Claim Form, he worked a gliding flexible schedule. He claims 53.6 hours over 27 pay periods in 2004. The Agency objects to all his claims on ground that he worked a flexible schedule, that his claims are outside the scope, and that he has submitted insufficient evidence to support his claims.

The Agency asserts that, based on Mr. Brooks' Claim Form, and based also on the

daily time logs he submitted therewith, Mr. Brooks was clearly working a flexible schedule for the entire period of his claim. In addition, it states that Mr. Brooks did not produce sufficient evidence to demonstrate by just and reasonable inference that the hours he claimed were actually worked, in that he does not detail they type of work he was performing, when he performed it, and what caused the work to be performed outside his regular work hours. For the record, the Agency makes additional objections not set forth here.

Irrespective of other issues raised by both parties in this case, it is clear that Mr. Brooks worked a gliding flexible schedule throughout the period reflected in his Claim Form. While his daily time logs are set forth with considerable care to detail, they affirm the nature of Mr. Brooks' gliding work schedule. I am therefore required to deny his claim.

Dorothy Rogers

Ms. Rogers worked as an Investigator in the Nashville Area Office throughout the claims period. As reflected in her Claim Form, she worked a gliding flexible schedule for all her claimed pay periods. She claims 225.44 hours over 160 pay periods. Ms. Rogers was among those claimants who received an extension of time to file. The Agency objects to all her claims on grounds that she worked a flexible schedule, that she failed to assert more than a *de minimis* claim, and that she received and used credit time in at least 45 pay periods.

The Agency asserts that, based Ms. Rogers' Claim Form, and based also on the daily time logs she submitted therewith, covering periods from 2004 through April 2006, Ms. Rogers was clearly working a flexible schedule for the entire period of her claim. In

addition, it states that Ms. Rogers did not produce sufficient evidence to demonstrate by just and reasonable inference that the hours she claimed were actually worked, in that she does not detail the type of work she was performing, when she performed it, and what caused the work to be performed outside her regular work hours. For the record, the Agency makes additional objections not set forth here.

The Agency asserts that, for 106 pay periods, Ms. Rogers cited a claim for 1.41 hours of overtime per pay period, which the Agency figures at 10.1 minutes a day, and that, in most other pay periods, she claimed similar amount of overtime. It argues that these are negligible claims and are viewed under the law as *de minimis* and, thus, not viable claims. (Note Ms. Rogers' explanation in her declaration, below.) It also notes that, in Ms. Rogers' daily time log, there are 45 pay periods in which she took credit time in either the same pay period or in pay periods thereafter, totaling 9.86 hours, which the Agency here asserts as an offset. It also identifies, from Ms. Rogers' daily time logs, that she appeared to have earned and used compensatory time in the same pay periods, which would, as a result, cause no overtime to be owing her for these pay periods.

Ms. Rogers' claim includes a declaration as follows:

> I am claiming 1.41 hours of Over Time for each pay period for which information was not provided by management. This is based on the 62 pay periods of sign-in sheets showing I actually worked 87.27 hours of overtime during the 62 pay periods from 2003-24 through 2006-10. None of the information provided or available takes into consideration the travel time, site visits, outreach, extra Intake hours worked because of an extreme shortage of investigators in the NAO [Nashville Area Office], or the extra telephone and mail inquiry handling by Investigators because of the lack of an Intake Supervisor and Clerical help during the relevant period.

Irrespective of other issues raised by both parties in this case, it is clear that Ms. Rogers worked a gliding flexible schedule throughout the period reflected in her Claim Form. While her daily time logs are, like those of Mr. Brooks, set forth with considerable

care to detail, they affirm the nature of Ms. Rogers' gliding work schedule. For that reason alone, I am required to deny her claim.

NEW ORLEANS

Tanya Darensburg

Ms. Darensburg worked as an Investigator in the New Orleans District Office (later the New Orleans Field Office) from before the claims period through May 29, 2012. She claims 11 hours over 3 pay periods, one of which (pay period 200317) she noted she worked a basic schedule, and two of which (pay periods 200507 and 200623) she noted she worked a 5/4/9 compressed schedule. The Agency objects to all her claims on grounds that she provided insufficient evidence to support her claims, that her supervisors could not have known that she was working overtime, and that her claims are outside the scope.

The Agency asserts that Ms. Darensburg's claim provides no information concerning the basis for the hours claimed, nor does she provide any explanation of her duties, or when she was performing them, and which such specific duties required overtime hours. It also argues that the Union did not present evidence during the hearings of "suffered or permitted" overtime for the New Orleans District Office. It notes further that there was no indication from Ms. Darensburg that she ever mentioned her extra work to management and that, therefore, there was no way they could have known of or prevented it.

The Agency referenced the Declarations of Keith Hill, Director (and former Acting Director) of the New Orleans Field Office, and Uma Kandan, Enforcement Supervisor in the New Orleans Field Office. Mr. Hill declared as follows: He regularly

reminded all staff in writing of the strict policy prohibiting work beyond regular work hours without prior written management approval, and that anyone wishing to earn compensatory time or overtime must first receive written authorization to do so. Management informed interested Investigators that they could be compensated for Outreach activities outside their regular work hours if they submitted their requests to their supervisor. Particularly during the December 2005 to 2007 rebuilding of the office following Hurricane Katrina, he would usually be the last to leave the office and, if he saw someone still in the office, he would instruct them to leave. He had no personal knowledge of Ms. Darensburg's arriving early to work or remaining late, taking work home, or otherwise working beyond her regular hours, and she never advised him she was doing so.

Ms. Kandan declared as follows: She has supervised Ms. Darensburg since December 2004, during which time Ms. Darensburg has been on a 5/4/9 compressed schedule, working from 8:00 A.M. to 5:30 PM. on her 9-hour days. She has no recollection of Ms. Darensburg's having worked either before or after he regular work hours, or on weekends, nor any recollection that Ms. Darensburg so advised her. On rare occasions, when Ms. Darensburg had to work through lunch or breaks when on Intake, she was permitted to leave early that day or on another day. She has no reason to believe that Ms. Darensburg worked any overtime, and, in particular, 6 hours of overtime in 2006 and 2 hours in 2005, nor does she recall Ms. Darensburg's asking her for compensatory time or credit hours to cover this or any other alleged work she performed outside her regular work hours. In the aftermath of Hurricane Katrina, Ms. Darensburg worked in the Dallas office from September 2005 until June 12, 206, during which time she was not

aware of Ms. Darensburg's activities.

On July 5, 2012 Ms. Darensburg requested, through Union counsel, that her claim be reopened. In this request, she stated the following:

> I am an investigator in the New Orleans Field Office and filed an overtime claim on May 29, 2012, for a total of 11 overtime hours. The Equal Employment Opportunity Commission did not provide me with attendance information or any other documentation that would have assisted me in correctly filing my claim. The information and lack of information not received from EEOC and the union prior to submitting the claim form clearly stated that supporting documentation was required for hours claimed.
>
> I recently discovered that documentation was not required and but [sic] that I could have submitted statements of explanation justifying the extra hours worked outside of my tour of duty. **I am requesting that my previous overtime claim be reopened to add a total of 133 hours worked.**
> **2003-add 50 hours**
> **2004-add 76 hours**
> **2005-add 7 hours**
> **Totaling 133 hours**
>
> More often than not, these additional hours were necessary for me to perform my investigative duties because of the overwhelming case backlog, pressure from management to meet deadlines and because members of the public needed to be served. I am, therefore, requesting that the additional 133 hours be added to the claim previously submitted on May 29, 2012. [Emphasis supplied]

The Agency, through counsel, rejected Ms. Darensburg's request on July 12, 2012, stating principally that Ms. Darensburg was not among those claimants granted an extension of time to file their claims, and that there was no basis for her contention that she had only recently become aware that she could provide a statement in support of her claimed extra hours worked in lieu of actual Agency records. Agency counsel stated further that the Claims Notice contains no requirement that a claim must be supported by Agency records. In addition, Agency counsel noted that Ms. Darensburg's proposed supplemental claim, rather than referencing specific pay periods, as required, aggregates all hours by calendar year.

The Union contends, in light of the above, that Ms. Darensburg had requested to

amend her claim because she did not have the correct information on the claim filing requirements, and that the Agency would not agree to the reopening of her claim. Ms. Darensburg alleges that she was not provided with records she requested and was, therefore, at a disadvantage in filing her claim. The Union requests that Ms. Darensburg's claim be reopened, that she be provided with hard copy claim forms, and that she be permitted to amend her claim to include her additional work hours. It points out further that the sign-in/sign-out sheets for the New Orleans District Office reflect that Ms. Darensburg conducted an onsite for three days, from March 8 to 10, 2005, and that employees conducted Outreach on the weekends. It asserts that the Agency's general objections present no evidence to show that Ms. Darensburg did not work the hours claimed. It rejects the Agency's assertion that, because no evidence was presented during the hearings concerning the New Orleans District Office, no claim may be granted for a New Orleans claimant, and asserts that such an argument ignores the principle underlying a bifurcated proceeding. It points to the 2009 Opinion's finding that violations have occurred throughout the Agency.

I have given careful consideration of the request Ms. Darensburg has made, through the efforts of the Union, to supplement her claim. There is every reason to believe that this request is made in good faith in an attempt to assert what she now views to be her fully stated claim for overtime hours.

However, I am required to observe the rules that the parties themselves carefully negotiated in their attempt to govern this claims process in such a way that it should apply, to the greatest extent possible, fairly and equally to all claimants. When exceptions have been made, particularly in matters of timely claim filing, the parties have

seen to it that these circumstances were clearly identified and addressed. Ms. Darensburg's case, with due respect, is not one that I am able to address in the same way.

The Claim Form Notice itself expressly stated that supporting documents, if available, were to accompany the Claim Form. In addition, the Claim Form Notice expressly stated that, if a claimant had additional pay periods in which extra hours were asserted to have been worked, it required a claim for those additional pay periods with relevant documentation in the same way (i.e., identified by pay period) as originally submitted.

This is how the claims process must be governed. Otherwise, it runs the risk of certain claimants being arbitrarily treated better or worse than others. I must conclude that the parties sought to avoid such a result when they took great pains to negotiate this process.

For these reasons, I must respectfully deny Ms. Darensburg's request to supplement her claim.

With respect to Ms. Darensburg's original claim, as filed, I find two matters that merit scrutiny. First, the sign-in/sign-out sheets for the New Orleans District Office reveal that Ms. Darensburg conducted one or more Onsites from the period of March 7 to 10, 2005, corresponding to pay period 200507, for which Ms. Darensburg claims 2 hours. However, even granting Ms. Darensburg these 2 hours, she would not have worked more than 80 hours during pay period 200507, since she had taken 3 hours of annual leave.

Second, the Outreach files for the New Orleans District Office reflect a Resource Fair Outreach on Saturday, October 28, 2006 (pay period 200623, for which Ms. Darensburg claims 6 hours). According to the October 26, 2006 Tydell Nealy e-mail,

this event was scheduled to take place from 10:00 A.M. to 6:00 P.M. and Ms. Darensburg was to work a booth from 2:00 to 4:00 P.M. This is a potentially viable claim, in that Ms. Darensburg worked a full 80 hours during pay period 200623. Whether she may merit 2 hours for the time she was scheduled to work a booth, or whether she spent additional time at the Resource Fair Outreach that day is uncertain. Claimant Marvis Hicks, whom I find to be similarly situated with respect to this Resource Fair Outreach, and whose claim for 5 hours that day I have granted, as explained in my discussion of her claim, causes me to grant Ms. Darensburg the same 5 hours, minus compensatory time used, and an equal amount of liquidated damages. Rust Consulting will perform the necessary calculations and the Agency shall pay Ms. Darensburg, in care of the Union, within sixty (60) days of the parties' receipt of this Report.

I advise the parties that I have placed no weight on the Agency's argument that the Union did not present evidence during the hearings of "suffered or permitted" overtime for the New Orleans District Office, as I deem that irrelevant considering the omnibus nature of these proceedings.

Althea Bertrand

Ms. Bertrand worked as an Investigator in the New Orleans District Office (later the New Orleans Field Office) from before the claims period through June 1, 2003. The Agency objects on the ground that Ms. Bertrand failed to meet the requirements for a valid claim. Further Agency objections are not relevant.

Ms. Bertrand's Claim Form, which is not completed, contains the handwritten notation: "I retired on 6//2003. All information & documentation were lost in Hurricane Katrina."

The parties agree that Ms. Bertrand failed to submit a valid claim.

Paulette Flemings

Ms. Flemings worked as an Investigator in the New Orleans District Office (later the New Orleans Field Office) from before the claims period through May 24, 2012. Her Claim Form reflected that she worked a flexitour schedule during the pay periods claimed. She claims 17 hours over 5 pay periods.

The Agency objects to this claim on grounds that Ms. Flemings was on a flexitour schedule in all pay periods covered by her claims, that she provided insufficient evidence to support her claims, and that her claims are outside the scope.

Specifically, the Agency asserts that she fails to explain how she derived the claimed hours, and fails further to explain what duties she performed at any particular time of which of these resulted in a particular amount of extra hours claimed, when during the day she performed them or what tasks required extra hours. It also asserts that the Union did not present evidence of "suffered or permitted" overtime for the New Orleans District Office. It argues that Ms. Flemings has provided insufficient evidence to demonstrate a just and reasonable inference that she performed overtime work or that she worked the number of hours claimed.

In addition, Ms. Flemings submitted documents in support of a second claim. She submitted information to Rust Consulting, received by them on July 16, 2012, with a cover letter stating:

> I just found out that I could claim my overtime hours that I worked after hours. I worked approximately 249 hours overtime during the relevant period. However, I did not claim the hours because I did not have any documentation to support the working hours. However, I was informed by the Birmingham, Alabama Office that I could and should claim my overtime working hours because I did work overtime without pay. I was told that I had to certify my hours to the best of my

knowledge.

In this cover letter, Ms. Flemings certified that she worked the 249 hours "without pay, comp time or credit time." She submits pages noting the start and end dates of pay periods from April 2003 (pay period 200309) through the beginning of June 2009 (including pay periods 200911 and 200912, which are not covered in this process), along with numerous Charge Detail Inquiry forms.

The Agency objects to Ms. Flemings' second claim on the ground that it is untimely and that she did not submit a claim under the process agreed upon by the parties. It notes that, while her letter to Rust Consulting contains the total number of hours claimed, it does not assign these hours to a pay period or even to a specific year, nor does it reflect what schedule she was working. It argues that, since Ms. Flemings knew the procedure for filing her first claim, there can be no explanation for why she failed to follow that procedure for her second. Despite the documentation she submitted, the Agency asserts, it bears no relation to work she allegedly performed beyond her normal hours. Moreover, it contends that, apart from the Agency's assertion of untimeliness, Ms. Flemings appeared to claim overtime for pay periods when the New Orleans District Office was closed for reason of weather and/or holiday.

On July 5, 2012 Ms. Flemings requested, through Union counsel, that her claim be reopened. Her request tracks identically that of Tanya Darensburg, above, differing only in the number of additional hours she requests. In this request, she stated the following:

> I am an investigator in the New Orleans Field Office and filed an overtime claim on May 29, 2012, for a total of 11 [should be 17] overtime hours. The Equal Employment Opportunity Commission did not provide me with attendance information or any other documentation that would have assisted me in correctly filing my claim. The information and lack of information not received from

> EEOC and the union prior to submitting the claim form clearly stated that supporting documentation was required for hours claimed.
>
> I recently discovered that documentation was not required and but [sic] that I could have submitted statements of explanation justifying the extra hours worked outside of my tour of duty. **I am requesting that my previous overtime claim be reopened to add a total of 249 hours worked.**
> **2003-add 29 hours**
> **2004-add 81 hours**
> **2005-add 70 hours**
> **2007-add 69 hours**
> **Totaling 249 hours**
>
> More often than not, these additional hours were necessary for me to perform my investigative duties because of the overwhelming case backlog, pressure from management to meet deadlines and because members of the public needed to be served. I am, therefore, requesting that the additional 249 hours be added to the claim previously submitted on May 29, 2012. [Emphasis supplied]

The Agency, through counsel, rejected Ms. Flemings' request on July 12, 2012 in the same e-mail in which the same request of Ms. Darensburg was likewise rejected. Here, as in the claim of Ms. Darensburg, counsel stated principally that Ms. Flemings was not among those claimants granted an extension of time to file their claims, and that there was no basis for her contention that she had only recently become aware that she could provide a statement in support of her claimed extra hours worked in lieu of actual Agency records. Agency counsel stated further that the Claims Notice contains no requirement that a claim must be supported by Agency records. In addition, Agency counsel noted that Ms. Flemings' proposed supplemental claim, rather than referencing specific pay periods, as required, aggregates all hours by calendar year.

The Union contends that, inasmuch as Ms. Flemings did not receive supporting documents she requested to assist her in filing here claim, she should be permitted to add the additional hours to her claim, that she should be sent a hard copy form, and that she should be given thirty days from the date of receipt to return her Claim Form. The Union asserts its belief that this represents an equitable solution to Ms. Flemings' circumstance.

It notes that Ms. Flemings submitted Agency IMS documents showing Onsites, conciliations and Intake, that her online claim was timely filed, but that her supporting documentation was mailed in July 2012. It asks that Ms. Flemings' supporting documentation be accepted and that the three business day deadline for doing so should be waived. The Union believes that failing to permit the addition of the supporting documents to Ms. Flemings' claim will cause unnecessary additional litigation and will prevent a full adjudication of Ms. Flemings' claim. With respect to the Agency's argument that Ms. Flemings made a claim for hours during which the office was closed due to weather in 2005, the Union points out that Ms. Flemings made no claim for pay periods 200519, 200520, 200521, 200522 and 200523, and that the Agency has submitted no specific evidence that Ms Flemings did not work the extra hours on her claim.

As in the claim of Ms. Darensburg, I have given careful consideration of the request Ms. Flemings has made, through the efforts of the Union, to supplement her claim. There is every reason to believe that this request is made in good faith in an attempt to assert what she now views to be her fully stated claim for overtime hours.

Again, however, as I have done in the claim of Ms. Darensburg, I am required to observe the rules that the parties themselves carefully negotiated in their attempt to govern this claims process in such a way that it should apply, to the greatest extent possible, fairly and equally to all claimants. When exceptions have been made, particularly in matters of timely claim filing, the parties have seen to it that these circumstances were clearly identified and addressed. Ms. Flemings' case, with all due respect, is not one that I am able to address in the same way.

The Claim Form Notice itself expressly stated that supporting documents, if

available, were to accompany the Claim Form. In addition, the Claim Form Notice expressly stated that, if a claimant had additional pay periods in which extra hours were asserted to have been worked, it required a claim for those additional pay periods with relevant documentation in the same way (i.e., identified by pay period) as originally submitted.

This is how the claims process must be governed. Otherwise, it runs the risk of certain claimants being arbitrarily treated better or worse than others. I must conclude that the parties sought to avoid such a result when they took great pains to negotiate this process.

For these reasons, I must respectfully deny Ms. Flemings' request to supplement her claim. In addition, I must also find that her original claim must be denied by virtue of her working a flexible schedule. In so finding, I advise the parties that I have placed no weight on the Agency's argument that the Union did not present evidence during the hearings of "suffered or permitted" overtime for the New Orleans District Office, as I deem that irrelevant considering the omnibus nature of these proceedings.

Marvis Hicks

Ms. Hicks worked as an Investigator in the New Orleans District Office (later the New Orleans Field Office) from before the claims period through May 29, 2012, working a basic schedule. She claims 77 hours over 37 pay periods. The Agency objects to her claims on grounds that she provided insufficient evidence to support her claims, that she did not work overtime during pay period 200523, that she received formal and/or informal compensatory time which operates as an offset, and that her supervisor could not have known that she worked overtime.

As the Agency correctly asserts, Ms. Hicks claims that she worked 2 extra hours (from 4:30 to 6:30 P.M.) in 36 of her 37 claimed pay periods. In the remaining pay period (200623), she claims 5 extra hours for working 8:00 A.M. to 1:00 P.M. on Saturday, October 28, 2006. The Agency contends that, with the exception of Saturday, October 28, 2006, when a Resource Fair Outreach event took place, there is no evidence among the documents produced by Ms. Hicks with her Claim Form that she worked beyond her regular 8:00 A.M. to 4:30 P.M. hours.

Ms. Hicks submitted numerous documents with her Claim Form, some of which I will detail below. They include a Proposed Conciliation Agreement, a Charge of Discrimination, cover letters to Charging Parties enclosing proposed charges of discrimination, an October 26, 2006 e-mail from Tydell Nealy to Ms. Hicks and other Investigators concerning the Saturday, October 28, 2006 Resource Fair referenced above, a portion of a document concerning "**LEGAL'S SIGNIFICANT ACCOMPLISHMENTS**," documents and notices referencing Onsites and case closures, an Investigative Memorandum, an Outreach report form, motor vehicle forms, and reports on pending cases.

The Agency argues that, in pay period 200523, during which Ms. Hicks claims 2 hours of overtime, FPPS records reflect that she was out on administrative weather leave for the entire pay period. Further, it claims that, despite Ms. Hicks' not indicating on her Claim Form that she received or used compensatory time in any claimed pay period, FPPS records reveal that she used 2 hours of compensatory time in pay period 200811 and 7 hours in pay period 200822. In addition, it contends that the Union also did not present evidence of "suffered and permitted" overtime for the New Orleans Office during

the hearings.

The Agency referenced the Declarations of Keith Hill, Director (and former Acting Director) of the New Orleans Field Office, and Uma Kandan, Enforcement Supervisor in the New Orleans Field Office. Mr. Hill declared as follows: He regularly reminded all staff in writing of the strict policy prohibiting work beyond regular work hours without prior written management approval, and that anyone wishing to earn compensatory time or overtime must first receive written authorization to do so. Management informed interested Investigators that they could be compensated for Outreach activities outside their regular work hours if they submitted their requests to their supervisor. Particularly during the December 2005 to 2007 rebuilding of the office following Hurricane Katrina, he would usually be the last to leave the office and, if he saw someone still in the office, he would instruct them to leave. He had no personal knowledge of Ms. Hicks' arriving early to work or remaining late, taking work home, or otherwise working beyond her regular hours, and she never advised him she was doing so.

Ms. Kandan declared as follows: She has supervised Ms. Hicks since December 2004, during which time she had been on a basic schedule, working from 8:00 A.M. to 4:30 PM. and telecommuting on most Fridays. She has no recollection of Ms. Hicks' having worked either before or after her regular work hours, or on weekends, nor any recollection that Ms. Hicks so advised her. On rare occasions, when Ms. Hicks had to work through lunch or breaks when on Intake, she was permitted to leave early that day or on another day. She has no reason to believe that Ms. Hicks worked any overtime, and, in particular, 77 hours of overtime in 37 pay periods, nor does she recall Ms. Hicks'

asking her for compensatory time or credit hours to cover this or any other alleged work she performed outside her regular work hours. On one Saturday in 2006, Ms. Hicks volunteered to conduct witness interviews for a charge that was being investigated by another office, and she was approved for compensatory time on this occasion. She did not recall Ms Hicks' having submitted a compensatory time request for the Resource Fair on a Saturday in October 2006. If she had, Ms. Kandan would have recommended it be approved and forwarded to Mr. Hill.

The Union contends that Ms. Hicks' documentation, which includes case settlements, charges of discrimination filed, e-mails for Onsites, travel requests, Outreach documents, and Government vehicle forms, show that her supervisors were aware of and approved her extra work hours. In addition, it notes that employees in the New Orleans District Office conducted Outreach on the weekends. The Union, in addition, challenges the Agency's assertion that Ms. Hicks could not have worked when she was on administrative weather leave, noting that employees may have come to the office to pick up files, may have contacted Charging Parties from home, and may have completed work from home, during periods of extreme weather, in anticipation of returning to regular duty. As such, it argues that the Agency has submitted no evidence to dispute Ms. Hicks' work hours, particularly in light of its failure accurately to record employees' work hours.

In reviewing the entirety of the documents submitted by Ms. Hicks along with the Claim Form, I must conclude that virtually all of them represent illustrations of what it is Ms. Hicks does as an Investigator. In this respect, these documents are, in large part, a job description. They do not, in my view, tend to demonstrate that Ms. Hicks was performing these duties in any time frame other than her regular work hours.

I note the Union's argument that there is no basis for the Agency conclusion that Ms. Hicks could not have worked 2 hours of overtime while on administrative weather leave in pay period 200523. It may be so that, as the Union suggested, employees may have occasion to pick up office files, contact Charging Parties from home, and the like. However, this cannot be assumed to have been the case here. This is the claimant's burden, not the Agency's.

The one exception to my conclusion that Ms. Hicks' documents do not reflect work in overtime is the 5 extra hours Ms. Hicks claims for working 8:00 A.M. to 1:00 P.M. on Saturday, October 28, 2006 at the Resource Fair Outreach. According to the October 26, 2006 Tydell Nealy e-mail, this event was scheduled to take place from 10:00 A.M. to 6:00 P.M., and Ms. Hicks had been scheduled to staff a booth between 10:00 A.M. and Noon. It is conceivable that she would have been required to arrive at the site early and perhaps have to stay beyond Noon, as originally scheduled. In addition, if I credit the claim for 5 hours, it would have to have been hours in excess of 80 in pay period 200623. In fact, they were, since Ms. Hicks' FPPS records reveal that she had worked a full 80 hours in that pay period.

Accordingly, I conclude that Ms. Hicks should be credited with the 5 hours of overtime she claims in pay period 200623, minus compensatory time used, and an equal amount of liquidated damages. Rust Consulting will perform the necessary calculations and the Agency shall pay Ms. Hicks, in care of the Union, within sixty (60) days of the parties' receipt of this Report. The remainder of Ms Hicks' claims are denied. In so finding, I advise the parties that I have placed no weight on the Agency's argument that the Union did not present evidence during the hearings of "suffered or permitted"

overtime for the New Orleans District Office, as I deem that irrelevant considering the omnibus nature of these proceedings.

Sharon Williams

Ms. Williams worked as an Investigator in the New Orleans District Office (later the New Orleans Field Office) from before the claims period through January 3, 2006. The Agency's principal objection to Ms. Williams' claims is that she failed to meet the requirements for filing a valid claim, along with other objections referencing her working a flexible schedule and failing to submit sufficient evidence in support of her claims, that her claims are outside the scope, and other objections for the record, as well as the Union's not presenting evidence of "suffered or permitted" overtime for the New Orleans District Office during the hearings.

Ms. Williams' Claim Form was not completed. On it, she made the following handwritten notation:

> I would like to officially make a claim for overtime pay. I worked on a basic and flexitour schedules as an investigator. I can not determine the number of hours I worked overtime while on on-site investigations, meetings or working late at the office because I was required by supervisor to sign in or out on my regular time. I did work overtime hours. I did not work compensatory time on many occasions. I cannot prove this.

Ms. Williams submitted a Supplemental Affidavit, dated February 5, 2013, in which she stated the following (both in printed and handwritten form):

> …When I sent in my form to Rust Consulting, I did not know what to put down, because the records for the New Orleans office were destroyed in Hurricane Katrina. I asked to file a claim, but I never received any response, until Ms. Hutchinson [Union counsel] called me, after she received my claim in the December 5, 2012 database.
>
> The New Orleans EEOC office hours were 8:00 a.m. to 4:30 p.m. The records in the EEOC office and my home were destroyed in Hurricane Katrina.
>
> I have no records of my daily arrival and departure times, because we

were not permitted to sign in and out for our actual arrival and departure time. I was instructed to only record my scheduled work hours on the sign in/out sheets.

I was instructed that I had to stay and complete Intake for members of the public who came to the office to file a charge. I was required to stay as long as it took to complete the charge filing. I was assigned to Intake once a month for a week. During my Intake week I would work 2 hours in excess of my forty hours per week.

I would usually perform eight onsite employer visits per year. At each onsite visit, whether the visit was in town or out of town, I would spend two hours in excess of my scheduled work hours, completing my onsite visit.

I performed outreach work four times a year. Sometimes my outreach was performed on the weekend. I would spend 4 hours in excess of my scheduled work hours completing outreach projects.

I did not receive any compensatory time for work I performed. I was told overtime was not available. I was also required to stay for meetings that ran past my work schedule. This happened about one (1) hour a month.

In an attachment to the above, Ms. Williams describes that it reflects the approximate number of hours she worked in excess of her work schedule during the period from April 2003 to December 2005, totaling 444 hours. She noted that she retired on January 6, 2006. She itemized these hours as follows:

Year 2003
Intake – 2 hrs wk x 52 weeks=104
Onsites – 2 hrs x 8 visits=16
Outreach –4 hrs x 4 visits=16
Meetings – 1 hr x 12 mths=12
Total: 148 hours

Year 2004
Intake – 2 hrs wk x 52 weeks=104
Onsites – 2 hrs x 8 visits=16
Outreach – 4 visits x 4 hrs=16
Meetings – 1 hr x 12 mth=12
Total: 148 hours

Year 2005
Intake – 2 hrs wk x 52 weeks=104
Onsites – 2 hrs x 8 visits=16
Outreach – 4 visits x 4 hrs=16
Meetings – 1 hr x 12 mths=12

Total: 148 hours

3 year total=444 hours

The Union contends that Ms. Williams should be sent a hard copy claim form, and that she be required to return the form within thirty days from receipt. It asserts that the Agency should then be required to file any objections within thirty days of receipt of Ms. Williams' filed claim, and that a decision be made on the claim.

I acknowledge Ms. Williams' stated intent to file a claim, and the Union's good faith efforts to assist her in that effort. However, despite the catastrophe of Hurricane Katrina, which she stated destroyed her records, she could still have attempted to submit a Claim Form that would have satisfied the requirements for a facially valid claim. As the record stands, even taking into account the very general information contained in her Supplemental Affidavit, it would be difficult to conclude that such would be the case, given what the Notice to Claimants specifically requires. Unfortunately, Ms. Williams' submission cannot be deemed sufficient.

Accordingly, I must deny Ms. Williams' claim.

NEW YORK

The Union asserts generally that the testimony of supervisors in the New York District Office was that employees are not paid overtime, that extra work hours are not recorded, and that sign-in/sign-out sheets and Cost Accounting Sheets did not reflect extra work hours.

Florence Duchantier-Díaz

Ms. Duchantier-Díaz worked as an Investigator in the New York District Office from before the claims period through July 15, 2005, and worked a basic schedule. She

claims 1,074 hours over 55 pay periods. The Agency objects to her claims on grounds that she did not work the overtime claimed, that she provided insufficient evidence to support her claims, that to the extent she claims travel time her claim is not compensable, that her supervisor could not have known of any overtime work, and that her claims are outside the scope.

The Agency, in assessing Ms. Duchantier-Díaz's Claim Form, points to items that, in its view, make it not credible. It notes that, despite her working a basic schedule of 8:00 A.M. to 4:30 P.M., she consistently indicated, in the column headed "If on a Basic work schedule, time of day you worked the additional hours," either "7:30 A.M. to 7:30 P.M." or "7:00 A.M. to 7:30 P.M." Most of her pay period claims, the Agency notes further, are for 20 hours of overtime, a few being less (two for 12 hours and one for 10 hours). It concludes that these claims are not credible, particularly given her attendance record which, as the Agency states, includes over 980 hours of leave during the claimed pay periods, or an average amount of leave taken per pay period of about 18 hours. It looks at pay periods 200322 and 200412, for both of which Ms. Duchantier-Díaz claims 20 hours of overtime. FPPS records reflect that, in pay period 200322, she took 72 hours of annual leave and 8 hours of holiday leave, and in pay period 200412, she took 60 hours of annual leave and 10 hours of sick leave. It also argues that Ms. Duchantier-Díaz' attendance record undercuts her claims of Outreach activities.

Along with her Claim Form, Ms. Duchantier-Díaz submitted the following statement:

> My name is Florence Duchantier-Diaz and I am a former Investigator GS-1810-12 with the Equal Employment Opportunity Commission (EEOC). I was assigned to the New York District Office (NYDO) from 3/1999-7/2005.
>
> During the entire time I was employed as an Investigator at the NYDO, I was

> never paid overtime despite routinely working in excess of 20 hours per week including at least two weekends a month and outreach.
>
> When I began coming to work an hour early and leaving no less than 3.5 hours [late] each work day, I did it because it was the only way I could stay on top of my caseload and I noticed early on it was frowned upon by the supervisors if you left at 4:30pm. Instead of overtime pay they (supervisors) would distribute chocolate bars to Investigators that did well. I was never told, instructed or advised not to come in early or work late. I was advised and encouraged to only sign in and out the hours I was expected because I would not be paid anymore or any less.
>
> It was routine for my fellow Investigators and I, to stay late and come early. I remember going on vacation and my supervisor at the time William Lai asked me who would check my voice messages in my absence. I didn't know what to say initially, then I told him I would check my messages when I was away. So from Barbados I checked my voice messages.
>
> I did outreach for the EEOC NYDO at least 2-3 time a month, often going to Queens, Brooklyn, Bronx, Chinatown, Midtown Manhattan and Long Island. I was never offered compensatory or overtime or reimbursement for travel expenses to and from these locations.

Ms. Duchantier-Díaz also included Leave and Earnings Statements with her Claim Form.

The Union contends that Ms. Duchantier-Díaz's claim is consistent with the practices in the New York District Office, and the hearing testimony so demonstrates. It asserts also that an employee may use annual and/or sick leave and still receive payment for overtime, since annual and sick leave are included in the calculation of the 40-hour week or 80-hour biweekly pay period. The Union argues that the Agency has not submitted any evidence that the extra hours claimed by Ms. Duchantier-Díaz were not worked and that the hearing testimony revealed that the New York District Office consistently expected, if not required, that employees would work extra hours and not receive pay.

In examining Ms. Duchantier-Díaz' Claim Form, there clearly are areas to be scrutinized carefully. Her claims, on their face, would appear difficult to sustain, given

the claims themselves, to say nothing of the records that would appear not to support them.

Ms. Duchantier-Díaz worked a basic schedule of 8:00 A.M. to 4:30 P.M. Yet during every pay period, she claims to arrive either at 7:00 or 7:30 A.M. and claims also never to leave work until 7:30 P.M. This must be explained, and I cannot conclude that the statement she included with her Claim Form does this adequately. The only documents she includes are Leave and Earnings statements. These certainly reflect leave taken, but they are not similarly a reflection of the extra hours she claimed to have worked. The sheer consistency of her 20-hour-per-pay-period claims requires greater support than she has provided. It is also unusual, for example, that, while she claimed no overtime in pay periods 200503 and 200504, she continued to arrive at 7:00 A.M. and stay until 7:30 P.M.

Finally, as I referenced in the "LEGAL ISSUES" section of this Report, paid leaves, including annual leave, while deemed "hours of work," do not contribute to the 80-hour work threshold beyond which overtime may be paid.

I do not, therefore, believe Ms. Duchantier-Díaz has, by her submission, carried her initial burden of showing by just and reasonable inference that the amount and extent of the overtime she claims was actually worked.

Accordingly, I am required to deny her claim.

Esther Gutierrez

Ms. Gutierrez worked as an Investigator in the New York District Office from before the claims period through May 14, 2012. During the period of time reflected on her Claim Form, she worked a 5/4/9 compressed schedule. She claims 29 hours over 4

pay periods. She testified at the hearings in Philadelphia, PA. The Agency objects to her claims on grounds that she provided insufficient evidence to support her claims, that she did not work overtime during pay period 200804, that her supervisors could not have known of any overtime work, and that she received or used compensatory time, some of which may have been used during the same pay period.

Specifically, the Agency contends that Ms. Gutierrez did not explain what duties she was performing at any particular time or which of these duties resulted in a particular amount of overtime claimed. Also, it argues that Ms. Gutierrez provides no information about the time of day when she performed the claimed extra work and gives no examples of any particular task that generated extra hours. In addition, it asserts that, as reflected in hearing testimony, Ms. Gutierrez never informed her supervisor of extra hours she was working during the 4 pay periods she claims here.

Ms. Gutierrez included documentation with her Claim Form consisting, in part, of a June 17, 2004 e-mail to William Lai, stating: "I have approximately 18 hours comp time. I will be taking that time off in the future. FYI. Thanks." In addition, she included three documents – dated December 13, 20 and 21, 2005 – in which Ms. Gutierrez notes 2 hours, 1 hour and 2 hours, respectively, of "CTE," or compensatory time earned.

The Union contends that Agency supervision was aware of and approved Ms. Gutierrez's extra work hours. It asserts that the Agency has submitted no evidence to show Ms. Gutierrez did not work the extra hours.

In examining this record, I find it highly disjointed. In one respect, it is the Agency's own argument that contributes to this.

I begin with the Claim Form and its associated documents. Four pay periods are at issue: pay periods 200412, 200524, 200701 and 200804. The one pay period in 2004 is pay period 200412 (May 16 to May 29, 2004). It is that pay period in which Ms. Gutierrez makes by far her greatest overtime claim of 18 hours. I might presume that there is a connection between this claim and the June 17, 2004 e-mail to Mr. Lai, where she relates that she has "approximately 18 hours comp time" and that she will be taking that in the future. If this is related to Ms. Gutierrez's claim of 18 hours for pay period 2004121, there is no way of telling, as FPPS records track no compensatory time for Ms. Gutierrez. There is surely no indication of when, after that date, those 18 hours of compensatory time was actually used by Ms. Gutierrez. Also, I can see no explanation of what type of work caused this claim of 18 extra hours and when it was performed.

The three December 2005 documents that note hours of compensatory time earned are also difficult to place in this picture. None of these actually falls within the one pay period in 2005 where Ms. Gutierrez claims overtime hours. Pay period 200524 runs from October 30 to November 12, 2005. In addition, there is no telling when those December 2005 compensatory hours were used, or why that would be relevant here.

As far as the 5 hours of overtime claimed by Ms. Gutierrez in pay period 200701, there is no indication or explanation of the work involved that might have generated these extra hours.

Finally, in pay period 200804, I encounter a problem with part of the Agency's narrative. It cites, and presents, FPPS records reflecting that Ms. Gutierrez took 36 hours of annual leave in pay period 200804 and, therefore, as the Agency argues, that militates against extra hours being worked. The problem there is that the Agency attributes Ms.

Gutierrez' 18-hour overtime claim she made in pay period 200412 to pay period 200804 (in which pay period she actually only claimed 4 extra hours). This is clearly an inadvertence, but it confuses the Agency's position. Furthermore, the FPPS excerpts in the Agency's portfolio for Ms. Gutierrez shows her taking 36 hours of annual leave in pay period 200804, whereas the Agency's omnibus FPPS records for all claimants reflect only 9 hours of annual leave for Ms. Gutierrez in pay period 200804. Ultimately, however, an explanation even for these 4 extra hours claimed in pay period 200804 is lacking.

Given all the above, I must conclude that Ms. Gutierrez has not carried her initial burden for any of her 4 pay periods in this claim. Accordingly, the claim must be denied.

Sean Oliveira

Mr. Oliveira worked as an Investigator in the New York District Office from February 19, 2006 through April 28, 2009, and worked a basic schedule. He claims 97 hours over 13 pay periods. The Agency objects to his claims on grounds that he provided insufficient evidence to support his claims, that his supervisors could not have known of any overtime work, and that his claims are outside the scope.

Specifically, the Agency challenges the amounts of time Mr. Oliveira claimed he worked on Saturdays and Sundays from 2006 to 2008. Mr. Oliveira submitted numerous e-mails which he represents are supportive of his overtime claims, and which the Agency charted in its own submission. With this submission Mr. Oliveira included "Pay Period Claim Form" documents intended to detail his claimed hours for the specific pay period referenced. With the exception of two e-mails from April 27, 2008 and three on December 16, 2007, the Agency denies any supervisory knowledge of Mr. Oliveira's

performing work on weekends. It references the testimony of Enforcement Supervisor Electra Yourke to the effect that Investigators were not permitted to work extra hours without prior approval, and that if she was informed that extra hours were worked, she would take their word for it and permit them to take the corresponding time off later.

The Agency references the Declaration of Rosemary Wilkes, Enforcement Supervisor in the New York District Office until her retirement in August 2008, and Mr. Oliveira's supervisor from at least March 2006 until her retirement. She declared as follows: Mr. Oliveira worked a basic schedule, telecommuting to the New York District Office from his home in Pennsylvania two days a week. Mr. Oliveira never advised her it was his practice to work on Saturdays and Sundays, and she had no recollection of his requesting overtime for working on a Saturday or Sunday.

The Union contends that, through e-mails, Mr. Oliveira's supervisors were aware of and approved his extra work hours. It asserts that the Agency has submitted no evidence to show that Mr. Oliveira did not perform the work claimed, and that his documentation, which includes communication with supervisors and managers, is supportive of all the work performed.

The Agency appears to challenge Mr. Oliveira's claim on two counts – whether his overtime claims are inflated and whether, save for e-mails from "isolated incidents" on two dates, there was supervisory knowledge of these activities.

There is no question that all these e-mails generated by Mr. Oliveira were weekend activities (so far as I can tell, all but one on a Sunday). That they were Agency business is not in question. Some of these are correspondence with counsel on pending charges, a few, as the Agency acknowledges, were with Agency management, such as

either Ms. Wilkes or Lisa Sirkin, Supervisory Trial Attorney in the New York District Office. Others, with the subject line "Work Stuff" are typically e-mails Mr. Oliveira sent to himself, always with attachments that presumably relate to pending charges. A few others are Intake-related matters.

The Agency would have me reach an inference that the attachments to these e-mails did not represent work he was actually performing on the weekends, but rather sent in anticipation of his returning to work. It also asks me to conclude that the few instances where correspondence did involve Agency supervision, that it was indeed isolated and not representative of "an ongoing pattern of supervisor awareness."

I view the matter of supervisory knowledge as a material issue of fact, one that cannot be resolved in whole or in part, by reference to Ms. Wilkes' Declaration, as I do not take its content as fact, but rather as part of the Agency's argument. Nor may I rely on the inference the Agency proposes with respect to what work actually was likely to have been performed on weekends.

Accordingly, I direct that a hearing be conducted on the issue of supervisory knowledge of the work Mr. Oliveira asserts he actually performed on weekends.

Sandra Calhoune

Ms. Calhoune worked as an Investigator in the New York District Office from before the claims period through March 15, 2004. For the periods covered by her claim, she was on a flexitour schedule. She claims 132 hours over 10 pay periods. The Agency objects to her claims on grounds that she worked a flexitour schedule, that she did not work overtime, that she provided insufficient evidence to support her claims, that her supervisor could not have known of any overtime work, and that her claims are outside

the scope.

The Agency contends that Ms. Calhoune's overtime claims, in light of her attendance record, are not credible, asserting that, during the 10 pay periods covered by her claim, she took over 160 hours of leave, making her average hours of leave per pay period about 16. In addition, it states that, her general record of attendance reflects a large amount of leave without pay, making her claims here even less credible. Yet, the Agency notes, Ms. Calhoune reports between 10 and 20 hours of overtime in every claimed pay period, while failing to explain with any relevant details how she derived these totals, what duties they entailed, and what work resulted in the particular overtime claimed.

The Union contends that Ms. Calhoune, consistent with the practice of the New York District Office, had no documents showing her claimed hours, since such time was not recorded. As for the Agency's objection that Ms. Calhoune used extensive leave without pay in the periods prior to and after those for which she claims relief, the Union submits that the Agency produced no evidence with respect to the purpose of the leave without pay, which may have been for reasons such as illness or family medical issues. The Union notes that Ms Calhoune did not use leave for any complete pay period during which she makes a claim, and the Agency has produced no specific evidence showing that Ms. Calhoune did not work the extra hours.

I must deny Ms. Calhoune's claim by virtue of her working a flexible schedule.

NORFOLK

Kanata Reid-Burwell

Ms. Reid-Burwell worked as an Investigator in the Norfolk Area Office from before the claims period until June 30, 2006. She worked a gliding flexible schedule. She claims 393 hours and 56 minutes over 65 pay periods. The Agency objects to all her claims on grounds that she worked a gliding flexitour schedule, that it is entitled to an offset for claimed overtime work where Ms. Reid-Burwell received and used compensatory time off, that she earned and used compensatory time off during the same pay period, that she seeks compensation for work performed during breaks, that she did not work the claimed overtime hours, that management could not have known or prevented her from working the claimed overtime hours, that she is not entitled to any compensation for noncompensable travel time, that she provided insufficient evidence to show that she worked the claimed additional overtime hours, and that her claims are outside the scope.

Among the other matters above, the Agency noted that, in light of certain requests Ms. Reid-Burwell made, and knew how to make, for compensatory time off in lieu of overtime, her failure to request, record and report any additional such extra hours of work strongly suggests that no further overtime was actually worked.

Ms. Reid-Burwell included extensive documentation with her Claim Form. Among these documents are sign-in/sign-out sheets, Onsite reports, Out of Office reports, e-mails, and requests for compensatory time.

Along with her Claim Form and the above-cited documents, Ms. Reid-Burwell submitted the following affidavit:

> Overtime pay was not available to me. In lieu of overtime pay, I was

offered/given compensatory time and/or credit time.

None of the compensatory time or credit time was ever included in or carried over onto my leave and earnings statements.

By letter dated May 1, 2012, I requested of the Secretary/Time Keeper Of the Equal Employment Opportunity Commission (EEOC), Norfolk Local Office: Sign-in Sheets, EEOC Cost Accounting Bi-Weekly Time Sheets, FPPS-{T&A Entry/Change}Sheets, Out of Office Reports, Requests for Leave or Approved Absences, Individual Report of Overtime/Compensatory Time Authorized and Out of Office Speaking Engagements and Outreach for the period of April 7, 2003 through June 30, 2006. (Attachment 1)

The Secretary/Time Keeper responded by letter dated May 10, 2012, "…Unfortunately, all documents prior to January 2006 have been destroyed." (Attachment 2)

Records and documents provided to my by the union, as well as, records and documents the Norfolk Local Office indicated they had available and provided, were used to complete the Overtime Claims Forms. Additionally, records and documents that were already in my possession were also used. The records and documents include but are not limited to Sign-in Sheets, Emails, Out of Office Reports, Individual Report of Overtime/Compensatory Time, memos, etc. A number of these are attached to the Overtime Claims Forms for each pay period completed, to support the information provided for each pay period.

Whenever I had on-sites for which I left directly from home or if I had to leave early from the office to attend, I would bring the file or files home to review at home the night before. I usually spent at minimum, 30 minutes per file.

Normally, during on-sites, I did not stop work for lunch breaks, I continued to work until I completed the on-site visit.

Lunch periods for the Norfolk Local Office were for an hour. My claim includes those periods that I did not have the opportunity to have my entire lunch period due to work. Those periods are evident on many of the Sign-in Sheets I have provided.

During the period of January 2003 through August 2005, I carpooled to and from work with my husband. He worked from 7:00 am until 3:30 pm. I arrived at work at about 6:30 am and departed work about 4:00 pm. I would work when I arrived at work and until I departed. I was not allowed to sign in prior to 7:00 am or after 3:30 pm. I provided copies of time sheets for pay periods I have included in the claim for this time. These sheets show that I was actually at work for the days I am claiming. There are not records for 2003 except for some the union provided to me for August and September 2003. There are not any records for December 2004 except for two emails I had in my personal records. These are included as supportive documentation for claims shown on the Overtime Claims Forms in December 2004. Otherwise, again as the Norfolk Local Office's Secretary/Time Keeper indicated, "…Unfortunately, all documents prior to January 2006 have been destroyed."

> I am including this special note for Pay Period 200425. I failed to include 12 minutes of overtime on the claims form for that pay period. I did not wish to distort the form by writing over numbers. The evidence of this 12 minutes is an email dated November 24, 2004. This is one of the documents I have provided from my records. I was not compensated in any way for this time. This document is attached to the records I have provided for Pay Period 200425.

The Union contends that Ms. Reid-Burwell's supervisors were aware of and approved of the extra work hours she claims. It states that the Agency has submitted no specific evidence that Ms. Reid-Burwell did not work these extra hours. Further, it submits that the Agency, after failing to keep accurate records of employees' work hours, cannot demand that the employee provide precise information on these extra work hours.

By virtue of Ms. Reid-Burwell's working a gliding flexible schedule, I must deny her claim.

PHILADELPHIA

The Union notes generally that testimony at the hearings revealed that employees worked extra hours to get their work completed, and that managers were aware that employees were putting in these extra hours. It notes further that the testimony revealed that employees were not told to go home when working early and beyond their scheduled work hours, and on weekends.

William Busund

Mr. Busund worked as an Investigator in the Philadelphia District Office throughout the claims period. As reflected on his Claim Form, he worked a flexitour schedule for all his claimed pay periods. He claims 68 hours over 17 pay periods, all in 2006. The Agency objects to his claims on grounds that he worked a flexitour schedule throughout the entire period for which he seeks compensation, that he provided no

supporting documentation with his Claim Form, that there is insufficient evidence to raise a reasonable inference that he worked hours in excess of 80 hours per pay period, and that his claims are outside the scope.

The Agency, referencing Mr. Busund's Claim Form, notes that it reflects only that he did not receive compensatory time, and that it is accompanied by no documentation or explanation in support of his claims.

The Union contends that, as noted above, employees in the Philadelphia District Office came in early, worked after their scheduled departure time, and worked on weekends in order to complete their work assignments. It argues that the Agency submitted no specific evidence challenging Mr. Busund's claimed work hours.

By reason of Ms. Busund's flexitour schedule, I must deny his claim.

Brenda Hester

Ms. Hester worked as an Investigator in the Philadelphia District Office throughout the claims period, working a 4/10 compressed schedule. She claims 774.75 hours over 137 pay periods. She was among the claimants who received an extension of time to file. She also testified at the hearings in Philadelphia, PA. The Agency objects to Ms. Hester's claims on grounds that most of her claimed hours were not suffered or permitted overtime, that some of her claimed hours consist of compensatory time earned and used in the same pay period (including religious compensatory time in pay period 200508), that some of her claimed hours were for noncompensable breaks, that some of her claimed hours appear to be for noncompensable travel time, and that there is insufficient evidence to raise a reasonable inference that she worked hours in excess of 80 hours per pay period.

The Agency acknowledges a few of her claims and offers to pay Ms. Hester for 44.85 hours of overtime, or $1,297.61, plus liquidated damages, totaling $2,592.21 in full settlement of her claims. This represents Ms. Hester's claims for pay periods 200410, 200511, 200613, 200616, 200617, 200618, 200619, 200624 and 200701.

The Agency asserts that, with respect to the Time and Attendance sheets completed by Ms. Hester which purport to show her extra hours worked, these are initialed as reviewed by her supervisor, William Cook, who noted on these sheets whether Ms. Hester was approved to work overtime. It notes that, for virtually every pay period, Ms. Hester was not so authorized. The Agency submitted Mr. Cook's Declaration, which is summarized below, and demonstrates, as the Agency argues, that these hours were not approved in advance and were, thus, not suffered or permitted. It argues further that, for some pay periods, Ms. Hester did not submit Time and Attendance sheets reflecting when the work for which she requests compensation was performed. In addition, as the Agency notes from Mr. Cook's Declaration, he agreed to Ms. Hester's request that she earn compensatory time, rather than overtime, owing to her low leave balance.

The Agency references the Declaration of Mr. Cook, then Enforcement Manager in the Philadelphia District Office and Ms. Hester's direct supervisor, now retired. He declared as follows: He supervised Ms. Hester from 1998 to November 2012, during most of which time she also served as a Union Steward and/or Local Vice President. Mr. Cook set up a system whereby Ms. Hester was to request in advance to work extra hours in exchange for informal compensatory time off. This advance request was typically done by e-mail, and Mr. Cook would either approve or deny her request. Mr. Cook set

up this system because he understood that Ms. Hester did not have much accrued annual or sick leave, and this would help her have some time off that she could not otherwise utilize. Ms. Hester's Time and Attendance sheets reflect the extra hours she requested and for which she received advance approval. He wrote in the "Remarks" section the number of hours previously approved. He also noted, where applicable, the amount of compensatory time used in addition to the amount earned. He also periodically sent her e-mails summarizing by day the amount of approved compensatory time and including a summary total of approved hours. Despite several discussions he had with Ms. Hester reminding her to request approval in advance for working extra hours, she repeatedly submitted Time and Attendance sheets reflecting time already worked and not previously approved. On those occasions, Mr. Cook would notate in the "Remarks" section "OT NOT authorized" and would include his initials, "WDC."

Ms. Hester included with her Claim Form pay-period-specific Time and Attendance sheets, along with Intake rotations schedules.

The Union contends that supervision was aware of Ms. Hester's extra work hours. It notes further that, with respect to the Agency's objection to extra hours claimed in pay period 200508, Ms. Hester submitted a sign-in/sign-out sheet showing that she worked extra hours in that pay period, and that the religious compensatory time addressed by the Agency is not included in the extra hours claimed. The Union asserts that the Agency submitted no specific evidence that Ms. Hester did not work the extra hours.

In reviewing the significant and specific documents submitted by Ms. Hester, along with the entire record of this claim, I direct that a hearing be conducted for the purpose of determining whether bases exist such that the proposed Agency remedy

should not be directed. In so directing, I specifically solicit testimony on the matter of the arrangement between Ms. Hester and Mr. Cook that was noted in Mr. Cook's Declaration and its impact on her claimed hours.

Elizabeth Wjasow

Ms. Wjasow worked as an Investigator in the Philadelphia District Office throughout the claims period. As reflected in her Claim Form, she worked a gliding flexible schedule. She claims 105.35 hour over 39 pay periods. The Agency objects to her claims on grounds that she worked a flexible schedule and is not entitled to compensation for suffered or permitted overtime, that her supporting documentation appears to show that she seeks overtime compensation for travel time, and that her claims are outside the scope.

Ms. Wjasow submitted numerous Time and Attendance sheets, along with three travel vouchers.

The Agency notes that the three travel vouchers submitted by Ms. Wjasow suggest that she requests compensation for travel time. The first of these is dated April 25, 2003 (pay period 200310), the second is dated July 28, 2003 (pay period 200317), and the third is dated December 16, 2003 (pay periods 200401). The travel on April 25, 2003 was for a trip to Reading, PA and back the same day in her personal vehicle; that on July 28, 2003 was for Amtrak travel to Harrisburg and back the same day; and that on December 16, 2003 was for a trip to Easton, PA and back the same day in her personal vehicle.

The Union contends that Ms. Wjasow's supervisors were aware of her extra work hours, and references the sign-in/sign-out sheets she submitted in support of her extra

work hours. It asserts that the Agency submits no evidence that Ms. Wjasow did not work the extra hours claimed.

By virtue of Ms. Wjasow's working a flexible schedule, I must deny her claim.

PHOENIX

Reference is made throughout the Agency's presentations concerning Phoenix District Office claimants both to Declarations of supervisory and management personnel and to testimony received at the 2008 hearings in these matters. Their probative weight in the current claims process, and the potential need for testimony in support thereof, will be assessed as needed.

The Agency, in its portfolio for each Phoenix District Office claimant, has offered its summary of testimony that it deems relevant for all claims. As such, it represents the Agency's view of that record, and so may be considered more in the nature of argument. It is not to be viewed as my own summary of the record. I set forth this summary here, rather than replicating it when individual claimants' files are being examined.

The Agency's summary, which it identifies in individual claimants' files as "Phoenix Testimony," generally sets forth the following:

> Yvonne-Gloria Johnson, the ADR Coordinator in the Phoenix District Office, supervised Mediators in Phoenix as well as in Albuquerque. She testified that there were many options within the control of a Mediator to avoid overtime work. Mediators are responsible for setting the times of their mediations, and can select a time that fits within their work hours or alter their schedule for the day. Mediations generally take from three to six hours and can easily be completed within regular working hours for a

Mediator on a 4/10 or 5/4/9 compressed schedule. If a mediation required a Mediator to work beyond his or her regular work schedule, a request for compensatory time could be submitted and would always be approved. Ms. Gloria-Johnson testified further that any extra time worked would be entered on the Cost Accounting Sheet and the form requesting to work extra time.

Investigator Janis Richardson testified that extra hours worked are reported to supervisors and are recorded in Time and Attendance records. Supervisor David Rucker described the same process. Investigators that needed to work overtime could ask permission in advance for compensatory time by filling out a form. Mr. Rucker has reprimanded Investigators who worked extra hours without prior approval and, after a counseling session, the behavior stopped. Mr. Rucker also testified that most Outreach events can be completed within regular working hours.

Graciela Bernal

Ms. Bernal worked as a Mediator in the Phoenix District Office from before the claims period until April 1, 2005, when she retired. She worked a 5/4/9 compressed schedule, except for eight pay periods, where she indicated she worked a 4/10 compressed schedule. She claims 149 hours over 53 pay periods. The Agency acknowledges that Ms. Bernal is entitled to payment for 7 hours, equaling $249.80, plus liquidated damages, totaling $499.60, and representing the 14 hours of compensatory time she earned during the claims period. In so stating, the Agency asserts that, in the Phoenix District Office, all hours worked were recorded in FPPS records, including the

amount of compensatory time awarded, and that, therefore, the Agency's calculation of what is owed Ms. Bernal is based on FPPS records. The Agency objects to most of her claims on grounds that she failed to submit sufficient evidence to create a reasonable inference that she worked the hours claimed in all claim periods, that she seeks compensation for hours that were not suffered or permitted, for travel time not compensable with overtime pay, and for working through lunch and breaks, that she claims the total for all extra hours worked in a pay period without factoring in the compensatory time she used in the same pay period, and that most of her claims are outside the scope.

Along with leave and earnings statements, Ms. Bernal submitted a statement with her Claim Form as follows:

> I was employed by the Equal Employment Opportunity Commission (EEOC) from August, 1984 until April 1, 2005. I was a GS-0301, ADR Mediator grade 12/13 from June, 2001 through April 1, 2005 (date of retirement).
>
> During the period March 23, 2003 to October 3, 2004, I mostly worked a compressed 5-4-9 work schedule. I worked eight nine-hour days and one eight-hour day during a two-week pay period. My work hours were 6:00AM to 3:30PM for my nine hour days and 6:30AM to 3:00PM on my eight-hour day.
>
> During the period from October 3, 2004 to January 22, 2005, I worked a 4/10 schedule. I worked 10 hours four days a week during each week of a two-week pay period. My work hours were from 6:30AM to 4:00PM.
>
> I was required by my direct supervisor, Yvonne Gloria-Johnson (ADR Coordinator) to change my schedule and reverted back to the 5-4-9 work schedule on January 23, 2005. Again, I worked eight nine-hour days and one eight-hour day during a two-week period. My work hours were 6:00AM to 3:30 PM for my nine hour days and 6:30AM to 3:00PM on my eight-hour day.
>
> During all these pay periods, the office hours were from 8:00AM to 4:30PM and the core hours for all employees, regardless of their work schedules, was 9:00AM to 3:00PM.
>
> As a Mediator, I was instructed by the ADR Coordinator, Yvonne Gloria-Johnson that a minimum of 3 mediations had to be scheduled per week in order to meet office goals and our own goals as Mediators. I was also required to work through my lunch hour if during the mediation it appeared that the parties were

moving forward from their position to a successful resolution. Because of these requirements, for most days where mediations were held, I did not take a lunch hour. I felt compelled to work through my lunch hour in order to meet the office goals imposed by the ADR Coordinator and EEOC.

Yvonne Gloria-Johnson sent e-mails to all Mediators informing us of the requirement of conducting 3 mediations per week. During performance reviews, she would also remind me of the requirement of scheduling and conducting 3 mediations per week. During travel to conduct mediations, specifically in Salt Lake City and throughout Arizona, it was not uncommon to conduct 2 mediations per day. It was communicated by the ADR Coordinator that in order to make travel cost effective, I needed to schedule as many mediations as I could. Time was always of the essence in regards to the number of days cases being mediated were retained in the ADR Unit.

Additionally, these requirements were reiterated to all Mediators at unit meetings both by the ADR Coordinator and the Deputy Director, Susan Grace. The unit meetings were held approximately once a month and they were called working lunch hour unit meetings. As mediators, we were required to attend the unit meetings.

For the most part, lunch consisted of sitting at my desk eating a sack lunch and completing mediation agreements (if mediation was successful). I was informed that the requirement for each Mediator was to have at least 80 or more successful mediations for the fiscal year. In order to meet this goal, as a Mediator, I had to schedule and mediate between 100-120 mediations per fiscal year. Because I carpooled for the entire period of this claim, I was never able to leave early if I had worked through my lunch hour.

Due to traffic congestion and because I carpooled with another employee, I would arrive at the office before 6:00AM each day of the work week and worked between 15 minutes to an extra half-hour on most days. I would clear messages from my phone to make sure parties had not canceled mediations for that day and also prepared all required documents for any scheduled mediation.

In the support of this claim, I requested my payroll documents for the period March 23, 2003 to April 1, 2005, from the Phoenix EEOC. I was informed by e-mail, copy attached, that the documents I requested were not available and that records were not maintained past six years. [Reference to e-mail of May 3, 2012 to Ms. Bernal from Sandra Orosco, Administrative Assistant, Phoenix District Office]

I maintained all my Leave and Earnings Statements for this period so I was able to accurately compute compensatory time earned and used. I have included copies of those statements. There are only four pay-periods where I could not locate my original statement. These pay periods occurred during the first quarter of calendar year 2005.

For lunch hours and early arrival work, I reconstructed calendars for the years 2003, 2004 & the first quarter of 2005. I do not have copies of the e-mails sent by the ADR Coordinator regarding the requirement of conducting 3 mediations

> per week or of the scheduled unit meetings. However, EEOC should be able to provide those e-mails.
>
> Based on the directives issued by the ADR Coordinator with the requirement of 3 mediations per week, I projected that I scheduled at a minimum 5 mediations per pay period. Out of those 5 mediations, I worked through my lunch hour at least 50% of the time. For the early arrival work, I also used a 50% calculation. Based on these estimates, I worked between an extra 1 to 5.5 hours of work in excess of my 80 hour compressed work schedule. I took into account federal holidays and all the annual, sick, and compensatory leave I took during each of these pay periods verified from my Leave and Earnings Statements.
>
> As a Mediator, I did extensive travel to conduct mediations in Utah and Arizona and worked extra hours during this travel. Most of the time, I did not submit the required compensatory time sheets, because of having been turned down on more than one occasion by my immediate supervisor in regards to approval of these extra hours. It just became the norm for me to do the extra hours and not request the compensatory time. I did not include any calculations for this travel, because I have no way of reconstructing those travel dates because I was not provided the appropriate travel records from the EEOC.

The Agency offered the Declarations of Berta Echeveste and David Rucker, both Supervisory Investigators in the Phoenix District Office. Ms. Echeveste declared as follows: Since at least January 2003, Investigators were told not to work before or after their regular hours unless such time was approved in advance by a supervisor. This was memorialized in a memorandum issued on February 2, 2004 by Acting District Director Susan Grace, and represents the policy of the Phoenix District Office for the entire claims period. Extra work approved would then be reported in writing in terms of hours actually worked. If overtime hours could not be approved in advance, they were to be reported to supervision as soon as possible thereafter. If such work was appropriate, it was freely approved. Investigators caught working extra hours that had not been approved were told to stop. She was not aware of any occasion where a supervisor required an Investigator to work beyond his or her regular hours. Most Outreach and Onsites were scheduled during regular hours and no Outreach was required in the evening, and when an individual volunteered for such an event, compensatory time was given. All hours,

including those in excess of 80 in a pay period, were recorded by employees and entered in the FPPS system. All compensatory time, both earned and used, and overtime hours known to supervision was entered into FPPS. These were also reflected on leave and earnings statements received by employees biweekly.

Mr. Rucker declared as follows: From at least January 2003, Investigators were repeatedly told not to work before or after their regular hours unless approved in advance by supervision. Management repeatedly told employees that, in cases where extra hours could not be approved in advance, they were to report such work to supervision as soon as possible thereafter, and if Investigators were caught working extra hours without approval, they were told to stop. Extra hours were to be approved in writing in advance and the actual extra hours worked were to be reported to supervision in writing, and required a supervisor's signature. Such requests were freely approved so long as the work was appropriate. He was not aware of any supervisor, including himself, requiring an Investigator or Mediator to work beyond their regular hours. Most Outreach and Onsite were conducted during regular hours, and no Investigator was required to perform an Outreach in the evening or on the weekend. When Investigators volunteered for such work, they received compensatory time for the extra hours worked. All hours of work, including hours in excess of 80 in a pay period, were recorded by employees and entered in the FPPS system. Therefore, all compensatory time, earned and used, and overtime hours known and approved by supervision were entered into FPPS. Compensatory time earned and used was also reflected in leave and earnings statements issued to employees biweekly.

The Union contends, in light of Ms. Bernal's assertions, that the Agency has

submitted no specific evidence that she did not work the extra hours claimed, and that, in addition, the Agency failed to provide Ms. Bernal with records to assist her in filing her claim, claiming that records were destroyed. It is for this reason, the Union asserts, that she was required to estimate her claim.

Based on my review of this record, there are matters that are contested and, in my view, merit a hearing for the purpose of determining whether bases exist such that the proposed Agency remedy should not be directed. First, pay periods in which Ms. Bernal earned no compensatory time and which, by my ruling, are not "outside the scope," may be examined.

Further, I direct testimony on two other matters. One is the matter of Ms. Bernal's "no lunch" claims, inasmuch as she stated that, for reasons of personal transportation, she was not able to make up for that by leaving early. The other is to determine whether, in fact, the travel that Ms. Bernal referenced was of a kind that, as the Agency asserts, was not compensable with money payment.

Carol Blackman

Ms. Blackman worked as a Mediator in the Philadelphia and Phoenix District Offices throughout the claims period. Ms. Blackman's Claim Form reflects her working both a 4/10 and 5/4/9 compressed schedule. She claims 261.1 hours over 52 pay periods. Ms. Blackman was one of the claimants granted an extension of time to file. The Agency agrees that Ms. Blackman worked most of the hours she claims in overtime, but that her hours should be offset by the amount of compensatory time she earned. It concluded that Ms. Blackman is entitled to payment for 74.25 hours, or $2,864.30, plus liquidated damages, totaling $5,728.60.

The Agency states that there is a series of claims for which Ms. Blackman appears to have interpreted FPPS records for compensatory time used (Code 41) as compensatory time earned (Code 40). It therefore objects to these claims on the basis that she did not work overtime in these pay periods or, in the alternative, that she used compensatory time for all compensatory time claims and, thus, is not entitled to any overtime pay on such claims. The Agency objects to other claims of Ms. Blackman on grounds that she requests overtime for working through a one-hour lunch during two pay periods (200318 and 200907), not reported to her supervisor, and claims for noncompensable travel time. It notes further that Ms. Blackman's claim for pay period 200813 is substantiated by a request to work overtime on April 11, 2008, a date that falls in pay period 200808, which the Agency does not dispute, subject to offsets. Finally, it notes that Ms. Blackman's claim of 7 hours for pay period 200906 is substantiated by a request to work 3 hours, not 7, on March 4, 2009. Therefore, that claim, while valid, is overstated by 4 hours.

The Agency offered the Declarations of Berta Echeveste and David Rucker, both Supervisory Investigators in the Phoenix District Office. Ms. Echeveste declared as follows: Since at least January 2003, Investigators were told not to work before or after their regular hours unless such time was approved in advance by a supervisor. This was memorialized in a memorandum issued on February 2, 2004 by Acting District Director Susan Grace, and represents the policy of the Phoenix District Office for the entire claims period. Extra work approved would then be reported in writing in terms of hours actually worked. If overtime hours could not be approved in advance, they were to be reported to supervision as soon as possible thereafter. If such work was appropriate, it was freely approved. Investigators caught working extra hours that had not been approved were told

to stop. She was not aware of any occasion where a supervisor required an Investigator to work beyond his or her regular hours. Most Outreach and Onsites were scheduled during regular hours and no Outreach was required in the evening, and when an individual volunteered for such an event, compensatory time was given. All hours, including those in excess of 80 in a pay period, were recorded by employees and entered in the FPPS system. All compensatory time, both earned and used, and overtime hours known to supervision was entered into FPPS. These were also reflected on leave and earnings statements received by employees biweekly.

Mr. Rucker declared as follows: From at least January 2003, Investigators were repeatedly told not to work before or after their regular hours unless approved in advance by supervision. Management repeatedly told employees that, in cases where extra hours could not be approved in advance, they were to report such work to supervision as soon as possible thereafter, and if Investigators were caught working extra hours without approval, they were told to stop. Extra hours were to be approved in writing in advance and the actual extra hours worked were to be reported to supervision in writing, and required a supervisor's signature. Such requests were freely approved so long as the work was appropriate. He was not aware of any supervisor, including himself, requiring an Investigator or Mediator to work beyond their regular hours. Most Outreach and Onsite were conducted during regular hours, and no Investigator was required to perform an Outreach in the evening or on the weekend. When Investigators volunteered for such work, they received compensatory time for the extra hours worked. All hours of work, including hours in excess of 80 in a pay period, were recorded by employees and entered in the FPPS system. Therefore, all compensatory time, earned and used, and overtime

hours known and approved by supervision were entered into FPPS. Compensatory time earned and used was also reflected in leave and earnings statements issued to employees biweekly.

The Union contends that Ms. Blackman's claim is supported by written declarations and affidavits, memoranda and e-mails reflecting her extra work hours, in addition to reports of compensatory time and travel documents, and that her supervisors were aware of and approved her extra work hours. With respect to the Agency's objection to Ms. Blackman's claim for seven hours in pay period 200906, the Union agrees that only three hours are supported and that this entry was likely an error.

Ms. Blackman's submission in support of her claims is substantial, a fact that the Agency has surely acknowledged. I note the Union's own acknowledgment of the 4 hours claimed in error for pay period 200906. I direct first that the parties jointly audit the Claim Report and agree to what extent, if any, there are errors attributable to Ms. Blackman's possible misreading of FPPS records.

Secondly, with respect to Ms. Blackman's travel claims, I conclude, based on the records, that these claims do not qualify for monetary payment. The first travel claim, in pay period 200310 (inadvertently indentified by Ms. Blackman as pay period 200308, a pay period not included in her claim), was for Ms. Blackman's travel from Philadelphia to Washington, DC Headquarters from April 28 to May 1, 2003 for Advanced Mediation training. While she appeared to have traveled on a day when she was on annual leave, I do not see anything that would bring this event within an exception to travel regulations that typically do not call for monetary pay. This is because her travel on her nonscheduled day did not occur during hours that would correspond to her regular work

hours. The travel claim for March 14, 2005 (pay period 200507) was for same-day travel back and forth to Bethlehem, PA for a mediation, which also does not qualify for monetary payment. The travel claim for March 15 and 16, 2006 (pay period 200607), while for mediations over two days, also, on the basis of this record, is not eligible because, taking place on a Wednesday and a Thursday, do not involve travel on nonscheduled work days. Finally, the travel claim for October 6, 2008 (pay period 200821), representing same-day travel to Tucson, AZ for a mediation, likewise does not qualify.

Finally, in light of my "outside the scope" ruling, I direct that a hearing be conducted for the purpose of determining whether bases exist such that the proposed Agency remedy should not be directed.

José Carrillo

Mr. Carillo worked as an Investigator in the Phoenix District Office and began working in a covered position (GS-9) on October 28, 2007. His Claim Form reflects his working a basic schedule during his claimed pay periods except for pay period 200909, where he reports working a gliding flexible schedule. He claims 110.5 hours over 18 pay periods. The Agency objects to his claims on grounds that he was on a flexible schedule, that his claim is offset because he received time off for time worked, and that he received and used compensatory time in the same pay period.

The Agency contends that, absent dismissal of his claim on the basis of working a flexible schedule, Mr. Carrillo's recovery would be limited because of the compensatory time he used in five of the pay periods for which he makes a claim, and because he has already been compensated with 1 hour of compensatory time for every hour of overtime

he claims to have worked. Thus, it concludes that his recovery would be limited to 38.25 hours, or $954.19, plus liquidated damages, totaling $1,908.39.

The Agency offered the Declarations of Berta Echeveste and David Rucker, both Supervisory Investigators in the Phoenix District Office. Ms. Echeveste declared as follows: Since at least January 2003, Investigators were told not to work before or after their regular hours unless such time was approved in advance by a supervisor. This was memorialized in a memorandum issued on February 2, 2004 by Acting District Director Susan Grace, and represents the policy of the Phoenix District Office for the entire claims period. Extra work approved would then be reported in writing in terms of hours actually worked. If overtime hours could not be approved in advance, they were to be reported to supervision as soon as possible thereafter. If such work was appropriate, it was freely approved. Investigators caught working extra hours that had not been approved were told to stop. She was not aware of any occasion where a supervisor required an Investigator to work beyond his or her regular hours. Most Outreach and Onsites were scheduled during regular hours and no Outreach was required in the evening, and when an individual volunteered for such an event, compensatory time was given. All hours, including those in excess of 80 in a pay period, were recorded by employees and entered in the FPPS system. All compensatory time, both earned and used, and overtime hours known to supervision was entered into FPPS. These were also reflected on leave and earnings statements received by employees biweekly.

Mr. Rucker declared as follows: From at least January 2003, Investigators were repeatedly told not to work before or after their regular hours unless approved in advance by supervision. Management repeatedly told employees that, in cases where extra hours

could not be approved in advance, they were to report such work to supervision as soon as possible thereafter, and if Investigators were caught working extra hours without approval, they were told to stop. Extra hours were to be approved in writing in advance and the actual extra hours worked were to be reported to supervision in writing, and required a supervisor's signature. Such requests were freely approved so long as the work was appropriate. He was not aware of any supervisor, including himself, requiring an Investigator or Mediator to work beyond their regular hours. Most Outreach and Onsite were conducted during regular hours, and no Investigator was required to perform an Outreach in the evening or on the weekend. When Investigators volunteered for such work, they received compensatory time for the extra hours worked. All hours of work, including hours in excess of 80 in a pay period, were recorded by employees and entered in the FPPS system. Therefore, all compensatory time, earned and used, and overtime hours known and approved by supervision were entered into FPPS. Compensatory time earned and used was also reflected in leave and earnings statements issued to employees biweekly.

The Union contends that Mr. Carrillo has supported the extra work hours claimed by reason of his submission of Cost Accounting sheets, leave slips and reports of compensatory time. In addition, it challenges the Agency's claim that Mr. Carrillo worked a flexible schedule and contends that, in fact, he worked a basic schedule (except, presumably, for pay period 200909, where he asserts that he was on a Gliding schedule). The Union points to the declaration of Berta Echeveste which, contrary to the Agency's representation, does not support the Agency's assertion that Mr. Carrillo was on a flexible work schedule. Rather, the documents attached to Ms. Echeveste's declaration

reflect that Mr. Carrillo worked an 8:00 A.M. to 4:30 P.M. schedule, and there is no clear indication that these hours differed from the official office hours. It asserts that the Agency submitted no specific evidence that Mr. Carrillo did not work the extra hours claimed.

The threshold issue here is whether, as Mr. Carrillo noted in his Claim Form, he was working a basic schedule (except for pay period 200909, his last claimed) or whether, as the Agency contends, he was working a flexible schedule.

The record on this issue is not clear. The documents before me, which include a large number of compensatory time requests (some, but not all, bearing a supervisor's signature), and leave requests seem to reflect more than one regular work schedule. Many suggest an 8:00 A.M. to 4:30 P.M. work schedule. Others suggest a work schedule as early as 7:00 A.M. to 3:30 P.M. (see, for example, leave requests for July 17, 18 and 21, 2008), as well as that of June 26, 2008, where Mr. Carrillo asked for leave from 1:00 to 3:30 P.M. (I assume here that he would not have returned after 3:30 P.M. as he stated his reason for leaving was family surgery). There are requests for compensatory time that likewise do not comport with an 8:00 A.M. to 4:30 P.M. schedule. In addition, one document represents a work schedule of 8:00 A.M. to 4:30 P.M., with an effective date of April 21, 2009, the one pay period in his claim where he stated he was on a gliding schedule.

Furthermore, I am not certain I may correctly assume in the first instance that 8:00 A.M. to 4:30 P.M. represents the official hours of the Phoenix District Office. The Declaration of Ms. Echeveste includes the Memorandum of Acting District Director Susan Grace. While the Union points to this document, which references Mr. Carrillo's

hours at that time as 8:00 A.M. to 4:30 P.M., as not clearly indicating that these differed from the official hours of the Phoenix District Office, it is also apparent that Mr. Carrillo's name appears under a column headed "FLEX." In addition, the Agency's arguments in the claim of Phoenix claimant, Julie Hammer, assert, among other matters, that the official hours of the Phoenix District Office are 8:30 A.M. to 4:30 P.M., and not 8:00 A.M. to 4:30 P.M.

Taking all this into account, and before I proceed further, if necessary, on the merits of this claim, I direct the parties to meet with me *in camera* (or, preferably, advise me if they are able to agree) on the matter of Mr. Carrillo's work schedule.

Antonio DeDios

There is no dispute that a valid Claim Form was not received for Antonio DeDios. The Union has asserted on his behalf that he suffers under a hardship and need assistance to file a claim. What has been submitted to me is correspondence dated May 17, 2012 sent to Rust Consulting from his wife, Eunice DeDios, with copies to counsel for the parties, in which she explains that her husband has suffered numerous injuries over the past ten years and, as a result, is left with "diminished and minor cognitive ability." She explained that she was unable to get assistance from the Phoenix District Office and, owing to lack of a computer, was unable to participate in online Claims Processing training that was being offered by the Union. She suggested that, by utilizing her own employer's computer facilities, she might be able to submit the necessary paperwork. She asked for the necessary assistance to do so.

I acknowledge the Agency's position in this matter, as well as its assertion that FPPS records would reflect that, in any case, Mr. DeDios had no claim to monetary relief

by reason of not having earned any compensatory time during the claims period. I note here that, owing to my "outside the scope" ruling, Mr. DeDios' claim would not be rendered invalid for this reason alone.

The Union requests, in light of Mrs. DeDios's stated desire to file a claim, that Mr. DeDios be mailed a hard copy claim form and that he be given sixty days from receipt of the form within which to file a claim, and that the Agency have sixty days from receipt of any claim within which to file a response.

Under these discrete circumstances, I conclude that this is an appropriate response to the request of Mrs. DeDios and therefore direct that the arrangement proposed by the Union be followed.

Julie Hammer

Ms. Hammer worked as an Investigator in the Phoenix District Office from October 29, 2007 to August 3, 2009. Her Claim Form reflects that she worked one pay period (200802) on a basic schedule, and the remainder on a 5/4/9 compressed schedule. She claims 23.9 hours over 7 pay periods. (This total, as I believe has happened in other claims as well, is not accurate in that it appears the Agency is adding these hours as decimals instead of fractions of an hour.) The Agency acknowledges that Ms. Hammer appears entitled to payment for 4.445 hours, or $117.89, plus liquidated damages, totaling 235.78. The Agency objects to her remaining claims on grounds that she was on a flexitour schedule in pay period 200802, that her overtime work was offset by time off in pay period 200906, that she seeks compensation for noncompensable travel time, and that her claims are outside the scope.

The Union contends that her claim is supported by compensatory time reports

submitted with her Claim Form. It notes the Agency's admission that Ms. Hammer worked the extra hours and states further that the FPPS records reference two additional pay periods, 200815 and 200823, which were not part of Ms. Hammer's claim, and which should also be paid.

On the matter of its assertion that Ms. Hammer worked a flexible schedule in pay period 200802, the Agency references a "Report of Compensatory or Credit Time Worked" form that Ms. Hammer worked from 3:40 to 5:40 P.M. on January 9, 2008, and requested 2 hours' compensatory time, which was approved. The Agency represented that the official office hours of the Phoenix District Office (a matter in some question in the claim of José Carrillo) were 8:30 A.M. to 4:30 P.M. The Agency spreadsheet in Ms. Hammer's portfolio likewise reflects the official hours as 8:30 A.M. to 4:30 P.M. This conflicts with the Agency spreadsheet for every other Phoenix District Office claimant. Here, the fact that it appears certain that those official hours end at 4:30 P.M., the issue appears not to be germane in Ms. Hammer's claim. However, this document accounts for one day, not an entire pay period. I decline to presume a flexible schedule for the entire pay period 200802 based on a single document that speaks to a single day.

For pay period 200906, the 3 hours Ms. Hammer claims for her Outreach on March 4, 2009 at Scottsdale Community College was, in fact, used in pay period 200907.

Ms. Hammer claims 14 hours in pay period 200813 for travel to Washington D.C. from June 8 to 13, 2008 for New Investigator Training. Based on the record before me, it is possible that such travel would be compensable with monetary payment. The travel was from a Sunday to a Friday, and she traveled on Sunday, June 8 (from 7:00 A.M. to 6:00 P.M.) during hours that correspond with her regular working hours. The Agency

asserted that FPPS records reflected Ms. Hammer "received 23 hours of travel comp time in pay periods 200815 (5 hours); and 200823 (14 hours)…," concluding that she had already been compensated for her travel. These are the two pay periods the Union correctly noted were not on Ms. Hammer's Claim Form, but for which it believes Ms. Hammer should be compensated.

The Agency's calculations are slightly off here. The Agency's assertion above adds to 19, not 23. What is actually reflected in the FPPS records is that, in furtherance of Ms. Hammer's claim for 14 hours in pay period 200813 for her travel to Washington, D.C., she used 9 hours of travel compensatory time in pay period 200815 and 5 hours (not 14) of travel compensatory time in pay period 200823. The Agency's figure of 14 hours for pay period 200823 apparently added in the 9 hours of regular compensatory time she used in pay period 200823. Therefore, the travel compensatory time used is the correct figure and nothing in this respect is owing.

While I do not believe a hearing is required, I will meet with counsel *in camera* to audit the above figures, to take up the matter of the Union's assertion that pay periods 200815 and 200823 should be added to Ms. Hammer's claim, and attempt to agree on the proper hours for which payment is due. In addition, I will ask the Agency to explain why it has asserted that, with the exception of pay periods 200823 and 200907, there was no evidence that Ms. Hammer "received" compensatory time.

Mary Hernandez

Ms. Hernandez worked as an Investigator in the Phoenix District Office from before the claims period until April 29, 2006, when she retired. The Claim Form she submitted dated March 26, 2012 reflects her having worked a flexitour schedule. She

claimed, by the Agency's reckoning, 21 hours over 9 pay periods, although I totaled 45 hours. The Agency, after reviewing Ms. Hernandez' FPPS records, concluded that she actually worked a 5/4/9 compressed schedule.

Ms. Hernandez signed her Claim Form on March 26, 2012. With it, she submitted leave request forms and included a letter to Rust Consulting, stating:

> I am submitting information based upon records I received from the Phoenix District Office. I requested data for the period April 7, 2003 to April 1, 2006. I cannot say that all of the records I received represent all of the requested documents. For example, for 2003 I received only three pieces of paper. I am unable to respond electronically because I am a former employee whose computer does not meet your requirements for submitting your report.
>
> I am submitting responses only for pay period numbers 200409 to 200523, where my records show I used compensatory time totaling 45 hours. Your column labeled "If on a Basic work schedule, time of day you worked the additional hours" does not apply to my schedule. I don't recall the official hours of the office so I cannot complete the column labeled "Official hours of the office during this pay period." I don't understand the column labeled "If 'Yes,' compensatory hours received during this pay period." I don't know if the agency has emails which will support the hours I worked compensatory time.

In a letter she sent to Rust Consulting, dated May 1, 2012, she stated:

> On April 27, 2012, I received additional relevant data from EEOC's FPPS payroll system maintained by the National Business Center in Denver. I have attached a copy of this information, and have annotated it to show the total number of hours of comp time I earned (90.3) and used (89.9). Please replace these new totals as an amendment to the "claims" forms I sent to you on March 26, 2012.

The Agency's objections, for the record, consist of Ms. Hernandez' receiving compensatory time for the same number of hours that she claims she worked overtime in each pay period, thus creating an offset. In addition, the Agency objects to each of Ms. Hernandez' initial claims, inasmuch as she admitted they were inaccurate and should be replaced by the hours reflected in her FPPS records.

The Agency asserts that, given this May 1, 2012 letter, Ms. Hernandez never filled out a new Claim Form and, therefore, used her supplemental information to base its

response. It found that her total claim would be for 41 hours. It concludes, therefore, that Ms. Hernandez is entitled to payment for 41 hours, equaling $1,509.45, plus liquidated damages, totaling $3,018.89. It deems this slightly inflated, as the Agency used Ms. Hernandez' pay rate in 2004 to calculate her claims in 2003.

The Union contends that the Agency seeks to recalculate Ms. Hernandez's work hours based upon its own formula, rather than the agreed-upon formula used by Rust Consulting. It states that Rust Consulting calculated Ms. Hernandez's claim amount based upon 45 hours and did not calculate the additional amended hours submitted by Ms. Hernandez, which included extra work hours in 2003, 2004, 2005 and 2006. The Union asserts that, since each year carries a different hourly pay rate, the Agency's calculations do not represent the amount due. It contends that Ms. Hernandez's claim should be recalculated and paid in accordance with the formula agreed on by the parties.

This is a matter that appears to me should be readily resolved by the parties. The fact is that Ms. Hernandez provided this information to Rust Consulting well in advance of the deadline for submitting her claim, the original of which was submitted March 26, 2012. The parties should jointly audit these data to determine what, if any changes, should be made in the methodology used to calculate the value of this claim. Should the parties fail to agree, the matter shall be returned to me for decision.

Patricia Miner

Ms. Miner worked as an Investigator in the Phoenix District Office throughout the claims period. She worked a 4/10 compressed schedule. She claims 117.5 hours over 22 pay periods. The Agency reasserts its position generally that, in the Phoenix District Office, all hours worked were recorded in FPPS records, including amounts of

compensatory time awarded. It notes that, in support of her claims, Ms. Miner attaches pay and leave statements showing how much compensatory time she earned and used in each pay period for which she makes a claim.

The Agency states that it generally agrees that Ms. Miner worked the hours she claims she worked in overtime and that her supervisor was aware that she worked these hours. It calculates that Ms. Miner appears to be entitled to payment for 50.75 hours, or $1,711.58, plus liquidated damages, totaling $3,423.16. The Agency believes no real dispute exists, inasmuch as Ms. Miner acknowledges that she received compensatory time for the time she worked, and that she earned and used compensatory time for two pay periods in which she makes a claim (pay periods 200803 and 200808).

For the record, the Agency makes the objections that it merits an offset since Ms. Miner received time off for time worked, and that she received and used compensatory time in the same pay period. On the latter point, Ms. Miner's Claim Form reflects that, in pay period 200803, she received 6 hours of compensatory time and used 3, and that in pay period 200808, she received 12.5 hours of compensatory time and used 12.

The Union notes the Agency's acknowledgment that Ms. Miner worked the extra hours claimed, wherein she relies upon her Earnings and Leave Statements, submitted with her Claim Form, which report her compensatory time in support of her claim. It states, however, that the Agency is seeking a credit for unofficial time off, which it asserts is not supported by the law.

Based on the above, it appears that the Agency believes there is no genuine dispute with respect to what Ms. Miner's records reflect, but that the Union is not in agreement, in its reference to the Agency's "seeking a credit for unofficial time off."

Before making a final disposition on this claim, the parties are directed to advise me on precisely how their respective positions on monetary relief are at odds.

Charles Rahill

Mr. Rahill worked as an Investigator in the Phoenix District Office from the beginning of the claims period until he was promoted to a GS-13 Lead Investigator (a non-covered position in these proceedings) on July 7, 2008. He worked principally a 5/4/9 compressed schedule. He claims 331.5 hours over 134 pay periods. These include the pay periods after he was promoted. This matter will be dealt with and resolved below. The Agency reiterates that all overtime hours in the Phoenix District Office were recorded in FPPS. The Agency outlines the bases for his claims, although Mr. Rahill's own statement that accompanied his Claim Form generally speaks for itself.

The Agency notes that Mr. Rahill earned and used compensatory time throughout the claims period, as demonstrated by the documents that accompany his Claim Form, as well as by his FPPS records. It concludes that Mr. Rahill is entitled to payment for 47.625 hours, or $1,812.32, plus liquidated damages, totaling $3,624.64, representing those claims for which he demonstrated he received supervisory approval through the awarding of compensatory time during the time he worked in a covered position.

The Agency states grounds for other objections, the first of which being that, since he was promoted to a GS-13 Lead Investigator on July 7, 2008, he was at that point no longer in a covered position. This is true and undisputed. Therefore, as of that date, corresponding to pay period 200815, any overtime claims he made are not cognizable. In addition, the Agency contends that any pay periods for which he did not receive compensatory time are outside the scope, that he did not create a reasonable inference

that he worked the hours he claimed, in particular, that he worked before the beginning of his shift and through lunch, that he was given compensatory time off for a portion of his claims, that he received and used compensatory time in the same pay period (for some of which Mr. Rahill's claim differs with FPPS records), that working through breaks does not make for an overtime entitlement, and that working before his shift was not suffered or permitted by the Agency.

Along with his Claim Form and his extensive compensatory time records, Mr. Rahill submitted the following statement:

> I was employed by the Equal Employment Opportunity Commission (EEOC) from July 1990 to March 2010. I was a GS-1810 grade 12 Investigator from April 7, 2003 to July 7, 2008. I was promoted to a GS-1810 grade 13 Lead Investigator on July 7, 2008. I believe I was still a non-exempt employee and a bargaining unit member after the promotion. It is my understanding that I am not eligible to file a claim for overtime after I was promoted to a GS-1810 grade 13 Lead Investigator. However, since the Lead Investigator has the same Pay Plan and Occ. Code (GS-1810) as the grades 9, 11 and 12 Investigators, I am including paperwork to support a claim for the period July 6, 2008 to May 9, 2009.
>
> During the time periods April 7, 2003 to May 9, 2009, I mostly worked a compressed 5-4-9 work schedule, meaning I worked eight nine hour days and one eight hour day during a two week pay period. My work hours were 6:00 AM to 3:30 PM for my nine hour days and 6:30 AM to 3:00 PM on my eight hour day. During this time period, I usually took my lunch to work and ate lunch at my desk. On most days, I did not take the full hour that was allocated to me for lunch. After eating my lunch, on most of the days that I was in the office, I went back to work. Additionally, due to traffic, I arrived at work at 6:00 AM on my eight hour days and worked an extra half hour on most [of] those days.
>
> Throughout my career I was a high producer and developed multiple systemic targets. I also became an expert at several EEOC programs, including EEO-1 and EEOSTAT. Working during my lunch and an extra half hour during my eight hour day helped maintain my high production, develop systemic targets and develop expertise of the EEOC programs.
>
> In support of this claim, I requested my payroll documents for the period March 23, 2003 [two weeks before the beginning of the claims period] to May 9, 2009, from the EEOC. I was not provided with the payroll records from March 23, 2003 to December 13, 2003 (19 pay periods) and January 7, 2006 to June 24, 2006. The EEOC indicated they did not have the missing documents (see attached). I subsequently received the January 7, 2006 to June 24, 2006 payroll

records from Attorney Barbara Hutchinson.

> The EEOC and Ms. Hutchinson provided me with documents for 118 pay periods (April 7, 2003 to July 7, 2008), while I was a GS-1810 grade 12 Investigator. During that period, I earned 188 ¾ hours of compensatory time (1.60 hours per pay period) and used 172 ¼ hours of compensatory time (1.46 hours per pay period). I also estimated that I worked 257.5 hours (2.18 hours per pay period) in excess of my 80 hour compressed work schedule. Based on the records provided, I projected 1 ½ hours of compensatory time earned and 1 ½ hours of compensatory time used, for each of the pay periods not provided (March 23, 2003 to December 13, 2003). Additionally, I projected that I worked two hours in excess of my 80 hour compressed work schedule, for each of the pay periods not provided (March 23, 2003 to December 13, 2003). The agency does not have e-mails to support my claim of the extra hours worked. The agency has records of the compensatory time.
>
> I have enclosed my e-mail correspondence with the EEOC and copies of all reported compensatory time that was provided to me by the EEOC. I also enclosed notification of my promotion to the Lead Investigator position and a copy of a Personnel Action form indicating the Lead Investigator position was a GS-1810 position.

The Agency offered the Declarations of Berta Echeveste and David Rucker, both Supervisory Investigators in the Phoenix District Office. Ms. Echeveste declared as follows: Since at least January 2003, Investigators were told not to work before or after their regular hours unless such time was approved in advance by a supervisor. This was memorialized in a memorandum issued on February 2, 2004 by Acting District Director Susan Grace, and represents the policy of the Phoenix District Office for the entire claims period. Extra work approved would then be reported in writing in terms of hours actually worked. If overtime hours could not be approved in advance, they were to be reported to supervision as soon as possible thereafter. If such work was appropriate, it was freely approved. Investigators caught working extra hours that had not been approved were told to stop. She was not aware of any occasion where a supervisor required an Investigator to work beyond his or her regular hours. Most Outreach and Onsites were scheduled during regular hours and no Outreach was required in the evening, and when an

individual volunteered for such an event, compensatory time was given. All hours, including those in excess of 80 in a pay period, were recorded by employees and entered in the FPPS system. All compensatory time, both earned and used, and overtime hours known to supervision was entered into FPPS. These were also reflected on leave and earnings statements received by employees biweekly.

Mr. Rucker declared as follows: From at least January 2003, Investigators were repeatedly told not to work before or after their regular hours unless approved in advance by supervision. Management repeatedly told employees that, in cases where extra hours could not be approved in advance, they were to report such work to supervision as soon as possible thereafter, and if Investigators were caught working extra hours without approval, they were told to stop. Extra hours were to be approved in writing in advance and the actual extra hours worked were to be reported to supervision in writing, and required a supervisor's signature. Such requests were freely approved so long as the work was appropriate. He was not aware of any supervisor, including himself, requiring an Investigator or Mediator to work beyond their regular hours. Most Outreach and Onsite were conducted during regular hours, and no Investigator was required to perform an Outreach in the evening or on the weekend. When Investigators volunteered for such work, they received compensatory time for the extra hours worked. All hours of work, including hours in excess of 80 in a pay period, were recorded by employees and entered in the FPPS system. Therefore, all compensatory time, earned and used, and overtime hours known and approved by supervision were entered into FPPS. Compensatory time earned and used was also reflected in leave and earnings statements issued to employees biweekly.

The Union agrees that Mr. Rahill's eligibility to participate in the claims process ended on July 7, 2008, and therefore agrees that, from pay period 200815 through pay period 200910 (the last pay period listed on his Claim Form), with his promotion to grade 13 Lead Investigator, he was no longer within the group of eligible claimants. Asserting that the remainder of the Agency's claims are not supported by the law, the Union seeks all payments for all remaining pay periods.

Mr. Rahill's Claim Form is generally well annotated. His accompanying statement is likewise set forth in reasonable detail, but this statement also, in my view, raises questions. It may be possible to discern answers to these questions by reference to the statement alone, but some of the references need clarification.

One such matter is Mr. Rahill's consistent claims that he worked through lunch and, apparently, through his break periods as well. Lunch and break periods, though not treated alike as "hours of work," need further explanation with respect to how these periods were actually spent. Mr. Rahill appears to suggest, through his statement, that he did not merely take lunch at his desk but that he actually devoted that time to productive Agency work. I can neither credit nor discredit this claim based on Mr. Rahill's statement alone, just as I can neither credit nor discredit the Agency's proffered Declarations on their own.

Another such matter is Mr. Rahill's claim that, due to commuting issues, he worked prior to his shift on most of his 8-hour days. This implicates the issue of supervisory knowledge which, on the basis of competing statements alone, creates a clear evidentiary conflict. This conflict must be explored through testimony.

Further, the Agency notes that the pay periods during which Mr. Rahill claims he

used compensatory time are inconsistent with FPPS records, sometimes varying toward his using more than he claims and sometimes less. The Agency assumes that, since it calculated the offset based on FPPS records, this is not in dispute. Noting, as I have previously done, my recognition in the 2009 Opinion that FPPS records may not always be reliable, particularly on matters of compensatory time, I await the parties' advice on whether the Agency's offset calculations are agreed upon.

Lastly, in view of my "outside the scope" ruling, a determination should be made as to whether other bases exist such the proposed Agency remedy should not be directed. For all the above reasons, I direct a hearing be conducted on Mr. Rahill's claims.

Janis Richardson

Ms. Richardson worked as an Investigator in the Phoenix District Office during the claims period. She worked a 5/4/9 compressed schedule. She testified at the hearings in Los Angeles, CA. She claims 282 hours over 41 pay periods. The Agency acknowledges that most of her claims are supported by FPPS records, but contends that her claim is untimely.

I note here that, among the many documents Ms. Richardson submitted with her Claim Form were Pay Period "grids" that, for each year, set forth pay period numbers and the start and end date of each pay period. While other claimants have likewise used this form, Mr. Richardson has annotated it with her representation of the amounts of compensatory time received and used in each pay period that involved such activity. This information also appears in the appropriate columns on her Claim Form. The other documents submitted include Time and Attendance sheets, compensatory time and leave request forms.

On the merits of Ms. Richardson's claim, the Agency contends that Ms. Richardson worked a flexible schedule, that the Agency should receive offsets because Ms. Richardson received time off for time worked, that she received and used compensatory time in the same pay period, that she did not work all the hours claimed, and that supervision did suffer or permit such work, that there is evidence she would have preferred earning compensatory time to overtime, and that some of her claims are outside the scope.

The first, and threshold, issue is whether, as the Agency argues, Ms. Richardson's claim is untimely. The Agency notes that Ms. Richardson filed a claim online that reveals it was finalized May 30, 2012, one day past the filing deadline. Also, as the Agency notes, Ms. Richardson sent her supporting documents by United States Postal Service Express Mail. The envelope bears a postmark date of June 2, 2012 and reflects its receipt by the Agency on June 4, 2012.

The Union notes the documentation submitted by Ms. Richardson, including bi-weekly time sheets, leave slips and reports of compensatory time in support of her claim. With respect to the issue of timeliness of the claim, the Union recognizes that Ms. Richardson's Claim Form bears a finalized date of May 30, 2012. The Union believes Ms. Richardson may have been finalizing her claim as the Midnight deadline approached on May 29, 2012. Her file includes a claim form which she printed out on May 29, 2012, with a cover page notation "PageControl=FinalizeClaim," with each page thereafter bearing the notation "PageControl=PayPeriodSummary," all pages bearing the date "5/29/12." The Union believes Ms. Richardson's claim was likely submitted close to the deadline and that she did not realize that the date of submission had rolled over to the

next day. The Union asks that Ms. Richardson be given consideration, since the late filing was not intentional, nor was she attempting to delay or take advantage of the process. It asks further that Ms. Richardson's supporting documents also be accepted, these documents having been postmarked on June 2, 2012, and that she receive full payment on her claim.

This is an unfortunate circumstance but, under these facts, I cannot find Ms. Richardson's claim timely. I am unable, therefore, despite the strong advocacy of the Union, to consider Ms. Richardson's claim on the merits.

First, the claim was not finalized until May 30, 2012, a day past the deadline. There can be no issue of knowledge of the deadline, as all claimants are clearly made so aware. The Union believed that the claim may have been in the process of being finalized as the Midnight deadline approached, and that she was not aware that the date of submission had rolled over to May 30. I have every belief, as the Union has argued, that Ms. Richardson intended to submit a timely claim and that she was not attempting to take undue advantage of the claims process. However, I am not convinced that Ms. Richardson was literally prepared to press the "Send" button when Midnight arrived. The fact is that the version of her Claim Form that bore the date "5/29/12" was incomplete. Whereas the Claim Form that was finalized reflects pay periods from 200402 through 200910, the version of the Claim Form that bore the date "5/29/12" only reflected pay periods 200402 through 200824. Thus, there was work yet to be done on this Claim Form – namely, the completion of work on 8 additional pay periods. I do not, therefore, believe, with due respect to Ms. Richardson, this was a split-second circumstance.

In addition, Ms. Richardson's Express Mail submission with her supporting

documents was likewise untimely. The Notice to Claimants clearly provides that supporting documents, if submitted separately from the online Claim Form, must be mailed "within three business days of finalizing your claim." This language surely assumes that the finalized date is no later than May 29, 2012. Ms. Richardson's supporting documents, unfortunately, were also a day late. Three business days after May 29, 2012 (Tuesday) is June 1, 2012 (Friday). I may not, with respect to both of these deadlines, knowingly waive the provisions of the process the parties themselves were at some pains to negotiate.

Accordingly, I must deny Ms. Richardson's claim as untimely.

José Robinson

Mr. Robinson worked as an Investigator in the Phoenix District Office from before the claims period through June 23, 2007, at which point he became an Information Technology Specialist, continuing to work in the Phoenix District Office. He worked a 4/10 compressed schedule. He claims 1,992 hours over 43 pay periods. In 40 of these pay periods, Mr. Robinson claims 48 extra hours, and in 3 pay periods (200405, 200525 and 200601) he claims 24 extra hours.

The Agency acknowledges, based on the record, that Mr. Robinson is entitled to payment for 57.5 hours or $1,838.87, plus liquidated damages, totaling $3,677.74. This, the Agency contends, is consistent with the amount of compensatory time he received based on FPPS records for the extra hours he claims. These records differ markedly from Mr. Robinson's Claim Form, which claims no compensatory time received or used during any of the relevant pay periods. The Agency objects to Mr. Robinson's remaining claims on grounds that he did not work the hours he claims in overtime, that he used

compensatory time in some of the pay periods claimed, that the hours were not suffered or permitted by the Agency, and that they are outside the scope.

Specifically, the Agency finds Mr. Robinson's claims outside the scope on the ground that, as he claimed, he worked without payment and his verbal requests for compensatory time were refused. In addition, the Agency argues that Mr. Robinson's claims were not suffered or permitted, this position being supported by the hearing testimony of David Rucker, his supervisor during this time, as well as by Mr. Rucker's Declaration, summarized below. Therefore, the Agency notes, if Mr. Robinson did work the extra hours he claims, they were contrary to specific directions given to him not to do so, and would not have been known to supervision if this was occurring while he worked at home. Moreover, the Agency argues, Mr. Robinson's claims, on their face, are not credible, notably with respect to his work on the Paradox Ten Day Service of Charge and Intake Rotation Programs, as well as the MS Access Case Management Program, referenced in Mr. Robinson's statement below. Further, the Agency contends, in some of the pay periods in which Mr. Robinson claims extra hours, he received compensatory time.

Along with his Claim Form, Mr. Robinson submitted the following statement:

> I was an EEOC Investigator (GS-1810, Grade 12) during the period of FY2003 through FY2007. During that time, management officials in the Phoenix District office knew that I had a background in computer programming. As such, I was suffered or permitted to work overtime hours without payment, when managers specifically requested and encouraged me to spend my off duty time to write and implement many highly sophisticated computer programs for the benefit of the agency.
>
> Consequently, I worked many off duty hours, over many pay periods, writing thousands of lines of computer source code in both Corel's Paradox application and Microsoft's Visual Basic Access application. The computer programs I wrote for the Phoenix district office included a program for Investigator's Case Management, Form 283 Mail-In Assignments, Intake Rotation, and Ten Day Charge Service Tracking program. These programs were extremely successful

> and they have been used in the Phoenix district office for many years, including up to the date of this claim period. Because I was an investigator and managers expected me to be able to create these programs to automate office processes, I felt compelled to purchase three technical programming books…
>
> The documentation that I am submitting to substantiate my claim and entitlement to overtime payment, include my annual performance appraisals for FY2004 and FY2006, the Chair's First Annual Core Award, September 2003, a letter from the Phoenix District Director of April 14, 2006, and the Chair's Excellence in Leadership Award, May 2008, all of which show that EEOC manager's [sic] documented the fact that I created computer programs for the benefit of the agency. Also, I am including all of the source code I wrote for each computer program identified in paragraph 2. The managers who either knew or should have known that I was creating these extensive computer programs during non-duty overtime hours include Susan Grace, Deputy Director, Paul Manget, Enforcement Manager, Berta Echeveste, Enforcement Supervisor, David Rucker, Enforcement Supervisor, and Lucy Orta, CRTIU/Intake Supervisor. Moreover, no manager ever told me not to create these computer programs during my off duty time, even after management officials refused my verbal requests for comp time.
>
> As a result, I believe that you will see from my superb evaluations and awards, that no one could have possibly achieved such high production results as an EEOC investigator, while at the same time creating such highly sophisticated computer programs, all during a regular forty hour work week.
>
> This overtime claim is made for the following:
> **MS Access Case Management Program (Conversion) (32 Weekends-768 Hrs).**
> **(PPs 200523, 20052(4, 200525, 200526, 200601, 200602, 200603, 200604, 200605, 200606, 200607, 200608, 200609, 200610, 200611, 200612, 200613)**
> [Emphasis added]

The Agency offered the Declarations of Berta Echeveste and David Rucker, both Supervisory Investigators in the Phoenix District Office, as well as that of Lucy Orta, CRTIU ("Charge Receipt Technical Information Unit") Supervisor from 2002 to mid-November 2006. Ms. Echeveste declared as follows: Since at least January 2003, Investigators were told not to work before or after their regular hours unless such time was approved in advance by a supervisor. This was memorialized in a memorandum issued on February 2, 2004 by Acting District Director Susan Grace, and represents the policy of the Phoenix District Office for the entire claims period. Extra work approved

would then be reported in writing in terms of hours actually worked. If overtime hours could not be approved in advance, they were to be reported to supervision as soon as possible thereafter. If such work was appropriate, it was freely approved. Investigators caught working extra hours that had not been approved were told to stop. She was not aware of any occasion where a supervisor required an Investigator to work beyond his or her regular hours. Most Outreach and Onsites were scheduled during regular hours and no Outreach was required in the evening, and when an individual volunteered for such an event, compensatory time was given. All hours, including those in excess of 80 in a pay period, were recorded by employees and entered in the FPPS system. All compensatory time, both earned and used, and overtime hours known to supervision was entered into FPPS. These were also reflected on leave and earnings statements received by employees biweekly.

Mr. Rucker declared as follows: From at least January 2003, Investigators were repeatedly told not to work before or after their regular hours unless approved in advance by supervision. Management repeatedly told employees that, in cases where extra hours could not be approved in advance, they were to report such work to supervision as soon as possible thereafter, and if Investigators were caught working extra hours without approval, they were told to stop. Extra hours were to be approved in writing in advance and the actual extra hours worked were to be reported to supervision in writing, and required a supervisor's signature. Such requests were freely approved so long as the work was appropriate. He was not aware of any supervisor, including himself, requiring an Investigator or Mediator to work beyond their regular hours. Most Outreach and Onsite were conducted during regular hours, and no Investigator was required to perform

an Outreach in the evening or on the weekend. When Investigators volunteered for such work, they received compensatory time for the extra hours worked. All hours of work, including hours in excess of 80 in a pay period, were recorded by employees and entered in the FPPS system. Therefore, all compensatory time, earned and used, and overtime hours known and approved by supervision were entered into FPPS. Compensatory time earned and used was also reflected in leave and earnings statements issued to employees biweekly.

Mr. Rucker declared the following with respect specifically to Mr. Robinson: He believes he supervised Mr. Robinson from before April 2003 until he became an Information Technology Specialist in 2007. When Investigators were caught working extra hours without approval, they were instructed to stop or risk discipline. He recalled that, in about 2003, he issued Mr. Robinson a disciplinary notice for working after hours without authorization. In that circumstance, Mr. Robinson had recently moved into an office that had non-module furniture, whereas his old office had module furniture. He came into the office on a Saturday, without notice, and moved the module furniture from his old office into his new office. Mr. Rucker counseled him not to be working outside his regular hours without prior written approval. He attached to his Declaration some compensatory time forms submitted by Mr. Robinson in 2006. Mr. Robinson did some work creating and updating computer programs to be used during Intake, and this work was supervised by Ms. Orta. He never specifically requested nor encouraged Mr. Robinson to spend time off duty to write and implement computer programs for the benefit of the Agency and stressed that Mr. Robinson should not work weekends or outside his scheduled hours without prior approval. He recalled, at one point, denying a

request by Mr. Robinson to work overtime on computer programs because the work he wanted to do was unnecessary. He has also approved Mr. Robinson's requests to work extra hours to update computer programs.

Ms. Orta declared as follows: Since at least January 2003, Investigators in the Phoenix District Office were repeatedly told not to work overtime unless approved in writing in advance by a supervisor, and that this included not working before or after regular hours. They were later to report in writing the actual extra hours worked and this needed a supervisor's signature. In circumstances where advance approval was not possible, Investigators were told that approval had to be granted as soon as possible. She was not aware of any instance where a supervisor requested an Investigator to work beyond his or her scheduled hours. All hours of work, including those in excess of 80 in a pay period, were recorded by employees and entered into the payroll system. This means that all compensatory time, both granted and used, and overtime known and approved by supervision was entered. Compensatory time earned and used also appeared on leave and earnings statements employees received biweekly. She supervised some work Mr. Robinson did creating and updating computer programs to be used during Intake in the CRTIU. In 2003 she complained to Mr. Robinson that the new IMS system would not track 10 days after a charge was formalized so that it could be ensured that charges were served within 10 days. Mr. Robinson said that he could create a program in Paradox that would help track this. She consulted with her supervisors and approved his work on this program, although she counseled him not to do any work at home as that had been a problem before. She personally observed him working on this and other Paradox programs during his down time while on Intake. She never specifically

requested nor encouraged Mr. Robinson to spend time off duty to write and implement computer programs for the benefit of the Agency, and stressed to him that he was not to work outside his regular hours, including on weekends, without prior approval. She instructed him to do such work while on down time during Intake.

Ms. Orta referenced certain documents attached to her Declaration. These include a nomination form for an award for Mr. Robinson for his work on the Service of Charge Paradox Program from February 10, 2003 to July 31, 2003; e-mails she sent to Mr. Rucker and Paul Manget, Enforcement Supervisor, documenting a conversation she had with Mr. Robinson instructing him again not to take the Paradox work home with him, and to make his other work his first priority; a series of e-mails she sent to Mr. Rucker on October 2003 commenting on the performance in the CRTIU of Investigators he supervised; correspondence in October 2003 regarding Mr. Robinson's having been given the CORE ("Chair's Opportunity to Reward Excellence") Award for his Paradox programming work; and further e-mails referencing Mr. Robinson's continuing work on CRTIU programs.

The Union contends that the Agency has submitted no evidence that the hours claimed by Mr. Robinson were not worked. It asserts that Agency managers and supervisors were aware of Mr. Robinson's work and that detailed documentation provided by Mr. Robinson confirms the work he performed.

Mr. Robinson submits considerable documentation with his Claim Form. Apart from his statement, above, he includes positive personal performance appraisals which reference, among many other matters, his work on the Paradox programs for CRTIU and his recognition for his work in this area, along with technical information on the Paradox

Ten Day Charge Service Tracking and the MS Case Management Programs.

Mr. Robinson's claims are unusually large, as he claims he put in all this work while at home on off-duty hours. What is more, he expressly asserts, as noted above, that supervision specifically "requested and encouraged" him to perform this extensive computer programming work for the benefit of the Agency. It is apparent, given Mr. Robinson's assertions and the strongly contrary Declarations of management personnel, that these positions are totally irreconcilable. These are credibility issues, and they are not going to be resolved by comparing documents.

I direct a hearing so that I may receive testimony for the purpose of determining whether bases exist such that the proposed Agency remedy should not be directed. Such testimony shall address Mr. Robinson's programming activities, and with specific reference to the key "suffered or permitted" issue that, in my view, cannot otherwise be resolved. In so doing, and in light of my "outside the scope" ruling, I do not restrict testimony on these issues to pay periods where compensatory time was received.

Maria Rojas

Ms. Rojas worked as an Investigator in the Phoenix District Office from before the claims period until December 2007, working a 4/10 compressed schedule. She claims 377.2 hours over 123 pay periods. As noted by the Agency, Ms. Rojas attaches to her Claim Form requests and approvals to work overtime for compensatory time.

The Agency notes it generally agrees that Ms. Rojas worked the hours she claims she worked in overtime, that her supervisor was aware that she worked these hours, and that she received compensatory time. It concludes, therefore, that Ms. Rojas is entitled to payment for 129.75 hours, or $4,880.59, plus liquidated damages, totaling $9,761.18.

The Agency adds that Ms. Rojas' claim is higher than most claims from the Phoenix District Office, explaining that, owing to Ms. Rojas' long commute, her supervisor permitted her regularly to adjust her schedule by earning and using compensatory time because she wanted flexibility in her schedule for personal reasons.

The Agency makes objections for the record, but it believes that there are no real disputes concerning her claims, since Ms. Rojas acknowledges on her Claim Form that she received compensatory time for the time she worked, as well as the amount of compensatory time she used in the same pay periods for which she makes claims.

The Union notes the Agency's agreement to the extra hours reflected on her Claim Form, but states further that the Agency objects, without foundation, to the formula for calculation of the overtime payment.

This is not a matter that, in my view, requires a hearing. From what the parties present to me, this is a circumstance where the parties should be able to resolve between themselves any issue with respect to calculation of the appropriate overtime payment. If no other issue is clearly before me as unresolved, I direct that they do so, failing which they will return the matter to me for decision.

Barbara Rusden

Ms. Rusden worked as an Investigator in the Phoenix District Office throughout the claims period. She worked a 4/10 compressed schedule. She claims 165.1 hours over 111 pay periods. The Agency believes, based on the record, that Ms. Rusden is entitled to payment for 31.375 hours, or $1,184.38, plus liquidated damages, totaling $2,368.76.

The Agency, as it has noted in previous claims, states that, in the Phoenix District Office, all overtime worked was recorded in FPPS. It states further that, in 37 of Ms.

Rusden's claimed pay periods, according to records, she requested and received compensatory time for overtime worked. Inasmuch as she did not request compensatory time in the remaining pay periods, the Agency deems these claims outside the scope.

Along with her Claim Form, Ms. Rusden attached for many of her claimed pay periods, the following statement:

> During this pay period, I was permitted to and worked the additional time as indicated and did not receive compensation such as overtime, compensatory time or credit time for the additional time worked.

Ms. Rusden also attached compensatory time reports, leave slips, biweekly time sheets and FPPS records.

The Agency argues further that, for all the claims to which the above statement applies, there is insufficient evidence on which to base a claim, in that it fails to identify the type of work performed, its amount and extent, when it was performed, or by whose authority she performed it. It notes that there is no suggestion of how the claimed extra hours could have been generated, whether there may be some relevant objection to such claims, or whether the asserted hours were worked. Further, it argues that, since Ms. Rusden frequently failed to follow the procedures in place in the Phoenix District Office for reporting such work, her supervisor could not have known she was working them, particularly since much of it was, on a daily basis, for a short period of time. In addition, the Agency claims an offset for compensatory time she received and used in the same pay period. It notes further that, in pay period 200502, according to the records Ms. Rusden submitted, she earned .45 hours (45 minutes) of compensatory time and used 3.30 hours (3 ½ hours), meaning that she actually worked less than 80 hours during that pay period and is, thus, not entitled to overtime pay, and that this has occurred in other pay periods.

The Union contends that, on the basis of Ms. Rusden's written affidavits (each

applicable to a single pay period), reports of compensatory time, leave slips, biweekly time sheets and FPPS records, Ms. Rusden's supervisors were aware of her working extra hours. It asserts that the Agency has presented no specific evidence to show that Ms. Rusden did not work the extra hours claimed. While the Agency objected that Ms. Rusden used more compensatory time than she earned in pay period 200502, the Union asserts that the FPPS records do not support this claim. (In fact, FPPS records reflect the Agency's position, whereas the WK1/WK2 pay grid for pay period 200502 in the Union's Barbara Rusden portfolio reflects only the 45 minutes earned and not the 3 ½ hours used).

There are clearly a large number of pay periods where Ms. Rusden did not earn compensatory time. While the Agency deems her claims not viable for these pay periods for that reason, my ruling on this "outside the scope" issue causes such pay periods not to be *per se* not payable with overtime. In light of this, I therefore direct that a hearing be conducted for the purpose of determining whether bases exist such that the proposed Agency remedy should not be granted.

Lorna Simpson

Ms. Simpson worked as an Investigator in the Phoenix District Office during the entire claims period. She began working in a covered position on October 28, 2007 (pay period 200724-GS 9). She worked a 5/4/9 compressed schedule. She claims 31 hours over 12 pay periods. The Agency, noting that, in the Phoenix District Office, all overtime worked was recorded in FPPS, states that, based on compensatory time earned and used and recorded in FPPS records, Ms. Simpson is entitled to 7.5 hours of pay, or $172.62, plus liquidated damages, totaling $345.24. The Agency objects to her

remaining claims on grounds that they were not suffered or permitted, that they are outside the scope, that she did not work the extra hours claimed, and that she received compensatory time for all the overtime hours she claimed she worked.

Along with her Claim Form, Ms. Simpson submitted Cost Accounting sheets, reports of compensatory time and the following pay period details:

> During the pay period of Feb 17, 2008 and March 1, 2008, I worked extra hours to prepare for an interview for an A1 case (Barrera) and subsequently worked extra hours to organize information obtained from the onsite interviews.
>
> During the pay period of November 11, 2007 to November 24, 2007, I worked extra hours after to organize the information obtained during an onsite for an A1 case (Mathis) which was conducted out of town and from which I arrived late in the afternoon.
>
> During the pay period of September 14, 2008 to September 27, 2008, I was appointed to carry out a Spanish intake interview, despite me not being scheduled to conduct interviews that day, because there were no personnel to take the interview on that day. I had to work extra time to complete my work duties planned for that day.
>
> During the period of October 12, 2008 to October 25, 2008, I assisted management by agreeing to interview a difficult charging party who showed up at the office during a non-intake day. I worked extra hours to complete the assigned tasks for the day.
>
> During the pay period of November 9, 2008 to November 22, 2008, I worked extra hours to complete the conciliation of a complex EPA case (Mathis). I received commendations from management on the hard work put in to and successful outcome of this negotiation.
>
> During the pay period of January 18, 2009 to January 31, 2009, I worked extra time to communicate with a hearing impaired CP (Wellman) during the negotiation of the conciliation of her case and to complete the pertinent paperwork for the conciliation of her case.
>
> During the pay period of February 1, 2009 to February 14, 2009, I worked extra hours to complete my assigned tasks for the period in addition to the handling of a group of charging parties (Mekong Supermarket cases) who filed complaints during that time.
>
> During the pay period of March 15, 2009 to March 28, 2009, I worked extra hours to prepare for an upcoming onsite interview on an A1 case (Borders). Several interviews were to be conducted during the onsite.
>
> During the pay period of March 29, 2009 to April 11, 2009, I conducted an on-

> site on a case that was categorized as A1 (Borders). I carried out several interviews and I had to work some extra hours to organize the information obtained from the interviews.

The Union contends that the Agency has submitted no specific evidence that the extra hours were not worked. In addition, it asserts that, while the Agency seeks an offset alleging that there were occasions where Ms. Simpson earned and used compensatory time in the same pay period, FPPS records do not support this assertion, and that, even had it occurred, the Agency would not get a setoff but, rather, would receive credit for compensatory time used.

As I reviewed Ms. Simpson's Claim Form, there appears to be some inconsistency between some hours she noted and those reflected in her FPPS records. For example, there are no fewer than 10 of the 12 claimed pay periods where Ms. Simpson claims to have used compensatory time, where FPPS records reflect none used. However, there is a much greater consistency in the two sources with respect to compensatory time received, where Ms. Simpson claims not to have received compensatory time in 9 of her 12 claimed pay periods, and FPPS records have that figure at 10.

In addition, the pay period details listed above raise a question concerning Ms. Simpson's extra hours claimed in pay period 200805 (February 17 to March 1, 2008). This is not a pay period included in her claim and I therefore do not consider it.

It is on the basis of FPPS records not reflecting that Ms. Simpson received compensatory time instead of overtime pay for many of the extra hours she claims that the Agency deems those hours outside the scope. In light of my ruling on that issue, I direct that a hearing be conducted for the purpose of determining whether bases exist such that the proposed Agency remedy should not be directed.

Rosanne Wood

Ms. Wood worked as a Paralegal Specialist in the Phoenix District Office from before the claims period until pay period 200804, when she was promoted to a Lead Paralegal position, and was thus no longer covered in this process. During the relevant claims period, she worked a 5/4/9 compressed schedule. She claims 99.5 hours over 10 pay periods. The Agency, which asserts that all overtime hours in the Phoenix District Office were recorded in FPPS, generally agrees that Ms. Wood worked the hours she claims in overtime and that her supervisor was so aware. It acknowledges that Ms. Wood is entitled to payment for 34.75 hours, or $905.66, plus liquidated damages, totaling $1,811.31, the amount owed minus applicable offsets for receiving time off for time worked.

Noting that there is some discrepancy between the amount of compensatory time used in the same pay period between what Ms. Wood claims and what FPPS records reflect, the Agency has relied on FPPS records, which show that Ms. Wood sometimes used less compensatory time in the same period that she claims and sometimes that she used more. It maintains that Ms. Woods worked overtime in a given pay period only to the extent the compensatory time received exceeds that used in the same pay period.

The Union contends that, while the Agency has no objection to Ms. Woods's claim, it seeks a setoff for compensatory time received, a position the Union argues has no legal support.

If the Union is correct in its characterization of the Agency's position—namely, that it merits credit for compensatory time received (and presumably not used)—I would expect the Agency to advise me so that this matter may be clarified. I believe the 2009

Opinion, and the FLRA appeal decision, speak clearly to this matter. In the event the parties are unable to agree on the amount of the monetary remedy, the matter will be returned to me for decision.

PITTSBURGH

The Union contends, on behalf of all claimants in the Pittsburgh Field Office, that, consistent with hearing testimony, the Director maintained an unofficial record of extra work hours, which could be carried from year to year by employees. All employees, the Union notes, were subjected to the same system and supervisors are aware of and approve extra work hours. The Union maintains that claimants Marjorie Gregory, Patrick Malley, Gregory Nanney, Paul Southworth and John Wozniak worked extra hours under the approved practice in the Pittsburgh Field Office, and asserts that the claimants are entitled to payment for the extra hours on their Claim Forms, less any compensatory time used, and an equal amount of liquidated damages. Accordingly, as the Union states, the Agency's claims for the Pittsburgh claimants are moot, as there is no dispute the hours were worked with the approval of management. As noted below, and as the Union agrees, Joel Pretz filed no claim.

The above is incorporated by reference in my discussion of all the Pittsburgh claimants.

Marjorie Gregory

Ms. Gregory worked as an Investigator in the Pittsburgh Field Office from before the claims period until December 31, 2007, working a 4/10 compressed schedule. She appears to claim 60 hours over 7 pay periods. An additional 20 hours initially claimed in

pay period 200524 was crossed out and initialed by Ms. Gregory, and the original total of 8 claimed pay periods was likewise crossed out and initialed by Ms. Gregory, who replaced the "8" with a handwritten "7."

The Agency agrees to pay Ms Gregory for 15 hours or $542.40, plus liquidated damages, totaling $1,084.80. It objects to the rest of Ms. Gregory's claims because, as the Agency asserts, she requested that a compensatory time schedule be set up so that she could have enough paid leave to cover an upcoming absence due to physical reasons.

Ms. Gregory submitted a note to her supervisor, Ronald Dean, dated April 24, 2007, requesting to work for compensatory time relating to a medical issue. I set forth the greater portion of this note, as this will make it easier to track the compensatory time hours she requested and to compare it with her Claim Form. The note states, in relevant part:

> The following is the schedule I would like to work for comp time, if this is okay with you, which will add up to a total of 30 hours. As you are aware, I already have 2 hours, from last week, thus far, so I will only need 28 more hours. I do appreciate your help in getting the comp time set up since I don't have a lot of sick leave and I will need to be off work for several weeks in June.
>
> Week of 04/23/07-04/27/07-5 hours comp-2 hours for 1 day and 3 hours for 3 days.
>
> Week of 04/30/07-05/04/07-5 hours comp-2 hours for 1 day [and] 3 hours for 3 days.
>
> Week of 05/05/07-05/11/07-4 hours comp-1 hour per day for 4 days.
>
> Week of 05/14/07-05/18/07-5 hours comp-2 hours for 1 day and 3 hours for 3 days.
>
> Week of 05/21/0705/25/07-5 hours comp-2 hours for 1 day and 3 hours for 3 days.
>
> Week of 05/28/07-06/01/07-4 hours comp-2 hours per day for 2 days.
>
> Based on the above, I will be on leave using comp time for June 7, 8, and 12, 2007 – 3 days – 30 hours…

The Agency, in making the above offer of payment to Ms. Gregory, notes that it does so "even though we question the sufficiency of some of her evidence." Its questions

appear to center on certain pay periods where it believes Ms. Gregory's documentation is lacking. While I agree that her support for each claim is not equally strong, I find that her numbers tie together in a manner that is far from arbitrary or random, and, in fact, explain more that her actual Claim Form, which does not reflect any compensatory time earned or used in any pay period.

As examples, the Agency questions Ms. Gregory's claim of 10 hours for pay period 200515. The Agency deems Ms. Gregory's record here not to be on an approved form, and not approved by her supervisor. That may be so, but, even if taken as a personal log, it reflects compensatory time of 10 hours earned each on July 8, 2005 and September 6, 2005, and 10 hours used on each of November 1 and 2, 2005.

With respect to pay periods 200516 and 200520, the Agency finds these 10 hour claims in each of these pay periods to be properly accounted for. In pay period 200516, Ms. Gregory requested and was approved for 10 hours of compensatory time for a July 18, 2005 Onsite. In pay period 200520, Ms. Gregory requested and was approved for 10 hours of compensatory time for her completing case closures on September 6, 2005.

With respect to pay period 200710, where Ms. Gregory claims 7 hours, the Agency questions the Cost Accounting Bi-weekly Time Sheet for the pay period ending April 28, 2007. It is signed April 26, 2007 by Ms. Gregory, with preprinted hours for both of her 4/10 weeks, the extra hours totaling 7, which is what her handwritten entry reflected on the top of the form. So far as I can see, when referencing Ms. Gregory's April 24, 2007 letter to Mr. Dean, these 7 hours represent the 2 hours from the prior week plus the 5 hours she asked to work for compensatory time during the week of April 23 to 27, 2007.

With respect to pay period 200711, the Agency also objects to Ms. Gregory's lack of sufficient documentation for the 9 hours she claims. Again referencing her letter to Mr. Dean, these 9 hours correspond to Ms. Gregory's request to work for 5 hours of compensatory time during the week of April 30 to May 4, and 4 hours during the week of May 7 to 11, totaling 9 hours.

With respect to pay period 200712, the Agency objects to Ms. Gregory's lack of sufficient documentation for the 10 hours she claims. In her letter to Mr. Dean, these 10 hours correspond to Ms. Gregory's request to work for 5 hours of compensatory time during the week of May 14 to 18, and 5 hours during the week of May 21 to 25, totaling 10 hours.

Finally, with respect to pay period 200713, the Agency objects to Ms. Gregory's lack of sufficient documentation for the 4 hours she claims. In her letter to Mr. Dean, these 4 hours correspond to Ms. Gregory's request to work for 4 hours of compensatory time during the week of May 28 to June 1.

With respect to how these 30 hours were to be used, Ms. Gregory stated in her letter to Mr. Dean that she planned on using them in 10-hour increments on June 7, 8 and 12, 2007. The Agency asserts that there is no evidence that Ms. Gregory actually obtained approval from Mr. Dean for this, or that she actually worked the hours she requested.

In light of the above, I will assume, unless being advised otherwise, that the Agency's offer of payment, despite questioning the sufficiency of some of Ms. Gregory's evidence, refers to the above that I have laid out. If so, there appears to be no need to revisit this. It does appear from the record that Ms. Gregory had made an affirmative

choice in 2007 to seek compensatory time in order to manage her low sick leave balance. With respect to her claims for pay periods 200515, 200516 and 200520, it appears that the Agency only challenges the sufficiency of her documentation for pay period 200515, and accepts the adequacy of her documentation for pay periods 200516 and 200520.

I do not believe a hearing is necessary. If the parties' positions are accurately set forth above, I direct that they come to a final agreement. Failing that, I will direct the appropriate remedy.

Patrick Malley

Mr. Malley worked as an Investigator in the Pittsburgh Field Office throughout the claims period. He worked a gliding flexible schedule. He claims 208.5 hour over 65 pay periods. The Agency objects to his claims on grounds that he worked a flexible schedule and that he submitted insufficient evidence that he worked hours in excess of 80 hours per pay period. It argues further that, since Mr. Malley indicated on his Claim Form that he used compensatory time in many of the same pay periods in which he earned it, his claim is offset by the amount of compensatory time used in the same pay period. The Agency makes further arguments for the record that I do not set forth here.

Mr. Malley has submitted no documentation in support of his claim.

I must deny Mr. Malley's claim by virtue of his working a flexible schedule.

Gregory Nanney

Mr. Nanney worked as an Investigator in the Pittsburgh Field Office throughout the claims period. He claims 33.5 hours over 3 pay periods, in one of which Mr. Nanney claimed he worked a gliding flexible schedule, and in the other two a 4/10 compressed schedule. The Agency objects to Mr. Nanney's claims on grounds that he worked a

gliding schedule in pay period 200507, and that he did not work more than 80 hours during the other pay periods in which he makes claims because he earned and used compensatory time in the same pay periods.

Apart from Mr. Nanney's flexible schedule in pay period 200507, the Agency specifically objects to Mr. Nanney's claims for travel time and working through breaks, and that he earned and used the same amount of compensatory time in pay periods 200514 and 200515.

In pay period 200507, Mr. Nanney asserts he worked a gliding flexible schedule and, thus, his claims for travel and lunch for that pay period, for an Outreach in Grant City, WV, must be denied.

In pay period 200514, he claims 10 hours for each of two days of training, one on June 16 and one on June 24, 2005, at Kane Regional Hospital. His claims include travel to and from work and presentation and preparation at the Kane site. He requested and received 20 hours of compensatory time and, as he reflects in his Claim Form, proceeded to use 20 hours in the same pay period.

In pay period 200515, he claims 10 hours once again for training on June 27, 2005 at Kane Regional Hospital. His claims again include travel to and from work and presentation and preparation at the Kane site. He requested and received 10 hours of compensatory time and, as he reflects in his Claim Form, proceeded to use 10 hours in the same pay period.

This would appear to illustrate the unofficial manner of tracking extra hours worked in the Pittsburgh Field Office, since FPPS records show no compensatory time either received or used by Mr. Nanney in either pay period 200514 or 200515. There is

no reason, therefore, not to credit the information reflected on Mr. Nanney's Claim Form.

In both pay periods 200514 and 200515, Mr. Nanney's claims for travel are, according to Federal travel regulations, not compensable with overtime.

Accordingly, for the above reasons, I must deny Mr. Nanney's claims.

Joel Pretz

Mr. Pretz worked as a Mediator in the Pittsburgh Field Office from before the claims period until December 1, 2011. Mr. Pretz did not submit a completed Claim Form. The parties agree that he has not made a valid claim.

Paul Southworth

Mr. Southworth worked as an Investigator in the Pittsburgh Field Office throughout the claims period. His Claim Form reflects that he worked a gliding flexible schedule. He claims 83 hour over 29 pay periods. The Agency objects to his claims on grounds that he worked a gliding schedule for entire claims period, that, having submitted no supporting documents with his Claim Form, he provides insufficient evidence to create a just and reasonable inference that the hours he claims reflect actual time worked, that, in some pay periods, he earned and used compensatory time in the same pay period, and that some of his claims are outside the scope.

By reason of his working a gliding flexible schedule, I must deny Mr. Southworth's claims.

John Wozniak

Mr. Wozniak worked as an Investigator in the Pittsburgh Field Office throughout the claims period. His Claim Form reflects that he worked a gliding flexible schedule.

He claims 18.5 hour over 6 pay periods. The Agency objects to Mr. Wozniak's claims on the grounds that he worked a gliding schedule for the entire claims period, and that, by including no supporting documentation, he provides insufficient evidence to crease a just and reasonable inference that the hours he claims reflect actual time worked, and that his claims are outside the scope. The Agency states additional objections for the record, which I do not include here.

Because Mr. Wozniak worked a flexible schedule, his claims must be denied.

RALEIGH

The Union asserts generally, on behalf of all claimants from the Raleigh Area Office, that the hearing testimony established that an unofficial record was maintained of extra work hours and that supervisors and managers were aware of the employees' working extra hours and approved the extra hours. It states that all the Raleigh claimants – Johnnie Barrett, Evelyn Lewis, Patricia Ann Miller, Jorge Morales-Mendez, Yamira Moreno-Cruz and Ola Wiggins – were subject to the office practices in the Raleigh Area Office, and that supervisors and managers were aware of and approved the claimants' extra work hours. It asserts that Ms. Barrett did not receive requested travel records, and that Ms. Wiggins relied upon computer screen shot document lists with the time on each file and a written statement stating she worked through lunch and breaks. The Union maintains that the Agency has submitted no evidence that the extra hours claimed were not worked, and that it wrongly seeks an offset for the unrecorded time maintained in the illegal off-the-books system or illegal credit time for employees on basic and compressed schedules. In this respect, it notes that, while the Agency is entitled to a credit for compensatory time used, it may not claim such credit for illegal time that was not

accurately maintained in official Agency records. Accordingly, it asserts that Ms. Barrett, Ms. Lewis, Ms. Miller, Mr. Morales-Mendez, Ms. Moreno-Cruz and Ms. Wiggins are entitled to be paid for the extra hours they worked, minus compensatory time, and an equal amount of liquidated damages.

The above is incorporated by reference in my discussion of all the Raleigh claimants.

Also set forth here and incorporated by reference in my discussion of all the Raleigh claimants are summaries of two Agency Declarations that are part of, and common to, each claimant's file. They are the Declarations of Brigitte Walker and Richard Walz. Additional Declarations, those of Thomas Colclough, former Enforcement Supervisor and Area Director in the Raleigh Area Office, were submitted separately for each of the Raleigh Area Office claimants and, at least in part, make discrete references to each claimant. As such, Mr. Colclough's Declarations will be offered with the appropriate claimants.

Brigitte Walker, Secretary to the Raleigh Area Office Director, declared as follows: It has been the practice of the Raleigh Area Office management team to require all staff to get approval before working compensatory time. Such requests are to be made by completing an internal form and giving it to management for approval and signature. The form is then given to Ms. Walker to document or input, and she makes the internal form a part of the employee's personnel file. She is not aware of compensatory time being worked if she was not given the internal form.

Richard Walz was Director of the Raleigh Area Office until he retired on June 3, 1996. He declared as follows: As far as he recalls, there were periods of time when there

was no compensatory time allowed, there was scheduled compensatory time, and almost none filed. The reason was that there were more than 20 District Directors and Acting Directors in the Charlotte District Office during his tenure, each of whom had his or her own interpretation of the FLSA and implemented it accordingly. The last change he recalled was the creation of the form called the "Credit Hours Earned/Used" form that the employee would fill out and, subject to time revisions, was approved by the Supervisor or other management employee. The time was to be used in the same pay period or, if not possible, the next. He and other supervisors specifically told employees to use the time promptly by the end of the next pay period. The employee would then sign the same sheet, designating that they had used the time and it would be approved by the Supervisor or other management employee. Time was not spent "bird-dogging" the employee to see that they did this; the pressure was to get out production in the office. He stated he was "amazed" that everyone did not follow this rule, and that employees now have submitted forms for consideration that were not approved in advance by a supervisor or manager.

Johnnie Barrett

Ms. Barrett worked as an Investigator in the Raleigh Area Office throughout the claims period on a 5/4/9 compressed schedule. She claims 1,238.5 hours over 160 pay periods. The Agency objects to most of her claims on grounds that the Agency is entitled to an offset for claimed overtime work where Ms. Barrett received and used compensatory time off, that she sometimes earned and used such compensatory time during the same pay period, that she did not work most of the claimed extra hours, that management could not have known or prevented her from working most of the claimed extra hours, that she is not entitled to any compensation for noncompensable travel time,

that she provided insufficient evidence to show she worked most of the claimed extra hours, and that her claims are outside the scope.

The Agency acknowledges that Ms. Barrett may be entitled to compensation for an additional .5 hours for each of 55 extra hours worked and approved as compensatory time in 10 pay periods, where she did not use the earned compensatory time during the same pay period, even though some of those hours arguably may have been noncompensable. The Agency thus concludes that Ms. Barrett may be entitled to $1,050.73, plus liquidated damages, totaling $2,101.47.

Mr. Colclough's Declaration, as it references Ms. Barrett, is summarized here. He declared: Upon his promotion to Enforcement Supervisor in 1999, he was the first line supervisor of all the Investigators in the Raleigh Area Office, including Ms. Barrett. He was Ms. Barrett's immediate supervisor from February 1999 to January 2005, when Mr. Colclough was assigned as Acting Director of the Greensboro Local Office; from October 1, 2006 to August 2009, when Mr. Colclough was Raleigh Area Office Director; and from February 2013 to the present. At all these times, Ms. Barrett worked a 5/4/9 compressed schedule, from 6:00 A.M. to 3:30 P.M., with the option to "slide and glide" 30 minutes on each side of her arrival and departure times. Ms. Barrett's flex day off was every other Monday. He has always instructed Ms. Barrett and all other staff during staff meetings and via e-mail not to work compensatory time without first obtaining approval, and Ms. Barrett was fully aware of the procedure for requesting compensatory time. Employees would request compensatory time using an internal form and he would sign the form. He believes his predecessor, Richard Walz, retired Raleigh Area Office Director, developed this process. The form would be given to Brigitte Walker, secretary,

who would record the compensatory time. He recalls that, when he returned in October 2006 to the Raleigh Area Office as Director, he directed that all approved requests for compensatory time be entered into the Agency's payroll accounting system, which Ms. Walker was responsible for doing. When Ms. Barrett requested compensatory time, he reviewed and approved her request and signed the appropriate documents. If she asserted that she worked compensatory time and did not have a document signed by him, he was not aware of her working those hours. Insofar as Ms. Barrett asserted that she completed a large volume of cases while on leave and attending to her sick mother, he was not aware of her working on cases at this time and he did not approve any time worked. Ms. Barrett was aware of the procedure for requesting compensatory time, and used it to request compensatory time while performing Outreach events in Siler City, NC and while performing an Onsite at Fort Bragg, NC.

The Agency asserts that, contrary to Ms. Barrett's claims, records maintained by the Raleigh Area Office show that she worked 74.5 extra hours for which she received compensatory time off used during and after the relevant period, and asserts this as an overtime offset. It argues that, given Ms. Barrett's claim that she worked 1,238.5 hours, it so exceeds the 74.5 hours she reported in writing and for which she obtained approval of compensatory time from her supervisors that it is unlikely that such additional overtime was actually worked.

Ms. Barrett submitted numerous documents in support of her claim. Among these are resolutions reports, work schedule requests, credit hour documentation, Government vehicle authorizations for Outreach activities, Earnings and Leave statements, partial lists of cases worked on (as Ms. Barrett indicates, "during overtime"), Travel Vouchers (with

the entry "Compensatory time to be authorized"), Cost Accounting Bi-Weekly time sheets, and a table of dates when Ms. Barrett indicated overtime work was performed.

Among these documents is a November 30, 2011 e-mail to Ms. Barrett from Richard Walz, former Raleigh Area Office Director, and titled "Hours Worked Beyond the Normal Work Day," in which he states, in part:

> I have been asked by Ms. Johnnie Barrett to supply a statement regarding the fact [that] she worked hours beyond the normal work day. It is my recognition [recollection?] that Ms. Barrett on many occasions worked beyond the normal work day. She completed Intake interviews, performed outreach functions, worked Saturdays, conducted onsite interviews and the associated travel involved that caused her to be in the field to perform her duties as a Senior Investigator. I believe that her Supervisor, Thomas Colclough, always granted her "comp time" in exchange for her time. I am sure that with the detailed record keeping her Supervisor maintained can establish just how many times and how many hours she performed this function. [The document continues, praising Ms. Barrett's dedication and high production record.]

Also included is a memorandum, dated May 24, 2012, from Yamira Moreno-Cruz (a fellow claimant of Ms. Barrett's from the Raleigh Area Office), which speaks, anecdotally, to Ms. Barrett's frequently working extra hours, including working through lunch.

Ms. Barrett attaches a statement with her Claim Form, which states, in pertinent part:

> I had kept a record on Amirus Attorney, a computer program maintained by the EEOC. Unfortunately, during my absence, the IT person performed an upgrade on my system, and that entire program was wiped from my system. Therefore, I do not have the charge numbers that I worked on during this period.
>
> I did ask Ms. Doris Miller, IT for the closures during that period and the Outreaches maintained on the yearly records and was told that they no longer existed.
>
> I also contacted EEOC representatives for the history on my system and/or under my log in and the telephone records for this period and again was told that the records were not kept.
>
> I have attached an email from the former Director, Richard Walz [set forth above, in part]. He is aware, along with my supervisor, at the time (now

> Director) Thomas Colclough, that I worked overtime everyday. I also worked through lunch, but I am not going to claim that hour. I also worked many weekends with the former Director, Mr. Walz, working on cases.
>
> It can also be confirmed by my co-workers that I worked extra hours because they were all aware that I would be the first one in the office and a lot of times the last one leaving.
>
> As the Director noted in his statement, the number of cases that I processed during this period speaks for itself. I am not going to claim the time that I worked from home, at night when, after working [long] hours in the office, I took work home to complete.
>
> We were also required to perform, at least two Outreaches a month and the Government had no money for over night travel. The Director required that the overtime [probably meaning "comp time"] be used by the next pay period. I turned these records in, and unfortunately, only one was maintained, and again, the Commission was unable to provide me with a copy of the travel authorizations or travel request, car mileage records, for this period; therefore I do not have these records and cannot claim this time. I claim only the time used daily to conduct Commission business.

While I am aware that Mr. Colclough testified at the hearings in Atlanta, GA, I find it will be necessary to produce Mr. Colclough to give testimony and be subject to cross-examination on these matters generally (including, but not necessarily limited to, issues of office practice, forms used and supervisory knowledge), and as they relate specifically to Ms. Barrett. In addition, pay periods in which Ms. Barrett did not receive compensatory time, and which, by my ruling, are not "outside the scope," may be examined for the purpose of determining whether bases exist such that the proposed Agency remedy should not be directed.

Evelyn Lewis

Ms. Lewis worked as an Investigator in the Raleigh Area Office throughout the claims period. She worked a 5/4/9 compressed schedule. She claims 94.5 hours over 31 pay periods. The Agency objects to many of her claims on grounds that it is entitled to an offset for claimed overtime work when she received and used compensatory time off,

that she sometimes earned and used compensatory time in the same pay period, that she is not entitled to compensation for work performed during breaks, that she did not work some of the claimed extra hours, that management could not have known or prevented her from working some of the claimed extra hours, that she is not entitled to any compensation for noncompensable travel time, that she provided insufficient evidence to show she worked some of the claimed extra hours, and that her claims are outside the scope.

The Agency acknowledges that Ms. Lewis is entitled to compensation for an additional .5 hours for each of 52.5 extra hours worked and approved as compensatory time in 21 pay periods, where she did not use the earned compensatory time during the same pay period and where the compensatory time did not involve work performed during paid breaks or for noncompensable travel time. The Agency concludes that Ms. Lewis is entitled to payment for 26.25 hours, or $825.51, plus liquidated damages, totaling $1,651.02.

The Agency notes that Ms. Lewis, while claiming that she worked 94.5 hours over 31 pay periods, admits that she used 83.5 of those hours as compensatory time during the relevant time period. It asserts that Raleigh Area Office records show that Ms. Lewis actually worked 81.25 extra hours, for all of which she received and used compensatory time. In addition, it contends that, due to Ms. Lewis' failure to complete and/or submit the "Credit Hours Earned/Used" forms as instructed, her Claim Form reports significantly fewer compensatory hours received than used. However, it point out that the last such form she submitted reflects a "0" balance, meaning that, as of May 22, 2006, she had earned and used the same number of compensatory time hours. Ms. Lewis,

it argues, did not explain why she failed to use the established system of reporting extra hours, and did not notify her supervisors that she was performing such work.

Mr. Colclough's Declaration, as it references Ms. Lewis, is summarized here. He declared: Upon his promotion to Enforcement Supervisor in 1999, he was the first line supervisor of all the Investigators in the Raleigh Area Office, including Ms. Lewis. He was Ms. Lewis's immediate supervisor from April 1999 to January 2005, when Mr. Colclough was assigned as Acting Director of the Greensboro Local Office; from October 1, 2006 to July 2009, when Mr. Colclough was Raleigh Area Office Director; and from February 2013 to the present. At all these times, Ms. Lewis worked a 5/4/9 compressed schedule, from 7:00 A.M. to 4:30 P.M., with the option to "slide and glide" 30 minutes on each side of her arrival and departure times. Ms. Lewis's flex day off was every other Friday. He has always instructed Ms. Lewis and all other staff during staff meetings and via e-mail not to work compensatory time without first obtaining approval, and Ms. Lewis was fully aware of the procedure for requesting compensatory time. Employees would request compensatory time using an internal form and he would sign the form. He believes his predecessor, Richard Walz, retired Raleigh Area Office Director, developed this process. The form would be given to Brigitte Walker, secretary, who would record the compensatory time. He recalls that, when he returned in October 2006 to the Raleigh Area Office as Director, he directed that all approved requests for compensatory time be entered into the Agency's payroll accounting system, which Ms. Walker was responsible for doing. When Ms. Lewis requested compensatory time, he reviewed and approved her request and signed the appropriate documents. If she asserted that she worked compensatory time and did not have a document signed by him, he was

not aware of her working those hours.

Among the documents Ms. Lewis had requested in order to prepare her claim in this process were Cost Accounting Biweekly Time Sheets, SF-71 Leave Request Forms and "Agency compensatory records, including request forms and emails submitted" to supervision, all for the entire period of Ms. Lewis's claim. She was advised that 2003 records had been destroyed as being beyond the records retention period. The "Credit Hours" form, which was described as having been unique to the Raleigh Area Office, was used here as well. For numerous pay periods, Ms. Lewis submitted statements referencing activities such as Outreach, interviewing witnesses and Charging Parties and speaking with them on the phone, completing cause cases, completing and processing Intake, and working on weekends.

In all of these, Ms. Lewis wrote: "I believe that my supervisor was aware that I worked these additional hours." As the Agency argues, this alone is not probative on the issue of supervisory knowledge. Nor, however, is Mr. Colclough's Declaration sufficient by itself on this issue.

For this reason, and others, while I am aware that Mr. Colclough testified at the hearings in Atlanta, GA, I find it will be necessary to produce Mr. Colclough to give testimony and be subject to cross-examination on these matters generally (including, but not necessarily limited to, issues of office practice, forms used and supervisory knowledge), and as they relate specifically to Ms. Lewis.

In addition, pay periods in which Ms. Lewis did not receive compensatory time, and which, by my ruling, are not "outside the scope," may be examined for the purpose of determining whether bases exist such that the proposed Agency remedy should not be

directed.

Patricia Ann Miller

Ms. Miller worked as an Investigator in the Raleigh Area Office throughout the claims period. She worked a 5/4/9 compressed schedule. She claims 165 hour over 55 pay periods. The Agency objects to many of her claims on grounds that it is entitled to an offset for claimed overtime work where she received and used compensatory time off, that she sometimes earned and used such compensatory time during the same pay period, that she did not work many of the claimed extra hours, that management could not have known or prevented her from working many of the claimed extra hours, that she is not entitled to any compensation for noncompensable travel time, that she provided insufficient evidence to show she worked many of the claimed extra hours, that her claims are outside the scope, and other grounds that it does not address based on what it deems the lack of information and explanation provided.

The Agency acknowledges that Ms. Miller may be entitled to compensation for an additional .5 hours for each of 64 extra hours worked and approved as compensatory time in 9 pay periods, where she did not use the earned compensatory time during the same pay period, and even though some of that time evidently involved noncompensable travel time. The Agency concludes that Ms. Miller may be entitled to payment of 32 hours, or $1,004.89, plus liquidated damages, totaling $2.009.78.

Ms. Miller's claim documents include Credit Hour forms, fiscal year review memoranda from Ms. Miller to supervision, Government vehicle authorization forms, performance appraisals, leave forms, and calendar records of Intake weeks.

The Agency contends that there is no dispute that, from 2007 through 2009, the

Raleigh Area Office had a system in place to record extra hours of work and for supervisors to grant compensatory time for such work. It contends further that there is also no dispute that Ms. Miller was fully aware of the system in place to record such extra hours and for supervisors to grant compensatory time for such work, noting that, from 2003 through 2009, she repeatedly used that system to record her extra hours and to receive compensatory time for such work. The Agency also asserts that, contrary to the hours claimed by Ms. Miller on her Claim Form, she actually performed 85 extra hours of work in 14 pay periods, and attributes this in the main to what it deems Ms. Miller's "wholly undocumented claims" for approximately 80 hours of overtime she asserted she worked in Intake from 2007 to 2009. It argues that Ms. Miller provided no explanation how such Intake assignments consistently required overtime as she claimed over such a long period of time, and that such time was not communicated to supervisors and did not result in the granting of compensatory time. It asserts that Ms. Miller's calendar references to "Intake" are not probative.

Mr. Colclough's Declaration, as it references Ms. Miller, is summarized here. He declared: Upon his promotion to Enforcement Supervisor in 1999, he was the first line supervisor of all the Investigators in the Raleigh Area Office, including Ms. Miller. He was Ms. Miller's immediate supervisor from April 1999 to January 2005, when Mr. Colclough was assigned as Acting Director of the Greensboro Local Office; from October 1, 2006 to July 2009, when Mr. Colclough was Raleigh Area Office Director; and from February 2013 to the present. At all these times, Ms. Miller worked a 5/4/9 compressed schedule, from 7:00 A.M. to 4:30 P.M., with the option to "slide and glide" 30 minutes on each side of her arrival and departure times. Ms. Miller's flex day off was

every other Monday. He has always instructed Ms. Miller and all other staff during staff meetings and via e-mail not to work compensatory time without first obtaining approval, and Ms. Miller was fully aware of the procedure for requesting compensatory time. Employees would request compensatory time using an internal form and he would sign the form. He believes his predecessor, Richard Walz, retired Raleigh Area Office Director, developed this process. The form would be given to Brigitte Walker, secretary, who would record the compensatory time. He recalls that, when he returned in October 2006 to the Raleigh Area Office as Director, he directed that all approved requests for compensatory time be entered into the Agency's payroll accounting system, which Ms. Walker was responsible for doing. When Ms. Miller requested compensatory time, he reviewed and approved her request and signed the appropriate documents. If she asserted that she worked compensatory time and did not have a document signed by him, she was not approved and he was not aware of her working those hours. He was aware that Ms. Miller did participate in Outreach events that occurred on weekend days, and it was his understanding that, after the event, she would request compensatory time using the appropriate forms and her request was approved.

Upon review of this record in Ms. Miller's case, I find that there are numerous details that I believe are not properly answered or that raise further questions. One is the actual methodology used by the Raleigh Area Office prior to 2007 for determining and recording extra hours worked, during the time when the "Credit Hours Earned/Used" forms were still in use. Inasmuch as it is clear that FPPS did not yet reflect these data, this must be adequately explained. Even in 2007 and thereafter, when the above form was replaced with the "Request, Authorization and Report of Overtime" form, this "credit

hour" nomenclature (never correct in the first place with compressed schedule employees) still appeared. For example, two such forms for Ms. Miller, from October 2007 and August 2008, where she was requesting extra time for "onsite @ St. Augustine's College" and "TAPS Training," respectively, the word "Overtime" was crossed out (unknown if by Ms. Miller herself) and "Credit Hours" is written in.

In addition, from what I am able to observe, the first entry in Ms. Miller's FPPS records for "Comp Time Earned" does not appear until pay period 200721. Only one other follows, at pay period 200724, and the first, and only, for "Comp Time Used" is not until pay period 200823. For a system that was to have been revamped in 2007, this merits explanation.

For this reason, and others, while I am aware that Mr. Colclough testified at the hearings in Atlanta, GA, I find it will be necessary to produce Mr. Colclough to give testimony and be subject to cross-examination on these matters generally (including, but not necessarily limited to, issues of office practice, forms used and supervisory knowledge), and as they relate specifically to Ms. Miller.

In addition, pay periods in which Ms. Miller did not receive compensatory time, and which, by my ruling, are not "outside the scope," may be examined for the purpose of determining whether bases exist such that the proposed Agency remedy should not be directed.

Jorge Morales-Mendez

Mr. Morales-Mendez worked as an Investigator in the Raleigh Area Office throughout the claims period. He worked a 5/4/9 compressed schedule. He claims 986 hours over 160 pay periods. He was among the claimants granted a 60-day extension of

time to file. The Agency objects to most of his claims on grounds that it is entitled to an offset for claimed overtime work when he received and used compensatory time off, that he often earned and used compensatory time during the same pay period, that he in not entitled to any compensation for work performed during breaks, that he did not work many of the claimed extra hours, that management could not have known or prevented him from working the claimed extra hours, that he is not entitled to any compensation for noncompensable travel time, that he provided insufficient evidence to show that he actually worked the claimed extra hours, and that many of his claims are outside the scope.

The Agency acknowledges that Mr. Morales-Mendez may be entitled to compensation for an additional .5 hours for no more than 242 extra hours worked and approved as compensatory time in 29 pay periods, where he did not receive compensatory time and where he did not use earned compensatory time during the same pay period. This estimate, it notes, exaggerates the amount of compensable hours because a significant portion of these hours involved noncompensable travel time. In addition, it argues, it is possible that Mr. Morales-Mendez' claim is untimely, as the Agency cannot determine the date on which he filed his claim.

Mr. Morales-Mendez accompanied his Claim Form with numerous documents, among them self-generated compensatory time reports for the years 2003 to 2005 (maintained at the instruction of his then supervisor, Richard Walz), "Credit Hour" forms, leave request forms, overtime report forms, and a large number of Cost Accounting Bi-weekly Time Sheets.

In addition, Mr. Morales-Mendez included a statement with his Claim Form as

follows:

> I was the go-to person in the Charlotte District for statewide Outreach directed at the Hispanic/Latino community. As such, I travelled frequently to conduct outreach around the state of North Carolina during [and] after normal work hours and weekends.
>
> In addition to the aforementioned, from October 1999 through December 2006, on average, I worked through lunch and did not take my lunch hour on an average of two (2) days per week. It is common knowledge that some investigators work through their lunch or continue to work while eating their lunch.
>
> The sources from which I obtained the information to file this claim are the Agency (Payroll; Time and Attendance; IMS Records) and the Union.

Another statement noted that "during the period January 2007 through June 2009, on the average, I worked through lunch and did not take my lunch hour on an average of one (1) day per week. It is common knowledge that some investigators work through their lunch hour or continue to work while eating their lunch."

The Agency contends that Mr. Morales-Mendez received 1 ½ hours of compensatory time for Outreach events in 2003 and that, therefore, the Agency is entitled to an offset for all such compensatory hours used. In addition, it notes that Mr. Morales-Mendez' account of his compensatory time ignores his compensatory time use after early 2007, which the Agency likewise claims as an offset, and that Mr. Morales-Mendez failed to incorporate any FPPS data into his calculation of compensatory time usage, once FPPS began reflecting such data in early 2007. It also states it does not owe Mr. Morales-Mendez any compensation for 88 hours of compensation both earned and used during the same pay periods, or for a total of 490 hours for work he asserted he performed during lunch breaks. It believes that, in examining his Outreach activities, a significant portion of his compensatory time was for noncompensable travel time. It concluded that Mr. Morales-Mendez may be entitled, as noted above, to compensation

for an additional .5 hours for 242 extra hours worked and approved as compensatory time in 29 pay periods, or 121 hours, equaling $3,881.05, plus liquidated damages, totaling $7,762.10. It believes this total should be "heavily discounted" owing to what it views as a large amount of noncompensable travel time.

Mr. Colclough's Declaration, as it references Mr. Morales-Mendez, is summarized here. He declared: Upon his promotion to Enforcement Supervisor in 1999, he was the first line supervisor of all the Investigators in the Raleigh Area Office, including Mr. Morales-Mendez. He was Mr. Morales-Mendez' immediate supervisor from September 1999 to January 2005, when Mr. Colclough was assigned as Acting Director of the Greensboro Local Office; from October 1, 2006 to July 2009, when Mr. Colclough was Raleigh Area Office Director; and from February 2013 to the present. At all these times, Mr. Morales-Mendez worked a 5/4/9 compressed schedule, from 7:00 A.M. to 4:30 P.M., with the option to "slide and glide" 30 minutes on each side of his arrival and departure times. Mr. Morales-Mendez' flex day off was every other Friday. He has always instructed Mr. Morales-Mendez and all other staff during staff meetings and via e-mail not to work compensatory time without first obtaining approval, and Mr. Morales-Mendez was fully aware of the procedure for requesting compensatory time. Employees would request compensatory time using an internal form and he would sign the form. He believes his predecessor, Richard Walz, retired Raleigh Area Office Director, developed this process. The form would be given to Brigitte Walker, secretary, who would record the compensatory time. He recalls that, when he returned in October 2006 to the Raleigh Area Office as Director, he directed that all approved requests for compensatory time be entered into the Agency's payroll accounting system, which Ms.

Walker was responsible for doing. When Mr. Morales-Mendez requested compensatory time, he reviewed and approved his request and signed the appropriate documents. If he asserted that he worked compensatory time and did not have a document signed by him, he was not approved and he was not aware of his working those hours. He was not aware of Mr. Morales-Mendez' working through his lunch hours and, if he had done so, he was familiar with the procedures for requesting compensatory time. He was aware that Mr. Morales-Mendez did participate in Outreach events from September 1999 to September 2006, and it was his understanding that, after the event, he would request compensatory time using the appropriate forms and his request was approved.

On the matter first of the Agency's belief that Mr. Morales-Mendez' claim may be untimely since it could not determine the date of its filing, I note that this is an affirmative defense on which the Agency bears the initial burden. Such a suspicion alone will not carry that burden. I have no probative reason to conclude that this claim was untimely filed.

As noted in previous claims from the Raleigh Area Office, the method of maintaining compensatory time records, such as it was, before early 2007, did not rely on FPPS records. This would appear to be one reason why Mr. Morales-Mendez' first "Comp Time Earned" entry is not until pay period 200714, a pattern consistent with that found in the records of previous Raleigh Area Office claimants. The first "Comp Time Used" entry is found in pay period 200724, with frequent such entries thereafter to pay period 200910.

For this reason, and others, while I am aware that Mr. Colclough testified at the hearings in Atlanta, GA, I find it will be necessary to produce Mr. Colclough to give

testimony and be subject to cross-examination on these matters generally (including, but not necessarily limited to, issues of office practice, forms used and supervisory knowledge), and as they relate specifically to Mr. Morales-Mendez.

In addition, pay periods in which Mr. Morales-Mendez did not receive compensatory time, and which, by my ruling, are not "outside the scope," may be examined for the purpose of determining whether bases exist such that the proposed Agency remedy should not be directed.

Yamira Moreno-Cruz

Ms. Moreno-Cruz worked as an Investigator in the Greensboro Local and Raleigh Area Offices from October 2, 2005 through the end of the claims period. Her Claim Form reflects that she worked a basic schedule from pay periods 200522 through 200609, on a flexitour schedule from pay periods 200610 through 200705, and on a 5/4/9 compressed schedule from pay periods 200706 through 200910. She claims 1,278.75 hours over 91 pay periods. The Agency objects to most of her claims on grounds that she worked a flexitour schedule during part of the period at issue, that the Agency is entitled to an offset for claimed overtime work when she received and used compensatory time off, that she is not entitled to any compensation for work performed during breaks, that she did not work most of the claimed extra hours, that management could not have known or prevented her from working most of the claimed extra hours, that she is not entitled to any compensation for noncompensable travel time, that she provided insufficient evidence to show that she actually worked most of the claimed extra hours, and that most of her claims are outside the scope.

The Agency acknowledges that Ms. Moreno-Cruz may be entitled to

compensation for an additional .5 hours for each of 27 extra hours worked and approved as compensatory time in 4 pay periods when she was not working on a flexitour schedule, even though some of that time evidently involved noncompensable travel time. The Agency, therefore, concludes that Ms. Moreno-Cruz is entitled to payment of up to 13.5 hours, equaling $441.80, plus liquidated damages, totaling $883.60.

Ms. Moreno-Cruz's Claim Form is accompanied by numerous documents, reflecting successive pay periods, among which are computer print screens (highlighting principally after-hours entries), Cost Accounting Bi-weekly Time Sheets, e-mails with Mr. Colclough, leave and earnings statements, Credit Hour statements, overtime request forms, personal calendar entries, and travel authorizations. These submissions, identified by pay period, included statements detailing the nature of the documents, generally as follows:

> During the period of October 3, 2005 through October 25, 2006, I worked at the Greensboro Local Office in North Carolina.
>
> I worked 8 hours per day, with a 30-minute lunch break and two 15-minute paid breaks. Through April 15, 2006, I worked from a Regular schedule from 8:30am-5:00pm, which are the office hours. During this period, I worked through my lunch break, except when I attended training outside the office, and I work 8-10 minutes of each of my paid 15-minute breaks, which can be corroborated by the testimony of my coworkers and supervisor, and for which I am claiming 15 minutes of overtime per day worked.
>
> The print-screens attached to my claims show dates and times when I sent emails from the office, which show I was working at the time. Emails sent to my personal email address…at the end of the week shows my intention to work during the weekend. Emails sent from my personal email to the office shows that I worked additional hours those days.
>
> I have also included print-screens showing computer generated timestamps of documents created, modified and/or saved on various sources, to include the server, my local D drive, 3 USBs, my home computers, and my personal laptop, which show that I worked on these documents outside of my work schedule. I have highlighted the relevant information.

Some such statements, which also include leave and earnings statements and Cost

Accounting Bi-weekly Time Sheets, made reference to Intake activity as well. On these, she noted she would stay late 3 hours during that week to complete her work, and worked through her 30-minute lunch break as well as her two 15-minute paid breaks. Others referenced that "[m]y supervisor was aware that I worked these additional hours as he also worked from 7:00am to 3:30pm, and usually came by my office on his way out." In addition, she submitted a statement from fellow Raleigh claimant, Johnnie Barrett, attesting to Ms. Moreno-Cruz's arriving early and working during lunch periods.

The Agency contends that, owing to her flexitour schedule, Ms. Moreno-Cruz is not entitled to any overtime compensation for 271.25 claimed hours in 22 pay periods. It notes that she admits using 34 hours of compensatory time during the relevant period, and that FPPS records confirm both her earning and using that amount, as do her Earnings and Leave Statements, which she submitted with her claim. The Agency therefore claims these 34 hours earned and used as an overtime offset. It also estimates that, inasmuch as it deems Ms. Moreno-Cruz's lunch and breaks not compensable, this represents 514.5 hours of her claimed work hours over 89 pay periods. Contrary to the total hours she claims, the Agency states that its records show she actually worked 34 extra hours in 5 pay periods, for all of which she requested, received and used compensatory time, the discrepancy largely owing, in the Agency's view, to Ms. Moreno-Cruz's undocumented, unrecorded claims. It asserts that, despite the system in place for documenting and approving such hours, Ms. Moreno-Cruz never requested such approval.

Mr. Colclough's Declaration, as it references Ms. Moreno-Cruz, is summarized here. He declared: Upon his promotion to Enforcement Supervisor in 1999, he was the

first line supervisor of all the Investigators in the Raleigh Area Office, including Ms. Moreno-Cruz. He was Ms. Moreno-Cruz's immediate supervisor from October 2005 until August 2009, and from February 2013 to the present. He was not aware of her having worked past her scheduled hours when they were both in the Greensboro Local Office. He did recall one instance when an Investigator told him she had worked on a weekend day, whereupon he demanded she put in a request for compensatory time and not to work extra time again without prior approval. In October 2006, Ms. Moreno-Cruz transferred to the Raleigh Area Office. She never requested compensatory time, and, if she had, her request would have been reviewed and approved. Ms. Moreno-Cruz worked a 5/4/9 compressed schedule, and her flex day off was every other Monday. He has always instructed Ms. Moreno-Cruz and all other staff during staff meetings and via e-mail not to work compensatory time without first obtaining approval, and Ms. Moreno-Cruz was fully aware of the procedure for requesting compensatory time. Employees would request compensatory time using an internal form and he would sign the form. He believes his predecessor, Richard Walz, retired Raleigh Area Office Director, developed this process. The form would be given to Brigitte Walker, secretary, who would record the compensatory time. He recalls that, when he returned in October 2006 to the Raleigh Area Office as Director, he directed that all approved requests for compensatory time be entered into the Agency's payroll accounting system, which Ms. Walker was responsible for doing. Regarding Ms. Moreno-Cruz's assertion that she had worked through lunch, she was repeatedly counseled verbally not to do so and to take her lunch, even when doing an Onsite or involved in an interview. She objected, but, to his knowledge, she has complied. Ms. Moreno-Cruz, who is a smoker, takes periodic smoke breaks during the

day. Ms. Moreno-Cruz was told not to take any systemic charges home to work on, which she frequently did on her flex day. He and Michael Whitlow, Enforcement Manager in the Charlotte District Office, told her that, if she worked extra hours on a systemic charge, she should make that known and she would receive compensatory time. He does not believe Ms. Moreno-Cruz ever informed Mr. Whitlow that she worked extra hours on a systemic charge, and she was never asked to do so. There was, therefore, never a need for Ms. Moreno-Cruz to work extra hours. Additionally, she worked a reduced caseload when working on systemic charges.

I find first that Ms. Moreno-Cruz is not eligible for suffered or permitted overtime from pay periods 200610 through 200705, by virtue of her being on a flexible schedule.

Next, while I am aware that Mr. Colclough testified at the hearings in Atlanta, GA, I find it will be necessary to produce Mr. Colclough to give testimony and be subject to cross-examination on these matters generally (including, but not necessarily limited to, issues of office practice, forms used and supervisory knowledge), and as they relate specifically to Ms. Moreno-Cruz.

In addition, pay periods in which Ms. Moreno-Cruz did not receive compensatory time, and which, by my ruling, are not "outside the scope," may be examined for the purpose of determining whether bases exist such that the proposed Agency remedy should not be directed.

Ola Wiggins

Ms. Wiggins worked as an Investigator in the Raleigh Area Office throughout the claims period. She worked a 5/4/9 compressed schedule. She claims 341.25 hours over 83 pay periods. The Agency objects to all her claims on grounds that she is not entitled

to any compensation for work performed during breaks, that she did not work the claimed extra hours, that management could not have known or prevented her from working the claimed extra hours, that she is not entitled to any compensation for noncompensable travel time, that she provided insufficient evidence to show that she actually worked the claimed extra hours, and that her claims are outside the scope.

Ms. Wiggins accompanies her Claim Form with computer screen shots (some of which display after-hours entries). These submissions are explained by Ms. Wiggins in her statement (which references the entire claims period), as follows:

> I worked a 5/4/9 compressed work schedule from 8:30 a.m. to 6:00 p.m. with an hour lunch. I did not take a 15 minute break.
>
> Throughout these pay periods, I often worked through my one hour lunch break. Specifically, the months of January, February, July, August, September and December of each pay period year, I worked during my lunch. Other months, I walked during my lunch.
>
> The print-screen attached to my claims show the dates and time I spent working from my home while reviewing, analyzing and preparing documents. The print-screens will show computer generated timestamps verifying that I worked outside of my work schedule. Many nights I worked to midnight.
>
> Also, during this period, I left the office prior to my official work hour to conduct on-site visits, to travel to the district office for systemic discussion and training and to conduct witnesses interviews.

The Agency, in part, contends in this case that Ms. Wiggins' claims for working through her lunch and breaks are incredible in the extreme. It uses her statement above as a basis for analyzing, through Ms. Wiggins' FPPS data, the number of hours during which she worked through her 30-minute lunch breaks and two daily 15-minute breaks in the 83 pay periods covered by her Claim Form. While I will summarize the Agency's analysis, I do not mean to be understood as endorsing it; I set it forth as a statement of the Agency's position.

I note first that Ms. Wiggins' statement is not pay-period-specific at all. It is

further, on its face, a bit unclear, in that she reports her schedule as including "an hour lunch," whereas it is actually 30 minutes. She reports further that "I did not take a 15 minute break." In my view, it cannot be determined whether this means that she typically eliminated one of two such breaks in a day, or both of them. Moreover, insofar as it obliquely references travel, it contains no details that might arguably make for a viable travel overtime claim.

In any event, the Agency engaged in an analysis to determine roughly the number of hours working through these lunch and break periods represents in the context of Ms. Wiggins' entire claim. For what it may be worth, and on the premise, as the Agency asserts, that it is applying "the parameters explicitly set by Ms. Wiggins," it calculates that these extra hours alone account for 527.5 hours over the 83 pay periods of her claim. By comparing sheer numbers alone, putting aside methodology, the Agency is correct when it says that this dwarfs the total of 341.25 overtime hours she claims to have worked in total.

At least with respect to paperwork relating to extra time worked, apart from her computer screen shots, the record clearly reflects that there was none. Nor, as the Agency correctly notes, was Ms. Wiggins unfamiliar with this process, since she had occasion to sign such paperwork on behalf of fellow employees in the Raleigh District Office when she served as Acting Supervisor.

Mr. Colclough's Declaration, as it references Ms. Wiggins, is summarized here. He declared: Upon his promotion to Enforcement Supervisor in 1999, he was the first line supervisor of all the Investigators in the Raleigh Area Office, including Ms. Wiggins. He was Ms. Wiggins' immediate supervisor from 1999 to January 2005, and from

October 1, 2006 until August 2009. At all these times, Ms. Wiggins worked a 5/4/9 compressed schedule, from 6:00 A.M. to 3:30 P.M., with the option to "slide and glide" 30 minutes on each side of her arrival and departure times. Ms. Wiggins' flex day off was every other Monday. He has always instructed Ms. Wiggins and all other staff during staff meetings and via e-mail not to work compensatory time without first obtaining approval, and Ms. Wiggins responded to his e-mails in the affirmative that she understood this directive. Employees would request compensatory time using an internal form and he would sign the form. He believes his predecessor, Richard Walz, retired Raleigh Area Office Director, developed this process. The form would be given to Brigitte Walker, secretary, who would record the compensatory time. He recalls that, when he returned in October 2006 to the Raleigh Area Office as Director, he directed that all approved requests for compensatory time be entered into the Agency's payroll accounting system, which Ms. Walker was responsible for doing. When and if Ms. Wiggins had requested compensatory time, he would have reviewed and approved her request and signed the appropriate documents, a process with which Ms. Wiggins was familiar. If she asserted that she worked compensatory time and did not have a document signed by him, she was not approved and he was not aware of her working those hours.

The case presented by Ms. Wiggins is distinguishable from that of her co-claimants in the Raleigh Area Office. It is important to define clearly how it is different. The principal reason is not, as the Agency might suggest, that Ms. Wiggins is the only Raleigh claimant not either to have received or requested compensatory time, a fact reflected not only in her Claim Form, but in FPPS as well. If that were so, and I were to weigh that, it would be contrary to my ruling that the failure of a claimant to receive

compensatory time is no bar to recovery. Rather, it is that Ms. Wiggins, by her submissions, has not, in my view, met the initial burden of proof necessary to raise the just and reasonable inference necessary to establish that relief of some kind should be granted. The large numbers of computer screen shots are of limited weight. They may have revealed Ms. Wiggins' having opened documents outside of regular work hours, but they do not, by themselves, lead to a conclusion that, in any event, she exceeded an 80-hour work week.

Accordingly, for the above reasons, I must deny Ms. Wiggins' claim.

SAN ANTONIO

Marie Minks

Ms. Minks worked as an Investigator in the San Antonio Field Office throughout the claims period. She worked a flexitour schedule. She claims 22 hours over 22 pay periods. She testified by telephone at the hearings in St. Louis, MO. The Agency objects to all her claims on grounds that she worked a flexible schedule, that she seeks overtime for paid breaks, that the hours were not suffered or permitted, and that her claims are outside the scope.

Along with her Leave and Earnings statements and Cost Accounting Bi-weekly Time Sheets, Ms. Minks provided the following statement:

> My supervisors have frequently reminded me that I was expected to contribute my fair share towards the unit, office or district's number of case closures so that each entity could achieve announced goals. Although they repeatedly claimed that goals were not set for individual investigators, my supervisors regularly reminded me about the number of cases I had closed and still needed to close in order to reach my proportional share of the goals. When the number of my closures was less than a calculated amount that could be projected to reach my specific share of the goals, I was warned that my productivity was not sufficient and threatened with performance improvement plans or demotion. Annually, my job productivity was evaluated based on the number of cases that I had submitted for closure.

> In order to avoid the stress of being chastised that I needed to complete investigations more quickly and submit more cases for closure in order to reach a calculated average number of closures, I regularly arrived before my scheduled starting time, frequently skipped lunch, and routinely departed after having worked more than an eight hour day.
>
> I have submitted a claim for one hour for each pay period during the time period April 7, 2003 to April 28, 2008 when my time records indicate that I was not absent for any annual, sick, holiday or administrative leave. Prior to absences for holidays, vacations, or sick leave, I worked longer hours to ensure no time sensitive issues would arise while I was gone. I routinely arrived between 10 to 20 minutes early each day, occasionally worked through lunch, and regularly departed 20 to 40 minutes late. My extra time worked regularly exceeded one hour each week. However, I claimed only one hour for each pay period because no documentation was available to show the exact amount of time that I worked beyond my compensated hours.
>
> Although my supervisors occasionally scolded me for working during my lunch hour or for not leaving at my scheduled time, these reminders were never written as were the warnings about productivity. I worked the extra time in order to accomplish what was required and expected of me.

The Agency contends specifically that, apart from agreeing that she worked a flexible schedule, Ms. Minks does not indicate how many of her claimed hours occurred during paid breaks, nor does she offer an estimate of such hours. In addition, it notes that, if she acknowledged that her supervisors would scold her for working through lunch or beyond her regular hours, the resulting extra hours were not suffered or permitted.

The Union contends that, while Ms. Minks' supervisors may have scolded her about working extra hours, she was not told to cease working. It states that the Agency submitted no evidence that Ms. Minks did not work her claimed extra hours. It notes that Ms. Minks testified that, if she stayed late on Intake, the supervisor would permit her to have time off to compensate, but that this was not documented.

By virtue of Ms. Minks' working a flexible schedule, I must deny her claim.

Tonyaa Shiver

Ms. Shiver worked as an Investigator in the San Antonio Field Office throughout

the claims period. She worked a 4/10 compressed schedule. She claims 322 hours over 152 pay periods. She testified at the hearings in St. Louis, MO. She also was among those claimants who received an extension of time to file. The Agency states that, subject to offsets for compensatory time taken, Ms. Shiver has submitted sufficient evidence to support her claim.

Along with her Claim Form, Ms. Shiver sent a letter to Rust Consulting, in which she referenced an Index of Documents she had prepared, and described her submission further as follows:

> The documents identified as Time & Attendance Sign-In & Sign-Out – Daily Registers for 2003, 2004, and 2005 were submitted by EEOC management officials during arbitration.
>
> For those pay periods for which the EEOC could not provide records of overtime worked during the relevant time period, I extrapolated data from the Time & Attendance Sign-In & Sign-Out – Daily Registers for 2003, 2003, and 2005. This action enabled me to calculate the average overtime that I worked for those periods for which the EEOC could not provide documentation.

Ms. Shiver's extrapolation, in addition to being applied for pay periods where sign-in/sign-out sheets were available for the period 2003 to 2005, also included the entire period from 2006 to 2009, inasmuch as the San Antonio Field Office had discontinued the use of such records in early 2006.

The Agency, while concluding that Ms. Shiver had submitted sufficient evidence to support her claims, prepared its own spreadsheet in an attempt to verify the accuracy of her calculations, utilizing 48 selected pay periods from 200309 to 200601. Its own calculation applied a 44% reduction to pay periods for which it concluded that Ms. Shiver had relied on extrapolation. After all its adjustments, the Agency concluded that it owed Ms. Shiver $6,572.00, representing 100.6 hours of overtime, this amount including liquidated damages.

The Union notes the Agency's admission that Ms. Shiver's extra hours were worked, but that the Agency disputes the calculations and seeks now to recalculate the extra hours based upon speculation. It contends that the Agency submits no specific evidence to show Ms. Shiver did not work the hours.

While I have no reason to conclude that the Agency's calculations are not arrived at in good faith, I conclude that there is no compelling need to adopt these calculations. The first reason is that the Agency believes Ms. Shiver's submission is sufficient to support her claims, and I note that her documentation was both relevant and thorough. The second reason is that, since the Agency was not able to provide her with sign-in/sign-out sheets after early 2006, this is a burden that, once met by Ms. Shiver, rightfully rests with the Agency. The absence of sign-in/sign-out sheets should not result in Ms. Shiver's having to absorb a 44% reduction. This lack of data, after all, is what caused Ms. Shiver to have to extrapolate. Her estimate, under these circumstances, should be deemed adequate under the doctrine of *Mt. Clemens*, in that it tends to create a just and reasonable inference as to the amount and extent of the work performed.

Accordingly, I direct that the necessary calculations be made by Rust Consulting, consistent with this finding, and that Ms. Shiver's claim be paid as submitted, minus compensatory time used, and an equal amount of liquidated damages. The payment shall be made by the Agency to Ms. Shiver, in care of the Union, within sixty (60) days of the parties' receipt of this Report.

Diane Webb

Ms. Webb worked as an Investigator in the San Antonio Field Office throughout the claims period. As reflected on her Claim Form, she worked a 4/10 compressed

schedule during her first four claimed pay periods (200309-12). For the remainder of her claims, covering pay periods (200409 through 200605), she worked a flexitour schedule. She claims 153.75 hours over 52 pay periods. Ms. Webb testified at the hearings in St. Louis, MO. The Agency objects to most of her claims on grounds that she worked a flexible schedule and that she earned and used compensatory time in the same pay period.

The Agency acknowledges that Ms. Webb provided sufficient evidence of overtime work performed in pay periods 200309 through 200312, while she worked a 4/10 compressed schedule, and for all of which she provided sign-in/sign-out sheets. Ms. Webb provided a worksheet on which she calculated her extra work hours, based on the sign-in/sign-out sheets for these four pay periods. Her total claimed extra hours were 4.75.

The Union contends that Ms. Webb's supervisor was aware of her extra work hours, and the Agency does not dispute those hours. It notes further that the Agency seeks credit for unrecorded compensatory time.

Ms. Webb's claims for extra hours worked during pay periods 200409 through 200605, during which time, as she reflected in her Claim Form, she was on a Flexitour schedule, are not viable. Her claims for pay periods 200309 to 200312, during which time she worked a 4/10 Compressed schedule, are payable.

The Agency has calculated that she is owed 2.38 hours plus liquidated damages, for a total of $132.46. In so concluding, it claims Ms. Webb's having received informal compensatory time as an offset to her recovery, although there is, as the Agency indicates, no evidence of when Ms. Webb may have taken this compensatory time. Indeed, there is no indication on her Claim Form of any compensatory time earned or

used. I am aware that the Agency was presuming Ms. Webb's having taken informal compensatory time as preserving the validity of her claim, on the basis of its interpretation of the 2009 Opinion as disallowing this claim otherwise. As the parties are aware from my "outside the scope" ruling herein, however, that is not the case. In addition, "informal" compensatory time use is not to be presumed.

Therefore, I find that Ms. Webb should be paid for her 4.75 extra work hours during pay periods 200309 to 200312, as supported by the applicable sign-in/sign-out sheets, and that no offset be applied to that amount. Rust Consulting shall make the appropriate calculations and the Agency shall pay Ms. Webb, in care of the Union, within sixty (60) days of the parties' receipt of this Report.

SAN DIEGO

Delger Covington

Mr. Covington worked as a Paralegal Specialist from before the claims period until June 7, 2008 and as an Investigator from June 8, 2008 until after the close of the claims period. He worked a 5/4/9 compressed schedule. The Agency places him in the San Diego Local Office, whereas the Union places him in the Dallas Regional Office. He claims 110 hours over 5 pay periods (200311, 200506, 200507, 200511 and 200610).

The Agency objects to all Mr. Covington's claims on grounds that he has submitted insufficient evidence to support his claims, that they are outside the scope, and because Agency FPPS records show that he received significant overtime and premium FLSA pay for pay periods 200506 and 200507 (by the Agency's reckoning, 19 hours of FLSA premium pay and 12 hours of unscheduled overtime for each of these two pay periods), and that, therefore, to the extent Mr. Covington worked overtime in these pay

periods, he has already been compensated. (My reading of the FPPS records is slightly different, although not ultimately determinative.)

The Union contends first that Mr. Covington was employed in the Dallas Regional Office (although the Claim Form reflects a San Diego address). It contends further that the Claim Form notes that the Agency has e-mails supporting Mr. Covington's extra work hours, and that Robert Canino, Dallas Regional Attorney, was aware of and approved these extra work hours.

I cannot be certain how the FPPS records of Unscheduled Overtime and FLSA Premium pay reported to have been paid to Mr. Covington in each of pay periods 200506 and 200507 and his claim of 25 extra hours worked in each of those same two pay periods can or should be reconciled. However, there in no explanation of that, nor is there any explanation of the extra sixty total hours he claims in pay periods 200311, 200511 and 200610. I cannot find that Mr. Covington has made a sufficient showing that these claimed hours merit monetary payment.

Accordingly, I must deny Mr. Covington's claim.

Mark Hayes

Mr. Hayes worked as an Investigator in the San Diego Local Office from before the claims period until March 7, 2004. His Claim Form reflects that he worked a basic schedule. He claims 175 hours over 25 pay periods (7 hours per pay period). The Agency objects to his claims on grounds that he worked a flexible schedule, that he has submitted insufficient evidence to support his claims, and that his claims are outside the scope.

The Agency asserts first that Mr. Hayes worked a flexible, not a basic, work

schedule. It stated that, while the official hours of the San Diego Local Office are 8:30 A.M. to 5:00 P.M., Mr. Hayes' hours were 7:00 A.M. to 3:30 P.M., making reference to Mr. Hayes' sign-in/sign-out sheets. It argues further that, inasmuch as Mr. Hayes submitted no documentation in support of his claims outside of his Claim Form, he has not produced sufficient evidence to demonstrate by just and reasonable inference that the hours claimed reflect actual time worked. It makes further claims for the record, but these are not germane here.

The Union notes that Mr. Hayes entered on his Claim Form that the Agency has e-mails that would support his claim. It contends that, while the Agency alleges that Mr. Hayes worked a flexible schedule, it submitted no sign-in/sign-out sheets to support its claim. It notes further that the Agency submitted no specific evidence that Mr. Hayes did not work the extra hours claimed.

There are, in fact, no sign-in/sign-out sheets submitted by either the Agency or by Mr. Hayes. Taking that the official hours of the San Diego Local Office are 8:30 A.M. to 5:00 P.M., if Mr. Hayes's hours are 7:00 A.M. to 3:30 P.M., that would, in fact, indicate he worked a flexible schedule. In that event, consistent with my prior findings on the issue of suffered or permitted overtime, Mr. Hayes' claim would fail. The one indication in this file, so far as I recognize, that does reflect Mr. Hayes' hours is the "Agency Objections Spreadsheet for Mark Hayes," in which it reports Mr. Hayes' schedule as "FLEXIBLE 7:00-3:30." While this document may well be some indication of what it purports to reflect, I presume it is not a document that is kept in the ordinary course of the Agency's business. Therefore, I decline to treat it as if it were such a business record.

However, even if I were to resolve the issue in Mr. Hayes' favor and conclude

that he was not on a flexible schedule, I would be required to find, based on the lack of any documentary support of any sort for his claims, apart from the Claim Form itself, that he has not made a probative showing of any kind that his asserted extra hours were actually worked.

Accordingly, I must deny Mr. Hayes' claim.

SAN FRANCISCO

The Union contends generally that the San Francisco District Office did not provide records to employees who were attempting to file claims. It claims that employees either received no response, were told records were destroyed, were sent records on the last day of filing, or were sent records which arrived after the filing deadline. Further, the Union claims, the San Francisco District Office refused to provide sign-in/sign-out sheets, leave slips, Government vehicle logs or compensatory time logs in response to any requests. The Union requests, therefore, that the Agency be prohibited from challenging any claim filed by employees in the San Francisco District Office.

Trina Anderson

Ms. Anderson worked in the San Francisco District Office as an Investigator from before the claims period until September 30, 2007. She worked a flexitour schedule. She claims 1,100 hours over 111 pay periods. The Agency objects to all Ms. Anderson's claims on grounds that they are untimely, that she was on a flexible schedule, that she submitted insufficient evidence to raise a reasonable inference that she worked the extra hours claimed, and that her claims are outside the scope.

The Agency states that it cannot determine, based on the documents submitted by Ms. Anderson, whether her claim is timely, asserting that, if she filed her claim after the

May 29, 2012 deadline, it would render her claim untimely and, thus, would bar any recovery.

The Union contends that, as referenced generally above, Ms. Anderson requested documents from the San Francisco District Office and the documents were not received until after Ms. Anderson had filed her claim. It points out that Ms. Anderson stated on her Claim Form that the Agency has e-mails that would support her claim, and that she had estimated her extra work hours based upon her recollection. To the Agency's suggestion that Ms. Anderson's claim may be untimely, the Union notes that Ms. Anderson was granted an extension of time to file her claim. The Union notes further that the Agency's FPPS records, in its filing, contain records which are not Ms. Anderson's (referencing FPPS records that were apparently supplied to Ms. Anderson, appearing to intermingle Ms. Anderson's records with an employee named Nicholson, identified as a Budget Analyst, although FPPS records in Ms. Anderson's portfolio do not contain this error). It asserts further that the remaining Agency objections are not supported by the law.

I address first the Agency's suggestion that Ms. Anderson's claim may be untimely (no "Finalized Date" appears on the Claim Form). In fact, by e-mail of June 1, 2012 from Agency counsel to Union counsel, it was confirmed that Ms. Anderson was on the extension list.

I acknowledge the Union's objections, set forth above, to what it deemed the obstructionist conduct on the part of the San Francisco District Office concerning employees' requests for documents. Notwithstanding this, Ms. Anderson, who, as her Claim Form reflects, was on a flexible schedule for every pay period listed, is not eligible

for suffered or permitted overtime.

Accordingly, by virtue of Ms. Anderson's being on a flexible schedule, her claim must be denied.

Dianna Horne

Ms. Horne worked as an Investigator for the San Francisco District Office from before the claims period until June 2007, when she retired. She was among the claimants who received an extension of time to file. She worked a 5/4/9 compressed schedule. She claims 698 hours over 63 pay periods. The Agency objects to most of her claims on grounds that her claims are outside the scope, that overtime work was offset by time off, that she claims overtime for work performed during breaks, that management could not have known of or permitted the claimed overtime work, and that she did not work the overtime hours claimed, stating, in part, that she took leave in almost all the pay periods where she has filed claims.

The Agency acknowledges that it appears Ms. Horne is entitled to payment for 4.5 hours, or $172.40, plus liquidated damages, totaling $344.79. It notes her FPPS records reflecting Ms. Horne's having earned 9 hours of compensatory time in pay period 200503, which she used in pay period 200505.

Accompanying her Claim Form is a letter from Ms. Horne to Rust Consulting, where she stated the following:

> EEOC Overtime claim for the period of April 7, 2003 through January 1, 2007 when I was employed as an Investigator 1810-grade 12 in the San Francisco District Office is attached.
>
> My recollection is assisted by personal diaries entries of many late nights and problems with cases, as well as partial victorys [sic] like Barnett v. US AIR.
>
> I believe my claim is substantiated by witnesses and documentation. Some

> records that I requested were not provided by EEOC and I reserve the right to submit additional witnesses and documentation if it becomes available through discovery.

In addition, Ms. Horne's Claim Form includes, by my count, some 61 statements, by pay period, where she set forth the extra hours she worked and, with varying detail, descriptions of the work involved (including several pay periods where she claimed she worked through lunch and breaks), with frequent references to case names. In some 24 of these, Ms. Horne attaches a statement (the same in each case) from Ellen Turner, a retired Investigator in the San Francisco District Office (and also a claimant in this proceeding), attesting to her routinely having seen Ms. Horne work late. In some 18 other of Ms. Horne's statements, Ms. Horne attaches a statement (the same in each case) from Blake Wu, also formerly an Investigator in the San Francisco District Office, likewise attesting to Ms. Horne's having worked late on many occasions. Ms. Horne's statement lists as a witness Cindy O'Hara, identified on the statements as a Trial Attorney in the San Francisco District Office. Included as well is one example of Outreach, Intake schedules for pay periods at the end of 2006 and the beginning of 2007, and a list of EEOC case numbers, with Charging Parties and Respondents.

The Agency references the Declarations of Michelle Nardella, former Enforcement Manager and currently ADR Coordinator in the San Francisco District Office, and Richard Proulx, Enforcement Supervisor in the San Francisco District Office. Ms. Nardella declared as follows: She was in Ms. Horne's supervisory chain of command from December 2003 to May 2007. During her entire employment with the Agency, it was the practice of the San Francisco District Office to provide employees the choice of receiving overtime pay or compensatory time for extra hours worked. Employees under her supervision usually chose to receive compensatory time, and they

knew that any overtime requests had to be approved in advance by the supervisor. If the request was for compensatory time, the request was usually granted, and it was the employee's responsibility to record overtime hours worked and compensatory time received in the Agency's time and attendance system. She has strictly enforced the San Francisco District Office's policy that no extra hours were to be worked unless the overtime was previously approved, and has routinely instructed employees who work past 6:00 P.M. (or on weekends or holidays) that they are to stop work, shut down their computer, leave the office and go home. Ms. Horne, as a veteran employee, was well aware of the office's system for requesting compensation for extra hours worked. She did not routinely see Ms. Horne in the office after 6:00 P.M. and, if she had, she would have been instructed to stop work and go home. She has no personal knowledge of evidence to support Ms. Horne's claim of 698 overtime hours worked, and was not aware of her practice of allegedly working through lunch and breaks and routinely working beyond the official office hours. If Ms. Horne did so, it was without prior authorization and without her knowledge. If she did work excess hours and followed the office policy and the Collective Bargaining Agreement, she would either have received overtime pay or compensatory time. Based on the two requests for compensatory time she did make, Ms. Horne plainly knew how to request compensatory time, and this strongly indicates that she did not work the extra hours claimed. She was also a marginal performer, and this is another reason why her overtime claim is not credible. In addition, Ellen Turner, who wrote in support of Ms. Horne's claim, was likewise a marginal performer.

Mr. Proulx declared as follows: He was in Ms. Horne's supervisory chain of command and believed he stopped supervising her sometime in 2004. During his entire

employment with the Agency, it was the practice of the San Francisco District Office to provide employees the choice of receiving overtime pay or compensatory time for extra hours worked. Employees under his supervision usually chose to receive compensatory time, and they knew that any overtime requests had to be approved in advance by the supervisor. If the request was for compensatory time, the request was usually granted, and it was the employee's responsibility to record overtime hours worked and compensatory time received in the Agency's time and attendance system. Because he was aware of the overtime litigation against the Agency in the 1990s, he was aware of the importance of not permitting employees to work overtime without prior approval, and the importance of ensuring that employees were compensated for any extra hours worked. He strictly enforced the office's policy of ensuring that no employee worked any extra hours without prior approval and routinely asked employees who were working after their scheduled hours to leave the building. It was rare for Investigators in his unit to work overtime, and when it did occur, it was usually for travel or Outreach. There was no reason for Ms. Horne to have put in such large amounts of overtime and he was not aware of such hours when he was supervising her. He had no knowledge of her practice of working through lunch and breaks and working past her regular hours, and, if she did so, it was without authorization and without his knowledge. If she had worked extra hours, she would have received compensatory time consistent with the office practice. He did not routinely see Ms. Horne working after 6:00 P.M. on a regular basis and, if he had, he would have told her to stop working and to go home.

The Union contends that Ms. Horne did not receive records she requested from the San Francisco District Office and that the Agency has submitted no evidence in

support of its objections, including its suggestion that Ms. Horne was a marginal performer. It adds that the remaining Agency objections are not supported by the law.

Ms. Horne has attempted, by her submission, to be as specific as possible concerning her claimed extra hours of work, on a pay-period-by-pay-period basis, as well as by referencing specific days of extra work, with respect to her duties and, in some cases, by referencing particular charges on which she was working. While similar in form, the level of detail is surely more suggestive that these assertions may be probative than if her references were more general and repetitive. Ms. Horne merits an opportunity to testify to these matters.

This documentation, in my view, highlights the principal factual conflict concerning whether the extra hours claimed by Ms. Horne were suffered or permitted. It is clear from the Declarations of Ms. Nardella and Mr. Proulx that the Agency finds it unlikely the extra hours were worked in the first instance. Testimony will be required to resolve these matters.

In addition, pay periods in which Ms. Horne earned no compensatory time and which, by my ruling, are not "outside the scope," may be examined for the purpose of determining whether bases exist such that that the proposed Agency remedy should not be directed.

Barbara Jackson

Ms. Jackson worked as an Investigator in the San Francisco District Office from before the claims period until her retirement in January 2004. She worked a basic schedule. She claims 197 hour over 18 pay periods. Ms. Jackson was among the claimants who received an extension to file. The Agency objects to all her claims on

grounds that they are untimely, that she has submitted insufficient evidence to raise a reasonable inference that she worked the extra hours claimed (in that no documentation accompanied her Claim Form), and that her claims are outside the scope. The Agency makes further objections for the record which I do not set forth here.

Ms. Jackson's Claim Form was filed on June 10, 2012. The Union contends that Ms. Jackson received an extension of time to file because the Agency had not provided her with the records she requested. In the event Ms. Jackson did not request an extension, the Union believes her claim should be accepted, since the reason for any delay in the filing of her claim was due to the actions of the Agency. All other Agency objections, it asserts, have no support in the law.

First, on the matter of the Agency's claim of untimeliness, I have noted above that Ms. Jackson did, in fact, receive an extension of time to file her claim, as she was on the original list of such claimants. Therefore, her June 10, 2012 Claim Form was timely filed.

On the merits of her claim, for which Ms. Jackson bears the initial burden of proof, I cannot conclude that this burden has been carried. I recognize the Union's very strongly expressed position concerning the Agency's failures with respect to production of records. However, without some supporting documentation, or some kind of narrative that might provide context to her claims by pay period, it is difficult to conclude that there exists a just and reasonable inference as to the amount and extent of extra hours worked.

Accordingly, I must deny Ms. Jackson's claim.

David Skillman

Mr. Skillman worked as a Paralegal Specialist in the San Francisco District Office throughout the claims period. He worked a 5/4/9 compressed schedule. He claims 231 hours over 14 pay periods. Mr. Skillman testified at the hearings in Los Angeles, CA. The Agency objects to most of his claims on grounds that he provided insufficient evidence to raise a reasonable inference that he worked the extra hours claimed, that he voluntarily chose to receive compensatory time instead of overtime pay, that he received compensatory time for all hours claimed, that his claims are outside the scope, and that management could not have known of or permitted the claimed overtime work.

The Agency acknowledges that Mr. Skillman is entitled to payment for 5 hours of overtime, or $314.68, plus liquidated damages, totaling $629.36. It bases this on FPPS data indicating that Mr. Skillman earned a total of 10 hours of compensatory time in pay periods 200402, 200404 and 200703 (my calculations show 20 hours, not 10).

In view of Mr. Skillman's assertion that he worked 231 hours, the Agency argues that, since it was the practice in the San Francisco District Office to grant compensatory time or overtime for extra hours worked by Legal Unit employees, including Mr. Skillman, it properly asserts an overtime offset for 231 hours of compensatory time received and used by Ms. Skillman. In addition, it asserts that, while Mr. Skillman claims (see statement below) that his supervisor knew he worked extra hours on FOIA reports, both his supervisors declared there was no way they could have known. It states further that Mr. Skillman's own identical declarations, submitted for each claimed pay period, are insufficient support for his claims. It argues that, since FPPS records reveal that Mr. Skillman requested 69.6 hours of compensatory time in 8 pay periods and received 68.05 hours of compensatory time in 14 pay periods, Mr. Skillman clearly knew

how to request and use compensatory time, therefore strongly indicating that he did not actually work the 231 hours of overtime he claims. (The Agency's argument here is a bit confusing, since, if we are to be consistent with how FPPS itself uses the terms, "requested" really should say "earned," and "received" really should say "used." In addition, the Agency's accounting of 68.05 hours of compensatory time used should actually reflect 4 hours used in pay period 200816, not 1.3, and that 1.3 hours used is attributable to pay period 200818). Further, the Agency argues that, to the extent Mr. Skillman voluntarily chose to receive compensatory time instead of overtime pay for any of the 231 overtime hours claimed, these claims should be denied.

Mr. Skillman submitted an affidavit stating the following:

> I am a Paralegal who was employed in the San Francisco District Office of the Equal Employment Opportunity Commission on and before April 7, 2003 and continuing until April 20, 2012.
>
> My undocumented overtime hours centered on my paralegal assignments and the yearly Freedom of Information Act (FOIA) reports that prior to 2010 were reconciled and compiled by hand.
>
> Undocumented overtime occurred in my job throughout the year.
>
> I was required to compile and reconcile FOIA data by hand for FOIA reporting from that years [sic] disclosure requests.
>
> The San Francisco District office's computer server crashed sometime in 2009 or 2010 and my records of our FOIA reports were destroyed.
>
> There were specific time frames for submission of the FOIA report.
>
> During the FOIA report production I would not be given relief from my other paralegal assignments which included production of FOIA disclosures and litigation.
>
> I would work 40 to 50 beyond my regular work hours each year.
>
> My supervisor knew I worked the hours and expected that I would complete the FOIA report on time by the due date.
>
> Typically, the request for FOIA report production happened in December or January and we would be given a month or two to produce the report.

> The dates, times, and amount of over time worked is my best recollection of the dates, times, and number of hours I worked on the FOIA report or paralegal assignments without compensation.

The Agency offered the Declarations of Jonathan Peck, Supervisory Trial Attorney in the San Francisco Regional Office, and David Offen-Brown, Trial Attorney and former Supervisory Trial Attorney in the San Francisco Regional Office.

Mr. Peck declared as follows: He supervised Mr. Skillman from April 2003 to July or August 2004, when he was reassigned to Mr. Offen-Brown, newly appointed Supervisory Trial Attorney. Mr. Skillman lists 42 extra hours worked performing FOIA duties when Mr. Peck supervised him. Mr. Peck was not aware of these extra hours or that Mr. Skillman was not completing his FOIA duties during his regular hours, and Mr. Skillman never came to him to request either overtime or compensatory time to complete his FOIA duties. Had he done so, Mr. Peck would have discussed the matter with Mr. Skillman and would either have shifted work to the two other Paralegal Specialists in the office, or approved the time Mr. Skillman believed he needed for this work. Mr. Skillman, as a Union representative, knew how to request overtime and compensatory time if it was needed, and the Regional Attorney often informed the Legal staff on these matters. In one matter, the Agency's ADA litigation against United Airlines, the assigned Trial Attorneys asked for extra hours for the Paralegal Assistants and asked Mr. Skillman if he could help, inquiring whether he wanted overtime (for which the Office of General Counsel had money available) or compensatory time. Mr. Skillman had very little sick or annual leave, and he said he needed to address family responsibilities (caring for his grandmother) and for pursuing his acting interests. In the United Airlines case, concerning which he testified at the hearings in Los Angeles, CA, Mr. Skillman received

compensatory time at his request. Mr. Skillman could have asked him for the extra time he needed for his FOIA work but he did not. Because of their different schedules, Mr. Peck was not in the office during the hours Mr. Skillman asserts he spent extra hours working.

Mr. Offen-Brown declared as follows: He was Mr. Skillman's first line supervisor from July 11, 2004 until at least February 2009. He knew Mr. Skillman performed FOIA duties, but he was not aware that he performed those duties outside his regular hours except on those occasions when he requested and received compensatory time. Mr. Skillman knew the policy in the Legal Unit of giving compensatory time or overtime when justified because the Regional Attorney, William Tamayo, regularly reminded Legal staff that he would do so, and Mr. Skillman knew, through his work as Union steward, that compensatory time was regularly given to Legal Unit staff. Because of their different schedules, Mr. Offen-Brown was not in the office during the hours Mr. Skillman asserts he spent extra hours working.

The Union contends that Mr. Skillman's supervisor was aware of his extra work hours and knew he worked on FOIAs. It notes that Mr. Peck and Mr. Offen-Brown admitted in their Declarations that they were not in the office when Mr. Skillman was working beyond his scheduled departure time. It adds that the Agency has submitted no specific evidence that Mr. Skillman did not perform the extra work hours.

The principal material issue of facts here are two: (1) whether there was a conscious and intended decision on the part of Mr. Skillman to request compensatory time in lieu of overtime and, if so, the extent of this decision; and (2) where there was supervisory knowledge, actual or constructive, of all or any part of Mr. Skillman's

asserted extra hours. For this, I require testimony and will direct a hearing, since, as I have explained in other claims, competing written declarations are not testimony, and serve more as statements of the parties' respective positions. On the matter of whether Mr. Skillman intended to request compensatory time in lieu of overtime, such an intent may, under the FLSA, be effectuated, if proved. 5 CFR §551.531(a) provides that compensatory time off for employees covered by the FLSA is "[a]t the request of an employee."

In addition, pay periods in which Mr. Skillman earned no compensatory time and which, by my ruling, are not "outside the scope," may be examined for the purpose of determining whether bases exist such that that the proposed Agency remedy should not be directed.

Malinda Tuazon

Ms. Tuazon began working in a covered Investigator position in the San Francisco Office in pay period 200526 and continued in a covered position throughout the claims period. She worked a 5/4/9 compressed schedule. She claims 982 hours over 67 pay periods. The Agency objects to her claims on grounds that they are untimely, that Ms. Tuazon has submitted insufficient evidence to raise a reasonable inference that she worked the extra hours claimed, that she is not entitled to compensation for work performed during breaks, that management could not have known of or permitted the claimed overtime work, and that her claims are outside the scope.

Ms. Tuazon submitted a statement, dated July 25, 2012, as follows:

> ...I was hired as a GS-7 Investigator on November 15, 2004. In December 2005, I was promoted to a GS-9 Investigator. I have always worked in the San Francisco District Office. From December 2005 through the present, I have worked on a compressed schedule. For several years, I

worked on a 5/4/9 schedule and I currently work on a 4/10 schedule.

When I was hired, I was told by Enforcement Supervisor Rick Proulx that the San Francisco District Office operated what he called a "projection" system. He told me that because the union had banned "quotas" – a system by which Investigators were *directed* to submit a certain number of cases each month and penalized for not submitting that number of cases – management had instituted a system called "projections." Under the "projection" system, Investigators sent an email each month stating how many and which cases they expected to turn in. Rich Proulx made it clear that I was expected to turn in between 7 and 10 cases each month. The total number of cases varied upon how many merit factor cases I turned in. When I expected to turn in more cause cases or settlements, cases for which merit factor was assigned, I was expected to turn in fewer cases total. No one explicitly directed me to turn in a certain number of cases each month. However, in months when I turned in fewer than my projected number of cases, Rich Proulx had a verbal discussion with me about my lack of production. During these discussions, I was told that if I were to consistently fail to meet my projected outcomes, I would be put on a Performance Improvement Plan. I believe the Commission has e-mails between Rich Proulx and me, which would support that I regularly turned in projections. I was also threatened with being put on a quota system. Rich Proulx explained that if I were put on a Performance Improvement Plan, the Agency could institute quotas.

With respect to the number of cases management expected to be turned in each month, GS-7 Investigators and GS-9 Investigators were held to the same standards. I am not aware of the standards for GS-11 and GS-12 Investigators at that time. At the beginning of each quarter, Rich Proulx and Michelle Nardella, the acting Enforcement Manager, would hold a meeting with all of the Enforcement staff. At that meeting, they would inform staff how many cases had been turned in and how many of those were merit factor cases. At every meeting, management also told staff the number of cases necessary to be turned in for the District Director to receive an "Outstanding " rating on her performance evaluation. Management conveyed this number as the District's goal each fiscal year. They told us to divide the total number of cases in the District by the number of Investigators to determine what our projections should be each month. I interpreted this as assigning a quota system. To my knowledge, Joan Ehrlich and Mike Baldonado, the District Directors during the period in question, always received "Outstanding" ratings. This practice of telling Investigators how many cases the District is expected to close each fiscal year continues to this day in the San Francisco District Office.

While Rich Proulx was the Enforcement Supervisor, on a quarterly basis, he would give out a "Top Gun" award. This award went to the Investigator, regardless of GS level, who turned in the most cases during the preceding quarter. This award was made public and Rich Proulx sent out emails to the Enforcement Unit congratulating each quarter's Top Gun award recipient. For most of the quarters during which the award was

administered, Kristine Jensen, a woman who had been hired as a GS-9 Investigator, was named as the recipient. Believing the recognition alienated her from the other Investigators because she was consistently recognized as the top producer to the exclusion of all others, Ms. Jensen eventually became upset by receiving the award so frequently that she asked that the practice be discontinued. Thereafter, Rich Proulx discontinued the practice. I believe this practice had the effect of pitting Investigators against each other as competitors instead of fostering a collaborative spirit among them. This practice, coupled with the "projection" system, led to an extremely high stress level and the expectation that the number of cases submitted was more important than working within normal working hours.

On a regular basis, I left home to go to work at about 7:30 AM. Many days, I returned home around 8:00 PM. I worked from about 8:00 AM to 7:30 PM. I typically worked 11 hours a day. This calculation is exclusive of a half-hour lunch break. I usually ate lunch at my desk while I worked, but would occasionally eat in the courtyard below our office. I did not take breaks outside the office except to go buy lunch when I did not bring it. When I was unable, for personal reasons, to stay late, I would regularly work at home on my 5/4/9 days off.

I was directed by Rich Proulx to report that I had worked 80 hours each pay period unless I had traveled or done outreach outside normal working hours. I complied with this instruction and reported 80 hours each pay period unless I traveled or conducted outreach outside normal working hours. Although I regularly worked in excess of 80 hours per week, on average 18 extra hours, I did not report this time on my time and attendance sheets because I was instructed not to.

The stress of working hours in excess of my normal working hours had deleterious effects on my health. I began, for the first time in my life, to experience migraines. These migraines became so bad that I would have to take time off work due to the pain and my doctor prescribed me Imitrex to help ease the pain my migraines would cause. When I began working for the EEOC in 2004, I weighed 130 pounds. My lowest weight during my tenure at the EEOC was 117 pounds. On a regular basis, staff would comment about my weight loss. In mid-September 2007, I experienced a nervous breakdown, which resulted in hospitalization. I was in the psychiatric ward of the hospital for three days and was required to participate in an outpatient partial hospitalization program for about six weeks after my hospitalization. After my hospitalization, I vowed to work within normal working hours, as I knew the overtime was a great contributor to the decline in my mental health. My productivity initially declined due to the decrease in hours, but I was eventually able to develop better organizational systems so that I could complete the requisite number of cases each fiscal year. [Emphasis supplied]

Ms. Tuazon submitted two additional statements, one the Agency asserts is dated July 17, 2012 from a former roommate (but which actually bears the date of March 16,

2012) and one dated July 16, 2012 from a former Investigator in the San Francisco District Office, both of which attested to her having regularly worked in excess of her normal tour of duty.

The Agency's threshold objection is that Ms. Tuazon's claims are untimely. It argues that there is no evidence that she submitted her Claim Form or the above-referenced documents on or before the May 29, 2012 deadline.

The Union, in this regard, asserts that Ms. Tuazon requested and received an extension of time to file her claim. It references e-mails where Ms. Tuazon requested an extension of time. Ms. Tuazon sent such a request on May 29, 2012 to then Agency counsel, Jason Hegy, as well as to Union counsel. Union counsel informed Ms. Tuazon that Mr. Hegy was not in the office on May 29, 2012 but that she was certain he would not object. Indeed, in other claims, similar e-mails have been supplied by the Union with a response from Mr. Hegy, usually indicating concurrence with the request. Here, while Ms. Tuazon submitted her request directly to Mr. Hegy's attention on May 29, 2012, I have no record that this request was approved. It may have been handled in much the same way as others have been. If so, Ms. Tuazon's own statement dated July 25, 2012 would indicate its being submitted shortly before the 60-day extension deadline would have expired, but I have nothing before me to indicate any Agency response to Ms. Tuazon's request, although this may have been merely a formality.

The Agency, on the merits, noted that Ms. Tuazon does not assert that her supervisor or any other manager was aware of her alleged practice of working through lunch and breaks and of routinely working past the hours of the office, and that her two supervisors state that they were not so aware (see summary of Declarations, below, of

Michelle Nardella and Richard Proulx). In addition, it points to FPPS records that show Ms. Tuazon requested and used 61.5 hours of compensatory time during the claims periods, contrary to her own claim that she was instructed not to report extra hours worked.

Ms. Nardella, former Enforcement Manager and currently ADR Coordinator in the San Francisco District Office, declared as follows: She was Ms. Tuazon's second line supervisor from 2005 to 2008. During her entire employment with the Agency, it was the practice of the San Francisco District Office to provide employees the choice of receiving overtime pay or compensatory time for extra hours worked. Employees under her supervision usually chose to receive compensatory time, and they knew that any overtime requests had to be approved in advance by the supervisor. If the request was for compensatory time, the request was usually granted, and it was the employee's responsibility to record overtime hours worked and compensatory time received in the Agency's time and attendance system. She has strictly enforced the San Francisco District Office's policy that no extra hours were to be worked unless the overtime was previously approved, and has routinely instructed employees who work past 6:00 P.M. (or on weekends or holidays) that they are to stop work, shut down their computer, leave the office and go home. Ms. Tuazon was well aware of the office's system for requesting compensation for extra hours worked. She did not routinely see Ms. Tuazon in the office after 6:00 P.M. and, if she had, she would have instructed Ms. Tuazon to stop work and go home. She has no personal knowledge or evidence to support Ms. Tuazon's claim of 982 overtime hours worked, and was not aware of her practice of allegedly working through lunch and breaks, routinely working 11 hours per day, and taking work home

when she was unable to stay late. If Ms. Tuazon did so, it was without prior authorization and without her knowledge. If she did work excess hours and followed the office policy and the Collective Bargaining Agreement, she would either have received overtime pay or compensatory time. Ms. Tuazon plainly knew how to request compensatory time, and this strongly indicates that she did not work the extra hours claimed.

Mr. Proulx, Enforcement Supervisor in the San Francisco District Office, declared as follows: He was in Ms. Tuazon's supervisory chain of command from about November 2004 to June 2006. During his entire employment with the Agency, it was the practice of the San Francisco District Office to provide employees the choice of receiving overtime pay or compensatory time for extra hours worked. Employees under his supervision usually chose to receive compensatory time, and they knew that any overtime requests had to be approved in advance by the supervisor. If the request was for compensatory time, the request was usually granted, and it was the employee's responsibility to record overtime hours worked and compensatory time received in the Agency's time and attendance system. He never instructed Ms. Tuazon not to report her extra hours worked on her time and attendance sheets. Because he was aware of the overtime litigation against the Agency in the 1990s, he was aware of the importance of not permitting employees to work overtime without prior approval, and of the importance of ensuring that employees were compensated for any extra hours worked. He strictly enforced the office's policy of ensuring that no employee worked any extra hours without prior approval and routinely asked employees who were working after their scheduled hours to leave the building. It was rare for Investigators in his unit to work overtime, and

when it did occur, it was usually for travel or Outreach. There was no reason for Ms. Tuazon to have put in 928 hours of overtime and he was not aware of such hours when he was supervising her. He had no knowledge of her practice of working through lunch and breaks and working at home on her days off, and, if she did so, it was without authorization and without his knowledge. If she had worked extra hours, she would have received compensatory time consistent with the office practice. He did not routinely see Ms. Tuazon working after 6:00 P.M. on a regular basis and, if he had, he would have told her to stop working and to go home.

The Union, on the merits, points out that Ms. Tuazon, on her Claim Form, indicated that the Agency has e-mails that would support her claim. It asserts that the Agency has submitted no specific evidence that Ms. Tuazon did not work the extra hours on her claim.

In furtherance of my discussion above on the threshold issue of the timeliness of Ms. Tuazon's claim, I direct the parties to inform me whether there is evidence or knowledge of the granting of an extension to Ms. Tuazon of the claim filing deadline, or, alternatively, if this remains a contested issue. Until I am informed on this matter, I will not proceed with my consideration of the merits of this claim.

Ellen Turner

Ms. Turner worked as an Investigator in the San Francisco District Office from before the claims period until her retirement on February 2, 2005. Her Claim Form reflects her having worked a basic schedule. She claims 923 hours over 47 pay periods. The Agency objects to her claims on grounds that she worked a flexible schedule, that she claims overtime for work performed during breaks, that management could not have

known of or prevented the claimed overtime, that she provided insufficient evidence to raise a reasonable inference that she worked the extra hours claimed, in part owing to her significant use of sick and annual leave, and that her claims are outside the scope.

Ms. Turner, while indicating on her Claim Form that she worked a basic schedule, was actually on a flexible schedule. Her work hours, as she handwrote on her Claim Form, were 9:00 A.M. to 5:30 P.M., whereas the official hours of the office were 8:00 A.M. to 4:30 P.M.

The Agency referenced the Declarations of Deborah Randall, former Acting ADR Coordinator and currently Enforcement Manager in the San Francisco District Office, Michelle Nardella, former Enforcement Manager and currently ADR Coordinator in the San Francisco District Office, and Richard Proulx, Enforcement Supervisor in the San Francisco District Office.

Ms. Randall declared as follows: It was the office's consistent practice to provide employees with a choice of receiving overtime or compensatory time for extra hours worked. Employees under her supervision usually chose to receive compensatory time. Employees were informed and aware that all overtime requests had to be approved in advance by their supervisor. If an employee chose to receive compensatory time, that request was usually granted. It was the employee's responsibility to record overtime hours worked and compensatory time received in the Agency's time and attendance system and on the appropriate overtime authorization form. She strictly enforced the office's policy that no employee worked extra hours without prior approval and routinely asked employees who were working after their scheduled work hours to leave the building. She had no personal knowledge of any evidence to support Ms. Turner's claims

that she regularly worked through lunch and breaks, and stayed until 7:30 P.M. or later performing "case work" on most nights, and that she should be paid for working 923 hours of overtime. If she had worked extra hours, she would have received compensatory time pursuant to office practice. She did not regularly see Ms. Turner in the office after 6:00 P.M., and if she did, she would have instructed her to stop work and go home. Ms. Turner was constantly tardy and her work schedule was changed several times. When her tardiness persisted, she was required to submit leave slip whenever it was noticed she arrived late to work.

Ms. Nardella declared as follows: She was in Ms. Turner's chain of command from December 2003 to February 2005. During her entire employment with the Agency, it was the practice of the San Francisco District Office to provide employees the choice of receiving overtime pay or compensatory time for extra hours worked. Employees under her supervision usually chose to receive compensatory time, and they knew that any overtime requests had to be approved in advance by the supervisor. If the request was for compensatory time, the request was usually granted, and it was the employee's responsibility to record overtime hours worked and compensatory time received in the Agency's time and attendance system. She has strictly enforced the San Francisco District Office's policy that no extra hours were to be worked unless the overtime was previously approved, and has routinely instructed employees who work past 6:00 P.M. (or on weekends or holidays) that they are to stop work, shut down their computer, leave the office and go home. As a veteran employee of the Agency, Ms. Turner was well aware of the office's system for requesting compensation for extra hours worked. She did not routinely see Ms. Turner in the office after 6:00 P.M. and, if she had, she would

have been instructed to stop work and go home. She has no personal knowledge or evidence, including FPPS records, to support Ms. Turner's claim of 923 overtime hours worked, and was not aware of her practice of working through lunch and/or breaks and staying until 7:30 P.M. or later performing "case work" on most nights. If Ms. Turner did so, it was without prior authorization and without her knowledge. If she did work excess hours and followed the office policy and the Collective Bargaining Agreement, she would either have received overtime pay or compensatory time. Ms. Turner was a marginal employee who had been placed on several PIPs throughout her career, in part due to her lack of productivity, which makes her claim of 932 hours of overtime not credible.

Mr. Proulx declared as follows: He was in Ms. Turner's supervisory chain of command from about April 2003 through November 2004. During his entire employment with the Agency, it was the practice of the San Francisco District Office to provide employees the choice of receiving overtime pay or compensatory time for extra hours worked. Employees under his supervision usually chose to receive compensatory time, and they knew that any overtime requests had to be approved in advance by the supervisor. If the request was for compensatory time, the request was usually granted, and it was the employee's responsibility to record overtime hours worked and compensatory time received in the Agency's time and attendance system. Because he was aware of the overtime litigation against the Agency in the 1990s, he was aware of the importance of not permitting employees to work overtime without prior approval, and the importance of ensuring that employees were compensated for any extra hours worked. He strictly enforced the office's policy of ensuring that no employee worked any extra

hours without prior approval and routinely asked employees who were working after their scheduled hours to leave the building. It was rare for Investigators in his unit to work overtime, and when it did occur, it was usually for travel or Outreach. There was no reason for Ms. Turner to have put in 923 hours of overtime and he had no awareness of her having put in such hours. He had no knowledge of her practice of working through lunch and breaks and staying until 7:30 P.M. or later performing "case work" on most nights, and, if she did so, it was without authorization and without his knowledge. If she had worked extra hours, she would have received compensatory time consistent with the office practice. He did not routinely see Ms. Turner working after 6:00 P.M. on a regular basis and, if he had, he would have told her to stop working and to go home.

For each of the 47 pay periods where she has claimed extra hours, Ms. Turner appended a statement reflecting that she worked a certain number of hours in excess of eighty. It began: "I worked ___ hours in excess of 80 hours in this pay period, or ___ hours in excess of 40 hours in one week in this pay period." She added:

> …I worked through my breaks and lunch, and stayed until 7:30pm or later performing case work on most nights. Frequently, Investigator Diane Horne, was also working in the office with me. I actually worked the hours I claimed and constructed the extra time based upon my best recollection. The facts are correct to the best of my knowledge and belief. The records provided to me did not reach me until May 24, 2012. I was informed that no other records would be provided. I request to amend this claim if new and additional records become available.

In addition, Dianna ("Diane") Horne (referenced above in Ms. Turner's statement, and a fellow claimant), also supplied a statement for each of Ms. Turner's 47 pay periods, wherein she indicated that "[a]lthough I do not recall the exact dates, I do recall routinely seeing [Ms. Turner] working until 7:30 at night and sometimes much later from April 7th, 2003 until she retired in February, 2005."

The Union contends that Ms. Turner did not receive the records she requested, basing her extra hours on her recollection. It agrees that Ms. Turner was on a flexible work schedule, and references the Agency's offering the statement of Deborah Randle, currently Enforcement Manager and, during the period of Ms. Turner's claim, Acting ADR Coordinator in the San Francisco District Office. The Union challenges Ms. Randle's assertion in this statement that the practice in the office has been to offer employees a choice of overtime or compensatory time for extra work hours, and states it is contrary to the sworn testimony of Timothy Riera, who served under the San Francisco and Los Angeles District Offices, to the effect that there was never any overtime offered. In any event, the Union notes, the 2009 Opinion decided that issue. It notes that the Agency produced no evidence to show that Ms. Turner did not work the extra hours claimed.

Because Ms. Turner worked a flexible schedule, her claims must be denied.

SAVANNAH

Janice Smith

Ms. Smith worked as an Investigator in the Savannah Local Office throughout the claims period. She notes on her Claim Form that she worked a flexitour schedule. She claims 856 hours over 160 pay periods. She was among the claimants who received a 60-day extension of time to file. The Agency objects to all her claims on grounds that she was on a flexible schedule, that she did not submit sufficient evidence to raise a reasonable inference as to the amount and extent of overtime hours worked, that, given her leave record, she did not work the hours claimed in overtime, that working through paid breaks is not overtime, that her supervisor could not know of or prevent her working

the claimed hours, and that her claims are outside the scope.

Along with her Claim Form, Ms. Smith submitted the following statement:

> While employed with EEOC during the periods of April 7, 2003 to April 28, 2009, I was a GS-12 Investigator working in the Savannah Local Office. I worked a flexi-tour from 9:00 a.m. to 5:30 p.m. each day except when I am on intake and then I work the office hours from 8:30 to 5:00 p.m. Due to the office being short staffed I would work around 30 minutes or more over my allotted work hours (Monday to Friday) to make sure that I completed my work tasks. I would also take work home with me and work on the weekends and night hours as needed. I would also work through lunch during intake and around the end of each quarter to get work out. I had to man the front desk, do mail-ins, answer telephones, read and answer e-mails, training, do case work (investigations, on-sites, settlements, intake, outreaches, requests for information and etc.) and perform as the Acting Director for a day, week or even months depending on the year. During the end of the quarter and the end of the fiscal year I would work a lot of overtime hours in the office and at home to make sure to meet the demands placed on me and to make sure that the Commissions [sic] goals and objectives are completed. There was generally not enough time in the day to complete all tasks being that I worked in a local office and we (investigators) had to do everything in the office (front desk work, ISA work, investigator and director work) as well as meet the case closure deadlines for the office. As you can see from my past performance I have always exceeded my portion of the office goals and requirements during these years. The Savannah Local Office was without a Local Director from June 2003 to around February 2005 and from around January 2006 to August 2007. As a GS-12 I was the Acting Director during various times in these periods.

The Union contends that Ms. Smith's statement is consistent with the hearing testimony concerning the Savannah Local Office. It notes that the Agency submitted no specific evidence that Ms. Smith did not perform the claimed work.

Because Ms. Smith worked a flexible schedule, I must deny her claims.

SEATTLE

John Lee

Mr. Lee worked as an Investigator in the Seattle Field Office from before the claims period until his retirement on April 14, 2006. He worked a 5/4/9 compressed schedule. He claims 64 hours over 14 pay periods. The Agency objects to his claims on grounds that his claims are outside the scope, that he is not entitled to compensation for

noncompensable travel time, and that his supervisor could not know or prevent some of the claimed overtime hours.

Along with his Claim Form, Mr. Lee submitted a detailed statement of his activities as follows:

> As a retired EEOC Investigator I, John A. Lee, ID 0000588782 provide this statement in support of my claim for relief, in resolution of those matters in arbitration concerning overtime pay during the period April 7, 2003 until my retirement April 14, 2006.
>
> This statement is of three pages and is being attached to each of the individual pay period claims submitted. Page one is a general statement intended to describe the context of my work; page two is a more particular description of those cases and projects for which additional hours are claimed; page three is a complete log of claimed dates and hours.
>
> I was employed with EEOC's Seattle office continuously from March of 1977 until my retirement. During the period of these claims I was a GS 12 Investigator with a "5/4/9" work schedule. Some aspects of my assignments were uncommon, and are relevant to explanations of my duties and hours. First, although I continued a full Intake schedule throughout my employment, and maintained a caseload of "ordinary" EEOC charges, my supervisor of record during the Claim period was Kathryn Olson, an EEOC Supervisory Trial Attorney. This arrangement had been found to assist Seattle's work on larger, multi-party class cases, which were preferentially assigned to me for investigation. In addition to this work, I also served the legal unit as an in-house data/statistical analyst. This structure of work and reporting was effective, and was continued by mutual agreement throughout these years. However, it did result in occasional time demands or conflicts that would not have occurred had I not been involved with more complex, multi-party class cases prepared for [or, at times, in] litigation. ... I believe any Seattle staff from that period will confirm this description of my role within the office at that time.
>
> The "date log" attached to this statement identifies specific instances of overtime work and is based on my own records and recollections. While presented by calendar date, it is better understood by case name, as it was case-specific demand that required such additional time as I have tried to specify, rather than any common habit of "break" or "lunch", or irregularity in time and leave accounting [imperfectly] recorded by agency documents. ... I believe agency records of the cases and projects involved will confirm my activity, and that the available time records will not show any "informal" time, "comp" time, or "leave" time used or credited on these dates. My experience was that the formal system had become largely irrelevant to the necessity of the work. ... I do not claim or suggest that my listing of dates and times is complete. While the dates selected are certain, the hours are approximate – the instances are those that are recalled. I invite any agency review or criticism that may properly identify error as to date or case activity, or correction concerning extent of hours.

Finally, I submit what I hope to be a brief respite for the Arbitrator, agency and union staff from the well-remembered tedium of fact-intensive cases:

... A few years before the claim period EEOC's headquarters staff solicited work related haiku for a "contest" among employees. I offer the entry that was, by staff vote, the runner-up. ...

Hub airport, midnight ...
It's such a glamorous job,
This being a fed.

My last weeks of employment held three significant tasks: a training commitment to the Oregon Bureau of Labor was completed, my caseload was managed to zero [March Intake], and one large case was prepared for transfer [I.O. Foresters].

The other cases named below - identified by case name, charge numbers being unavailable – had all been taken through Conciliation. All but "Plasterer", a Charging Party, are Respondent named. Five of the six class cases had multiple Charging Parties, with counsel. More detailed description of these actions will be supplied if requested.

.. TrendWest Outside mediation [successful] in litigation 2004
action in addition to regular duties
regional: sex, class, promotion

.. Union Pacific w/ multiple party railroad union co-respondents 2004
extensive negotiations lead to LOD and Concil.Failure in same week
national: sex, class, benefits – contraception

.. Plasterer [CP]; on-site to Vancouver WA 2004
local: sexual harassment by CEO of small business

.. Oberto's ; 2005
religious accommodation and discharge, multiple Somali women
on-site w/ two new staff as training experience;
meetings with CPs, counsel, and non-profit HFZ community org. staff

.. Wal-Mart ; on-site to Lewiston ID 2005
egregious harassment of African-American male

.. Les Schwab ; witness search 2005
regional: sex; class hiring and promotion

.. Pro Sports ; CP interviews; settlement explorations 2005
multiple CPs -- extensive review for litigation assessment
local: class; multiple location; race hiring / assignment, retaliation claims

.. March intake complete filings, first reviews 2006
three intake days in month prior to retirement

.. OR state Bureau of Labor Salem OR 2006
days both before and after BOL statistics training, driving and Seattle office time

.. I.O. Foresters prepare case for transfer and assessment 2006
interposition of Salem training required use of weekend hours
regional: sex; promotion, pay; retaliation

ann. hrs year *total hours claimed – total days with claims*
daily hrs date case name description

six __ 2003 ***64 Hours -- 29 Days***
1 October 20 TrendWest ; mediation prep
1 October 21 mediation prep
2 October 23 mediation mtg. [post conciliation]
2 October 14 Union Pacific ; LOD and Conciliation failure

five __ 2004
3 June 2 Plasterer [CP]; Vancouver WA onsite
1 July 14 Oberto's ; day before onsite
1 September 22 .. mtg w/ Oberto's CPs at HateFreeZone

thirty two __ 2005
3 February 27 Wal-Mart ; travel to Lewiston, ID
3 February 28 ... onsite interviews
2 June 8 Les Schwab ; witness search
2 June 9 .. witness search
1 July 28 Pro Sports ; CP interviews
5 July 29 .. [5/4/9 off Friday] PS , statements
3 July 31 .. [Sunday] PS, case summary
3 September 9 .. [5/4/9 off Friday] PS, settlement efforts
2 August 15 I.O. Foresters ; travel to Portland OR
2 August 16 ... onsite interviews
1 December 19 I.O. Foresters ; travel to Boise ID
2 December 20 ... onsite interviews, CPs
2 December 21 ... onsite interviews, managers
1 December 22 ... travel to Seattle

twenty one __ 2006
1 March 8 intake
1 March 13 intake
2 March 15 intake
5 March 24 IOF Foresters [5/4/9 off Friday]
4 April 8 IOF [Saturday] investigator's memo
4 April 9 IOF [Sunday] investigator's memo
2 April 4 OR state Bureau of Labor; Salem statistics training
2 April 6 .. 4/4 and 4/6, driving days
- April 14 __ last day worked __

The Union contends that the Agency has submitted no evidence to show that Mr.

Lee did not work the extra hours claimed.

Mr. Lee's statement is unusual in its detail. While it is submitted in support of each individual pay period claim for extra hours, it attempts not only to provide a generalized description of Mr. Lee's activities, but it attempts to describe how the details are set forth and how they may be best understood. Further, it attempts to the extent possible to identify individual activities by date and case identification. There are elements of this statement that are imprecise either by date or description, but, in all relevant respects, it goes well beyond a mere generic description of his day-to-day job duties.

With respect to a few specific Agency objections, I note first that it seeks to invalidate Mr. Lee's claims for work on his compressed days off and on weekends on the ground that he does not specifically assert that his supervisor was aware that he was performing his work during this times and, therefore, would have no opportunity to prevent it. I acknowledge this position. In my view, however, by the very nature of these proceedings, the issue of supervisory knowledge, regardless of a lack of "pleading" this issue in a given circumstance, remains an integral part of the process. The fact is that, without a finding one way or the other on this very issue, there is no way to resolve the issue of suffered or permitted overtime in a given case. Therefore, I find no reason not to solicit testimony on this issue.

Second, on the matter of Mr. Lee's travel hours claimed, these are, for the most part, noncompensable with overtime as I read the descriptions in Mr. Lee's statement. The same-day travel, such as his Seattle travel claim for 1 hour on December 22, 2005 (pay period 200601), does not qualify. Similarly, his 2-hour claim for "driving days" in

pay period 200609, based on what the records reveal of those being scheduled work days, would not qualify. His 6-hour claim for pay period 200506 (travel to Lewiston, ID) would likewise appear not to be payable, in part because he took 13 hours of paid leave during that pay period. Also, Mr. Lee's travel in pay period 200518 to Portland, OR on August 15, 2005, even assuming it was an overnight trip related to Onsites the next day, did not involve a nonscheduled work day. Lastly, his travel to Boise on December 19, 2005 (pay period 200601), even assuming the next two days were related to this trip, did not involve nonscheduled work days.

Based on the above, therefore, I find that Mr. Lee has presented information to an extent sufficient to merit a hearing on these claims insofar as they relate to the issue of supervisory knowledge. In addition, pay periods in which Mr. Lee earned no compensatory time and which, by my ruling, are not "outside the scope," may be examined.

Lwanda Okello

Mr. Okello worked as an Investigator in the Seattle Field Office from the beginning of the claims period until August 15, 2005.

Mr. Okello did not submit a valid Claim Form. He signed it and dated it, without filling in any of the required data, and attached the following letter:

> As Investigator GS-1810 12, I was not advised to keep track of my total work time and we were only required to sign in and out, during the particular period of time. As with all Investigator[s], we were given the impression that a certain amount of extra work was required to finish a[n] adequate amount of peer work, which, would be noted in our performance review. We did whatever was necessary to accomplish case closure, that included, taking work home, and, on average, working three to four extra hours, per work day, and many times on Saturdays because of witness work schedules. During this period of time, witness testimony was an essential work performance of an Investigator. We had to obtain it, regardless of the…time or day of the week.

> Some supervisor[s] required written notation for hours worked, on-site and after work hours. Any extra hours in addition to this, would not be recorded or compensated for. During the eligibility period, I was employed for 3 years, 4 months and 8 days. I would estimate the total, undocumented extra hours, around, fifteen per week, for 104 weeks, decreasing to 4 hours a week for 68.8 weeks.
>
> To obtain time cards from the employer will not increase the recollection of the many undocumented extra hours an investigator may have worked during this period of time. As with any implied or perceived quota expectation, you do what is necessary to complete the job. Nevertheless, during this period of time, I was given no notice that my total work time would come into question, and therefore, took no note of extra hours required to complete the monthly assignments. It became routine to take the time necessary to close a file. In the office I was in (I believe) we all worked in addition to 40 hours a week or the job would not get done. As [for] myself, extra hours were not records and any memory about such hours are not accurate.
>
> I pray this information is sufficient for a claim under these procedures. Thank you very much for your attention to this matter.

The Agency asserts that, by virtue of Mr. Okello's having failed to submit a valid Claim Form, his claims should be denied on that basis.

Mr. Okello also entered into a Settlement Agreement with the Agency in February 2008 with respect to a claim filed under the Age Discrimination in Employment Act ("ADEA"). The Agency contends further that, by virtue of Mr. Okello's having signed a waiver and release of all claims arising against the Agency prior to February 22, 2008, his claims should be denied on this basis as well. Mr. Okello ended his employment with the Agency on August 15, 2005.

With respect to the Agency's waiver argument, the Union references its October 31, 2013 response to the Agency's general claims objections, wherein it rejects the Agency's argument that Mr. Okello's claims here are barred because he entered into a Settlement Agreement with the Agency on the ADEA claim. The Union there asserts that neither Mr. Okello's Settlement Agreement nor those of two other claimants – Victor Galvan (Dallas) and Francine Schlaks (Las Vegas) – were executed with the Union, and

the Union was not a party to any of the actions covered by these Settlement Agreements. Moreover, it notes that all three Settlement Agreements were executed after the Union filed its grievance in this case. It stresses the Union's right as the exclusive representative to act on its own behalf and on behalf of groups of employees, and that "[n]o individual employee can invoke and/or relinquish the Union's rights, since individual employees do not have status to act for the Union, under the law." This matter is referenced and a ruling thereron made in the "LEGAL ISSUES" section of this Report. That ruling declines to invalidate Mr. Okello's claim on the basis of the Agency's waiver argument.

The Union contends that Mr. Okello's statement, set forth above, indicates the desire to submit a claim. It asks that Mr. Okello be given the opportunity to file a hard copy Claim Form and informed that he must return the Claim Form within thirty days from his receipt of the hard copy Claim Form or the claim will be dismissed. Further, the Union asks that, in the event Mr. Okello elects to participate, the Agency and the Union should have thirty days to respond to the claim. With respect to the Agency's waiver argument, the Union notes its previously having addressed the issue.

I acknowledge the Union's good faith argument setting forth Mr. Okello's desire to file a claim, asking that he be given an opportunity to do so. I am unable to agree. The parties' negotiated claims process clearly addresses the time frame within which a claim must be filed in order to be deemed valid. Whether Mr. Okello believed he lacked the details at his disposal at the time in order actually to file a claim is not recognized by the parties as a sufficient reason to refrain from doing so altogether. I recognize that Mr. Okello submitted a statement of his position, along with certain details concerning

estimated hours. However, this alone is, on its face, insufficient to satisfy the parties' own framework for submission of a valid claim. For me to grant the relief now requested would, in my view, contravene the parties' own negotiated claim filing procedure.

For this reason alone, therefore, I am unable to grant the relief requested.

ST. LOUIS

Pearlethea Clayton

Ms. Clayton worked as an Investigator in the St. Louis District Office from before the claims period until July 2006, and as a Mediator from July 2006 until July 2008. Her Claim Form, as well as her FPPS records, reflect that she worked both 5/4/9 and 4/10 compressed schedules. Ms. Clayton was among those claimants granted an extension of time to file. She claims 907 hours over 120 pay periods. The Agency objects to her claims on grounds that she seeks compensation for work performed during breaks and for noncompensable travel time, that she provided insufficient evidence to raise a reasonable inference that she worked the extra hours claimed, that management could not have known of or prevented the claimed overtime work, that she received compensatory time for all hours claimed, and that her claims are outside the scope.

The Agency argues, in part, that Ms. Clayton's claim of never stopping for lunch breaks on a daily basis for 120 pay periods is not credible. It asserts further that her travel claims are undocumented and are, so far as can be determined, not compensable with overtime. In addition, there is no evidence that Ms. Clayton requested or received compensatory time for any of the 907 overtime hours claimed, or that she was compensated at all. (Actually, she did claim to have received 3 hours of compensatory time in pay period 200407, and that she used 3 hours in pay period 200412). Since, as

the Agency asserts, it was the practice of the St. Louis District Office to grant compensatory time for extra hours worked, it asserts here an overtime offset of 907 compensatory hours received and used by Ms. Clayton.

The Agency offered the Declarations of Maria Schulte and Sylvia Smith. Ms. Schulte, ADR Coordinator in the St. Louis District Office, declared as follows: She was Ms. Clayton's supervisor from July 2006 to July 2008. It was always the practice in the office to require employees to obtain approval from supervision before working overtime, and she has strictly enforced this practice. If compensatory time was requested, it was usually granted. She knows of no instances where it was denied. It was the employee's responsibility to record overtime and compensatory time received in the Agency's time and attendance system. She has no personal knowledge or evidence that Ms. Clayton worked through her lunch and breaks, deeming that claim not credible, and past her normal shift on a daily basis. If she did so, it was without Ms. Schulte's knowledge or prior authorization. She also has no personal knowledge or evidence that Ms. Clayton worked two to four hours late during the week and eight or more hours on Saturday and Sunday. If she did so, it was without her knowledge or prior authorization. She has no personal knowledge or evidence to support Ms. Clayton's claim for 907 hours of overtime, and that if she had worked overtime during the claims period, she would have received compensatory time consistent with the office policy. She is not aware of Ms. Clayton's having worked any overtime for which she did not receive compensatory time. She does not recall having seen Ms. Clayton in the office regularly after 6:00 P.M. and, if she had, she would have instructed her to stop work and go home. As a veteran employee, Ms. Clayton was well aware of the office's policy regarding compensatory

time, and that it was her responsibility to record overtime hours worked and compensatory time received in the Agency's time and attendance system, which other employees routinely did. Since Ms. Clayton did not, this strongly suggests that she worked no overtime.

Ms. Smith, District Resources Manager in the St. Louis District Office, declared as follows: Ms. Clayton volunteered to assist the ADR Unit in February 2006, and continued working as an Investigator until she became a full time Mediator in July 2006. During this overlap period, according to IMS data, Ms. Clayton was dividing her time between the two positions, rather than performing both jobs full time, and her production was not high while performing either job. Before 2006, potential Charging Parties could not walk into the office and file a charge or meet with an Investigator, but were required to fill out a questionnaire and submit it to the office. The questionnaires were assigned to Investigators who were responsible for contacting the Charging Party. As a result, all Investigators were able to control their own calendars and plan their work accordingly.

Ms. Clayton submitted a detailed statement along with her Claim Form. I set it forth in its entirety (as I have in many such cases) because I want to ensure that Ms. Clayton's position and arguments in support of her claim are completely and accurately reflected. The statement is as follows:

> I had been employed with the Equal Employment Opportunity [Commission] for approximately 34 ½ years from October 23, 1973 until July 4, 2008, when I retired. From September 1979 to August 1982, I held the position title as an Investigator, GS-160-9 in the Fact Finding Unit. My immediate supervisor at the time was John D. Fultz. During my tenure, I worked in various units, including but not limited to Intake and other Investigative Units, i.e., ADEA/EPA, Systemic. The exact time periods, I do not recall and/or remember nor do I recall or remember my grade levels, but I did receive promotions during 1982 to 2005 or 2006 to grade levels 9 to 12. I made an attempt to secure such information, but was informed by the District Resource Manager that she did not have to comply with my request because the scope of overtime did not cover, SF50s and

no such documents exist. (See e-mail from Ms. Smith dated May 12, 2012 [actually May 8, 2012]). However, to the best of my recollection and I reasonably recall, sometime in August 2004, due to a shortage of Investigators and one Mediator, Maris Schulte, in the office, I was required to perform a dual role; an Investigator in the Enforcement Unit and conduct Mediations.

Sometime in 2004, the exact month or date, I do not recall, until I was promoted to ADR Mediator, sometime in 2005 or 2006, I was still required to perform both Enforcement and Mediation duties. My job series changed following my promotion from GS-1810-12/6 to GS-301-12/6, but my grade level did not. The promotion was a lateral move because the Mediator position was announced at a Grade 12.

During that same time period, I was still assigned Intake Questionnaires on a daily basis to schedule and conduct interviews. I generally worked through my lunch, took no breaks and often worked past my assigned shift to complete my assignments.

My duties as an Investigator required that I schedule and conduct interviews on weekly inquir[i]es received from the Intake Unit, complete analysis on case files in my current inventory, conduct interviews of potential witnesses on cause cases and complete the final dispositions of cases. I also received case assignments from the Mediation Unit to broker, schedule and conduct mediations, type contact letters to both Charging Party and Respondent regarding the date, time and location where the mediation would be held, type the settlement agreement(s), mail out closure letters and input coding. I normally scheduled 2 to 4 mediations a week and generally the mediation went beyond my normal scheduled shift (7:00 a.m. until 5:00 p.m.). I worked a Compressed shift (5/4/9). The office core hours were 8:00 a.m. until 4:30 p.m.

On a daily basis during the pay periods: 4/6/2003 to 6/21/2008, I generally worked through my lunch, breaks and past my normal assigned shift, while performing multiple duties (Intake, Enforcement and Mediations), i.e., Intake, conducting witness interviews, returning phone calls, scheduling on-sites, settlement discussions for possible resolutions, Pre-Determination interviews (PDIs), brokering, I never stopped for lunch or breaks and often worked late; past 6:00 p.m. To the best of my knowledge, I was rarely awarded compensatory time nor were these additional hours reflected on my time card. Further, based on the Supervisor's requirements that certain brokering and reports be completed at specified times, the only alternative for me was to do these duties during non-scheduled working hours because my hours were taken up while performing mediations. Also, these additional hours were performed based on the availability of the Charging Parties['] schedule and workload.

The Saint Louis District Office, under the former, District Director, Lynn Bruner, had a[n] unwritten policy requiring any employee who worked and/or remained in the office beyond 6:00 p.m., were required to sign out at the guard's desk, located in the main lobby.

The specific pay periods, I do not remember or recall, I often worked late and on some Saturdays and Sundays, along with a co-worker, Shirley Smith. To the best

of my knowledge I do not recall if these additional hours were recorded on my time and attendance card or if I was awarded compensatory time for those hours. Management had knowledge that I, and other employees were working these additional hours in order to keep up with their pending caseload or work assignments, i.e., intake questionnaires, case assignments, interviews, scheduling interviews, returning phone calls, settlement discussions, brokering, and conducting mediations.

Shirley Smith, former Paralegal, who worked in the Legal Unit, attempted to obtain sign in/sign out sheet(s) maintained at the guard's desk, where employees and/or guest [were] required to sign in and out from Inspector Stone and he informed her that to the best of his knowledge, those records are retained for approximately 5 years, but he would check with the Administrator, and give her a call back. Ms. Smith informed me that she never received the call back from Inspector Stone. Shirley also told me that she contacted Joe Wilson, Union President, about securing the sign in and sign out sheets and he told her that he had spoken to Sylvia Smith, District Resource Manager about the matter and her response was, "Its not likely anyone would get access to those records". [Shirley Smith, also a claimant in these proceedings, referenced her desire to assist Ms. Clayton with her own records, as needed. Note Ms. Smith's report, *infra*.]

Absent from obtaining the actual records, sign in and sign out sheets during April 7, 2003 to April 28, 2009, I believe I had worked 2 to 4 hours late during the week, and 8 or more hours on Saturdays and Sundays.

I was never informed by my immediate supervisor or management that I was not allowed to work additional hours. To the best of my knowledge I was not compensated for those additional hours worked.

I was unable to secure information from the appropriate channels, regarding specific positions and the times served on Intake, Intake Scheduling, positions held and time served in each position, work plans, travel records and SF 50s. (See e-mail dated May 12, 2012.) Ms. Smith response to me was "Under the Claims Procedures in this case, the Agency is requited [sic] to provide the employee with "Cost Accounting Sheets and/or leave records, including compensatory time taken". She also alluded that my request was "Beyond the scope of what the Agency must provide and that the Agency does not have such documents". I was provided Cost Accounting sheets for the specified time frames, but no other requested documents were given.

I had retained such additional information, such as work plans, travel vouchers and SF 50s, Intake schedules, but the office experienced a water break, from a[n] upper floor in the building, which I believe occurred sometime during the latter part of 2006 or early 2007, and my office, along with several other employees, Vivian Lawson and Supervisor, Maggie McFadden's office suffered a lot of personal and office documents. There were other employees whose offices were affected, but I do not recall the names of these employees.

I also was required to take Commission ADR training in Atlanta, Georgia for 5 days. To the best of my knowledge, I do not recall or remember if this training took place sometime in June or July 2006 or 2007, or what pay period it covered.

I had to leave my residence 1 hour early to arrive at the airport; check in my bags and undergo a security check. Absent from obtaining the requested documents, I was not compensated for this hour.

Sometime in 2006 or 2007, I was assigned 2 charges from the Hearing Unit, while still performing Mediation duties. These case files were assignments from Hearing Judge, Amy Weinhaus. I do not recall the Charging Parties and Respondent's names or case file numbers. However, I was required to travel to Kansas City, Missouri, for 1 ½ days for these mediations, which required that I leave home 1 hour early to get to the airport; check my bags and pass security checks. I attempted to obtain these documents (travel vouchers) and was told that my request was beyond the scope of the overtime claim. (See attached e-mail from Sylvia Smith) I was not awarded compensatory time for leaving home 1 hour early nor was I compensated for not taking lunch or breaks during my travel.

The information I have provided is what I reasonably remember or recall regarding the number of hours worked. Absent from obtaining the actual documents or records that I was unable to obtain because of my retirement on July 4, 2008 and my inability to obtain this information from the District Resource Manager, Sylvia Smith. Her response was "No such records or documents exist". (See Ms Smith e-mail, dated May 8, 2012). Based on such a late response, no attempt was made to secure these documents from the Record Center. Nevertheless, I am unable to provide specific date(s), but to the best of my knowledge, I performed Outreach duties for the former Out Reach Coordinator, Sharon Blalock in Springfield, Missouri, but the exact pay period, I do not recall or remember. I was required to accompany former Supervisor, Althea Bolden, who has since retired by pov. I had to leave my residence 45 minutes early to pick Ms. Bolden up from her residence. This outreach was done to educate small business owners regarding the Commission's Procedural Regulations on the various laws the Commission had authority to enforce. To the best of my knowledge, I was not awarded compensatory time for this travel nor any additional hours.

Absent from obtaining actual records, work plans, case numbers, while working in Mediation sometime in 2004 to July 4, 2008, until I retired. I generally scheduled 3 to 4 mediations per week. During that time period I worked a compressed 5/4/9 (7:00 a.m. until 4:30 p.m.[)] and a compressed 4/10 (6:00 a.m. until 4:30 p.m.) work schedule. The office core hours were 8:00 a.m. until 4:30 p.m. I never stopped for breaks or lunch. Most of the time the mediation went over 1 to 3 hours beyond my shift. At some point, compensatory time was award[ed].

During pay period 8/8/2004-8/21/2004, I worked a total of 8.0 additional hours beyond my assigned shift on 8/18/2004. I was unable to take lunch or breaks while conducting 2 mediations; 280-2004-05784—Bryan Recht v St. Louis Charter Academy 280-2004-05968—Cyrous Hashemann v St. Louis Charter Academy. One mediation was scheduled at 9:00 a.m. and the other at 2:00 p.m. The 9 o'clock mediation ran over. No breaks and/or lunch were taken and I did not complete the mediations until 11:30 p.m. that evening. These cases resulted in full relief for both Charging Parties, however, I do not recall or remember if

> compensatory time was awarded. Also, the sign-in and sign-out sheets maintained by the guard's desk would reflect when I left the building. A reasonable attempt was made to obtain the necessary documents, from Sylvia Smith, with no avail. Again, I was told that no such documents exist.
>
> For that pay period I worked a total of 15 additional hours; this reflects no lunch or breaks taken during that time. I was awarded time off occasionally for outstanding performance. I have no records to reflect this nor am I aware if any records exist.
>
> The information I have provided is what I reasonably remember or recall regarding the number of hours worked during my tenure. Absent from the actual documents and/or records that I was unable to obtain since I retired from the Agency on July 4, 2008. The District Resource Manager, Sylvia Smith's attempt to divert information that she "Claim", such as travel vouchers, work plans, inventories, Intake Scheduling and SF50s were beyond the scope of what the Agency was required to provide, has limited my abilities.

Also included in Ms. Clayton's Claim Form materials is a testimonial from a Charging Party referencing Ms. Clayton's commendable performance on the Charging Party's behalf, and a response from District Director James Neely thanking the individual and praising Ms. Clayton.

The Union contends that the Agency has submitted no specific evidence to show that Ms. Clayton did not work the extra hours claimed. It argues that Ms. Clayton's detailed statement of work and work assignments has established that she performed the work and that the work was for the benefit of the Agency.

Ms. Clayton provided significant information in her statement. It provides insight into her activities both as an Investigator and as a Mediator. There is, however, with due respect to Ms. Clayton's statement, a general lack of detail as it relates to many of the duties and responsibilities she described, concerning, if not specific pay periods, at least fairly identifiable time frames. Her never stopping for lunch or breaks, while perhaps indicating her work ethic, does not reveal why such extra work time was utilized, either by way of specific case duties or something else. Likewise, her claim that she generally

worked late every week, including significant time on Saturdays and Sundays, is lacking detail insofar as the nature of the work that occupied this time, and why it could not have been performed effectively during regular work hours.

I find there are a few discrete circumstances that may merit scrutiny. One is her travel to Kansas City, MO in 2006 or 2007 for mediations, which she asserted took place over 1 ½ days. This may be relevant in terms of potential travel overtime if Ms. Clayton is able to address when these mediations took place so as to meet the requirements of the applicable Federal regulations. The same may be said for her Outreach activity in Springfield, MO. Lastly, the two mediations which she conducted on August 18, 2004 (pay period 200418), for which she claims 8 hours, may qualify as well, depending on whether she can show she worked more than 80 hours in that pay period. In order to do so, she would have to overcome the FPPS records that reflect her taking 9 hours of annual leave during that pay period.

For these above purposes, I will allow Ms. Clayton to make her case at a hearing, so that she might attempt further through testimony to establish that she is entitled to payment for extra hours. In view of my "outside the scope" ruling, I do not limit or preclude consideration of pay periods by reason of the non-receipt of compensatory time.

Shirley Smith

Ms. Smith worked during the claims period as a Paralegal Specialist until her retirement on April 3, 2006 on a 5/4/9 compressed schedule. She had been an Investigator before the claims period. She claims 50.5 hours over 71 pay periods. She was among the claimants who received an extension of time to file. The Agency acknowledges that Ms. Smith is entitled to payment for 3 hours, or $92.34, plus

liquidated damages, totaling $184.68. The Agency objects to her remaining claims on grounds that she provided insufficient evidence to raise a reasonable inference that she worked the extra hours claimed, that she seeks compensation for work performed during breaks, that management could not have known of or prevented the claimed overtime work, and that her claims are outside the scope.

The Agency asserts that, with the exception of 6 hours in pay periods 200507, 200510, 200511, 200517 and 200526, there is no evidence that Ms. Smith requested or received compensatory time for any of her 50.5 claimed hours. In addition, the Agency contends that, while Ms. Smith claims 30 minutes of overtime for each pay period form April 7, 2003 to April 3, 2006, she did not indicate the method by which she arrived at such a calculation.

Accompanying Ms. Smith's Claim Form are numerous documents, including Cost Accounting Bi-weekly Time Sheets for pay periods 200507, 200510, 200511, 200517, 200525, 200526, and 200608 (her last pay period worked), a Leave and Earnings statement for pay period 200620, FPPS records, a letter from Regional Attorney, Robert Johnson, shortly before her retirement, praising her work, positive work reviews from Donna Harper, then her Supervisory Trial Attorney, additional evidence of work achievement, a list of litigation activities in which she was engaged, and requests for documents in her pursuit of the current action (including a memorandum detailing her inability to procure many requested records).

In the referenced memorandum, she narrated her difficulty in obtaining needed records, noting: "Had I been able to obtain such records for 2003-2006, it would have substantiated my claim that I often departed from the office at or after my scheduled time

and also that I would come to work in the office on week-ends when the office was closed." In addition, she wrote that she shared the information relating to her attempts to secure documents with her co-worker (and co-claimant) Pearlethea Clayton, "in an attempt to assist her in her claim." She added that "I hereby consent that any information that I am providing may also be used for her claim."

Ms. Smith included a detailed statement with her Claim Form, where she states:

> ***It is my belief that I am eligible to participate in this claims process based on the following:*** I was employed by the EEOC, St. Louis District Office, from April 16, 1973 until my voluntary retirement, effective April 3, 2006. I held various positions during my tenure. I was employed in a position of **Investigator GS-1810 grade 9-12** from January 1980 to June 1994. I was first employed as a **Paralegal Specialist GS-950 grade 9-11**, from January 1998 to January 1999 (1 yr. temp promotion) and subsequently from March 2000 until my retirement in April 2006.
>
> For the purpose of addressing the information sought in connection with the EEOC Overtime Claim, my incumbency in the position of Paralegal during the time period April 2003 to April 2006, would be relevant. **Accordingly, on the basis of my statements contained herein, the contents of the attachments which I have included, and in light of the absence of accurate recordkeeping/retention by the EEOC-St. Louis District Office,** ***for the purpose of this claim, I am claiming 30 minutes overtime for each pay period from April 7, 2003 to April 3, 2006. The only exceptions made are in a few pay periods where the record clearly shows that I worked more than 80 hrs., but does not show that the extra time was ever used.*** (See attachments to CLAIM FORM starting with pay period ending 2005 07).
>
> **In further support of my claims as made for overtime pay, my statements are as follows:** As a practice, any changes in assigned work schedules, requests for credit time or compensatory time etc., might have been recorded on the SF-71 Leave slip, but in my recall usually done by a verbal communication to or from a Supervisor, but most often by inter-office emails. While in the position of Paralegal, I worked a compressed 5/4/9 schedule. Customarily, my 80 hrs. per pay period consisted of 8 days of 9 hrs. (72 hrs.) plus 1 day of 8 hrs. work – and 1 off day of 9 hrs. My scheduled off day was Monday of the 1st week of the pay period and my 8 hr. day was Friday in the 2nd week of the pay period. My normal work schedule was 8:00a – 5:30p, although I do recall making adjustments to my schedule at various times due to work demands. I do not recall exactly when the sign-in sign-out sheets were abolished in the St. Louis District Office, but I can accurately state that such a time accounting method existed at least until March 2000, although that period is not relevant to the instant claim….

My position as a Paralegal included a variety of duties, demands, and time frames to be met. Before my incumbency in the position, the Legal Unit in the SLDO had always had at least 3-5 Paralegals on staff to perform the required duties for the 5-7 Trial Attorneys and the Regional Attorney. From March 2000-January? 2004, there was only two of us, myself and Jim Vincent. Jim Vincent retired in 2004 and I was the only Paralegal in the St. Louis District Office up until my retirement in April 2006. I was responsible for all aspects of the job which included (just to name a few) FOIAs, Attorney Referrals, Cost Accounting, Review and Purging of Administrative Files, Scheduling Court Reporters and Witness Depositions, Locating Potential Classmembers, Victims and Witnesses, Preparing Trial Exhibits and Subpoenas, Preparing Back Pay Calculations, Testifying In Court, and many other Litigation related matters….

I have now been retired from the St. Louis District Office for over six (6) years and I have not retained the inter-office e-mails and/or other records which would provide me with the factual information needed to respond. I have made requests for information from the SLDO, the Union and from other sources. I recently attempted to access EEOC's Groupwise E-Mails on the web but was unable to do so because I have forgotten my password used in the past. I have been provided with Cost Accounting Sheets from the Union and Payroll Records from the St. Louis Office. The information provided to me did not include any e-mails, SF-71 Leave Slips or other records which would enable me to accurately verify the ***exact number of hours that I actually worked in any specific pay periods*****….**

In light of the absence of certain records I am further stating, based upon the best of my memory and recall as follows:
Despite what is/is not reflected in the written records that I have been able to obtain from the SLDO and the Union, I am factually stating that it was a known and common practice for me to work more than 80 hrs. each pay period, taking into account that I would: **1) most often work through the entirety of my lunch or during a part of my lunch and break periods; 2) I would frequently work in the office beyond my 9 hrs. per day and/or 3) on a daily basis, I would take work home with me to complete; 4) I performed work at home, including while I was on sick or annual leave; and, 5) I sometimes would go into the office on the week-ends and work while the office was closed.**

I can without argument state that: I did not receive any "overtime pay" as a Paralegal. Contrarily, without having access to specific records and e-mails which would have been generated at the time of occurrences, ***I am unable to factually state the number of hours that I did/did not work during each pay period in question. Nor can I factually identify the specific pay periods in which I did or did not receive or use compensatory time.***

In all fairness to Management, I must acknowledge that my work performance did not go unnoticed during the period relevant to the EEOC overtime claim. During the period covering April 2003 to April 2006, I received cash awards, core awards, time off awards, earned credit time and I'm sure that I was likely given compensatory time on more than one occasion. Pointedly however, when compared against the SLDO pay records, one will see that it was the

> policy/practice of the Office to record only a 40 hr. work week (80 hr. pay period). ***I am now submitting some of the acknowledgments and e-mails which to me tend to support my claim that the consistent 80 hr. reporting as demonstrated in the Cost Accounting Sheets and Payroll records is not a true indicator of my actual time worked. I would not have been able to accomplish all of the work had I not dedicated extra time to the work….***
>
> **I honestly believe that my claim for extra time as made herein, although not totally supported by the records, is fair and would amount to less than what would have been an accurate and exact recording of the amount of time I worked beyond my normal schedule.**
> [Emphasis supplied]

The Union contends that Ms. Smith was required to estimate her extra work hours due to the failure to receive the records she requested. It asserts that the Agency does not submit any specific evidence to show that Ms. Smith did not work the extra hours claimed. It refers to Ms. Smith's detailed statement of work and work assignments, and argues that this has established that she performed the work described and that the work was for the benefit of the Agency.

There is no question that Ms. Smith, throughout her career, was a very highly valued contributor, both as Investigator and as Paralegal Specialist. Her documentation speaks clearly to that. It is also apparent that, like her colleague, Ms. Clayton, despite her having been granted an extension of time within which to file her claim, she filed hers in the ordinary course and did so without the advantage of records that she strongly believed would have been of assistance in supporting her claims.

Ms. Smith's detailed statement accompanying her Claim Form, while as thorough as she believed possible, does lack details that would tend to link specific activities with specific times or pay periods. Had that detail been set forth, it would surely have been easier to identify what specific tasks generated extra hours and why.

Inasmuch as my "outside the scope" ruling does not limit consideration to pay

periods where compensatory time was received, I grant Ms. Smith a hearing so that she may testify for the purpose of determining whether bases exist such that the proposed Agency remedy should not be directed.

TAMPA

The Union asserts generally that the hearing testimony showed that supervisors were aware of employees' working extra hours, that they maintained a compensatory time book, and that employees were instructed to sign in and sign out with the employees' scheduled work hours.

Beverly Collins

Ms. Collins worked as an Investigator in the Tampa Area Office throughout the claims period. As reflected on her Claim Form, and without dispute, she worked a flexitour schedule. She claims 1,244.75 hours over 95 pay periods. She testified at the hearings in Atlanta, GA. The Agency objects to all her claims on grounds that she worked a flexible schedule, that she provided insufficient evidence of overtime work, that she did not work much of the overtime claimed, that on no occasions after 2003 could her supervisor have known of or prevented her claimed overtime work, and that any valid claims would be subject to an offset.

More specifically, the Agency argues that, while Ms. Collins states she spent about 12 hours each quarter working on quarterly and annual reports, she does not claim these constitute excess hours. It asserts that Ms. Collins has provided virtually no evidence to support the very large number of overtime hours she claims or the method she used to derive them, arguing that her testimony at hearing does not support this large a claim. In addition, it argues that there is no support for Ms. Collins' working extra

hours in connection with quarterly or annual reports, IT or investigative work.

Along with her Claim Form, Ms. Collins supplied the following statement:

> As supporting documentation in reference to my entire claim, I would like to provide the following information.
>
> The calculations that I have entered are based on the information that I have been able to put together from limited documents that I have.
>
> First and foremost, I do not have exact hours, but for over 4 years, I have successfully closed on average, over 150 cases per year, with some years being closer to 200. This information can be verified through the Commission's reporting system.
>
> Additionally, from approximately 1999 through 2006, I was responsible for the quarterly and annual 396 and staffing reports that were forwarded to headquarters. Thus, each quarter required approximately 12 hours of reconciling the information, prior to sending to management and hq.
>
> From approximately 6/2005 through 1/2007, in addition to my investigative functions, I also served as the office IT Specialist. During that time, there were many nights that I stayed well beyond my 'normal duty' hours. It was at that time that the new VOIP phone systems were installed; the new servers were sent out; desktops were reimaged; and the deployment of laptops to the field office began. I was the only person performing these duties, in addition to investigative functions.
>
> I have two feet of documents, that (1) I cannot afford to copy and forward or (2) would not be able to be scanned in the 7 hrs that was granted to submit my claim. However, should they be needed, I will be more than happy to provide for review.
>
> Most importantly, I would like to point out as I did during depositions, it is difficult to remember back to exact times and dates now, especially when we were constantly told that we had to sign in the time that stated on our time sheets – so even those are not accurate.

The Agency offered the Declaration of Manuel Zurita, former Director of the Tampa Area Office. He declared as follows: Ms. Collins performed many IT functions in the Tampa Area Office for about 9 months in 2006, before which time he himself performed them. Ms. Collins was never detailed as an IT Specialist and maintained a reduced Investigator caseload so that she could perform both tasks within regularly scheduled hours. She had no significant responsibility for the VOIP phone system, and

this was handled principally by a contractor. She also had minimal involvement with the laptop deployment, and was never responsible for the quarterly and annual 396 reports or staffing reports. To his knowledge, Ms. Collins did not spend 12 hours in any quarter reconciling information in the reports. Only on a few occasions did he recall seeing Ms. Collins in the office beyond 3:30 P.M. between 2003 and 2009 and she never reported to him that she had worked beyond 80 hours in a pay period.

The Union contends that Ms. Collins worked the time that she has claimed and that, further, as the testimony revealed, managers and supervisors in the Tampa Area Office were aware of and approved the extra work hours. It argues that the Agency submitted no evidence to show that Ms. Collins did not work the extra hours claimed, and that, as her statement above indicates, she sets forth the nature of the work and demonstrates that it was performed for the benefit of the Agency.

By reason of Ms. Collins' having worked a flexible schedule, I must deny her claims.

Carey Shepherd

Mr. Shepherd worked as an Investigator in the Tampa Area Office from before the claims period through October 13, 2008. He worked a 4/10 compressed schedule. He claims 510.5 hours over 92 pay periods. The Agency objects to some of his claims on grounds that they are noncompensable travel time, that some are for work performed while in paid leave or holiday status, that some are not supported by any evidence, and that some are outside the scope.

The Agency acknowledges that Mr. Shepherd has stated a viable claim for about 78 hours of overtime work, for which he received informal compensatory time, and is

therefore entitled to $2,766.66, which includes liquidated damages.

The Agency recognizes that Mr. Shepherd generated a detailed contemporaneous log of his work hours and the manner in which he worked his hours, along with the times of his receipt and use of compensatory time (none of which is reflected in FPPS records). These confirm, the Agency notes, that he worked overtime, typically on weekends, early mornings and after work, as well as the amount of overtime worked in most of his claimed pay periods. Additionally, except for claims of work on holidays and during annual leave, the Agency acknowledges supervisory knowledge of such work. The Agency disagrees on the amount of the claimed overtime hours, in that they do not consistently conform to Mr. Shepherd's log, and some hours are for hours that are not compensable, either by reason of travel, holiday or leave, and do not account for compensatory time taken in the same pay periods. The Agency correctly calculates that, according to Mr. Shepherd's Claim Form, he received compensatory time in 4 pay periods totaling 19 hours and used compensatory time in 16 pay periods totaling 78 hours.

Along with his Claim Form, Mr. Shepherd submitted a statement directed to Rust Consulting wherein he detailed how his claim is documented. It states:

> Per your instructions I have completed the overtime forms. In support, I have included my personal Time and Attendance Log, a notebook I began keeping in August 2001 and that I maintained up until I left EEOC. One notebook, (08/2001 to 03/2004) has been lost, so I did not enter information for the applicable dates. In addition, I only calculated to the half-hour, not bothering to add quarter hours or fewer. The total is 491.5 hours.
>
> My decision to keep a notebook was predicated upon a management directive to enter 700am to 530pm on the official time sheet, regardless of the number of hours actually worked or when they were worked. I was uncomfortable about recording what was essentially untrue, so I kept the private log for myself. I do not appear to have been very careful with comp time..I doubt that I requested it very often.

> I left EEOC in October 2008, largely because I was tired of working unpaid hours to achieve my case closure numbers and maintain my outstanding performance rating. It was exhausting.
>
> I am providing you the original notebook and I did not make a copy. I have no access to emails or other evidence since I am no longer with the agency. However, my sense is that there are likely electronic documents in support [of] every entry.
>
> You are welcome to contact with me if you have questions. Otherwise, I hope I have provided the information you requested.

The Union contends that, by virtue of Mr. Shepherd's personal notebook records, managers and supervisors would be aware of Mr. Shepherd's extra work hours, consistent with the practice in the Tampa Area Office. The Union asserts that the Agency, while acknowledging the extra hours were worked, disputes the number of hours and seeks to recalculate them by relying on speculation. It notes that the Agency's chart, which it used to track Mr. Shepherd's reported hours, attributes activities to the incorrect page and is, thus, in error. It points out that Mr. Shepherd's hard copy claim form has a notation by each pay period corresponding to the correct page in his notebook.

Mr. Shepherd's records are unusually precise and detailed. They are also, on their face, clearly contemporaneous. The parties' difference here is, principally, over the number of relevant extra work hours.

I could direct a hearing for the purpose of determining how to parse these matters, but I do not believe it is necessary. Rather, I believe the parties should jointly audit this claim, so that a final figure may be agreed upon, with the understanding that such audit will be conducted consistent with my "outside the scope" ruling. I will resolve any issues that remain.

Steven M. Wolf, Esq.
Arbitrator

December 11, 2015