

DETAILED WITNESS ATTACHMENT TO THE UNION'S CLOSING BRIEF

Angelica Ibarguen, (Ms. Ibarguen), Chief Human Capital Officer for EEOC, has responsibility for human resources including compensation, benefits, recruitment, training and labor and employment relations, 2 *H.T.* 412-413¹. Ms. Ibarguen's immediate supervisor is the Chair of the EEOC, *Id.* Joann Riggs, is the head of Labor Relations and reports directly to Ms. Ibarguen, 2*H.T.* 416. Ms. Ibarguen testified the U.S. Office of Personnel Management sets the policies and procedures for overtime under the FLSA and her responsibility is to clarify the policies and disseminate the information to employees, 2 *H.T.* 419-422. Ms. Ibarguen testified if her office issues policies or guidance, the District Directors are required to follow the policy and/or guidance, 2 *H.T.* 447.² On March 3, 2003, Ms. Ibarguen issued a memorandum , A-5-D, as a reminder and guidance on the manner in which the EEOC administers overtime, 2 *H.T.* 432-434. Ms. Ibarguen testified from the date of issuance of the March 3, 2003 memorandum through the date of her testimony, on January 23, 2008, no managers or supervisors had requested any changes to the overtime policy, 2 *H.T.* 448-449. Ms. Ibarguen testified she had been informed by the Union, a long time ago, that the policies for overtime were not being followed, 2 *H.T.* 449-451. Ms. Ibarguen told Nicholas Inzeo, head of the Office of Field Programs, about the Union's complaint and a conference call was held with the district directors on the overtime policies, *Id.*

Ms. Ibarguen testified her understanding is nonexempt employees may choose to take

¹ The hearing transcript is denoted herein by volume and page numbers, “__H.T.__”.

² Joint Exhibits are denoted as “J-__.” Union exhibits are denoted as “U-__.” EEOC exhibits are denoted as “A-__.”

overtime money payment or compensatory time for hours of work beyond their scheduled work hours, 2 *H.T.* 434-436. Ms. Ibarguen stated nonexempt employees could not receive compensatory time if overtime money was not available, 2 *H.T.* 437-441. Ms. Ibarguen stated since she became employed with the EEOC, money for overtime has been available in the EEOC budget each fiscal year, 2 *H.T.* 442-443.

Joann Riggs, (Ms. Riggs) Assistant Director, Office of Human Resources, began employment with EEOC in June 1988 and has responsibility for labor and employee relations, workers' compensation, and reasonable accommodation, 9 *H.T.* 2880-2881. Ms. Riggs administers the CBA, processes first step grievances for the Office of the Chair of EEOC, handles unfair labor practices, adverse actions, and performance based actions, *Id.* Ms. Riggs became familiar with the FLSA as it applies to federal employees beginning in 1988, when she began employment with EEOC, 9 *H.T.* 2923. Ms. Riggs testified the EEOC has made clear to managers and supervisors that all time spent by an employee performing work which benefits the agency is hours of work which must be compensated, 9 *H.T.* 2924-2925. Ms. Riggs testified the Federal Personnel Payroll System, (FPPS), is used to track hours of work and leave of employees; entry of leave and work hours in FPPS is mandatory; and she had no knowledge of certain types of work hours not being entered into FPPS, 9 *H.T.* 2928-2929. Ms. Riggs testified she was told by prior chief financial officers it was a violation of the Anti-Deficiency Act to let someone work compensatory time and not have money on the books to pay for the time, 9 *H.T.* 2935. Ms. Riggs testified the EEOC made clear, to managers and supervisors, through day to day customer service and by including the information in the Management Development Institute, employees could not work for compensatory time if the office had no money in their office budgets for

overtime, 9 *H.T.* 2934-2936. Ms. Riggs testified the March 3, 2003 memorandum was given to EEOC senior managers; the memorandum was EEOC policy; and managers and supervisors were bound to follow the memorandum, 9*H.T.* 2932-2933.

Ralph Soto, (Mr. Soto), Supervisory Program Analyst, Office of Field Programs has responsibility for assisting the Director of the Office of Field Programs in overseeing and managing the enforcement operations by setting goals for the district directors; monitoring and assessing the director's performance; recommending the allocation of staff; allocating money to the field, and approving requests for overtime, 9 *H.T.* 2941, 2943. Mr. Soto testified the EEOC does not pay overtime for investigators and mediators and encourages directors to use compensatory time for overtime, 9*H.T.* 2944. Mr. Soto testified there is money in the budget for overtime to comply with the Anti-Deficiency Act, 9 *H.T.* 2944-2945. Mr. Soto testified the EEOC requires field offices to keep records of time worked beyond the scheduled work hours of mediators but does not require the hours to be recorded in the FPPS, *Id.* Mr. Soto testified he had no formal training in the administration of overtime policies, rules, and regulations but had been involved in labor relations matters with Ms. Riggs for many years, who had taught him a great deal, 9*H.T.* 2954. Mr. Soto testified he understood employees may only perform work for which the government is prepared to make payment, 9 *H.T.* 2954-2955. Mr. Soto testified the Office of the Chief Financial Officer of EEOC decided an employee could work for compensatory time , when the Director had no money for overtime in the office budget, as long as there was overtime money in the headquarters budget, 9 *H.T.* 2959-2961. Mr. Soto testified the EEOC's practice is to recommend compensatory time when overtime money is requested for investigators, *Id.* Mr. Soto testified his office and the Office of the Chief Financial officer told

supervisors and managers, there was no requirement to have money in their office budget for an employee to work for compensatory time, 9 *H.T.* 2961-2962. Mr. Soto testified when an office requests overtime for an investigator the overtime for the investigator is denied and the office is told to use compensatory time, 9*H.T.* 2966-67. Mr. Soto testified the practice of denying overtime money payment to investigators has existed, since the question arose from Lynn Bruner, a District Director, until today, 9 *H.T.* 2970-2971.

Mr. Soto testified the purpose of the FPPS was to keep track of the hours employees actually worked; the EEOC does not mandate all hours of work be input into FPPS; supervisors and managers were permitted to maintain an informal system for hours beyond an employee's scheduled work hours; and the FPPS does not track every single minute of hours worked; 9 *H.T.* 2978-2979. Mr. Soto testified the EEOC does not require a specific recording system for compensatory time and compensatory time is not part of the EEOC's official records, 9*H.T.* 2982-2983. Mr. Soto testified if a Governmentwide regulation or the law required recording of excess work hours the EEOC would be required to record the excess work hours and he had never asked what the law required for recording excess hours of work, 9*H.T.* 2984.

Nicholas Inzeo, . Director Office of Field Programs, has responsibility for all field offices, *H.T.*(5/22) 827-828. On direct examination, Mr. Inzeo testified there has always been money available to pay for overtime; there is a perception that there is no money available; he doesn't believe there is a connection between money for overtime and giving compensatory time; and he believes he can give compensatory time without having money to pay overtime, *H.T.*(5/22)834-838. Mr. Inzeo testified the EEOC does not require offices to have money in their budget when employees work excess hours for compensatory time, *H.T.*(5/22) 838, 841-842, and A-5D.

On cross-examination, Mr. Inzeo testified the EEOC is bound by the CBA requirement that nonexempt employees may not work excess work hours when money is not available; stated he tell supervisors, if asked, money is available; tells district directors three times a year money is available for overtime; sends a budget to district directors that money is available for overtime; and sends nothing to the Investigators on money being available for overtime, *H.T.* 843-846, J-1, and U-156. Mr. Inzeo testified the only written communication he sent out to clear up the false perception about overtime was the budget sent to district directors, *H.T.*(522) 846-848. Mr. Inzeo testified he reached a different opinion about the March 3, 2003 memorandum two-three weeks ago; it was a long-standing practice in the EEOC to permit managers and supervisors to give compensatory time for excess work hours, even though money is not available for overtime; and managers and supervisors were not trained that the CBA prohibited employees working excess work hours when money was not available, *H.T.*(5/22)853 -859, J-1, and A-5D.

Philadelphia Hearings

Philadelphia

Louise Garcia, Secretary, began employment with the EEOC in 1993, 24 *H.T.* 6903-6904. Ms. Garcia used the sign-in/out sheets to record time in the FPPS, when she initially began using the automated system, 25 *H.T.* 7071. Ms. Garcia collected the sign-in/out sheets; supervisors periodically reviewed the sign-in/out sheets; entered regular scheduled work hours, in the FPPS, unless the supervisor approved overtime; and did not record compensatory time in the FPPS unless the supervisor gave her a form for compensatory time 25 *H.T.* 7072-7088, U-6, U-7, and U-8. Ms. Garcia could not make changes in the FPPS to the master time and attendance scheduled work hours unless she received a permanent change requested by an employee, 25

H.T. 7088-7089. Ms. Garcia testified Philadelphia was more strict on completion of the sign-in/out sheets than Tampa, 25 *H.T.* 7118-7119.

Adrian Rhaney, Program Assistant, for the Mediation unit, performs timekeeping duties for the Mediation unit by inputting information from the sign-in/out sheets and the Costa Accounting Biweekly Time Sheet (CABTS) the Federal Personnel Payroll System (FPPS), 1 *H.T.* 10-16. After inputting the information, Ms. Rhaney sends the information, electronically, to Phil Goldman, the manager, for certification of the information, *Id.* Ms. Rhaney stated she compares the hours on the sign-in/out sheets and the CABTS, *Id.* Ms. Rhaney testified she records the time and attendance of Patricia Folino, mediator, 1 *H.T.* 23-24. Ms. Rhaney testified Ms. Folino works a schedule of 8:00 a.m. to 4:30 p.m.; Ms. Folino's sign-in/out sheet showed she worked 8:00 a.m. to 5:00 p.m.; she recorded Ms. Folino's work hours as 8 hrs of work; she did not report the extra thirty minutes Ms. Folino worked; Mr. Goldman never spoke to her about the extra time Ms. Folino worked; and she had no training on the application overtime laws to lunch periods and breaks, 1 *H.T.* 23-31 and U-9.

Phil Goldman, ADR Coordinator, testified he has held the supervisory position of ADR Coordinator, since 2002 or 2003, 1 *H.T.* 32-34. Mr. Goldman testified he received no supervisory training since he became the ADR Coordinator and no training on the Agency policies and procedures for attendance, overtime and compensatory time, 1 *H.T.* 36-38. Mr. Goldman did receive training on overtime from the Human Resources in agency headquarters on overtime and the CBA, specifically Articles 30 and 31, 1 *H.T.* 39-40, 42. Mr. Goldman monitors and approves the time and attendance of mediators, *Id.* Mr. Goldman testified Robert Smith, mediator, worked a slide and glide work schedule and Ms. Folino, mediator, worked 8:00 a.m. to

4:30 p.m., *I H.T.* 41-42. Mr. Goldman did not specifically recall receiving the August 6, 2004 memorandum of Director Tomasso and stated the office policy on overtime was they had none, *I H.T.* 44-45 and A-20(G-I)(*Phila.*), p.1. Mr. Goldman testified mediators were permitted to work for compensatory time when no overtime money was available, *I H.T.* 45-46, 51-52. Mr. Goldman testified he is in the office when mediators arrive to work and when they depart work at the end of the workday, *I H.T.* 57. Mr. Goldman stated Patricia Folino's work hours were 8:00 a.m. to 4:30 p.m.; he believed she completed the sign-in/out sheet in error; mediators who worked beyond their scheduled work hours were not offered overtime money; Ms. Ibarguen's memorandum was Agency policy; the Agency had a practice since March of 1999 of giving mediators compensatory time for work beyond scheduled work hours; and since 1999, he was informed by Agency managers no money was available for overtime, *I H.T.* 60-62, 71-78, and U-9.

Barbara Marcucci, Secretary to Regional Attorney, Legal Unit testified she has performed timekeeping duties for seven years, *I H.T.* 90. Ms. Marcucci stated employees of the Legal Unit sign-in/out on a daily basis and she compares the sign-in book and the CABTS on a biweekly basis to assure all hours worked and leave are input into the FPPS, *I H.T.* 90-94. Ms. Marcucci stated employees cannot enter information into the FPPS and cannot review information in the FPPS, *I H.T.* 96-97. Ms. Marcucci stated there is a code in the FPPS for compensatory time earned and used, *I H.T.* 98, 154-155. In September 2006, the EEOC instructed employees to record all hours worked on the CABTS, *I H.T.* 100, 156-158.

Patricia Folino, Mediator, testified she began employment with EEOC in November 2005, *I H.T.* 186. Ms. Folino's supervisor Phil Goldman informed money was not available for overtime

and if she worked beyond her scheduled work hours she could receive compensatory time, *I H.T.* 188, 192-193. Ms. Folino testified she completed the sign-in/out sheets with the hours she actually worked; she stayed later to complete mediations but did not enter the time on her sign-in/out sheets; and her records for compensatory time were kept by Mr. Goldman, *I H.T.* 194-203. Ms. Folino testified she takes an hour for lunch and does not take breaks, *I H.T.* 214-215. In the event Ms. Folino is going to arrive more than thirty minutes late for work or be away from the office, she is required to take leave, *I H.T.* 218. Ms. Folino always informs Mr. Goldman, if she is going to stay past her scheduled departure time from work and Mr. Goldman knows about the days she stays past her scheduled work hours, *I H.T.* 219-220. Terminating a mediation session, prior to completion, is difficult because of the overload of work and it reduces the likelihood of settlement, *I H.T.* 220-221.

Novella West, Investigator, testified she has been employed with EEOC for approximately 20 years, *I H.T.* 222. Ms. West's immediate supervisor is William Cook, *Id.* Ms. West completed sign-in/out sheets on a daily basis; the handwriting in the remarks column of the sheet's was Mr. Cook's; the sheets were located in the outer hallway by the Enforcement Manager's office; and the information in the remarks column was not on the sheet's when she entered her daily times, *I H.T.* 223-228 and U-8. Ms. West had never seen or reviewed the sign in/out sheets with the remarks column completed until the day of her testimony, *I H.T.* 228-237. Ms. West believed Mr. Cook was in the office when she worked beyond her scheduled work hours and he did not inform her she could not work beyond her scheduled work hours, *Id.* Ms. West said she kept no records of work hours past her scheduled duty hours; Mr. Cook gave her the time; the sign-in/out sheets were records of time she actually worked; and she was not offered, by Mr. Cook, money

payment for the time worked nor the right to request money payment or compensatory time, 1 *H.T.* 238-249 and U-8. Ms. West entered dashes in the lunch-in/out category when she worked through lunch, *Id.* Mr. Cook completed the information on Ms. West's CABTS, 1 *H.T.* 248.

Brenda Hester, Investigator, testified she began employment with EEOC in 1974, 2 *H.T.* 306. Ms. Hester currently serves as 1st Vice President of AFGE Local 3614, which represents employees in Philadelphia, Baltimore, Norfolk, Richmond, and the Washington Field Office, 2 *H.T.* 306-307. Since 1991, employees in the Philadelphia office have been permitted to extend their thirty minute lunch period, by attaching their 2 fifteen minutes breaks to the lunch hour, 2 *H.T.* 310. Ms. Hester testified authorized work hours in Philadelphia are between 6:00 a.m. and 6:00 p.m., 2 *H.T.* 313. Since 1987, the Philadelphia office has had an Intake rotation, during which employees are assigned to take charges of discrimination from members of the public for five days per week, eight hours per day, 2 *H.T.* 313-314. Employees on compressed work schedules are required to come off the compressed work schedule during the Intake rotation and work a five day, 8 hour per day week, 2 *H.T.* 314-315. In 2003, Director Tomasso, informed employees, because of budget constraints, requests for work beyond scheduled work hours must be submitted to a supervisor, 2 *H.T.* 319. Ms. Hester requested overtime from William Cook, the Enforcement Manager, for work assignments she had to complete by a certain time deadline *Id.* and 386-387. Mr. Cook informed Ms. Hester he could not pay overtime money but would give her compensatory time, 2 *H.T.* 319-320, 387-388. Mr. Cook informed Ms. Hester there was no overtime money, *Id.* Ms. Hester believed Mr. Cook was forcing her to take compensatory time, 2 *H.T.* 403. In all conversations Ms. Hester had with Mr. Cook, concerning working beyond her scheduled work hours, Ms. Hester was never told she could take compensatory time

or not work at all, 2 *H.T.* 407. Ms. Hester stated she completes daily sign-in/out sheets and Mr. Cook her immediate supervisor completes the CABTS, 2 *H.T.* 321-328. Ms. Hester, in her capacity as a Union representative, had discussions with the Philadelphia office management on completion of the daily sign-in/out sheet by employees, 2 *H.T.* 329-330. Management wanted employees to sign-in and out for their work schedule rather than the time the employees actually reported to work, *Id.* Ms. Hester stated the handwriting in the remarks column was Mr. Cook's and she had never seen the remarks column filled in prior to her testimony, 2 *H.T.* 331-332. Ms. Hester stated Mr. Cook did not speak to her about hours she worked in excess of her work schedule; she did not receive money payment for the excess work hours; Mr. Cook told her he would not pay her money; she received hour for hour compensatory time; and the records were kept by e-mails sent to Mr. Cook, 2 *H.T.* 332-338, 355-357. Mr. Cook was in his office each day Ms. Hester worked beyond her work schedule and did not inform her she could not continue working, 2 *H.T.* 403-405. Ms. Hester did not put in a written request for hours worked in excess of her work schedule, 2 *H.T.* 341-343. Ms. Hester testified, in her capacity as a Union representative, the process by which she received compensatory time was the practice in the Philadelphia office, 2 *H.T.* 346-347. Ms. Hester was not offered an election between overtime money payment and compensatory time for work hours in excess of her scheduled work hours, 2 *H.T.* 351-353.

Mark Maddox, Investigator, became employed with EEOC in 1998, 5 *H.T.* 1364-1365. Mr. Maddox's immediate supervisor is Howard Gurmankin, 5 *H.T.* 1356. Mr. Maddox completes sign-in/out sheets daily and the sheets are initialed by his supervisor, 5 *H.T.* 1369-1372, 1419-1421, and U-150-A-D. Mr. Maddox worked on days, when his work hours were not reported in

the FPPS, 5 *H.T.* 1373-1379, 1385-1390, U-150-A, 150-C, and U-1. Mr. Maddox worked beyond his scheduled work hours; did not take lunch; was not offered overtime money payment for extra work hours; and had an understanding there was no money for overtime, 5 *H.T.* 1379-1382 and U-150-B. Mr. Maddox stayed beyond his scheduled work hours because his work was piling up and he had no discussions with his supervisor about him staying beyond his scheduled work hours, 5 *H.T.* 1383-1384, 1391-1396, 1402-1403, 1406-1408, and U-150(A-D). Mr. Maddox stated it was understood if you need to catch up on your work you can come in on Saturdays or work late and supervisors and managers knew the employee had to work, whenever the employee came in, 5 *H.T.* 1396-1400. William Cook, Enforcement Manager, would be at work on weekends, when Mr. Maddox worked, 5 *H.T.* 1400-1401.

Diane Vallejo-Benus, Bilingual Investigator, became employed with EEOC in March 1999, 5 *H.T.* 1422-1423, 1425. Ms. Benus' immediate supervisor is Mr. Gurmankin, 5 *H.T.* 1426. Ms. Benus arrived and began working at 5:40 a.m. or 6:00 a.m; would enter a second arrival time at 7:00 a.m; was instructed by her supervisor not to enter her initial arrival time on the sign-in/out sheets; and did not receive overtime payment or compensatory time for the extra work hours, 5 *H.T.* 1427-1443, 1444-1459, 1461-1463, U-7, and U-149. Ms. Benus was told by upper management there was no money but she could have compensatory time, 5 *H.T.* 1443-1444.

Evangeline Hawthorne, Investigator, became employed with the EEOC in June 1999, 5 *H.T.* 1465. Ms. Hawthorne's immediate supervisor is Mr. Gurmankin, 5 *H.T.* 1467. Ms. Hawthorne does Outreach; understands the Outreach is part of her performance evaluation; and the appointments are set up by Charles Brown, 5 *H.T.* 1469-1474 and U-48. Ms. Hawthorne's CABTS was completed by her supervisor, 5 *H.T.* 1476-1480. Ms. Hawthorne would work

through lunch and was not offered overtime money or compensatory time for the extra work hours, 5 *H.T.* 1493-1502.

William Cook, Enforcement Manager, has been in his position since 1981, 5 *H.T.* 1505. The Philadelphia District office includes Pittsburgh, Newark, Cleveland, and Baltimore, 5 *H.T.* 1508-1509, 1514. Mr. Cook's immediate supervisor is Stanley Braverman, Deputy Director, 5 *H.T.* 1511-1512. Currently Mr. Cook has direct supervision over one investigative unit and there are two investigative units in Philadelphia, 5 *H.T.* 1516-1517. Mr. Cook stated persons covered by the FLSA are to be paid overtime or compensatory time for hours worked in excess of forty hours, and investigators and clerks are covered by the FLSA 5 *H.T.* 1523-1524. Mr. Cook stated the March 3, 2003 memorandum and February 5, 2005 memorandum were agency policies which he was bound to follow; 5 *H.T.* 1526-1529, A-5-D and A-5-F. Mr. Cook agreed he is bound to follow governmentwide regulations; he is required to use the CBA, Article 31 in matters of excess work hours for Investigators, 5 *H.T.* 1529-1532, J-1, and U-156. Mr. Cook stated he believed Investigators did not receive overtime money, because the EEOC was broke; he has participated in conference calls with Nick Inzeo where it was implied the agency had little money; he may have told Investigators there is no money for overtime; and his belief there was no overtime money came from upper management, 5 *H.T.* 1532-1538. Mr. Cook was aware a claim for overtime had been made for Investigators in 1994/1995 and was aware of a general right to payment for overtime for Investigators, 5 *H.T.* 1542-1544. Mr. Cook said his understanding was there was no money available for payment of overtime for Investigators, 5 *H.T.* 1544-1545 and A-12. Mr. Cook stated compensatory time is recorded in the FPPS, if it is official compensatory time; a record is kept of unofficial compensatory time called credit time;

and he was generally aware of the requirements in the CBA on credit time, 5 *H.T.* 1554-1557 and J-1. Mr. Cook stated, even though he knew excess work hours were not credit time, he has permitted Investigators under his supervision to frequently work nights, weekends, the person would receive compensatory time for the work; and he has not kept an accurate total of the time worked, 5 *H.T.* 1557-1562 and J-1. Mr. Cook says his records for extra work hours are unofficial; sometimes recorded on the sign-in/out sheets; and the unofficial compensatory time system varies from employees to employee, 5 *H.T.* 1563-1566. Mr. Cook was aware that undocumented excess work hours were not permitted by EEOC and he did not inform his supervisors that he was keeping undocumented excess work hours for his employees, 5 *H.T.* 1575-1577 and A-5-E. Mr. Cook did not inform Director Tomasso he was keeping unofficial overtime, when he received the August 6, 2004 memorandum, 5 *H.T.* 1580-1582 and A-20 (*Phila*)G(I), p. 1. Mr. Cook stated his normal work hours are from 7:30 a.m to 7:00 p.m., 5 *H.T.* 1586-1588 and U-5. Mr. Cook stated employees are expected to sign the sign-in/out sheets, 5 *H.T.* 1591-1592 and U-6(A-D). Mr. Cook could not recall if he showed the employee the sign-in/out sheet after he entered information in the remarks column; he did not give the sheet to the employee to inform them the extra work hours were not authorized; he did not instruct the employee to go home if the employee was working past their scheduled work hours; and he was aware he was intentionally violating the FLSA, 5 *H.T.* 1593-1599. Mr. Cook stated he believed the employee was in agreement with his violation of the overtime laws, *Id.* Mr. Cook stated he believe that he could keep unofficial records of hours worked as long as he was providing compensation, 5 *H.T.* 1602-1608. Mr. Cook stated the timekeepers told him he could not enter more than forty hours per week on the CABTS; he did not speak to the Director or Headquarters

to determine if the information was true; and he kept the extra hours of the official records, 5 *H.T.* 1609-1612, U-8, and U-13. Mr. Cook stated he continues to intentionally violate the overtime laws, 5 *H.T.* 1616-1618. Mr. Cook stated, over the years, employees were instructed to sign-in/out with their official hours of work, regardless of the number of hours they actually worked, 5 *H.T.* 1620-1625 and U-150-A. Mr. Cook stated he was aware employees worked on Saturday to do Outreach, 5 *H.T.* 1625-1626.

Paralegals

Jacqueline McNair, Regional Attorney, Philadelphia, became employed with EEOC in 1986, 9 *H.T.* 2659. Ms. McNair has responsibility for Paralegal Specialists in Philadelphia, Baltimore, and Cleveland, 9 *H.T.* 2673, 2675. Ms. McNair's immediate supervisor is the General Counsel in EEOC's Headquarters and the employees under her supervision are subject to EEOC's policies and procedure and District office procedures which are the same as the EEOC policies, 9 *H.T.* 2679-2681 Ms. McNair visits the office quarterly, 9 *H.T.* 2682-2683. Ms. McNair sends memorandums at least once a year, to employees under her supervision, on excess work hours, 9 *H.T.* 2696. Employees working beyond their scheduled work hours submit a form requesting the time and when the time is worked, a second part of the is completed authorizing the work, 9 *H.T.* 2697-2699 and U-11-B. Ms. McNair stated no new procedures for requesting and approving excess work hours was instituted, when she became responsible for Baltimore and Cleveland, 9 *H.T.* 2700-2701. Ms. McNair stated she regarded the March 3, 2003 memorandum as a reminder to comply with EEOC policy; knows employees have the right to elect to receive money or compensatory time for excess work hours; and she knows she must have money in her budget for employees to work excess hours, 9 *H.T.* 2706-2708, 2713-2718 and A-5-D. Ms. McNair was

aware there were budgetary constraints for overtime, but she would request overtime, if needed; does not receive overtime money allocated to her budget; and makes an oral request followed up in writing for excess work hours, 9 *H.T.* 2710-2714. Ms. McNair stated all hours worked are to be entered on the CABTS and a written approved request authorizing excess work hours is to accompany the CABTS, 9 *H.T.* 2718-2725, A-20G(I)(*Phila*), p. 2-3, 13. Ms. McNair did not know if Yvonne Davis, Bettina Dunn, and Yvonne Williams were offered the opportunity to have money payment or compensatory time for excess work hours and she did not request money to pay for overtime or compensatory time, 9 *H.T.* 2727-2732, 2737-2741, U-10, U-11-B, and U-12(A-B). Ms. McNair stated the Cleveland office uses sign-in/out sheets; she reviews the time sheets; her review of time sheets showed employees were earning excessive amounts of credit hours and compensatory time; and she has directed employees to cease working excess work hours, 9 *H.T.* 2741-2746 and U-16. Ms. McNair sent a memorandum to legal unit employees informing the employees only compensatory time would be received for excess work hours, 9 *H.T.* 2746-2752 and U-13.

Bettina Dunn, Paralegal Specialist, became employed with the EEOC in July 1999, 5 *H.T.* 1298. Ms. Dunn was initially assigned to Newark and began working in Philadelphia in August 2003, *Id.* Ms. Dunn is currently under the immediate supervision of Judith O'Boyle, Supervisory Trial Attorney, 5 *H.T.* 1299. Ms. Dunn has been told repeatedly there is no money for work performed beyond her regularly scheduled work hours, 5 *H.T.* 1302-1303. Ms. Dunn completes sign-in/out sheets on a daily basis, 5 *H.T.* 1311-1312 and U-11(A-D). Ms. Dunn was directed to travel to New York to appear as a witness at 9:00 a.m. and received no overtime compensation or compensatory time, for the travel time, 5 *H.T.* 1317-1318. Ms. Dunn was instructed not to place

her work hours in excess of her regular schedule on the CABTS, 5 *H.T.* 1334-1338 and U-11(D).

Sylvia Williams, Paralegal Specialist, became employed with the EEOC in October 1987, 5 *H.T.* 1341-1342. Ms. Williams' immediate supervisor is Judith O'Boyle, Supervisory Trial Attorney, 5 *H.T.* 1343. Ms. Williams completes sign-in/out sheets, on a daily basis, 5 *H.T.* 1345-1348 and U-12-A. Ms. Williams was not offered the opportunity to receive overtime pay for work she performed on a Saturday, 5 *H.T.* 1351-1355 and U-12-B. The work, Ms. Williams's performed outside her regular work hours, was performed to meet deadlines set by attorneys, 5 *H.T.* 1361-1362.

New York

Michael Bertty, ADR Program Coordinator, became employed with EEOC in August 1992, as an Enforcement Supervisor, 7 *H.T.* 2189. Mr. Bertty stated he advises his mediators to begin mediations at 10:00 a.m and conclude by 5:00 p.m., but it doesn't always happen, 7 *H.T.* 2191-2192. Mr. Bertty does not certify time in the FPPS for mediators, 7 *H.T.* 22160-2211, A-23, and A-24. Mr. Bertty supervised David Ging, a mediator in Buffalo and Mr. Ging's time and attendance was done by Buffalo, 7 *H.T.* 2208-2209 and U-48. Time and attendance for mediators in Boston and Newark was overseen by the office directors, 7 *H.T.* 2226-2227 and A-14. Mr. Bertty stated each mediator has a national goal of 90 days to complete the mediation process; he reviews the pending inventory reports every couple of weeks; and discusses the assignments with the mediators, 7 *H.T.* 2229-2230. Mediators may not take time off work or not report to work during scheduled duty hours without Mr. Bertty's approval, 7 *H.T.* 2231-2233, 2249-2251.

Christopher Kwok, Mediator, New York City, became employed with the EEOC as an

Investigator, 4 *H.T.* 1068-1069. During his time as an Investigator, Mr. Kwok was required to sign-in/out on a daily basis, 1070-1071 and U-45. Mr. Kwok testified he would work in excess of his regularly scheduled work hours, whenever it was necessary to complete his work, 4 *H.T.* 1075, 1088-1089. Electra Yourke, his immediate supervisor, signed the sign-in/out sheets, daily, *Id.* As a mediator Mr. Kwok worked in excess of his regular work hours, because the nature of the work required staying as long as the mediation participants needed, 4 *H.T.* 1081. Mr. Kwok may not decline work assignments he receives from Michel Bertty, his immediate supervisor; must inform Mr. Bertty if he is going to late arriving or leaving work early; must inform Mr. Bertty if he wishes to take time off from work; and must take sick or annual leave if he is not at work, 4 *H.T.* 1091-1096. Mr. Kwok does not readjust his regular work hours, when he stays past his scheduled work hours, 4 *H.T.* 1082. Mr. Kwok reports his scheduled work hours, not the excess time; discusses his workload with Mr. Bertty, his immediate supervisor; talks with Mr. Bertty about the time he arrives and leaves; has heard Mr. Bertty state EEOC can't pay overtime; and believes he is not entitled to overtime, 4 *H.T.* 1082-1086, 1091-1092. When Mr. Kwok informed Mr. Bertty of excess work hours, Mr. Bertty told him that's not good, *Id.* Mr. Bertty has observed Mr. Kwok working and has not instructed Mr. Kwok to go home, 4 *H.T.* 1090.

Electra Yourke, Enforcement Supervisor, New York, became employed with the EEOC initially in 1978 and returned to EEOC employment in 1999, 8 *H.T.* 2525, 2545. Ms. Yourke's current immediate supervisor is Nancy Boyd, Deputy Director, 8 *H.T.* 2545-2546. Ms. Yourke stated she was not familiar with the use of credit hours as it related to overtime, 8 *H.T.* 2549-2552 and A-20G(I)(*New York*), p. 1. Ms. Yourke stated she was informed by Nancy Boyd and communicated to her Investigators, it was "bedrock rule," there was no paid overtime, there is

not a provision for it and there is not a budget for it, 8 *H.T.* 2553-2554, 2579-2581, A-5-D and A-12. Ms. Yourke stated she did not have Investigators who worked more than 40 hours per week or 80 hours in a pay period; it could have happened without her knowledge; and she was responsible for certifying accurate time worked for individuals under her supervision, 8 *H.T.* 2555-2557. Ms. Yourke stated there are no records of hours people actually worked; she signed the sign-in/out sheets; only scheduled duty hours were certified; and she believed those were the hours the employees worked, 8 *H.T.* 2558-2560, 2591 and U-45. Ms. Yourke was in the office and verified the sign-in/out sheets showing Christopher Kwok was working in excess of his scheduled work hours on a daily basis; certified in the FPPS Mr. Kwok worked eight hours per day; and had approval of her supervisors to certify hours of work which did not show actual work hours of employees, 8 *H.T.* 2561-2573, 2587-2593, U-1, and U-45.

Rosemary Wilkes, Supervisory Investigator, became employed with the EEOC in 1971, 8 *H.T.* 2596. Ms. Wilkes's immediate supervisor, until 2005 or 2006 was Nancy Boyd, 8 *H.T.* 2616. As supervisor of CRTIU, i.e. Intake, Ms. Wilkes would assign work to Investigators and set the deadlines based upon whether the work was time sensitive, 8 *H.T.* 2619-2620. Ms. Wilkes stated she began using the CABTS in 2005 and ceased using the sign-in/out sheets, 8 *H.T.* 2621. Prior to the CABTS, the sign-in/out sheets were used to prepare the time cards, 8 *H.T.* 2622-2624. Ms. Wilkes had received memoranda from Headquarters which stated employees could not be required to accept compensatory time, rather than overtime pay; was not told money had to be in the office budget for compensatory time when employees worked excess work hours; had never requested approval for money for overtime; had authority to approve compensatory time for her employees; and informed her employees the EEOC does not pay

overtime, 8 *H.T.* 2630-2636, 2637-2644, , 2648-2651, A-5-D, A-20-G(I)(*New York*), p.1, 4-6. .

Esther Guterrez, Investigator, New York City, became employed with the EEOC in June 1999, 4 *H.T.* 1098. Since October 1999, Ms. Guterrez has worked under the immediate supervision of Electra Yourke and Rosemary Wilkes, 4 *H.T.* 1099. Ms. Gutierrez completed daily sign-in/out sheets, 4 *H.T.* 1099-1106 and U-45. Ms. Guterrez would receive compensatory time if she worked beyond her scheduled work hours; would record her extra work hours on the sign-in/out sheets; and was informed money could not be paid for extra work hours, because no money was available for payment of overtime, 4 *H.T.* 1106-1109. Ms. Guterrez believed her supervisors had been told no money was available by the EEOC Headquarters , 4 *H.T.* 1110-1114. Ms. Guterrez would work extra hours when she had fact-finding conferences, settlement conferences, or when she conducted Outreach for EEOC, 4 *H.T.* 1115-1119. Ms. Guterrez's supervisors have observed her working through lunch, 4 *H. T.* 1126-1130.

Boston

Elizabeth Marcus, Mediator, Boston, became employed with EEOC in 1999, 8 *H.T.* 2358. Ms. Marcus must sign-in on a daily basis, which is required of all employees in Boston, 8 *H.T.* 2359. Ms. Marcus was not aware the Boston Area Director was responsible for her time and attendance; must submit a leave slip if she does not come to work or wish time off from work; has no knowledge of government regulations concerning hour of work and overtime; and she informed her immediate supervisor Michael Bertty about her extra work hours, 8 *H.T.* 2357-2365.

Newark

Jose Rosenberg, Director Greensboro, became employed with the EEOC in May 1976 and

was Enforcement Supervisor in Newark until May 2007, 7 *H.T.* 2252-2253. Mr. Rosenberg stated Investigators received compensatory time but no overtime money; he was never told an employee had a right to elect money payment or compensatory time; he never received the January 20, 2006 e-mail concerning suffer and permit work; and he was told there was no overtime for Investigators, 7 *H.T.* 2301-2312, A-5-D, and A-5-E. Mr. Rosenberg kept sign-in/out sheets by his office door; initialed the sign-in/out sheets; and the extra work hours were not entered on the CABTS and in the FPPS, but kept in a separate book by the Director, 7 *H.T.* 2313-2318, U-53, U-54, A-23, and A-24.

Eris Yarborough, Investigator, Newark, became employed with EEOC in January 1981, 4 *H.T.* 1132. Ms. Yarborough was under the jurisdiction of the Philadelphia District office until January 2007, 4 *H.T.* 1134. Compensatory time was unofficial, and not reported in the time records prior to 2007, 4 *H.T.* 1135-1136, 1141-1146, 1163-1171, U-54, U-59, U-60, U-61, and U-62. Ms. Yarborough completed a daily sign-in/out sheet and her work hours were initialed by her immediate supervisor, Jose Rosenberg, 4 *H.T.* 1136-1140 and U-53. Ms. Yarborough did not record extra work hours on the CABTS and was not offered the opportunity to receive money for the extra work hours, 4 *H.T.* 1147-1151, 1155-1162, U-55, U-57, and U-58. Ms. Yarborough was required to use leave if when arrived late to work or departed early, 4 *H.T.* 1152-1156 and U-56. Ms. Yarborough stopped using sign-in/out sheets in early 2007, 4 *H.T.* 1162. Ms. Yarborough's supervisors approved compensatory time for Outreach work on Sunday and for covering the office, when employees were granted administrative leave, 4 *H.T.* 1172-1175, U-62, and U-63. Ms. Yarborough had no discussions with her supervisors about receiving money payment for extra work hours, *Id.* Ms. Yarborough stated all her extra work hours were for

completing her work assignments which had deadlines for completion; her supervisor was aware of the deadlines; and she would be questioned monthly if work was not completed, 4 *H.T.* 1187-1195.

Buffalo

Elizabeth Cadle has been the Director of the Buffalo office since October 1995, 7 *H.T.* 1943. Ms. Cadle's immediate supervisor is Spencer Lewis, Director New York District office, 7 *H.T.* 1999. Ms. Cadle has regular biweekly and triweekly meeting with Mr. Lewis and other management staff, 7 *H.T.* 2000. Ms. Cadle requests money for overtime from the EEOC Headquarters, when needed; stated the history and practice has been to give Investigators compensatory time; stated the compensatory time can be used whenever the Investigator needs it; stated she can usually tell when an Investigator works extra hours, 7 *H.T.* 1945-1947, 2000, 2029-2031. Investigators receive compensatory time for onsite investigations because of the large geographical distances the office covers, 7 *H.T.* 1954-1955, 2034-2036 and A-25. Ms. Cadle has received training on the FLSA and is aware Investigators are to receive overtime money for extra work hours and have a right to elect money or compensatory time; has never requested overtime money for Investigators; Mr. Lewis was aware she was giving Investigators compensatory time; and knew overtime money was available but believed it was for specific projects, 7 *H.T.* 2008-2014, 2019-2020, 2027. Ms. Cadle could not recall discussing payment for Ms. Sanchez's excess hours but would have told Ms. Sanchez there was no overtime money, 7 *H.T.* 2021. Ms. Cadle could not recall being told there was no overtime money for Fiscal Years 2003 to 2008, 7 *H.T.* 2022-2026. Ms. Cadle was trained on the use of the FPPS; certifies time for Investigators under her supervision; Ms. Cadle used sign-in/out sheets prior to

implementation of the CABTS, for recording hours of work; received training on use of the CABTS; is a certifier for the CABTS; believed compensatory time used is recorded in the other leave category; initialed the sign-in/out sheets on a daily basis; and stated the FPPS does not permit recording compensatory time used in a separate category, 7 *H.T.* 2040-2066, U-47, and U-51.

Nelida Sanchez, Investigator, Buffalo became employed with EEOC in August 2001, 2 *H.T.* 558-559. Ms. Sanchez's immediate supervisor is Elizabeth Cadle, Director of the Buffalo Area office, 2 *H.T.* 559. Ms. Sanchez stated she completes a sign-in/out sheet on which is recorded her arrival and departure from work, her leave, extra work hours and the days she is off work, 2 *H.T.* 560-562 and U-48. Ms. Sanchez stated she and her coworkers took no breaks and extended her lunch hour to include the two fifteen minute breaks, 2 *H.T.* 567-570, U-48 and U-49. Ms. Sanchez stated the times on her sign-in/out sheets were the times she actually worked, 2 *H.T.* 571-572, U-48, U-49, and U-50. Ms. Sanchez stated she was not permitted to put her work hours beyond her scheduled work time on the CABTS, 2 *H.T.* 572-574, 578-579. Ms. Sanchez stated Ms. Cadle kept track of compensatory time and she sends a memo letting Ms. Cadle know when she has worked excess hours, 2 *H.T.* 575-577 and U-51(A-C). Ms. Cadle told Ms. Sanchez there was no money payment for overtime and there was only overtime money for clericals, *Id.* Ms. Sanchez stated she was willing to do clerical work for overtime money but was told she could not do it, *Id.* The Buffalo office covers the State of New York, except for New York City, 2 *H.T.* 598. When Ms. Sanchez conducts on-site investigations, she has to work extra hours to complete witness interviews and receives compensatory time for the extra hours, 2 *H.T.* 598-602. Ms. Sanchez has never been told by Ms. Cadle she cannot stay and work past her scheduled

work hours, 2 *H.T.* 605-606. No matter the number of hours Ms. Sanchez actually worked, she is only permitted to enter her scheduled work hours on the sign-in/out sheets and the CABTS, 2 *H.T.* 607-608.

Pittsburgh

Marilee Hallam, IT Specialist, Pittsburgh, testified she has been employed with EEOC since June 1991, 3 *H.T.* 675-676. Ms. Hallam performs the duties of timekeeper for the Pittsburgh office, 3 *H.T.* 677-678. Ms. Hallam testified she uses the electronic system to record employees' hours of work and leave and send the electronic timecard to supervisors and managers who certify the time, 3 *H.T.* 682-690. Ms. Hallam has a timekeeper book, which is updated by memorandums from the Headquarters of EEOC, 3 *H.T.* 693-696. The Pittsburgh office uses sign-in/out sheets for reporting arrival and departure from work, 3 *H.T.* 697-701. Ms. Hallam stated the practice in the office was compensatory time was requested in advance and no money was available for overtime pay, 3 *H.T.* 705-709. Ms. Hallam stated excess work hours are not recorded on the CABTS; compensatory time is kept on a separate document; and not recorded in the electronic payroll system, 3 *H.T.* 711-713, 714-7, A-14, and A-20-G(I) (*Phila*), pp. 38-39. Ms. Hallam keeps track of the compensatory time records, 3 *H.T.* 723-724. Ms. Hallam stated her supervisor has asked her about the compensatory time balances, usually on an annual basis and reviews the records periodically, 3 *H.T.* 724-726. Ms. Hallam stated her supervisor never discussed paying people for their compensatory time, with her, *Id.* Ms. Hallam stated she received the Director Tomasso's August 6, 2004 Memorandum; she believed all employees received the memorandum by e-mail; and it was discussed in a staff meeting with the office, 3 *H.T.* 726-727 and A-20-G(I)(*Phila*), p. 1. Ms. Hallam stated she keeps track of excess work

hours by recording the compensatory time which is earned and used in the Pittsburgh Office, 3 *H.T.* 728-731 and U-21(A-B). The form is shown to supervisors, but not distributed to employees, *Id.* Ms. Hallam has never seen any directive authorizing managers to keep excess work hours on the form used in Pittsburgh; Mr. Hardiman is aware she keeps the form; she has received no inquiries from the EEOC Headquarters about keeping the unofficial records on compensatory time, 3 *H.T.* 731-732. The practice in Pittsburgh is the employee submits the excess work hour form to their supervisor, who signs the form, and submits it to Mr. Hardiman for approval, 3 *H.T.* 735-736 and U-21(A). Mr. Hardiman gives the form to Ms. Hallam for her timekeeping duties, *Id.* When Ms. Hallam receives the completed form she does not know if the employee was offered the opportunity to be paid money for the excess work hours, 3 *H.T.* 737. Ms. Hallam stated she is aware of the federal regulations for keeping time and attendance records; she discussed with other timekeepers that the federal government does not recognize unofficial compensatory time; she discussed the matter several times with Mr. Nelson, the former Director, and he directed her to continue the unofficial record, 3 *H.T.* 741-743. Ms. Hallam raised the matter with the Philadelphia office and the Philadelphia office is aware of the unofficial records, 3 *H.T.* 743-744. Ms. Hallam stated she maintained annual records of compensatory time for employees in Pittsburgh, 3 *H.T.* 745- 786 and U-22, U-23, U-24, U-25, U-26, U-27(A-B), U-28(A-B), U-29, U-31 (A-B), U-32(A-B), and U-33(A-B). At a discussion for night-time Outreach at Kane Hospital, Ms. Hallam did not hear Eugene Reed or Joe Hardiman ask employees to volunteer for the assignment, 3 *H.T.* 7543-754, 796. Ms. Hallam stated when Mr. Malley had a negative compensatory time balance, she and Mr. Reed spoke with Mr. Malley; and she does not recall Mr. Reed offering Mr. Malley the opportunity to use annual leave to

correct the negative balance, 3 *H.T.* 768-773. Ms. Hallam stated, while serving as a timekeeper, she had never been informed she was authorized to depart from government regulations, for the use and earning of leave, 3 *H.T.* 774-776. Ms. Hallam had a 2005 compensatory time balance sheet for Joseph Wozniak, which showed a balance forward for 2004, 2005, and 2006, 3 *H.T.* 784-786

Joanne Frankwich-Bly, Mediation Assistant, in the Pittsburgh Office of the EEOC, testified she has performed back up timekeeping duties for Marilee Hallam and began performing timekeeping duties on a regular basis in 2005, 2 *H.T.* 266-268. Ms. Frankwich-Bly records timekeeping for six investigators, 2 *H.T.* 269. The Pittsburgh office has sign-in/out sheets which show the daily hours of attendance, 2 *H.T.* 270-271. Ms. Frankwich-Bly records hours of attendance for Carl Bartolomucci, Patrick Malley, Gregory Nanny, Frank Rodia, Constance Smith, and John Wozniak, 2 *H.T.* 276. Ms. Frankwich-Bly has never recorded any excess hours of work for Investigators, *Id.* Ms. Frankwich-Bly stated she received the memorandums for overtime/compensatory time from Investigators; she did not enter the information from the memorandums into the FPPS; and kept track of the time worked by Investigators on the side, 2 *H.T.* 278-281 and A-20(G-10(*Phila*), p. 38. Ms. Frankwich-Bly Ms. Frankwich-Bly testified she keeps separate track of compensatory time on a weekly or monthly basis for each year, *Id.*

Patrick Malley, Investigator, Pittsburgh, began employment with the EEOC, in October or November of 1993, 2 *H.T.* 514. Since at least 2003, Mr. Malley has served under he immediate supervision of Eugene Reed and Joe Hardiman, Area Director , 2 *H.T.* 414-515. Mr. Malley works a flexible work schedule of 8 hours per day, five days per week, 2 *H.T.* 519-520. Mr. Malley testified that forms for requesting to work excess work hours are kept in a file drawer and

on his computer, 2 *H.T.* 520 and A-20(G-I)(*Phila*), pp. 38-39. Mr. Malley testified if he knows he is going to have additional work hours he requests permission in advance and will submit the form, after he works additional time on occasions when he skips lunch or works past his quit time while on Intake, 2 *H.T.* 522-524. Mr. Malley testified he had not seen the running balance compensatory time record, but keeps a handwritten record of his own, 2 *H.T.* 524-525. And U-28(A-B) Mr. Malley says he has talked with Marilee Hallam, the timekeeper, to check his balances for compensatory time, *Id.* Mr. Malley stated his compensatory time was not maintained in the electronic payroll records of EEOC, 2 *H.T.* 534. On February 11, 2005, Mr. Malley participated in a fact-finding conference; worked beyond his quit time; and submitted the request for the additional work hours, after the fact, 2 *H.T.* 536-537. Mr. Malley could not recall specific conversations about working beyond his scheduled work hours, but generally recalled being told in staff meetings there is no money for overtime and we can't make you work and he would be given compensatory time if he wanted to work beyond his scheduled work hours, 2 *H.T.* 538. Mr. Malley testified Joe Hardiman selected the location, time, and date of an Outreach in Petersburg, WVA; he believed Outreach was part of his performance standards; he volunteered for the assignment, and he was not offered the opportunity for money payment for the assignment, 2 *H.T.* 538-540. Mr. Malley stated he completes the CABTS and if he has excess work hours he does not enter the hours on the CABTS, 2 *H.T.* 542-544. The EEOC stipulated no compensatory time would be found in Mr. Malley's payroll records on Union exhibit 1, 2 *H.T.* 546. Mr. Malley testified when he completed the request forms for compensatory time, it did not mean the request was a voluntary request, 2 *H.T.* 547-549. Mr. Malley testified his supervisors would know about his excess work hours because of the number

of hours and occasions he has repeatedly worked excess hours, 2 *H.T.* 551-553. Mr. Malley has never been told by his supervisors not to work beyond his scheduled work hours, *Id.* Mr. Malley stated Intake appointments are scheduled by the Intake supervisor, 2 *H.T.* 555-556. Mr. Malley stated between a half and one-third of the days he is assigned to Intake he skips lunch or goes beyond his quit time and could only recall one occasion when Mr. Reed told him assistance would be given when he has interviews which backup the scheduled appointments, 2 *H.T.* 556-558.

Susan Kelly, Investigator, Pittsburgh, became employed with the EEOC in September 1994, 3 *H.T.* 613. Ms. Kelly's immediate supervisor has been Joe Hardiman, Director, except for one year under the supervision of Eugene Reed, 3 *H.T.* 614-615. Ms. Kelly's normal workday is 6:30 a.m. to 4:00 p.m., 3 *H.T.* 625. Ms. Kelly stated she puts in written requests for compensatory time; keeps her own tally of hours she works beyond her scheduled work hours; and periodically checks with Marilee Hallam, timekeeper to assure her records are accurate, 3 *H.T.* 615-617 and U-27(A-B). Ms. Kelly stated a presentation with the American Cancer Society was scheduled by Joe Hardiman and assigned to her as an Outreach assignment, 3 *H.T.* 621-622. Ms. Kelly stated she has been directed to perform Outreach assignments by the Director, 3 *H.T.* 652-654, 665-667. Ms. Kelly stated it was her understanding she was required to do Outreach unless she had a compelling reason for not performing the assignment and Outreach work is part of her performance evaluation, 3 *H.T.* 656-657, 662-663, 673-674. Ms. Kelly stated she was not offered money payment for the Outreach assignments and stated it was her understanding overtime money payment was not available to her, 3 *H.T.* 623, 653-654. Ms. Kelly stated it was the practice of the office that overtime money was not available, 3 *H.T.* 623, 627. Intake is a

rotating duty shared by Investigators in Pittsburgh, with the schedule being set by the Intake supervisor, 3 *H.T.* 631-632. Intake is a time-consuming process and the work will often spill over to a subsequent day, which often results in a need to work beyond scheduled work hours, 3 *H.T.* 632-635. Ms. Kelly's immediate supervisor is aware of her work assignments and work schedule, *Id.* Ms. Kelly stated the Outreach assignment to Grant County, WVA, a four hour drive from her office, was scheduled by the Director, 3 *H.T.* 637 and U-27(A). Ms. Kelly completes the CABTS but does not record excess work hours on the form, 3 *H.T.* 641-642. Ms. Kelly stated, based upon instructions of the timekeeper and her supervisor, she does not record her excess work hours on the CABTS because it is her understanding the office keeps an unofficial record of the time, 3 *H.T.* 641-643. When Ms. Kelly uses her compensatory time, she does not record the leave on the CABTS, 3 *H.T.* 644-646. Ms. Kelly stated if she does not use all of her compensatory time, it is carried forward to the next calendar year and available for her to take, 3 *H.T.* 648-650.

Joseph Hardiman, II, Area Director, Pittsburgh, began employment with the EEOC in 1978, 3 *H.T.* 806. Mr. Hardiman has been employed in Pittsburgh, since 1980, served as the Intake Supervisor from 1984 to 1987, became an Enforcement Supervisor in 1987, and Area Director in December 2004, 3 *H.T.* 806-808. Mr. Hardiman has a master's degree in Public Administration and has attended training at the EEOC's headquarters in Washington, D.C, most recently in September or October of 2007, 3 *H.T.* 809-812. Mr. Hardiman's immediate supervisor is Stanley Braverman, Deputy Director of the Philadelphia office and his second line supervisor is Marie Tomasso, Director, 3 *H.T.* 812-813. Mr. Hardiman stated the Philadelphia office issues an annual work plan for each office under its supervision, 3 *H.T.* 813-814. Mr.

Hardiman speaks to Mr. Braverman, at least once each week and receives office visits from Director Tomasso, quarterly or biannually, *3 H.T.* 814–815. Mr. Hardiman is responsible for carrying out the policies of the EEOC and the Philadelphia office in Pittsburgh, *3 H.T.* 819. Mr. Hardiman stated he is required to follow policies of the EEOC to the letter and if a question arises he would seek guidance and/or clarification, *3 H.T.* 821. Mr. Hardiman has no responsibility for the mediator who is located in his office, but has responsibility over Ms. Frankwich-Bly, *3 H.T.* 856-863. Mr. Hardiman stated he had never been told by the EEOC headquarters or the district office that overtime money was available, *3 H.T.* 863-865. Mr. Hardiman has always asked the district office, during the fourth quarter of the fiscal year, if overtime money is available and been told there is no money, *3 H.T.* 865-866. Mr. Hardiman did receive training from the EEOC that he should not suffer employees to work past their regular work hours and make sure employees do not work past their regular work schedule, *3 H.T.* 868-869 and U-156. Mr. Hardiman stated he told employees if they found it necessary to work past their scheduled work hours and the supervisor tells the employee there is no overtime pay, he will provide the employee compensatory time, *3 H.T.* 870-873, *8 H.T.* 2451-2453. Mr. Hardiman stated he told employees he could not approve requests for overtime pay, without authorization from headquarters, but he made no request to headquarters for overtime money, *8 H.T.* 2454. Mr. Hardiman stated he told employees who were at work past their scheduled work hours to go home, *3 H.T.* 873.

Mr. Hardiman stated outreach is part of the each Investigator's performance standards; time spent doing outreach is work time; he has the right to assign outreach to an investigator; and time spent by Investigators doing outreach was work performed for the benefit of the EEOC, *3 H.T.*

873-879.

Mr. Hardiman stated Mr. Nelson gave him a copy of the March 3, 2003 memorandum of Ms. Ibarguen and it was the current policy followed in his office, 3 *H.T.* 826 -827 and A-5-D. Mr. Hardiman stated he was never told he had to have money in his budget to permit employees to work beyond their regular schedule for paid overtime or compensatory time, 8 *H.T.* 2461-2462. Compensatory time was being recorded, separately on forms, under Mr. Nelson; Mr. Hardiman continued the practice; and he has no written policy which permits keeping the separate records, 3 *H.T.* 879-889 and U- 21(A-B).

Mr. Hardiman stated he interpreted the March 3, 2003 memorandum to mean if you have a compensatory time balance it must be used in 26 pay periods, 3 *H.T.* 828. Mr. Hardiman approves all compensatory time earned or used in his office, 3 *H.T.* 848-850. Mr. Hardiman stated all employees receive a memorandum at the beginning of the first quarter of the fiscal year reminding them to use their compensatory time but he did not recall why Mr. Wozniak had carried a balance of compensatory time from year to year, 3 *H.T.* 829-832 and U-33(A-B). Mr. Hardiman testified he would have in his office records of how Mr. Wozniak volunteered to work compensatory time, *Id.* Mr. Hardiman stated he asked Ms. Hallam and Ms. Frankwich -Bly each year if employees had a balance, 3 *H.T.* 846. Ms. Hallam and Ms. Frankwich-Bly are good employees and very careful employees but Mr. Hardiman did not recall being told about Mr. Wozniak's compensatory time balance, 3 *H.T.* 850-852. Mr. Hardiman stated he knew employees were required to be paid for unused compensatory time at the end of twenty-six pay periods, 3 *H.T.* 847-848. Mr. Hardiman checked his office records; could not find any record Mr. Wozniak used the accrued compensatory time, *January 30, 2008 electronic mail message,*

re: Wozniak comp time, 8 H.T. 2431-2433.

For the Kane Hospital Outreach assignment, Mr. Hardiman arranged the schedule and times of the outreach; he told employees he had no overtime money and the employees could have compensatory time; and he could not remember if he asked Director Tomasso for overtime money, 3 *H.T.* 894-899 and U-22.

Mr. Hardiman stated if an employee submitted a request to use more compensatory time, than the employee had accrued, he would deny the request; timekeepers were to come to him or a supervisor if an employee had a negative compensatory time balance; and Mr. Malley's negative balance was not brought to his attention, 3 *H.T.* 901-904 and U-28(B). Mr. Hardiman approved compensatory time for Investigators, after the time was worked; did not offer the employees money payment for the time; permitted employees to work excess work hours for personal reasons; and was aware that employees were working excess hours on a regular and recurring basis, 3 *H.T.* 910-920, U-21 to 24, U-26 to U-29, and U-31 to U-33.

Richmond

Patricia Gelisson, Director, became employed with EEOC in October 1984, 7 *H.T.* 2067. Ms. Gelisson was under the Baltimore District office until January 2006 and currently reports to the Charlotte District office, 7 *H.T.* 2068. Investigators make a request to work extra hours to Ms. Gelisson, by e-mail, 7 *H.T.* 2069. Ms. Gelisson did inquire if overtime money was available; was told by Reuben Daniels employees could not work extra hours if payment couldn't be made for the work; and was told employees had to be offered compensatory time or overtime pay, 7 *H.T.* 2136-2139. Ms. Gelisson has no records for employees who orally requested compensatory time; had never seen the EEOC form for requesting overtime; and only began to use the overtime

form when the office went under the supervision of the Charlotte District office, 7 *H.T.* 2139-2141 and A-15. Ms. Gelisson testified she sent Ms. Pemberton e-mails approving compensatory time for employees, 7 *H.T.* 2142-2144. Ms. Gelisson was aware Kathleen Harmon would be driving to a location to conduct an onsite investigation, which would exceed Ms. Harmon's scheduled work hours, 7 *H.T.* 2150-2159. Ms. Gelisson testified regular work hours were entered into the FPPS for employees using compensatory time, because she was told by the timekeeper, excess work hours could not be entered in the FPPS, 7 *H.T.* 2167-2181, U-1, U-17, A-23, and A-24.

Catherine Pemberton, IT Specialist, began employment with the EEOC in 1988, 3 *H.T.* 952. Ms. Pemberton's current immediate supervisor is Patricia Gelisson, Director and her previous supervisors were Rosalind Hall-Smith and Gloria Underwood 3 *H.T.* 953-955, 962-963. Ms. Pemberton has performed timekeeping duties for approximately five years and received no training for performance of her work, 3 *H.T.* 958. Ms. Pemberton performed timekeeping duties for Investigators and Mediators, 3 *H.T.* 960-961. Richmond has sign-in/out sheets for the Investigators which are located in the Director's area, 3 *H.T.* 964. Investigators sign-in/out on a daily basis and Mr. Pemberton picks up the sheets the second day, 3 *H.T.* 965, 970. The time sheets are completed by the employees, who sign in/out upon arrival and departure, including lunch, 3 *H.T.* 967-968 and U-17. Employees may only make changes to the sheets with the permission of the Director, 3 *H.T.* 970-971. On a biweekly basis, Ms. Pemberton enters time from the CABTS into the payroll system, 3 *H.T.* 972-973. Prior to the CABTS, Ms. Pemberton entered information from the sign-in/out sheets, *Id.* Ms. Pemberton stated employees enter all hours worked on the CABTS and compensatory time is only entered into the payroll system, after

the Director approves the compensatory time, 3 *H.T.* 982-984.

Agnes Logan, Legal Technician, began employment with EEOC in October 1985, 4 *H.T.*

1003. Ms. Logan stated she received the initial training on the FPPS system and trained Ms. Pemberton and Mary McMillan, 4 *H.T.* 1010-1011, A-23 and A-24. Ms. Logan stated the FPPS has pay codes and there is a code for compensatory time earned and used, 4 *H.T.* 1012-1013.

Brinda George, Investigator, began employment with the EEOC in April 1980, 4 *H.T.* 1017.

Ms. George testified she is required to sign-in/out on a daily basis; employees sign-in/out, chronologically based upon arrival and departure time; and the lunch period was one hour including two fifteen minute breaks, 4 *H.T.* 1019-1022 and U-17. Ms. George completes the CABTS; she only places on the sheet her scheduled work hours unless excess work hours are approved in advance; she has worked overtime since 1986 because she was required to do so; and she had worked excess work hours but not reported the hours, 4 *H.T.* 1027-1032 and U-18.

Kathleen Harmon, Investigator, became employed with the EEOC in April 1978, 4 *H.T.*

1032-1033. Ms. Harmon has served in the position of Local President for AFGE Local 3614 which covers Richmond, Norfolk, Baltimore, and Philadelphia, 4 *H.T.* 1034-1035. Ms. Harmon would sign-in/out on a daily basis and put a plus sign behind the total hours when she worked beyond her scheduled work hours, 4 *H.T.* 1041-1042 and U-17. Ms. Harmon's supervisor never discussed the plus sign behind the total hours on the sign-in/out sheets, *Id.* Ms. Harmon stated she received compensatory time for hours of work beyond her scheduled work hours and she was led to believe money payment was not available for excess work hours, 4 *H.T.* 1044-1046 and U-17. During an onsite investigation, which required 8 hours of travel to the location, Ms. Harmon worked past her scheduled work hours; recorded the excess work hours on the CABTS; was not

offered money payment for the excess hours; and her supervisor was aware she would work the excess hours, 4 *H.T.* 1047-1057 and U-19. The work assignment was made by Ms. Harmon's supervisor; Ms. Harmon could not refuse the work assignment; and the work assignment had an expectation she would perform an onsite investigation, 4 *H.T.* 1064-1067.

Baltimore

Debra Lawrence, Supervisory Trial Attorney, became employed with the EEOC in 1984, 8 *H.T.* 2483. Ms. Lawrence has been a supervisor since 2002 and has been the immediate supervisor of La Eunice Chapman, 8 *H.T.* 2485. Ms. Lawrence stated she does not know what the EEOC's policies require for overtime; assumed it is consistent with the law; and does not know what the law requires, 8 *H.T.* 2492. Ms. Lawrence has been aware since at least 2006, that nonexempt employees have a right to elect overtime money or compensatory time for extra work hours, 8 *H.T.* 2498-2499, 2523-2524. Ms. Lawrence testified Paralegals submit to her the EEOC form for excess work hours and she signs the form and submits it to the timekeeper, 8 *H.T.* 2503-2505 and U-35. Ms. Lawrence stated Ms. Chapman's requests for compensatory time would show up in her box and she would sign; she did not offer Ms. Chapman money payment or compensatory time for extra work hours; and she did not tell Ms. Chapman to stop working and go home 8 *H.T.* 2509-2513 and U-37.

LaEunice Chapman, Paralegal Specialist, began working for EEOC in June 1979, 4 *H.T.* 1197. Debra Lawrence, Supervisory Trial Attorney, is Ms. Chapman's immediate supervisor, 4 *H.T.* 1198. Ms. Chapman submits a form for overtime request, when she works extra hours, 4 *H.T.* 1200-1201. Ms. Chapman receives her work assignments from the attorneys, who set the deadlines for the completion of the work, 4 *H.T.* 1224-1229. Ms. Chapman records her extra

work hours on the CABTS, *4 H.T.* 1202 and A-14. Ms. Chapman worked on her day off; received compensatory time for extra work hours beyond her regular work day; was instructed no overtime money was available; and she had to request compensatory time or the extra work hours would not be approved, *4 H.T.* 1204-1215, 1222- 1223, U-39 and 39-A. Ms. Chapman's supervisor is aware she works through lunch, *4 H.T.* 1220-1221.

Yvonne Williams, Paralegal Specialist, began employment in 1979 and retired on September 2, 2006, *4 H.T.* 1232. Ms. William's immediate supervisor was Tracey Spicer, Supervisory Trial Attorney, *4 H.T.* 1234. Ms. Williams put all hours she worked on the CABTS, *4 H.T.* 1239 and A-14. Ms. Williams was never offered overtime money for her works hours beyond her regular schedule because the administration office stated there was no money for overtime, *4 H.T.* 1241-1244 and U-35. Ms. Williams stated she worked past her regular work hours most of the time and sometimes received approval, after the time was worked, *4 H.T.* 1245-1253 1254-1256 and U-41. Ms. Williams was not asked if she wanted compensatory time; was not told she didn't have to work the extra work hours; and was not told to go home by her supervisors, *4 H.T.* 1257-1261.

Loretta Miller, Investigator, Baltimore, became employed with the EEOC in February 1974, *4 H.T.* 1263-1264. Ms. Miller has been supervised by Wilma Scott and Judy Castle, *4 H.T.* 1264. Ms. Miller completed sign-in/out sheets, daily, and if she did not take lunch would put a dash, *4H.T.* 1265-1270 and U-44. Ms. Miller testified she would work past her quit time to complete work; did not receive overtime pay for the hours she worked past her quit time; had asked for overtime and was told there was no overtime by her supervisors; was not given compensatory time for her extra work hours; and not permitted to adjust her arrival or departure times for the

extra work hours, 4 *H.T.* 1271-1277. Ms. Miller worked extra work hours to complete her work within the deadlines set for completion and to service members of the public wishing to file charges of discrimination, 4 *H.T.* 1278-1288. Ms. Miller had periodic meetings with her supervisors, monthly, where her work projections were reviewed and deadlines were set for her work assignments, 4 *H.T.* 1289-1292.

Chicago

Horice Taylor, Secretary, became employed with the EEOC in August 200, 6 *H.T.* 1834, 1836. Ms. Taylor's immediate supervisor is Deputy Director Julianne Bowman, 6 *H.T.* 1836-1837. Ms. Taylor performs timekeeping duties for Investigators and Mediator, 6 *H.T.* 1841-1842. Ms. Taylor stated for the CABTS, information cannot be entered in the Saturday and Sunday blocks, 6 *H.T.* 1846 and A-14. Ms. Taylor stated excess work hours are not placed on the CABTS; are recorded on a form and approved by the Deputy Director ; and she keeps all records on compensatory time, 6 *H.T.* 1849-1854 and U-65-A.

Tryone Irvin, Enforcement Supervisor, became employed with EEOC in June 2001, 6 *H.T.* 1863-1864. Mr. Irvin stated his training and formation he received from supervisors and managers was you do not get overtime payment for excess work hours because there is no money but you can receive compensatory time, 6*H.T.* 1868-1869, 1910. Mr. Irvin stated he was instructed to keep a log of the time Investigators worked beyond their schedule and grant employees time off based upon the time he keeps, 6 *H.T.* 1869-1870, 1877-1878, and 1882-1883. Mr. Irvin did not receive training on the CBA; did not receive training nor understand the term nonexempt employee; and believed he had received a memorandum informing him nonexempt employees were not entitled to overtime pay, 6 *H.T.* 1874-1877, and 1899-1903. Mr. Irvin stated

it is office practice and instruction to record only 40 hours per week or 80 hours per pay period on the CABTS and the supervisor keeps a separate record of excess work hours, 6 *H.T.* 1884-1886 and A-14.

Eileen Sotak, Enforcement Supervisor, became employed with the EEOC in 1978 and became a supervisor in 1989, 9 *H.T.* 2754, 2779. Ms. Sotak's immediate supervisor is Julliam Bowman, Deputy Director, 9 *H.T.* 2782. Ms. Sotak stated she had never seen excess work hours on the CABTS; employees, under her supervision, note their excess work hours in e-mails; and she believes the law and regulations permit employees to record excess work hours and receive compensatory time for the excess work hours, 9 *H.T.* 2787-2793. Ms. Sotak testified the excess work hours recorded by employees are unofficial time; she does not recall who authorized her to keep unofficial compensatory time; and believes her supervisors were aware of her unofficial records of excess work hours; she did not know Investigators could receive money payment for excess work hours and employees would tell her in advance about excess work hours and she approved the work, 9 *H.T.* 2793-2798, 2802-2815, A-20(G)(I)(*Chic*), p. 7-9.

Regina Husar, Mediator, was an Enforcement Supervisor from August 2001 to April 2006, 9 *H.T.* 2819. Ms. Husar stated outreach was part of an Investigator's duties; she believed work performed outside an employee's duty hours was not hours of work and was reported in e-mails; she was told by the Director and Deputy Director there was no money for overtime; did not enter compensatory time earned in the FPPS; knew an employee could not work excess work hours for overtime or compensatory time when no money was available; and signed a leave slip for Sarronda Harris to use compensatory time, 9*H.T.* 2837-2856, U-1, and U-65(A-B). Ms. Husar stated the Director and Deputy Director told her she could give compensatory time even when

there was no money in the budget for payment of excess work hours, 9 *H.T.* 2861-2868, A-5-D, U-156, and J-1. As a Mediator, Ms. Husar works excess work hours, works through lunch, keeps notes on her excess hours, and e-mails the hours to her immediate supervisor, 9 *H.T.* 2869-2871. Ms. Husar stated she was instructed to place scheduled work hours on the CABTS, 9 *H.T.* 2875-2877 and A-14.

Nanisa Pereles, Investigator, became employed with the EEOC in June 2001, 6 *H.T.* 1679-1680. Ms. Pereles uses the CABTS to record her scheduled work hours; was informed by her supervisor hours in excess of her scheduled work hours were not be recorded on the CABTS; was only permitted compensatory time for excess work hours; and was informed by the Deputy Director to work Outreach outside their scheduled work hours and receive compensatory time, 6 *H.T.* 1684,1686-1691, 1698-1700. Ms. Pereles was given assignments which required excess work hours; did not have to get prior approval to work excess work hours; and did not receive overtime payment for the excess hours, 6 *H.T.* 1693-1696.

Janel Smith, Investigator, became employed with EEOC in April 2001, 6 *H.T.* 1701, 1703. Ms. Smith was informed at an office meeting not to record excess work hours on the CABTS; to report excess work hours to the supervisor by electronic mail; and was informed she would receive compensatory time for the excess work hours, 6 *H.T.* 1707-1711.

Sarronda Harris, Investigator, became employed with the EEOC in July 2001, 6 *H.T.* 1914. Ms. Harris testified if she worked beyond her scheduled work hours, she would keep a note and inform her supervisor of the time worked; she does not place excess work hours on the CABTS, and she has not been offered the opportunity to receive payment for excess work hours, 6 *H.T.* 1919-1925, 1929-1931, and U-65-A.

Milwaukee

Chester Bailey, Director, began employment with the EEOC in March 1980, *H.T.(5/12)* 4.³ Mr. Bailey was Director from 1989 until 2005 and was acting Director in Dallas for six months, *Id.* Mr. Bailey testified it was his understanding that Headquarters had to be contacted before employees worked excess work hours whether it was voluntary or involuntary work, *H.T.(5/12)* 11-12, 30-32, and A-5-D. Mr. Bailey testified he was aware that nonexempt employees could not work excess work hours when overtime money was not available, *H.T.(5/12)* 33-35. Mr. Bailey testified he contacted EEOC Headquarters for funds for overtime; he did not need headquarters approval for employees to work excess hours just for the money; and he included compensatory time in speaking about overtime, *H.T.(5/12)* 42-45, U-156, and A-20GI(*Phila*), p. 16. Mr. Bailey testified everybody understood the rules for overtime and compensatory time; requests were sent to Cynthia Pierre and Ralph Soto; and the money for excess work hours was approved by Nick Inzeo, *H.T.(5/12)*, 45-50 and A-20GI(*Phila*), pp. 16-19. Mr. Bailey testified each office had a Budget Analyst who informed him on the monies in the budget; he would ask the individual about the money in the budget; and when he wrote there was no overtime money available, it meant he had no money in his budget, *H.T.(5/12)* 51-54 and A-20G(I)(*Chic*), p.1 and A-20GII(*Dallas*), p. 1. During the time Mr. Bailey was a District Director, he was aware of a grievance filed by the National Union, on overtime for bargaining unit employees, *H.T.(5/12)* 111.

Felcia Sykes, Information Technology Assistant, Milwaukee, became employed with the EEOC in May 2002, 6 *H.T.* 1716. Ms. Sykes received training on the CABTS by telephone, 6

³The Los Angeles hearing transcript is designated by date "H.T.(date)_____."

H.T. 1725-1726. Ms. Sykes was told to keep a record of compensatory time but it was off the books, *6 H.T.* 1729-1730. Ms. Sykes set up a spreadsheet on which she recorded sick leave, administrative leave, compensatory time, and overtime, *6 H.T.* 1731-1734, 1741-1745, 1762-1764, and U-66. Ms. Sykes stated her supervisors would ask about the compensatory time accumulated by investigators, *6 H.T.* 1737-1738.

Pamela Bloomer, Investigator, Milwaukee, became employed with EEOC in April 1994, *6 H.T.* 1771-1772. Ms. Bloomer was told no overtime funds were available by her supervisors and managers; was told the CABTS need to match her scheduled work hours; sends e-mails to her supervisors about excess work hours; and keeps a personal sheet of excess work hours, *6 H.T.* 1780-1787, 1797, and U-67.

Lili Llanas, Investigator, Milwaukee, became employed with EEOC in July 1999, *6 H.T.* 1797. Ms. Llanas completes the CABTS to record her work hours, *6 H.T.* 1803-1804, 1807-1808 and U-69(A-B). Ms. Llanas worked on a Sundays and weekends; did not enter the work hours on the CABTS; was not asked the actual work hours she worked; and did not receive money payment for all the hours she worked on the Sundays and weekends, *6 H.T.* 1807-1821, 1828-1830, and A-20GI(*Chic.*), p. 17-21.

St. Louis Hearings

St. Louis

James Neely, Director, began employment with the EEOC in 1975, *18 H.T.* 5806-5807. Mr. Neely has responsibility for St. Louis, Kansas City, Mo, Oklahoma City, *18 H.T.* 5808-5809. Mr. Neely has served in management positions of Regional Attorney, and Deputy General Counsel of EEOC, *18 H.T.* 5826-5829. Mr. Neely was a member of the management collective

bargaining team in 1991, *18 H.T.* 5829-5830. Mr. Neely testified the agreement employees are required to sign was in use, prior to his arrival as Director of the office and the form is used for any employee requesting to work excess hours, including paralegals; , *18 H.T.* 5822-5824 and U-92.

On cross-examination, Mr. Neely testified he was aware of the EEOC's policies on excess work hours and the payment for such hours, *18 H.T.* 5844-5845 and A-5A. Mr. Neely testified he instructed Gail Cober compensatory time was unofficial and he authorized "Neely days" for employees who worked excess work hours, which he kept of the books, *18 H.T.* 5851-5852, 5858-5859. Mr. Neely stated he knew the FLSA required nonexempt employees to be offered overtime, *18 H.T.* 5859-5860 and U-92. Mr. Neely agreed the EEOC's policy did not permit employees to work excess work hours when there was no overtime money in the budget; he had employees sign the form to work excess work hours when he knew he had no money to pay overtime; and he kept the excess work hours off the books, *18 H.T.* 5860-5872, 5873-5876, U-92, and J-1.

Carol Abernathy, State & Local Clerk, became employed with the EEOC in April 2001, *14 H.T.* 4215. Ms. Abernathy testified the FPPS has the employees scheduled work hours filled in by the payroll office; she changes the hours upon approval by a supervisor; and enters excess work hours when she receives a form signed by a supervisor, *14 H.T.* 4226-4230 and A-23.

Penny Horne, Paralegal Specialist, Kansas City, became employed with the EEOC in 1994, *10 H.T.* 3022. Ms. Horne's immediate supervisor, is Barbara Seely, located in the St. Louis office, *10 H.T.* 3023. Ms. Horne was required to sign an the EEOC form for excess work hours waiving money payment for the hours and could not elect money payment or compensatory time, *10 H.T.*

3023-3027 and U-92. Completion of the EEOC form waiving overtime money was mandatory; performance of the work was required; and Ms. Horne did not have a choice not to perform the work, *10 H.T.* 3038-3041.

Dallas

Janet Elizondo, Deputy Director, became employed with the EEOC in January 1981, *14 H.T.* 4237. Ms. Elizondo was acting District Director from July 2001 to December 2003 and became Deputy Director in March 2004, *14 H.T.* 4239. Ms. Elizondo attended the management development training at EEOC headquarters in 2003 and 2005, *14 H.T.* 4243. Ms. Elizondo testified since she has been in the position of Deputy Director, the Dallas District Office, does not use the EEOC's form for requesting overtime; supervisors keep track of the information; and the excess work hours are not recorded on the CABTS; *14 H.T.* 4276-4279 and A-15. Ms. Elizondo testified, as an Enforcement Manager, she was informed there were no overtime monies; it was her understanding employees requesting to work beyond their scheduled hours could receive compensatory time and waive overtime; and employees were required to waive overtime payment to receive compensatory time, *14 H.T.* 4282-4289 and J-1. When Michael Fetzer became District Director in January 2004, the EEOC form for requesting overtime was eliminated, *14 H.T.* 4292-4293. Ms. Elizondo testified she was informed in management training employees could waive overtime and request compensatory time, when overtime monies were not available and she offered employees compensatory time when no overtime money was available for excess work hours; and required employees to waive overtime when she had overtime money available, *14 H.T.* 4297, 4303-4309, 4311-4315, 4324-4325, 4329-4331, 4332-4334 an A-20GII(*Dallas*), pp.8-15. Ms. Elizondo testified there is an understanding overtime

money is not available unless you receive specific notice there is money and there has not been regular distribution of any document at the beginning of a fiscal year showing overtime money is available, *14 H.T.* 4336-4340. Ms. Elizondo testified it is a national practice that employees may not waive lunch and leave work early, *14 H.T.* 4360-4361 and A-20GII(*Dallas*), pp. 36-39. Ms. Elizondo testified the overtime request form used in her office had inserted a typewritten line of “waive overtime”; she did not know who inserted the information on the form; and the information had always been on the request form used in Dallas, *14 H.T.* 4362-4364, U-71(1-20) and A-15. Ms. Elizondo testified Mr. Fetzer authorized credit time hours to be kept informally by supervisors, *14 H.T.* 4365-4368 and J-1. Carla Vogel, Supervisory ADR Attorney, who reported to Ms. Elizondo, used a different form for recording excess work hours, *14 H.T.* 4371-4373 and U-70(1-3). Ms. Elizondo testified all employees in Dallas were required to work 8:00 a.m. to 4:00 p.m., while assigned to Intake; Azella Dykman was required to work the Intake hours; and Ms. Dykman was required to waive overtime payment because she came to work at 7:30 a.m during Intake , *14 H.T.* 4379-4381. Ms. Elizondo testified there was no money available for to pay for overtime, when Ms. Dykman was required to waive overtime, *14 H.T.* 4421-4422 and U-71. Ms. Elizondo testified Outreach performed by employees is hours of work and part of EEOC’s work, *14 H.T.* 4415-4417. Ms. Elizondo stated an employee has to agree to take compensatory time for Outreach performed beyond scheduled work hours and on weekends, *Id.* Ms. Elizondo testified the Dallas District office received approximately 4,000 cases in Fiscal Year 2006, *14 H.T.* 4425. Ms. Elizondo stated the mediation unit receives 70-80% of the charges for processing; she has never conducted a survey to determine the amount of time a mediator must spend to process a case from start to finish; and any expectations she has about the work

processing are based upon IMS reports, *14 H.T.* 4427-4432.

Alma Anderson, Enforcement Manager, became employed with EEOC in 1993, *15 H.T.* 4776-4777. Ms. Anderson testified she was provided with the overtime request form used in Dallas, by Jacqueline Bradley and had never seen the EEOC's overtime request form, *15 H.T.* 4822-4823, U-71, and A-15. Ms. Anderson became a supervisor of the mail unit in October 2005 and the CRTIU unit in 2006, *15 H.T.* 4823-4824. Ms. Anderson had no supervisory responsibility for the CRTIU unit between October 2005 and 2006, *15 H.T.* 4827. Ms. Anderson testified, while she was supervisor of the mail unit, the Investigators did not serve in Intake and she had no responsibility for observing the hours of work of employees in Intake, *15 H.T.* 4828-4829. Ms. Anderson testified she did not supervise Azella Dykman until October 2005; she had no knowledge of whether overtime monies were available; and that Outreach is part of the Investigator's job responsibilities, *15 H.T.* 4819-4820, 4844-4845, 4846-4851. Ms. Anderson testified her meaning of Investigators volunteering for Outreach was the employees selected among projects offered to them, *15 H.T.* 4850-4851.

Gloria Smith, Mediator, Dallas became employed with the EEOC in 1974, *10 H.T.* 3042. Ms. Smith was required to travel to distant locations, frequently to perform mediations; was informed there was no overtime for excess work hours; kept a record of her excess hours which was turned in to her supervisor; and did not report excess work hours on her CABTS, *10 H.T.* 3050-3057, 3067, 3071-3072 and U-70(A-D). The procedure for reporting excess work hours was to turn the hours into the timekeeper and to call the supervisor after the hours were worked, *10 H.T.* 3059-3062. Ms. Smith was never offered the opportunity to have money payment or compensatory time for her excess work hours, and could only decline a work assignment based

upon a conflict of interest, *10 H.T.* 3074-3076. Ms. Smith was instructed if the parties to a mediation wanted to continue past her scheduled work hours to complete the mediation if possible, *10 H.T.* 3095-3096. Ms. Smith has work assignments of twenty per month and is required to schedule, convene, and complete mediations within ninety days of receiving the assignment, *10 H.T.* 3101, 3112.

Azella Dykman, Investigator, Dallas, became employed with the EEOC in 1977, *10 H.T.* 3116. Ms. Dykman was required to complete the EEOC form for excess work hours, which contained a typewritten statement waiving overtime, *10 H.T.* 3120-31225 and U-71(1-20). Ms. Dykman worked on Intake; was assigned to the Intake process for one week every five weeks; and was required to remain at work until 4:30 p.m., *10 H.T.* 3131-3133, 3135-3136. Ms. Dykman worked a 7:30 a.m. to 4:00 p.m. work schedule; was told by Janet Elizondo to remain until 4:30 p.m. when she performed Intake assignments; and was not offered money payment for the excess work hours, *10 H.T.* 3163-3164 and A-26 to A-34.

Melva Best, Investigator, became employed with the EEOC in 1971, *10 H.T.* 3171-3172. Ms. Best stated she worked excess work hours; was not offered money payment for the excess work hours; her supervisor was aware she worked the excess work hours; and received compensatory time on rare occasions for the excess work hours, *10 H.T.* 3174-3182 and A-20G-II(*Dallas*), p. 14. Ms. Best stated she was required to complete Intake interviews, even if it went beyond her scheduled work hours; she did not receive money payment or compensatory time for the work; and she could not inform the person to return the next day, *10 H.T.* 3189-3192.

San Antonio

Melinda Johnson, Office Automation Assistant, San Antonio, became employed with the EEOC in 1989, *10 H.T.* 3225. Ms. Johnson stated sign-in/out sheets were used by Investigators until 2005 and the supervisor was responsible for maintaining the sheets, *10 H.T.* 3233-3235 and U-76.

Travis Hicks, Enforcement Manager, became employed with the EEOC in May 1989, *16 H.T.* 5260, 5263. Mr. Hicks testified he responded to Ms. Trevino's inquiry regarding employees working excess work hours, but did not inform her of his practice of trading hours with employees, *16 H.T.* 53299-53300, 5313-5318, A20GII(*Dallas*), pp. 19-20, 22. Mr. Hicks checked the sign-in/out sheets on a daily basis and noted the employees' work location and/or absence, *16 H.T.* 5320-5331, U-72, U-73 (A-I), and U-74. Mr. Hicks testified he did not know employees could not work excess hours, if there was no money in the office budget to pay for the work, *16 H.T.* 5312-5313 and A-5D. Mr. Hicks said he always had the understanding there was no money for overtime, *Id.*

Guillermo Zamora, Supervisor, began employment with the EEOC in 1974, *16 H.T.* 5178. Mr. Zamora testified he makes a visual check on employees' presence at work in the morning, afternoon, and at the end of the workday, *16 H.T.* 5185-5186. Mr. Zamora testified Pedro Esquivel, Director, was strict on administration of time and attendance, *16 H.T.* 5186-5187. Mr. Esquivel expected the accurate time of arrival and departure to be on the sign-in/out sheets; Mr. Zamora was required to pick up the sign-in/out sheets on a weekly basis; he reviewed the sheets; and Mr. Zamora was not aware employees who worked excess hours could elect to receive pay or compensatory time, *16 H.T.* 5217-5219, 5222-5226, and U-76(1-5). Mr. Zamora does not

certify time and attendance for his subordinates, *16 H.T.* 5191. Mr. Zamora testified Management in the EEOC from the top to the bottom has always been told there is no money for overtime, *16 H.T.* 5193-5195, 5199-5200. Mr. Zamora testified Mr. Esquivel had instructed Investigators to interview members of the public, no matter what time the person arrived at the office and late hours for Intake are frequent, *16 H.T.* 5204-5205. Mr. Zamora testified after turning in the sign-in/out sheets he was never informed by the Budget Analyst, that investigators working excess work hours should be paid; he never informed Mr. Fetzer he had employees who were working excess hours; and he ordered the Investigators to stop working and go home; but took no discipline if they didn't go home, *16 H.T.* 5228-5232, 5235-5236, U-76(4), U-77(A-B), A20GII(*Dallas*), p. 19, and J-1. Mr. Zamora testified if an Investigator drives back from an on site in the Southern part of Texas he does not have to pay overtime money for the excess work hours because he can give them compensatory time; he was informed by Mr. Esquivel he could give compensatory time when no money was budgeted for overtime; and employees and managers were told in staff meetings about the process of getting compensatory time, *16 H.T.* 5244-5249.

Katherine Sanchez Perez, ADR Coordinator, became employed with the EEOC in 1993, *16 H.T.* 5001. In 2004, Ms. Perez was responsible for supervising mediators in San Antonio and assumed responsibility for mediators in Dallas and El Paso, in 2006, *16 H.T.* 5005-5007. Ms. Perez does not certify the time and attendance of mediators, *16 H.T.* 5042-5044. Ms. Perez testified she understood EEOC's rules to permit individuals to receive compensatory time, when no money was in the budget for money for overtime and no obligation existed to pay for work done without prior approval, *16 H.T.* 5014-5015. Ms. Perez could not recall who told her there

was no obligation to pay for excess work hours, which had not been approved in advance, *16 H.T.* 5091-5092. Ms. Perez testified Craig Kempf reported excess work hours; reported the hours after he worked the hours; and she did not keep track of the extra work hours, *16 H.T.* 5016-5019. Ms. Perez testified she was aware there was no money for overtime; she continued to permit mediators to work excess work hours; and give the mediators compensatory time for the work, *16 H.T.* 5051-5057, 5058-5059, 5062-5066 and A-20GII(*Dallas*), pp. 19, 23. Ms. Perez testified she believed she could keep track of excess work hours, without recording the hours in the time and attendance system, *16 H.T.* 5067-5068. Sign-in/out sheets were used in the San Antonio office to record hours of work and; the office Director ordered the use of the sign-in/out sheets; *16 H.T.* 5068-5074 and U-75(A-B). Ms. Perez assigns all cases to the mediators; has the ability to track the mediators pending workloads; and does not talk with mediators to determine if the work assignments can be performed within scheduled work hours, *16 H.T.* 5096-5098.

Craig Kempf, Mediator, began employment with the EEOC in 1994, *11 H.T.* 3292-3293. Mr. Kempf stated he would sign-in/out when he arrived and departed work, *11 H.T.* 3296-3301 and U-75(A-C). Mr. Kempf was informed by his immediate supervisor to let her know if he worked beyond his scheduled work hours and she would give him compensatory time or credit time, *11 H.T.* 3313. Mr. Kempf stated he records his scheduled work hours on the CABTS, *11 H.T.* 3315-3319, U-1, U-75C-5, and A-13. Mr. Kempf stated he was not offered money for hours he worked in excess of his scheduled work hours, *11 H.T.* 3333-3335.

Tonyaa Shiver, Investigator, became employed with the EEOC in August 1999, *11 H.T.* 3339-3340. Ms. Shiver works a compressed work schedule of four days per week, ten hours per

day, *11.H.T.* 2243-3345 and U-76. Ms. Shiver stated all employees were required to sign-in/out on a daily basis and employees had been instructed to sign-in/out if she left the office during the scheduled work day for annual leave or doctor's appointments, *11 H.T.* 3350-3352. Ms. Shiver worked from 6:30 a.m. to 5:00 p.m.; was required to remain on duty and take charges of discrimination if a person arrived at 4:45 p.m to file a charge; and did not record excess work hours from her time and attendance sheets, *11 H.T.*3353-3356, 3360-3361, 3364, 3372, and U-76. When Ms. Shiver worked in excess of her scheduled work hours she was told she would receive compensatory time; her supervisor observed her working the excess hours, and was instructed to record only forty hours per week on the CABTS, *11 H.T.* 3366-3369, and 3376.

Diane Webb, Investigator became employed with EEOC in August 1999, *11 H.T.* 3389 and 3391. Ms. Webb testified she recorded her arrival and departure from work on sign-in/out sheets and was informally told if she worked beyond her scheduled work hours she could come in later or leave early on another day, *11 H.T.* 3394, 3397-3406 and U-76. Ms. Webb stated if she worked beyond her scheduled work hours, she did not record it on the CABTS; was informally given time off by her supervisor; and was not told to stop working beyond her scheduled work hours, *11 H.T.* 3407-3421, 3434-3435, U-1, U-77(A-B), A-13, and A-14. Ms. Webb stated excess work hours were not recorded and she was instructed, when assigned to Intake to complete taking a charge if a member of the public arrived close to the closing hour, *11H.T.* 3440-3441. Ms. Webb could not vary her arrival and departure time for work on a daily basis and was required to submit a leave slip if she arrived late, *11 H.T.*3445-3346. On telecommuting days, Ms. Webb was required to report to her supervisor the work she would complete and report the work completed on return to the office, *11H.T.* 3447-3448.

John Ahlstrom, Investigator, began employment with EEOC in December 1991, *11 H.T.* 3459. Mr. Ahlstrom was told he was to work forty hours per week and if he worked hours beyond scheduled work hours he would receive compensatory time, *11 H.T.* 3463. Mr. Ahlstrom stated the hours on his CABTS were based upon his scheduled work hours, *11 H.T.* 3471 and U-72A . Mr. Ahlstrom worked in excess of his scheduled work hours during Intake; was instructed to complete charges from members of the public who arrived shortly before the close of the office; and did not record all of the hours he worked on the CABTS , *11 H.T.* 3472- 3492, U72A and U-73(A-I), Mr. Ahlstrom's supervisor picked up the sign-in/out sheets daily, *11 H.T.* 3499. Mr. Ahlstrom was told there was no money for overtime and he would receive compensatory time for excess work hours , *11 H.T.* 3499-3501.

Maria Minks, Investigator, became employed with EEOC in 1999, *15 H.T.* 4687, 4689. Ms. Minks testified she was required to complete a daily sign-in/out sheet and her excess hours of work were not documented, except on the sign-in/out sheets, *15 H.T.* 4691-4694, 4700-4703, 4709-4713, U-72, U-73(A-I), and U-74(A-F). Ms. Minks testified she was told by her supervisors there were no funds to pay for excess works hours and she was not offered the opportunity to be paid money or take compensatory time for excess work hours, *15 H.T.* 4715-4716. Ms. Minks testified her supervisors always knew if she was working extra hours on Intake because they would come and check, *15 H.T.* 4720-4721, 4723-4725.

El Paso

Patricia Province, Information Technology Specialist, began employment with the EEOC in February 1988, *11 H.T.* 3505. Ms. Province records hours of work for Investigators and was instructed by the Director to record only scheduled work hours on the CABTS, *11 H.T.* 3509,

3522-3523.

Jose Gurany, Mediator, became employed with the EEOC in 1991, *17 H.T.* 5343-5344. Mr. Gurany served as Enforcement Supervisor from 1998 until 2006; received e-mails two to three times a year from Mr. Esquivel informing him excess work hours were not authorized unless pre-approved; and was aware employees worked beyond their scheduled work hours, *17 H.T.* 5344, 5355-5356, and 5358-5359. Mr. Gurany testified Mr. Calderon, Area Director, reviewed the sign-in/out sheets at the end of each pay period and he compared the sign-in /out sheets for payroll purposes, *17 H.T.* 5390-5393 and U-160. Mr. Gurany supervised Unit 1 from 2003 through 2006; did not supervise Mary Christine Bobadillo, Rollin Wickenden, Arturo Carrion, and Sandra Cox from November 11, 2005 through April 1, 2006; and was not assigned new Investigators to supervise, from 2003 through 2006, *17 H.T.* 5436-5439, U-160, U-161, and U-162. Mr. Gurany testified he saw Investigators taking charges in Intake, when he left work at the end of the day; he told the Investigators goodbye; and the office did not kick people out at 5:00 p.m., even though Intake ended at 5:00 p.m., *17 H.T.* 5449-5450.

Mary Christine Bobadillo, Investigator, began employment with the EEOC in 1976, *11 H.T.* 3528-3529. Ms. Bobadillo used a sign-in/out sheet to record her hours of work; was told to record her scheduled hours of work; worked in excess of her scheduled work hours; did not receive pay or compensatory time for some of the excess work hours; would receive compensatory time for excess work hours if the supervisor approved the hours in advance; was told there was no money for overtime; and was not offered money payment for the excess work hours, *11 H.T.* 3536-3546, 3552, 3555-3556. Ms. Bobadillo's supervisor observed her working in excess of her scheduled work hours; did not instruct her to go home or cease working; and did

not offer her money payment or compensatory time, *11 H.T.* 3558-3559. Ms. Bobadillo stated she was instructed by Mr. Calderon and Ms. Anchondo to take charges from members of the public who arrived fifteen minutes, prior to the office closing, *11 H.T.* 3565- 3566.

Arturo Carrion, Investigator, began employment with the EEOC in 1990, *11 H.T.* 3576-3577. Mr. Carrion completed sign-in/out sheets on a daily basis; worked beyond his scheduled work hours all the time; was observed by his supervisor working beyond his scheduled hours; was informed by the District Director customer service was a priority; and was told by supervisors there is no money payment for work beyond the scheduled work hours but compensatory time would be given, *11H.T.* 3580-3581, 3586-3587, 3593-3595, 3608-3609. Mr. Carrion was required to perform Outreach as part of his performance requirements, *11 H.T.* 3612-3613, 3622-3623, 3631-3632. Mr. Carrion was requested to perform an outreach assignment in Roswell, New Mexico; was told by his supervisor he could not receive money payment for the work; was told by his supervisor no written record was needed for the work; and was told by his supervisor not to report the work performed on the CABTS, *11 H.T.* 3600-3605 and A-14.

Rollin Wickenden, Investigator, began employment with the EEOC in 1990, *11 H.T.* 3634. Mr. Wickenden was required to sign-in/out on a daily basis; was required to complete Intake interviews for members of the public who might arrive late to file a charge of discrimination; and was informed the EEOC did not pay money for excess work hours but he could receive compensatory time, *11 H.T.* 3639, 3641, 3643-3647.

Sandra Cox, Investigator, began employment with the EEOC in 1999, *11 H.T.* 3661-3662. Ms. Cox was required to sign-in/out daily; was told to record her scheduled work hours on the

sign-in/out street; and was told if she worked beyond her scheduled work hours she would receive compensatory time *11 H.T.* 3665-3670, 3672.

Houston

Deborah Urbanski, ADR Coordinator, became employed with the EEOC in 1999, *16 H.T.* 5104-5107. Ms. Urbanski had responsibility for mediators in Houston, Dallas, and Oklahoma City from 1999 until January 2006 and began supervising the mediators in Houston and Dallas in January 2006, *16 H.T.* 5107. Ms. Urbanski testified the mediation units receive approximately 2,000 cases per fiscal year, *16 H.T.* 5160-5161. Ms. Urbanski certifies the time and attendance of mediators under her supervision, in Houston, *16 H.T.* 5109-5111, 5164, 5168. Jane Elizondo certifies the time and attendance for mediators in Dallas, *16 H.T.* 5167. Ms. Urbanski testified she always approved excess work hours for mediators in Dallas, after the hours were worked, *16 H.T.* 5117-5118. Ms. Urbanski understood that any hours of work beyond scheduled work hours is overtime; stated she believed the EEOC was not obligated to pay for excess work hours unless approved in advance; said she told her employees if they were going to work overtime she would request money payment for the time; and testified she believed she had discretion from the District Director to give people compensatory time when there was no money to pay for the excess work hours, *16 H.T.* 5135-5141, 5143-5144, J-1, and A-5D. Ms. Urbanski testified she was not authorized to offer money payment for excess work hours, *16 H.T.* 5145-5148. Ms. Urbanski informed Michael Fetzer, District Director, of the mediators working excess work hours without prior approval and Mr. Fetzer agreed with the process, *16 H.T.* 5149-5150 and A-20GII(*Dallas*), p. 19. Ms. Urbanski stated the excess work hours are not recorded; she considered the hours credit time; and she was not aware individuals on a compressed work

schedule could not receive credit time, *16 H.T.* 5151-5152 and J-1.

Ms. Urbanski testified, on direct examination, she did not know about Laverne Morrison's training, prior to Ms. Morrison taking the training and Ms. Morrison received a day off in the following pay period, *16 H.T.* 5122-5124 and U-81. On cross examination, Ms. Urbanski agreed she had received the Laverne Morrison request, prior to Ms. Morrison taking the training 5153-5154 and U-81. Ms. Urbanski agreed Ms. Morrison's training was work related and attending the training on her off day was overtime, *16 H.T.* 5176-5177. Ms. Urbanski had never seen the excess work hour record for Gloria Smith and stated managers in other offices could authorize excess work hours and she would not be aware of the excess work hours, *16 H.T.* 5168-5172, U-70A-3.

Phyllis Fletcher, ADR Program Assistant, became employed with EEOC in 1989, *12 H.T.* 3690. Paralegals and Investigators in New Orleans had sign-in/out sheets for the purpose of recording hours of work, *12 H.T.* 3696-3698, 3708. Ms. Fletcher stated she records hours of work for exempt employees and if there are excess work hours it is off the record credit time, *12 H.T.* 3713, 3722-3723. Ms. Fletcher records time for mediators Dollison, Johnson, Rodriguez, and Morrison, and was informed the employees in the Unit were exempt, *Id.* Ms. Fletcher stated paralegals worked a lot of overtime, *12 H.T.* 3714, 3716-3717.

Lolita Jefferson, Legal Secretary, became employed with the EEOC in January 1981, *12 H.T.* 3774-3775. Ms. Jefferson has performed timekeeping duties for Paralegals and received instructions to record excess hours of work in the FPPS, *12 H.T.* 3795-3797.

Joseph deLeon, Supervisor, became employed with the EEOC in 1979, *17 H.T.* 5459, 5461. Mr. DeLeon testified employees do not report excess work hours on the CABTS, it is considered

credit time, *17 H.T.* 5472-5473. Mr. deLeon testified Investigators completed time and attendance sheets and he reviewed and certified the sheets, *17 H.T.* 5521–5526 and U-78(1-3). Mr. deLeon testified he would give employees compensatory time for excess work hours; would not check to see if there was money in the office budget; he gives credit time to employees on a compressed work schedule; and he did not inform the District Director of his practice of giving credit time, *17 H.T.* 5537-5548, A-20GII(*Hous*), p.7, and J-1. Mr. deLeon testified Investigators are not permitted to decide the time or date of Outreach assignments, *17 H.T.* 5548-5549.

Samantha Chan, Investigator, became employed with the EEOC in April 1999, *12 H.T.* 3800-3801. Ms. Chan stated Outreach work is used in assessing her performance; she participated in Outreach, after completing her scheduled hours of work; was told there was no money for overtime; received compensatory time for excess work hours; and did not record the excess work hours on the CABTS, *12 H.T.* 3806-3821, 3823, 3828-3829, U-79A, and U-82B.

Laverne Morrison, Mediator, became employed with EEOC in 1978, as an Investigator and became a Mediator in March 1999, *12 H.T.* 3830. On a monthly basis, Ms. Morrison has approximately 20 cases per month, *12 H.T.* 3833-3834. Ms. Morrison stated work hours in excess of her scheduled hours are not reported anywhere and does not record excess work hours on the CABTS, *12 H.T.* 3843-3846 and U-81. Ms. Morrison voluntarily paid for mediation training, which was considered a work day for her; agreed to return and train other mediators; has been observed by her supervisor working beyond her scheduled work hours; and was not offered money payment for the excess work hours, *12 H.T.* 3860-3865.

Elaine Weintritt, Investigator, became employed with the EEOC in May 1999, *12 H.T.* 3866. Ms. Weintritt worked on her off days to complete work assignments to support office production

goals; received compensatory time for the excess work hours; and completed a form reporting her time, *12 H.T.* 3870-3888, A-14, U-83A-B(1-3).

Pamela Edwards, Investigator, became employed with the EEOC in 1978 and serves as the Union steward, *14 H.T.* 4557-4559. Ms. Edwards testified she received instruction from her supervisor not to record hours worked beyond her regular schedule and to just take time off for the hours worked, *14 H.T.* 4562. Ms. Edwards testified it was normal to work beyond her scheduled work hours; had to report any time off from work by use of a leave slip; was not offered money payment for the excess work hours; and was told by her supervisors to just take time off, *14 H.T.* 4572-4580, 4592-4593. Ms. Edwards case assignments average between 55 per month and 100 per month, *14 H.T.* 4594-4595.

Oklahoma City

Kerie Frantzen, Investigative Support Assistant, became employed with the EEOC in September 1999, *12 H.T.* 3894-3895. Ms. Frantzen has performed the duties of timekeeper, since 1999, *12 H.T.* 3897-3898. Ms. Frantzen testified the hours for each Investigator's daily work schedule is entered into the FPPS and she does not have to enter the Investigator's work schedule biweekly, *12 H.T.* 3908-3909 , 3935-3937, A-14 and A-23, p.2. Ms. Frantzen created a document for payroll purposes, for all employees in Oklahoma City and recorded credit time for Robert Hill, who was on a compressed work schedule, *12 H.T.*3912-3923 and U-151(A). Ms. Frantzen was instructed by the Director to record Mr. Hill's compensatory time hours as credit time, *12 H.T.* 3924-3929 and U-152-B(1-6).

Donald Stevens, Area Director, became employed with the EEOC in June 2001, *15 H.T.* 4853, 4860. From June 2001 to January 2006, Oklahoma City was under the jurisdiction of the

Dallas District office, *15 H.T.* 4871-4872. In January 2006 Oklahoma City was transferred to the jurisdiction of the St. Louis District office, *Id.* Investigators in Oklahoma City reported directed to Mr. Stevens from June 2001 through the summer of 2004, *15 H.T.* 4875. Mr. Stevens testified he attended Management Development training, given by EEOC employees and was told money was not available for payment of overtime, *16 H.T.* 4938-4941. Mr. Steven testified he had received e-mail from the Headquarters and Human Resources that money was not available for overtime, *Id.* Mr. Stevens testified he understood EEOC's policy required employees elect between money payment and compensatory time and employees could not work for compensatory time if there was no money in the office budget for payment for excess work hours, *16 H.T.* 4943-4948, A-5C, and A-5D. Mr. Stevens testified he understood, upon receiving a July 2002 e-mail message from Janet Elizondo, an employee could only receive compensatory time, if the employee waived money payment, *16 H.T.* 4950-4952. And A-20GII(*Dallas*), p. 13. In Jul 2003, Mr. Stevens did not inform his employees orally or in writing, money for available for excess work hours, *16 H.T.* 4953-4956 and A-20GII(*Dallas*), p. 15. Mr. Stevens testified he understood an individual who worked five days one week and 4 days the next week, of a biweekly pay period, was on a compressed work schedule, *16 H.T.* 4965- 4967 and J-1. Mr. Stevens said he was told by the Director an employee, on a compressed work schedule could receive credit time and he did not check with Ms. Elizondo to determine if the information was correct, *16 H.T.* 4967-4969. Mr. Stevens testified he was aware of the requirements of the CBA for credit time and individuals working on a compressed work schedule, but he had his own interpretation and permitted employees to work excess hours, without prior approval, *16 H.T.* 4972-4988, J-1-1, A-20GII(*Dallas*), pp. 14-43, U-151(B-G), and

U-152(C-L).

On direct examination, Mr. Stevens testified he never had a circumstance where Investigators worked beyond 80 hours in a pay period and he would not have approved the hours if the Investigators asked, *15 H.T.* 4878-4879. Mr. Stevens says he has communicated to Investigators orally and in writing that money is not available for excess work hours, *15 H.T.* 4882-4883. Mr Stevens approved credit time for Robert Hill, *15 H.T.* 4885-4892 and A-20GII(*St.Lo*), pp. 14–17, 19-20. Mr. Stevens continued to approve credit time for Investigators, Robert . Hill, Donna Smith, and Marilyn Koshiway, *15 H.T.* 4895-4902 , 4908- 5915and A-20GII(*St.Lo*) pp. 21–35, 37-43. Mr. Stevens testified Robert Hill would request approval of excess work hours, after he performed the work and there was an understanding he would approve the hours, *15 H.T.* 4920-4921. In August 2004, Mr. Stevens had received an e-mail, from the Acting Director, to discontinue the practice of employees working excess work hours without approval and took no action to stop Mr. Hill’s work, *16 H.T.* 4956-4958, 4995 and A-20GII(*Dallas*), p. 18.

Robert Hill, Investigator became employed with the EEOC in August 1999, *12 H.T.* 3951. Mr. Hill worked a compressed work schedule; was given credit time for excess work hours; and was told by Joyce Powers and Don Stevens he could have credit time because he was working the Intake 8 hour work schedule; began to routinely work hours in excess of his regular work schedule; and did not have to receive advance approval to work excess work hours, *12 H.T.* 3953- 4021, 4032-4033, U-1, U-151(A-G), U-152 (A-L), A-20(G)(II)(*St.Lo*), p. 14-24, 26, 35.

Louisville

Douglas Cave, Office Automation Assistant, became employed with the EEOC in August

1999, *13 H.T.* 4081-4082. Mr. Cave performs timekeeping duties for Investigators and Mediators, *13 H.T.* 4087-4088. Mr. Cave created a sheet he uses to record the hours worked by Investigators and Mediators, *13 H.T.* 4091-409-4095 and U-91(A-B). Mr. Cave transfers the information from each employee's CABTS onto his form, *Id.* If an employee uses compensatory time, Mr. Cave records the time used in the Other Leave Category, on the CABTS, *13 H.T.* 4096-4098. Mr. Cave records compensatory time earned on his form, *13 H.T.* 4100-4104, 4107-4109. Mr. Cave stated to his knowledge, overtime money was not offered for excess work hours, *13 H.T.* 4120-4122.

Susan Ryan, Supervisor, began employment with the EEOC in March 1974, *18 H.T.* 5880, 5916. Ms. Ryan testified she has been told and learned there was no money to pay for excess work hours, *18 H.T.* 5890. Ms. Ryan testified Investigators have worked excess work hours, with advance approval and without advance approval, *18 H.T.* 5891-5893, 5933-5934. Ms. Ryan testified she could not recall telling her employees, they could work excess hours for compensatory time or not work at all, *18 H.T.* 5948-5949.

Sharon Baker, Mediator, became employed with the EEOC in 1991 and serves as President of AFGE Local 3599, *13 H.T.* 4038-4039, and 4043-4044. Ms. Baker receives work assignments covering the state of Kentucky and the southern part of Indiana, *13 H.T.* 4044. Ms. Baker, Investigators, and paralegals worked excess work hours doing Outreach on weekends and beyond their scheduled work hours; were told there was no overtime money; and were given compensatory time for the excess work hours, *13 H.T.* 4044-4063 and U-153 A-H. Danny Harter, District Director, and Marcia Hall-Craig, Area Director were aware of the excess hours worked on Outreach and informed employees there was no overtime money, *Id.* Ms. Baker

testified Outreach is in everyone's job description; she has been directed to do Outreach; and she was assigned the role of Coordinator for Outreach in Kentucky *13 H.T.* 4072-4076.

Darrick Anderson, Investigator, became employed with the EEOC in August 1999, *13 H.T.* 4182. Mr. Anderson has worked on weekends and worked hours in excess of his regularly scheduled work hours; has been told by the Area Director there is no money for excess work hours; and does not record his excess work hours on the CABTS, *13 H.T.* 4184-4195 and 91(A-B). Mr. Anderson stated he is forced to perform Outreach work because it is part of his performance evaluation; his work hours end at 3:30 p.m.; the office has a requirement of taking individuals who wish to file a charge until 4:30 p.m.; and he has been required to stay and conduct Intake past his scheduled work hours, *13 H.T.* 4196-4199, 4204-4209

Indianapolis

Karen Bellinger, ADR Coordinator, became employed with EEOC in 1974, *18 H.T.* 5610, 5646-5647. Ms. Bellinger supervised the Indianapolis and Louisville mediators from 1999 until January 2006, *18 H.T.* 5647-5648. In January 2006, she began supervising mediators in Detroit and Cincinnati, *Id.*, *18 H.T.* 5709. Ms. Bellinger stated her managers instructed her, she could give compensatory time or credit time to employees who worked excess work hours, *18 H.T.* 5652. Ms. Bellinger stated she did not have an understanding that employees could not work excess work hours, for overtime or compensatory time, if there was no money in the office budget, *18 H.T.* 5655-5656 and A-5D. Ms. Bellinger testified she is not in the same location as the mediators she supervises; the mediators travel; and she communicates mainly by telephone and e-mail, *18 H.T.* 5615. The majority of mediators under Ms. Bellinger's supervision are on a compressed work schedule, *18 H.T.* 5618-5619. Ms. Bellinger testified she certifies the time

and attendance for mediators in Indianapolis and mediators' time in other offices is certified by local managers, *18 H.T.* 5619-5620. Ms. Bellinger testified, for the mediators in other cities, she does not know the hours the mediators are actually working, *18 H.T.* 5623-5624. Ms. Bellinger testified she lets her mediators work excess work hours and permits them to take the time at a later date, *18 H.T.* 5663-5668 and J-1.

John Davis, Mediator became employed with EEOC, in February 1992, *13 H.T.* 4144-4145. Mr. Davis works a compressed work schedule of 4 ten hour days per week.; normally works 8:30 a.m. to 7:00 p.m; has worked beyond his scheduled work hours performing mediations; was given a day off in another pay period for working on his regular day off; and has been informed there is no money to pay for excess work hours, *13 H.T.* 4162-4169, 4173-4176, 4179, and 4180-4181.

Joseph Tedesco, Investigator, became employed with EEOC in 1998, *15 H.T.* 4661, 4663. Mr. Tedesco testified it was well known throughout his office, you received compensatory time for excess hours of work; you kept track of the excess work hours through a memorandum; and you kept a balance of the time which was earned and used, *15 H.T.* 4669-4670, 4673-4675, and U-86(A-C).

Detroit

Gail Cober, Field Director, became employed with the EEOC in 1989, *14 H.T.* 4441. Ms. Cober testified she was routinely told there was no money for overtime, *14 H.T.* 4453-4456 and A-5D. Ms. Cober testified if individuals in Detroit worked excess work hours, the hours were referred to as unofficial comp time not official comp time, *14 H.T.* 4460-4465. Ms. Cober testified she has never offered individuals working excess work hours the opportunity to be paid

money or receive compensatory time, *14 H.T.* 4465. Ms. Cober testified compensatory time for excess work hours was not recorded in the FPPS, *14 H.T.* 4500. Ms. Cober testified it was a common understanding that money had to be paid for excess work hours only when an employee was required by management to work beyond their scheduled work hours, *14 H.T.* 4504-4511, 4515. Ms. Cober testified all travel outside the office location was approved by the District Director and employees who were required to travel and had excess work hours were offered compensatory time, *14 H.T.* 4547-4552.

Patricia McNeil, Mediator, became employed with EEOC in 1991, *15 H.T.* 4749. Ms. McNeil testified excess work hours were not recorded on the CABTS; she would tell James Neely or Gail Cober she had worked the excess work hours; and she was not offered money payment for the excess work hours, *15 H.T.* 4769-4770, 4773-4775.

Cincinnati

Wilma Javey, Area Director, became employed with the EEOC in September 1978, *18 H.T.* 5720, 5739. Ms. Javey has employees complete a sign-in/out sheet on a daily basis, *18 H.T.* 5725. On direct examination, Ms. Javey testified the EEOC rules and policy permitted working excess work hours, only if approved in advance and she communicated the rules and policy to her employees, *18 H.T.* 5727-5729. Ms. Javey testified, on direct examination, Maria Saldivar was the only employee who worked excess work hours, on one occasion, *18 H.T.* 5729-5730. Ms. Javey testified, on direct examination, she had conversations with Ms. Saldivar, informing her she could not permit her to work past her scheduled work hours, *18 H.T.* 5733-5735.

On cross-examination, Ms. Javey testified she believed the EEOC policy was that employees working excess work hours, if management told the employees there was no money, the

employees could have compensatory time or not work, *18 H.T. 5755-5756* and A-5D. Ms. Javey never told employees under her supervision they did not have to work, when she had no money for overtime, *18 H.T. 5758*. Ms. Javey stated no investigators had asked for money payment for excess work hours and she believed she could offer the employees compensatory time, *18 H.T. 5759-5760*. Ms. Javey testified she did not believe all work performed by an employee for the benefit of the agency was hours of work, *18 H.T. 5760-5763* and J-1. Ms. Javey testified she tries to make sure no Investigator works past their scheduled work hours, *18 H.T. 5764* and J-1. Ms. Javey testified she is aware employees on a compressed work schedule may not receive credit hours; Maria Saldivar is on a compressed work schedule; and she instructed Ms. Saldivar to go home when Ms. Saldivar worked past her scheduled hours, *18 H.T. 5664-5765* and J-1. Ms. Javey testified she receives e-mails from employees, including Ms. Saldivar, who stay late; she will tell them to give her an e-mail to keep track of the time; and credit time she has given is unofficial time, not entered into the CABTS or FPPS, *18 H.T. 5766-5777, 5803-5804, and U-163(1-4)*. Ms. Javey received e-mails from Ms. Saldivar for performing Intake and other duties, after Ms. Saldivar's scheduled work hours; Ms. Saldivar was not offered money payment for the excess work hours; and testified she believed employees were entitled to money payment for excess work hours, even if they volunteered, *18 H.T. 5778-5795* and U-164(1-9).

Rosa Moore, Office Automation Assistant, became employed with EEOC 1987, *15 H.T. 4633-4634*. Ms. Moore testified excess work hours are treated as credit hours; not recorded in the FPPS; employees send e-mails to the Director for excess work hours; and she keeps e-mails on the excess work hours, *15 H.T. 4644-4650, 4656-4658*.

Thomas Feiertag, Investigator, became employed with the EEOC in 1980, *14 H.T. 4602-4603*.

Mr. Feiertag testified he completes a daily sign-in/out sheet as well as the CABTS; he was instructed to record his regularly scheduled hours on the CABTS; excess work hours are off the books and called credit time; and he was never given the opportunity to receive money for excess work hours, *14 H.T.* 4606-4615, 4619, 4625-4628.

Maria Saldivar, Investigator became employed with the EEOC in October 2006, *15 H.T.* 4726. Ms. Saldivar testified she completed sign-in/out sheets on a daily basis, she worked excess work hours; was instructed to notify the supervisor of the excess work hours; and keep track of the time worked, *15 H.T.* 4729-4732, 4735-4737. Ms. Saldivar testified she is directed to perform on-site investigations and incurs excess work hours when she performs the work, *15 H.T.* 4743-4745. Ms. Saldivar testified she was informed she is not supposed to work excess work hours and if she works the hours she will get credit time, *15 H.T.* 4746-4747.

Atlanta Hearings

Atlanta

John Fitzgerald, Deputy Director, began employment with the EEOC in September 1979, *26 H.T.* 7348, 7350. On direct examination, Mr. Fitzgerald testified he has for the hearings unit, the ADR unit, the CRTIU unit, the outreach program analyst, and second level and direct supervisory responsibility for the Savannah office, *26 H.T.* 7351-7352. In supervising Savannah, Mr. Fitzgerald appointed the Investigator assigned to Intake as acting director, with responsibility for signing off on leave slips, with a requirement that he review the sign-in/out sheets, *26 H.T.* 7353-7354. Investigators are assigned to Intake for one week out of a four week rotation and the hours for Intake are 8:30 a.m. to 5:00 p.m., *26 H.T.* 7356-7357. Individuals on a 5/4/9 schedule may work their 9 hour day, *Id.* Mr. Fitzgerald testified an individual working overtime needs the

approval of the District Director, 26 *H.T.* 7361-7362. Mr. Fitzgerald testified an individual may work beyond their scheduled work hours and receive “cuff time” at the employee’s request, 26 *H.T.* 7362-7363. Cuff time is an informal system between the supervisor and employee and is not recorded on the CABTS or in the FPPS, 26 *H.T.* 7391-7393. Cuff time was used in the Savannah *office*, 26 *H.T.* 7397. Mr. Fitzgerald testified the EEOC has always had a cuff policy, 26 *H.T.* 7397-7398. Mr. Fitzgerald testified cuff time arises when a person may have to remain for Intake beyond 5:00 p.m of work on an onsite investigation past scheduled hours; the individual would work out the matter with the supervisor; and the individual would be paid back the time at a later date, normally the following week, 26 *H.T.* 7363-7364, 7367-7368. Mr. Fitzgerald testified mediators also receive cuff time, 26 *H.T.* 7368-7369. Mr. Fitzgerald testified he observed and signed off on the time and attendance of Paralegal Specialists in the Legal Unit, 26 *H.T.* 7375. Mr. Fitzgerald testified the Legal Unit practices cuff time and he was aware of the backlog and emergency situations which required excess work hours, 26 *H.T.* 7376-7384. Mr. Fitzgerald testified the office had sign-in/out sheets until approximately December 2007, when the office changed to sign in only, 26 *H.T.* 7390. The sign-in/out sheets are used by supervisors to certify the time of Investigators, 26 *H.T.* 7390-7391. Mr. Fitzgerald testified he knew Diego Torres was performing Outreach, outside his scheduled work hours and received cuff time for the excess work hours, 26 *H.T.* 7399–7401.

On cross-examination, Mr. Fitzgerald testified he was aware of the EEOC policy on overtime and provided guidance and counseling on the policy, 26 *H.T.* 7409. Mr. Fitzgerald testified he abides by the EEOC policy, 26 *H.T.* 7411. Mr. Fitzgerald testified he believes an individual working overtime has a choice of money or compensatory time, when overtime has been

approved by the Headquarters, 26 H.T. 7413 and A-5D. Mr. Fitzgerald testified he accepted that all work performed for the benefit of the agency is hours of work, 26 H.T.7413-7414 and U-156. Mr. Fitzgerald testified employees on a compressed work schedule can receive cuff time and in his 30 year career with the EEOC, each office he worked in had cuff time, 26 H.T. 7418-7419. Mr. Fitzgerald testified the term cuff time was a term he heard from managers and supervisors but in Atlanta it is called compensatory time and that in Atlanta employees knew overtime would not be approved , 26 H. T. 7459-7461. Mr. Fitzgerald testified he is aware the EEOC is required to exercise control over the work performed; be prepared to pay for all work performed; and keep complete and accurate records of work performed, 26 H.T. 7419-7420 and U-156. Mr. Fitzgerald testified he believed credit time and cuff time were similar and agreed credit time is authorized by law, but had not read the law, 26 H.T. 7420-7423 and J-1. Mr. Fitzgerald testified the EEOC practice cuff time and he had never been told by the Union it was inappropriate but agreed he was aware of the 1993 grievance filed by the Union for failure to pay overtime, 26 H.T. 7423-7425. Mr. Fitzgerald testified he visited the Savannah office once or twice a quarter and would glance at the sign-in/out sheets on his visits, 26 H.T. 7427, 7451. Mr. Fitzgerald testified he was not aware of anybody working past their scheduled work hours in Savannah; due to the EEOC policy of giving cuff time he believed employees would complain if they were being shortchanged; and he did not know about the Request for compensatory time form being used in Savannah, 26 H.T.7451-7455 and U-97. Mr. Fitzgerald testified Robert Dawkins certifies the time for the Paralegal Specialists; he is only asked about working excess work hours if the supervisor is absent; he does not review the sign-in/out sheets on a periodic basis; he certifies time only if the supervisor is absent; and he has had no discussions with Mr. Dawkins about the

cuff policy, 26 *H.T.* 7429-7435 and U-96. Mr. Fitzgerald testified the Legal Unit had a FOIA backlog of six months for as long as he could remember, 26 *H.T.* 7436-7437. Mr. Fitzgerald testified if an employee works outside their scheduled work hours the EEOC has told the employees they will receive cuff time, 26 *H.T.* 7437-7439, 7441. Mr. Fitzgerald testified supervisors did not keep real records of cuff time, 26 *H.T.* 7443. Mr. Fitzgerald testified employees were asked to do Outreach and Outreach was part of the positions descriptions of Investigators and Mediators; and part of the performance standards for one year, 26 *H.T.* 7446-7448.

Sandra Gill, Supervisor, began employment with EEOC in September 1978, 23 *H.T.* 6716-6717. Ms. Gill testified completion of sign-in/out sheets was mandatory and the sheets were used for time and attendance purposes, 23 *H.T.* 6726-6728 and U-93(1-9). Ms. Gill recorded excess hours worked by Investigators on her calendar; did not record the hours in the FPPS; the training given to Investigators was to place scheduled work hours on the CABTS; Investigator in Intake were required to complete taking a charge of discrimination, even if it would go past 5:00 p.m; and she believed money for overtime was not available, 23 *H.T.* 6730-6742 AND a-5d.

Mildred Allen, Investigator, began employment with EEOC in April 1974, 19 *H.T.* 5978-5979. Ms. Allen completed a sign-in/out sheet on a daily basis, 19 *H.T.* 5987-5988 and U-93(1-9). Ms. Allen had not heard of the term cuff time, 19 *H.T.* 5998-5999.

Kenneth Warford, Mediator, began employment with the EEOC in 1978, 20 *H.T.* 6009-6010. Mr. Warford completed sign-in/out sheets on a daily basis, 20 *H.T.* 6013-6017 and U-94(1-3). Mr. Warford worked excess work hours and would inform his supervisor, after working; would take an hour off the cuff; and entered only his scheduled work hours on the CABTS, 20

H.T 6017-6024, U-94 and A-14.

Rosalyn Williams, Investigator, began employment with the EEOC in September 1978, *21 H.T.* 6178-6179. Ms. Williams worked a compressed work schedule and was required to sign-in/out on a daily basis, *21 H.T.* 6182-6192, 6197, and U-95(1-11). Ms. Williams was told by the managers not to sign out after 6:00 p.m. and if you worked excess hours to give the supervisor a memorandum for credit time, *21 H.T.* 6197-6198. Ms. Williams received credit time for excess work hours, while she was on a compressed work schedule, *21 H.T.* 6192-6195, 6202, and U-95(9). Excess work hours were not recorded on the sign-in/out sheet, *21 H.T.* 6205-6206. Ms. Williams testified she had a verbal instruction from managers, for Intake, to complete a charge, from individuals who had traveled 50 miles or the person arrived on the 180th day, even if it required working past scheduled work hours, *21 H.T.* 6200-6201, 6204-6205.

Helen Garrett, Paralegal Specialist, became employed with the EEOC in September 1994, *23 H.T.* 6555-6556. Ms. Garrett was required to complete sign-in/out sheets, daily, *23 H.T.* 6562-6565 and U-96(1-18). Ms. Garrett did not enter her excess work hours on the CABTS, *23 H.T.* 6568-6560 and A-14. Ms. Garrett testified she was told there is no overtime; she can work excess work hours and receive credit time; and she has received credit time on a compressed work schedule, *23 H.T.* 6580-6582.

Savannah

Richelle Durr, Office Automation Assistant, began employment with the EEOC in April 2006, *20 H.T.* 6096-6097. Ms. Durr was trained to do timekeeping by Denise Freeman, the former Investigative Support Assistant, *20 H.T.* 6098. Ms. Durr records the employees' regular scheduled hours of work in the FPPS and received instruction that compensatory time is

unofficial and not to be recorded in the FPPS, 20 *H.T.* 6101-6104 and A-14.

Diego Torres, Investigator, began employment with the EEOC in June 1993, 19 *H.T.* 6031. Mr. Torres completed sign-in/out sheets on a daily basis, 19 *H.T.* 6034-6039, 6042-6044, 6058-6059, U-97(1-10), and U-98(1-11). Mr. Torres was told money was not available to pay for excess work hours and compensatory time could be given for excess work hours, 20 *H.T.* 6049-6052 and U-97(10). Mr. Torres testified compensatory time hours were off the record and not recorded in the CABTS, 20 *H.T.* 6057, 6067-6069, and U-97(10). Mr. Torres testified he was required to use compensatory time within two pay period or lose the time and he has lost compensatory time due to the large workload, 20 *H.T.* 6068-6069, 6081-6084. Mr. Torres testified employees could not stay overnight for onsite visits because of a lack of travel funds and the employees would receive compensatory time, for excess work hours required by the travel, 20 *H.T.* 6065-6067, 6079-6080, and U-97(10). Mr. Torres testified Outreach is required and part of Investigator's performance evaluation, 20 *H.T.* 6084-6086, 6091-6092.

Birmingham

Booker T. Lewis, Supervisor, began employment with EEOC in July 1971, 26 *H.T.* 7183, 7224. On direct examination, Mr. Lewis testified employees continued on their selected work schedule during Intake; to work beyond scheduled work hours an employee must show him the need for the work; if there is a need he will approve the work; and he does not pay money for excess work hours 26 *H.T.* 7191, 7193-7914. Mr. Lewis testified he has had employees on a compressed work schedule miss their day off and take the day off in the next pay period, 26 *H.T.* 7196-7197. Mr. Lewis testified for Outreach, he and the Program Analyst set up the Outreach activity, 26 *H.T.* 7198. Mr. Lewis testified he has never seen anyone work beyond the office

hours of 6:30 p.m, 26 *H.T.* 7203-7205. Mr. Lewis testified he had never know Ms. Bryan-Brooks to come to work to get cases on her off day, when she is telecommuting, 26 *H.T.* 7212-7213. Mr. Lewis testified he leaves the office, normally, at 7:00 p.m., 26 *H.T.* 7217.

On cross-examination, Mr. Lewis testified he has received no written instructions on excess work hours for employees; had received no instructions on employees right to elect money payment or compensatory time for excess work hours;, 26 *H.T.* 7238., 7239-7240, and A-5D. Mr. Lewis testified he has read the CBA; applies it as he understands it; employees must select a work schedule which he approves; and the 30 minute delay in arrival and extension of departure was collectively bargained with the Union, 26 *H.T.* 7241-7245 , 7246-7248, and J-1. Mr. Lewis testified in his office he believed there was a memorandum of understanding with the Union permitting employees to swap days off, 26 *H.T.* 7251-7254 and J-1. Mr. Lewis testified he believe a nonexempt employee was a nonmanagement type and certain rules applied; he was informed in staff meeting, non exempt employees received compensatory time for excess work hours; and he was never told he could not give employees compensatory time if there was no money in the office budget, 26 *H.T.* 7254-7256, 7279-7281, and J-1. Mr. Lewis testified to his knowledge no employees worked excess work hours and he reviewed sign-in/out sheets at the end of each workday, 26 *H.T.* 7256-7258. Mr. Lewis testified Glenda Bryan-Brooks's day off was a Monday in 2004; employees under his supervision must account to him for hours of work; and that employees performing work for the benefit of the EEOC earn money for hours of work, 26 *H.T.* 7259-7264, 7267-7278 and U-99-B. Mr. Lewis did not offer Ms. Bryan-Brooks, money payment for her excess work hours for the period of November 15, 2004 to November 19, 2004 and believed he missed her working excess hours, 26 *H.T.* 7281-7286 and U-99-B(11-14). Mr.

Lewis permitted Julia Hodge an employee on a compressed work schedule to work more than 80 hours in a pay period and did not pay her for the excess work hours, 26 *H.T.* 7310-7315, U-99-B(1-4), and A-13. Mr. Lewis testified he did not often permit Investigators to swap days off and he occasionally gave people days off rather than money for excess work hours, 26 *H.T.* 7315-7316. Mr. Lewis signed the sign-in sheets showing Ms. Hodge worked in excess of 40 hours in a week; did not offer her money for the excess work hours; and the timekeeper did not bring to his attention an employee had worked overtime, 26 *H.T.* 7317-7322, U-99-B(6-17), and A-13. Mr. Lewis testified Ms. Bryan-Brooks worked her off day in March 2006 and was given a day off later in the same week; Ms. Bryan-Brooks and Ms. Hodge worked in excess of 80 hours in a pay period and were not offered money for the excess work hours, 26 *H.T.* 7323-7340, U-99-A and A-13.

Glenda Bryan-Brooks, Investigator, began employment with the EEOC in 1985, 24 *H.T.* 6783-6784. Ms. Bryan-Brooks completes a sign-in/out sheet on a daily basis; works a compressed work schedule; and has worked on her off day to meet deadlines for her work, 24 *H.T.* 6786-6792 and U-99-A(1-10). Ms. Bryan-Brooks receives the approval of her supervisor prior to conducting on-site investigations, 24 *H.T.* 6792-6793, 6823. Ms. Bryan-Brooks has worked on her compressed schedule off day and not taken an off day until the following pay period and does not enter excess work hours on the CABTS, 24 *H.T.* 6793-6810, 6822-6823, U-99-B(1-14), and A-14. Ms. Bryan-Brooks did not have a record of excess hours she worked and she worked the excess hours because of supervisor statements that certain numerical goals had to be met, 24 *H.T.* 6817-6819. Ms. Bryan-Brooks was not offered any money payment for excess work hours, 24 *H.T.* 6823-6825 and U-99-A(6-10).

Julia Hodge, Investigator, began employment with the EEOC in May 1970, 24 *H.T.* 6864-6865. Ms. Hodge has a telecommuting day as part of her work schedule; is required to give her supervisor a list of the work she will perform at home; and is required to produce the work upon her return to the office, 24 *H.T.* 6867-6869 and U-99-A. Ms. Hodge completes a sign-in/out sheet daily, 24 *H.T.* 6869-6870. Ms. Hodge has worked outside her scheduled work hours and on her off days; has not been offered money payment for the excess work hours and working on her off days; and has lost time because she was unable to take off a day in the same pay period, 24 *H.T.* 6872-6878, 6883-6889, 6900-6901, U-99-A, and U-99-B(1-15). Ms. Hodge testified the supervisor reviews the sign-in/out sheets periodically and currently on a daily basis, 24 *H.T.* 6880-6881. In 2008, Ms. Hodge received instructions to sign-out at her regularly scheduled hours, regardless of how late she may stay at work, 24 *H.T.* 6881-6882 and U-99-B. Ms. Hodge testified her supervisors were aware her work assignments could not be completed within her scheduled work hours, 24 *H.T.* 6895-6896.

Charlotte

Melvin Hardy, supervisor, became employed with the EEOC in July 1979, 25 *H.T.* 7126-7127. Mr. Hardy became a supervisor in April 2006; received no training on the EEOC's policies for overtime; has not read the CBA; does not have an understanding of the term nonexempt employee; has not been informed employees can't work overtime when money is not available; and the CBA applies to Investigators under his supervision, 25 *H.T.* 7127, 7146-7153, 7155-7156 and J-1. Mr. Hardy testified Ms. Barnett had a system in place for excess hours of work; employees would call Ms. Barnett; and the employee and Ms. Barnett kept track of the excess work hours, 25 *H.T.* 7159-7160, 7176.

Sandra Young, Office Automation Assistant, began employment with the EEOC in 1987, 21 *H.T.* 6110. Ms. Young testified the Investigators' work schedules are in the FPPS system; she enters the employees' leave use; and she enters compensatory time for excess work hours, 21 *H.T.* 6120-6125 and A-23.

Sandra Chavez, Investigator, began employment with the EEOC in October 2005, 21 *H.T.* 6134. Ms. Chavez testified she does not record excess hours she worked on the CABTS, but place the compensatory time she uses, in the other leave category, 21 *H.T.* 6140-6149, 6166-6171, and U-107(1-5). Ms. Chavez sends e-mail to her supervisor about her excess hours worked and she does not always request the excess work hours in advance, 21 *H.T.* 6162-6164, 6172-6173. Ms. Chavez testified she did not get to use her compensatory time hours because of her workload, 21 *H.T.* 6171. Ms. Chavez testified she is required to conduct two Outreaches per year and she is required to look for the events, for Outreach, 21 *H.T.* 6151-6153. Ms. Chavez testified while assigned to Intake she cannot use the remainder of her day to work on her regular work assignments, 21 *H.T.* 6171.

Greensboro

Peggy Saunders, Information Technology Specialist, began employment with the EEOC in 1992, 22 *H.T.* 6221-6222. Ms. Saunders testified she input the Investigators' regular scheduled hours of work in the FPPS and she would record excess hours of work off the books in a record she kept; 22 *H.T.* 6229-6231.

Jannes James, Investigator, became employed with the EEOC in June 1994, 22 *H.T.* 6387-6388. Ms. James testified the volume of Intake work was so high in the Greensboro office, she was working past her scheduled work hours on a regular basis and a Memorandum of

Understanding was entered into with the Union to establish a procedure for handling work assignments in the office, 22 *H.T.* 6394-6396 and A-20GIII(*Char*), pp. 45-48. Ms. James testified she had been told to take charges from individuals, who came in at 4:00 pm. Or 5:00 p.m, who were at the end of their 180 filing period and to handle charges from members of the public within 30 days of the filing deadline as a priority, 22 *H.T.* 6397-6398. Ms. James testified a meeting was held and she was told to stop recording hours of work beyond her scheduled work hours on the CABTS, excess work hours are not recorded when she is working in the office; and she believed her supervisors knew of her excess work hours, 22 *H.T.* 6399-6402 and U-116. Ms. James testified at one time the office had a sign-in/out sheet, prior to 2003, and it was removed because employees were recording actual hours of work; there were discussions in the office about the number of work assignments; and she believed her supervisors know the number of work assignments could not be completed within scheduled work hours, 22 *H.T.* 6403-6404, 6409-6420, 6412, 6415. Ms. James was told by her supervisors she could not receive overtime because of her grade level, 22 *H.T.* 6411-6413.

Raleigh

Thomas Colclough, Area Director, began employment with the EEOC in January 1988, 23 *H.T.* 6435. Mr. Colclough testified he had not received training on the application of the overtime laws and regulations, 23 *H.T.* 6444. Mr. Colclough testified he believed the March 3, 2003 memorandum was agency policy, 23 *H.T.* 6446 and A-5D. Mr. Colclough testified he believed he could offer an employee compensatory time for excess work hours but he was not aware he had to have money in his budget to offer compensatory time, 23 *H.T.* 6448-6449. Mr. Colclough testified the Raleigh office maintains records of compensatory time for excess work

hours; excess hours can be worked without prior approval; and he did not offer employee money payment for the excess work hours; 23 *H.T.* 6450-6462, 6466-6469 and U-154. Mr. Colclough testified he ceased using the compensatory time/credit time form when he became Area Director, but the forms were in use in April 2007, 23 *H.T.* 6463-6465, 6470 and U-154(8-15). Mr. Colclough testified the Greensboro office had staff shortages; the staff shortages resulted in a focus on taking new charges; he began processing new charges to ease the workload; and observed Ms. James working in excess of her regular work schedule, 23 *H.T.* 6475-6479. Mr. Colclough testified the August 5, 2005 e-mail of Tonya Johnson was the district office standard for payment of overtime; money could not be paid for excess work hours; and compensatory time was the only thing offered for excess work hours, 23 *H.T.* 6494-6496 and A-20GII(*Char*), p. 11. Mr. Colclough testified, after reviewing the CBA, believed compensatory time was the district standard for excess work hours and he believed the regulations authorized giving only compensatory time for excess work hours, 23 *H.T.* 6496-6500 and J-1. Mr. Colclough testified he directed employees to attend Microsoft training for the agency and did not offer the employees money payment for excess work hours, 23 *H.T.* 6501-6502 and A-20GIII(*Char*), p. 9. Mr. Colclough testified he was aware of employees working excess work hours, prior to the hours being worked; employees were instructed by the Raleigh office director to keep track of excess work hours on a form; the excess work hours were not entered into the FPPS; the office director authorized employees to carry compensatory time from year to year; he believed if an employee did not use compensatory time within 26 pay period the time was forfeited; he knew employees could be paid for time at the end of 26 pay period; he did not assure Mr. Morales received money payment for any unused compensatory time, he approved excess work hours,

after the hours were worked; and he did not offer the employees money payment for the excess work hours, 23 *H.T.* 6528-6548 and U-112(1-29). Mr. Colclough testified he did not believe an employee had to be instructed or directed to perform work outside their scheduled work hours to receive money payment for the hours, 23 *H.T.* 6554.

Memphis

Audrey Bonner, Enforcement Manager, became employed with the EEOC in June 1988, 27 *H.T.* 7500-7501. On direct examination, Ms. Bonner testified she was not aware of any Investigators working excess work hours, except during Intake, 27 *H.T.* 7508-7509. Ms. Bonner stated she grants credit time to Investigators who stay late in Intake, *Id.* Ms. Bonner testified she has found a new Investigator working excess hours; offered her credit time; and told her she could not stay beyond her scheduled work hours, 27 *H.T.* 7510. Ms. Bonner testified she has no system of knowing how long a person worked excess hours and bases the credit time on what an Investigator tells her, 27 *H.T.* 7511. Ms. Bonner testified she has never approved overtime in advance because she was not aware she could give overtime; she did not know about compensatory time; and all she has approved is credit time, 27 *H.T.* 7517-7518. Ms. Bonner testified employees do Outreach and she approved an Outreach on the weekend and gave the employee credit time, 27 *H.T.* 7521-7523. Ms. Bonner testified she does not supervise the Investigators in Intake; assignments are given by the Intake supervisor; and Investigators are instructed to take a charge from person, with a deadline who arrive close to closing time, 27 *H.T.* 7568-7571. Ms. Bonner testified employees in Memphis have been informed there is no overtime money available, 27 *H.T.* 7575. Ms. Bonner testified Outreach is part of the office goals; Outreach was organized and set up by the Program Analyst; Outreach performed outside

work hours was hours of work; and Outreach was part of the Investigator's performance standards and position description, 27 *H.T.*7577-7581. Ms. Bonner testified she was not aware the acting Director had authorized unofficial compensatory time and she did not speak to the acting Director about the practice of credit time, 27 *H.T.* 7581-7582 and A20GIII(*Memp*), p. 28.

On cross examination, Ms. Bonner testified the Memphis District office includes Nashville and Little Rock, 27 *H.T.* 7531. Ms. Bonner testified the official office hours for the Memphis office were set out in a Memorandum of Understanding with the Union; employees were required to select a work schedule; and employees were permitted to vary their arrival and departure by 30 minutes on a given day, 27 *H.T.* 7539-7544 and A20GIII (*Memp*), pp. 1-4, 7. Ms. Bonner testified she was instructed that excess work hours were discouraged; she had an understanding their was no overtime; she was told by her supervisor their was no overtime; ; she had no training in overtime; she has a copy of the CBA; and she did not recall being told an employee could not work compensatory time or overtime, if there was no money in the office budget, 27 *H.T.*7552-7559, J-1, and A-5D. Ms. Bonner testified she was not aware and never told that credit time could be given only to employees on an 8 hour work schedule, 27 *H.T.* 7559, 7561, and J-1. Ms. Bonner testified she gives credit time when people work excess hours, through their lunch breaks, work in Intake, and conduct on-sites; she used a form for recording credit time; and she did not record the credit hours, 27 *H.T.* 7560-7563 and U-120. Ms. Bonner testified it was common practice to give credit time for excess work hours; she never asked if the practice complied with the EEOC policy or requirements, 27 *H.T.* 7564-7566. Ms. Bonner testified she has reported employees as being at work when the employee was taking credit time and it was

the standard practice to enter into the automated system the employee was at work, 27 *H.T.* 7566-7567 and U-120.

Linda Hudson, Office Automation Assistant, began employment with the EEOC in September 1976, 22 *H.T.* 6288-6289. Ms. Hudson testified the supervisor kept a log of credit hours, when there was no overtime and Investigators could work excess hours when needed, 22 *H.T.* 6320-6322 and U-120(1-12). The credit hours were off the record, 22 *H.T.* 6332-6334.

Irma Boyce, Mediator, began employment with the EEOC in January 1981, 22 *H.T.* 6249-6250. Ms. Boyce worked excess hours, was on a compressed work schedule, and received credit hours for the excess hours, 22 *H.T.* 6257, 6261-6269, and U-118(1-3). Ms. Boyce testified she works through lunch most of the time, 22 *H.T.* 6276-6277.

Nashville

Sarah Smith, Director, became employed with the EEOC in 1979, 27 *H.T.* 7584, 7615. On direct examination, Ms. Smith testified sign-in/out sheets were discontinued in 2006; she did not use sign-in/out sheets to determine time and attendance; and the sign-in/out sheets were not reliable or determinative of work hours, 27 *H.T.* 7592-7593. Ms. Smith testified she gave instructions that there is no compensatory time, credit time, or overtime, 27 *H.T.* 7593. Ms. Smith testified she sent the March 3, 2003 Memorandum on Overtime to three supervisors to assure the supervisors were following the guidance in the memorandum, 27 *H.T.* 7595-7596 and A-20GIII(*Nash*), p. 12. Ms. Smith testified she never told any Investigator. Not to report all hours of work on the cost accounting sheet, 27 *H.T.* 7601. Ms. Smith testified Investigators on a flexible work schedule receive credit time for excess work hours; the earning of credit time occurred no more than five times a year; and was no more than 45 minutes, 27 *H.T.* 7601-7602.

Ms. Smith testified Lu Ann Hawk earned credit time while performing Intake; the credit time was informal; and she was not aware of anyone other than Ms. Hawk who worked excess hours, 27 *H.T.* 7603-7604. Ms. Smith testified she recalled only one instance in which an Investigator on a compressed work schedule worked excess work hours; she checked to determine if money was available for the compensatory time; and was told it was okay, 27 *H.T.* 7605-7607. Ms. Smith testified Outreach is normally performed outside scheduled work hours, 27 *H.T.* 7612.

On cross examination, Ms. Smith testified during the period of March 2003 to November 2004, Kathi Kores and Danny Harter were her immediate supervisors and she was subject to the policies of the Memphis District office, 27 *H.T.* 7628-7631 and A-20GIII(*Memp*), pp. 1-4,7-10. Ms. Smith testified Investigators were required to be in the office on Tuesdays and Wednesdays, 27 *H.T.* 7632-7633. Ms. Smith testified sign-in/out sheets were used from January 1, 2003 through sometime in 2006, 27 *H.T.* 7633-7634. Ms. Smith testified the timekeeper collected the sign-in/out sheets on a weekly basis; Ms. Hawk received credit time for excess work hours; the credit time was not recorded in the FPPS; she had no training on credit time; and did not know the law required credit time be recorded in the official time records, 27 *H.T.* 7641, 7650-7652 and U-127. Ms. Smith testified she entered comments on the sign-in/out sheets on a daily basis and ; she did not give instructions to Investigators about recording the excess work hours on the CABTS, 27 *H.T.* 7652-7662 and U-127. Ms. Smith testified it was her belief an employee on a flexible work schedule could only receive credit time; she got the understanding from the CBA and the Administrative officer, 27 *H.T.* 7676.

Little Rock

Wanda Milton, Area Director, became employed with the EEOC in January 1981, 23 *H.T.*

6586. Ms. Milton testified in her office excess work hours were kept informally, at one time, 23 *H.T.* 6600-6602. Ms. Milton testified the form, a comp/credit log, was used to record excess work hours; the form recorded the work performed; the hours worked; and the dates, 23 *H.T.* 6604-6607 and U-121-A(1-8). Ms. Milton testified she initialed the hours to show approval; approved credit hour for Investigators on compressed work schedules; and approved more than 8 credit hours for Investigators, 23 *H.T.* 6607-6614 and U-121-A. Ms. Milton testified she gave the forms to the timekeeper after she approved the excess work hours and the hours were not recorded in the FPPS, 23 *H.T.* 6614-6621 and U-121-B. Ms. Milton testified she reported an employee as being at work, when the employee was off on unofficial compensatory time, 23 *H.T.* 6621-6622. Ms. Milton testified she did not know if employees had requested money payment for the excess work hours and the employees were not paid for the excess work hours, 23 *H.T.* 6629 and U-121-A, U-121-B, and U-121-C. Employees used daily sign-in/out sheets, 23 *H.T.* 6629-6640, 6642-6648 and U-123(1-10), U-125(1-9), and U-126(1-9). Ms. Milton testified she had a form which showed whether employees wanted money payment for excess work hours, but the form was not approved by her supervisor, and she had no copies of the form, 23 *H.T.* 6649-6653. Ms. Milton did not offer employees money payment because she did not know about the employees right to have money payment for excess work hours, 23 *H.T.* 6653-6654. Ms. Milton testified she was not aware there was overtime money in 2006; she never requested money for Investigators working excess hours; and she could not recall specifically informing Investigators of the right to elect money payment for excess work hours, 23 *H.T.* 6654-6659. Ms. Milton testified she was not aware in 2003 that Investigators could receive money payment for excess work hours; she did not check to determine the rules for excess work hours; a 2001 Overtime

policy was distributed to employees; and unofficial compensatory time had been authorized by the Acting District Director , 23 *H.T.* 6661-6668 and A-20GIII(*ltlRoc*), pp. 19-28 .

Miami

Juan Gonzalez, Supervisor, became employed with the EEOC in 1981, 27 *H.T.* 7685-7686. On direct examination, Mr. Gonzalez testified the office has sign-in/out sheets and he reviews the sheets daily; he monitors Investigators to see they do not work beyond their scheduled work hours; and has frequently informed Investigators not to stay beyond scheduled work hours, 27 *H.T.* 7690, 7693. Mr. Gonzalez testified he has had Investigators work beyond scheduled work hours in Intake; given the employees credit time; and it aware of Outreach being performed on weekends, 27 *H.T.* 7695-7696. Mr. Gonzalez testified he does not believe there is money for overtime, 27 *H.T.* 7699.

On cross-examination, Mr. Gonzalez testified he received no training on overtime because he was told there was no overtime, 27 *H.T.* 7706-7707. Mr. Gonzalez testified he assigned schedule for the Investigators for Intake, 27 *H.T.* 7716-7717. Mr. Gonzalez and other supervisors signed the sign-in/out sheet daily to certify employees were at work; he told employees could receive credit time when they work excess work hours; he was not told employees could receive compensatory time or money for excess work hours; and he has never seen forms for overtime or paid overtime; 27 *H.T.* 7717-7722 and U-128. Mr. Gonzalez testified he knew Ms. Caddle work excess work hours; he considered excess work hours credit time; he was never informed excess work hours were overtime, whether he requested the work or not, and Investigators were covered by the CBA, 27 *H.T.* 7722-7728, U-128 and J-1. Mr. Gonzalez testified that prior to the CABTS he made a separate record of employee work hours and sent the hours to the timekeeper, 27

H.T.7730-7732. Mr. Gonzalez testified he did not offer money for excess work hours because there was no money for overtime; he was not aware overtime money was available in 2006; and he had been told by his superiors there was no overtime money for Investigators, *27 H.T. 7743-7746* and A-12. Mr. Gonzalez testified he only knew about credit time; never knew about compensatory time; and did not know credit time did not exist until a law was passed, *27 H.T. 7752-7755.*

Maria Garrido, Office Automation Assistant, began employment with the EEOC in September 2003, *24 H.T. 6753-6755.* Ms. Garrido became a timekeeper in February 2005, *24 H.T. 6756.* Ms. Garrido performs timekeeping duties for all Investigators in Miami, *24 H.T. 6757.* Ms. Garrido testified sign-in/out sheets are used by Investigators to record arrival and departure from work; Investigators, Mediators, and Paralegal record any excess work hours on the CABTS in the “Other Leave” category of the CABTS by placing a note as to the type of the excess hours; and she records the hours if approved by a supervisor, *24 H.T. 6760-6762, 6766, 6770-6772, 6773-6774, 6781, U-128 (1-9), and A-14.*

Rosemary Caddle, Investigator, became employed with the EEOC in May 2001, *24 H.T. 6836.* Ms. Caddle completed sign-in/out sheets on a daily basis; was instructed to place only regularly scheduled work hours on the sign-in/out sheets; accumulated compensatory time due to excess work hours; was instructed to report the excess hours to her supervisor but not record the hours on the sign-in/out sheets; and was instructed to complete charges of discrimination in Intake, even if she had to stay past her scheduled work hours, *24 H.T. 6839-6848, 6858, 6860-6863 and U-128.* Ms. Caddle’s supervisor was aware of the excess work hours due to the computer system, which recorded log-off times, when she was in Intake, *24 H.T. 6858-6859.*

Tampa

Sylvia Pouncy, Supervisor, became employed with the EEOC in 1979, 27 *H.T.* 7756-7757. On direct examination, Ms. Pouncy testified Investigators are on Intake every other week; sign-in/out sheets are completed daily; employees are expected to sign-in on arrival and sign-out on departure; and she reviews the sign-in/out sheets daily, 27 *H.T.* 7760-7763. Ms. Pouncy testified the timekeeper collects the sign-in/out sheets at the end of each pay period; prepares the time in the FPPS; and forwards the time and attendance to her to certify, 27 *H.T.* 7763-7764. Ms. Pouncy testified there is no such thing as overtime, there is no money for overtime in the budget, 27 *H.T.* 7766-7767. Ms. Pouncy testified excess work hours are a rare occasion, 27 *H.T.* 7767-7768. Ms. Pouncy stated she gives credit time for excess work hours and gave credit hours to an Investigator on a compressed work schedule, 27 *H.T.* 7769-7770. Ms. Pouncy testified the practice of the office was to give Investigators credit time, 27 *H.T.* 7777. Ms. Pouncy testified she could not recall Ms. Wroblewski, Ms. Diaz, and Ms. Collins working excess hours and receiving credit time, during the time she supervised the individuals, 27 *H.T.* 7777-7779.

On cross examination, Ms. Pouncy testified employees were instructed to record their scheduled work hours on the sign-in/out sheets and if employees worked excess work hours she kept a record of the time, 27 *H.T.* 7793-7795. Ms. Pouncy testified the Director authorized credit time because overtime money was not available and she believed credit time was in compliance with the law because the Director authorized the credit time; 27 *H.T.* talked to Mr. Shepherd before he performed the excess work hours; did not offer Mr. Shepherd money or compensatory time for the work; and did not contact Mr. Zurita to request money for overtime, 27 *H.T.* 7802-7804 and J-1. Ms. Pouncy testified she did not supervise Investigators in Intake; when

Investigators were in Intake work assignments were done by the Intake supervisor; and she did not supervise her Investigators when they served in Intake, 27 *H.T.* 7809-7812, 7815-7816 and U-129-A. Ms. Pouncy testified she supervised Ms. Diaz in 2002 for a six month period of time, 27 *H.T.* 7816-7818 and U-129-A(11). Ms. Pouncy testified compensatory time and credit time are used synonymously; she was aware there is a difference between credit time and compensatory time; and because she had been instructed there was no money in the budget, the office gave credit time, 27 *H.T.* 7819-7825, U-129-A(11), and U-129-B(2). Ms. Pouncy testified the office practice was to write down the excess work hours on the sign-in/out sheets or on a separate record, 27 *H.T.* 7827-7828.

Louise Garcia, Secretary, began performing timekeeping duties, in December 2005, 25 *H.T.* 7097. Ms. Garcia testified the regular scheduled work hours were in the FPPS, when you opened the automated system, 25 *H.T.* 7099-7100, A-14, and A-23. Ms. Garcia testified compensatory time is between the employee and the supervisor and it has always been the practice of no paperwork for excess work hours, 25 *H.T.* 7101-7104, U-129-A, and U-129-B. Ms. Garcia testified Philadelphia was more strict on completion of the sign-in/out sheets than Tampa, 25 *H.T.* 7118-7119.

Beverly Collins, Investigator, began employment with the EEOC in June 1992, 24 *H.T.* 6918-6919. Ms. Collins completes a daily sign-in/out sheet, 24 *H.T.* 6922-6924 and U-129-A (1-23). Ms. Collins received instructions to sign-in/out for her scheduled work hours, 24 *H.T.* 6927. Ms. Collins designed the sign-in/out sheet, after consultation with supervisors, 24 *H.T.* 6934-6936 and U-129-A. Ms. Collins recorded excess work hours on the sign-in/out sheet; the supervisor would record the excess hours in a compensatory time book; and she was not offered

money payment for the excess work hours 24 *H.T.* 6941-6947, 6953-6963, and U-129-B. Ms. Collins testified under the office practice she did not have to get advance supervisory approval for excess work hours, 24 *H.T.* 6968-6972.

Julia Diaz, Investigator, began employment with the EEOC in October 1992, 24 *H.T.* 6972-6973. Ms. Diaz completed sign-in/out sheets daily, 24 *H.T.* 6976-6998, 6999-7000, U-129-A(11-23) and U-129-B(1-28)). Ms. Diaz worked excess work hours and the supervisor would record the hours in the compensatory time book; she was not offered money for the excess work hours; and she was instructed to sign in and out for her scheduled work hours, 24 *H.T.* 7002-7019, 7029-7033, and U-129-B. Ms. Diaz did not record her excess work hours on the CABTS, 24 *H.T.* 7020-7021 and A-14. Ms. Diaz testified in 2003, compensatory time was discontinued for excess work hours, 24 *H.T.* 7031-7032.

Doralisa Wroblewski, Investigator, began employment with the EEOC in June 1999, 24 *H.T.* 7035. Ms. Wroblewski was required to complete sign-in/out sheets daily; worked excess work hours; was told not to enter the excess work hours on the sign-in/out sheets and the CABTS; and would inform her supervisor of the excess work hours and the supervisor recorded the hours, 24 *H.T.* 7039-7048, 7050-70553, U-129-B, and A-14. Ms. Wroblewski was not offered money for her excess work hours, 24 *H.T.* 7048. In Savannah, Ms. Wroblewski was expected to stay past her scheduled work hours to complete Intake work, 24 *H.T.* 7056-7059.

Los Angeles Hearings

Los Angeles

Deborah Lichten, Investigator, became employed with EEOC in 1999, *H.T.*(5/12) 112. Ms. Lichten testified she was instructed by management that she did not get paid for excess work

hours and she did not record excess work hours on the CABTS, *H.T.(5/12)* 114-119 and U-133. Ms. Lichten testified she did not know who kept a record of her excess work hours, *H.T.(5/12)* 120.

Honolulu

Timothy Riera, Director, became employed with the EEOC in May 1988, *H.T.(5/21)* 739,742. On cross examination, Mr. Riera testified he has been informed by the District office that no money is available; he would ask for money each time he wanted an employee to work excess work hours and be told no money was available; and his superiors told him he could give compensatory time, when no money was available, *H.T.(5/21)* 772-775, J-1, and A-5D. Mr. Riera testified he makes the decision on the need for trips to Saipan; he requests the money for the trips; he did not instruct Mr. Griffin to complete the work in 40 hours; and he told Mr. Griffin he could not have money payment; *H.T.(5/21)* 777-784, U-131. Mr. Riera testified he and his supervisors knew the employee had the right to elect money payment and each time an employee worked excess hours, the employee was told there was no money available for overtime, *H.T.(5/21)* 800-805, A-38, and A-5D.

Raymond Griffith, Jr, Investigator, became employed with the EEOC in September 2001, *H.T.(5/14)* 461. The office covers the Hawaiian Islands, Guam, Saipan, and other Pacific Islands, *H.T.(5/14)* 462. Mr. Griffith has work assignments which require him to work excess work hours; he was not offered an opportunity to have money payment for the excess work hours; and did not record the hours worked on the weekend on the CABTS, *H.T. (5/14)* 463-469. Mr. Griffith testified he was advised to request compensatory time for excess work hours, *H.T.(5/14)* 476-481 and A-38.

San Diego

Deborah Kinzel-Barnes, Investigator, became employed with the EEOC in November 1989, 261. Ms. Kinzel-Barnes worked excess work hours; the hours were not recorded and was informed she had to use the excess work hours in the same pay period, *H.T.(5/13)* 265-269 and U-142.

Phoenix

Chester Bailey, Director, began employment with the EEOC in March 1980, *H.T.(5/12)* 4. Mr. Bailey was Director from 1989 until 2005 and was acting Director in Dallas for six months, *Id.* Mr. Bailey testified it was his understanding that Headquarters had to be contacted before employees worked excess work hours whether it was voluntary or involuntary work, *H.T.(5/12)* 11-12, 30-32, and 5-D. Mr. Bailey testified he was aware that nonexempt employees could not work excess work hours when overtime money was not available, *H.T.(5/12)* 33-35. Mr. Bailey testified he did not make any request for funds for excess work hours when Georgia Marchbanks was approving compensatory time for excess work hours; he had not given any instructions about excess work hours; and he did not authorize the creation of forms for excess work hours, *H.T.(5/12)* 77-86, U-135, U-136, and U-139. Mr. Bailey testified he left the responsibility of employees working past scheduled work hours to his subordinate managers; the managers were not authorized to contact the Headquarters to request money for excess work hours; and he did not recall subordinate managers asking for money for excess work hours, *H.T.(5/12)* 86- 92 and U-139. Mr. Bailey testified he could not recall any year when he had overtime money in his district office budget; stated the Outreach program had plenty of money; and he knew of Albert Sanchez offering compensatory time when money was available to pay for excess work hours,

H.T.(5/12)92-95, 97-103 and U-138.

Yvonne Gloria-Johnson, ADR Supervisor, became employed with the EEOC in 1969, *H.T.(5/15) 501, 516.* Ms. Johnson testified she assigns the charges of discrimination filed to the mediators, under her supervision; she carries a monthly inventory of 175 to 200, *H.T.(5/15)529-531, 533-538.* Ms. Johnson made arrangements to have time and attendance for Mediators in Albuquerque and Denver monitored and approved by the District Director of each office and she is not responsible for the time and attendance of Mediators in those offices, except for approving their work schedule, *H.T.(5/15) 541-542, 552.* Ms. Johnson does not certify the time for Mediators in Albuquerque and Denver, *H.T.(5/15) 546.* Ms. Johnson testified her experience has been because of no budget for overtime, all requests for excess work hours are for compensatory time; she believed she could give compensatory time because the time had been worked; and she never told employees stop working excess hours, *H.T.(5/15) 553-557.* Ms. Johnson testified she permitted Ms. Montoya to work excess hours and knew there was no money to pay for the work; stated Ms. Marchbanks and everyone knew there was no money for overtime; she approved the use of the form from Phoenix for requesting and recording excess work hours; and Mediators report to her by e-mail changes in their daily arrival and departure, *H.T.(5/15) 558-569, U-136, and U-139.* Ms. Johnson testified she understood employees are entitled to a choice between money payment and compensatory time for excess work hours; the employees could not have money because there was no money available; and she was aware of the requirement if no money was in the budget for overtime an employee could not work for compensatory time, *H.T.(5/15)570-574, J-1, and U-156.*

David Bruce Rucker, Supervisory Investigator, became employed with the EEOC in 1995 or

1996, *H.T.(5/20)* 633, 657. On direct examination Mr. Rucker testified a number of Investigators work excess work hours; he has a practice of requiring the Investigator to submit a form at the beginning of a pay period requesting the excess work hours; and the Investigator reports the number of hours worked at the end of the pay period, *H.T.(5/20)* 636-639

On cross-examination, Mr. Rucker testified Janis Richardson was assigned to his Unit, as the result of a settlement agreement with the Union, *H.T.(5/20)* 669-670. Mr. Rucker testified he had training on the CBA; the work schedules of employee were the schedules listed in the CBA; and he knew employees on a compressed work schedule could not receive credit hours, *H.T. (5/20)* 673-675 and J-1. Mr. Rucker testified he believed Investigators could only get compensatory time; he had followed the directive that there is no overtime money available; stated he never asked his superiors if there was money for excess work hours; .he never told Investigators not to work beyond their scheduled work hours; and only told them not to work too much, *H.T.(5/20)* 676-681, 683-691, 692-696, J-1, A-5D, A-14, and U-156. Mr. Rucker believed that money for excess work hours was not available in the field; was not told employees had the right to elect money payment or compensatory time for excess work hours; and was never told excess work hours could not be worked if money was not in the budget for overtime, *H.T. 709-716*, J-1, U-156, and A-5D.

Albuquerque

Georgia Marchbanks, Area Director, became employed with the EEOC in July 1999, *H.T.(5/12)* 121. Ms. Marchbanks testified her office budget was part of the Phoenix office budget, including funds for TAPS; she has no authority to switch budget funds from category to category without asking the District Director; and she did not know whether there was money for

overtime in the office budget, *H.T.(5/12)* 133-136, 233, and A-5D. Ms. Marchbanks testified she initials the CABTS sheets of individuals who work for her; she initialed the sheets of Kathlyn Johnson; employees were instructed to record excess work hours on the CABTS; she did not offer Ms. Johnson money payment for the excess work hours; and she signed forms for excess work hours after the time was worked, *H.T.(5/12)* 136-155 and U-136. Ms. Marchbanks approved Ms. Johnson working beyond her scheduled work hours and on weekends, without assuring money was in the budget for overtime and without offering Ms. Johnson money payment for the work, *H.T.(5/12)* 156-166, 204-209, and U-136. Ms. Marchbanks approved excess work hours for Rita Montoya, after the hours were worked; did not offer Ms. Montoya money payment for the excess work hours; and did not assure there was money in the office budget for the excess work hours, *H.T.(5/12)* 167, 172, 174-183 and U-139. Ms. Marchbanks testified the Phoenix District office had a compensatory time form, which was developed by Phoenix and the form was currently in use, *H.T.(5/12)* 173- 174 and U-139-A(9). Ms. Marchbanks testified an employee is entitled to money payment for all excess work performed for the benefit of the agency and she did not know who authorized Albert Sanchez to tell employees they could only receive compensatory time, *H.T.(5/12)* 169-172 and U-138. Ms. Marchbanks testified she knew the excess work hours performed by employees, whether requested or not, were overtime and the employees were entitled to money payment for the work, *H.T. (5/12)* 201-203, 215-217.

Kathlyn Johnson, Investigator, became employed with the EEOC in October 1992, *H.T.(5/13)* 344. Ms. Johnson works a schedule of 4 nine hour days and one four hour day per week, a work schedule authorized in the office, *H.T.(5/13)*351-352. Ms. Johnson worked excess

work hours; recorded the excess work hours on the CABTS in the Other Leave category; participated in Outreach projects which required excess work hours, and was not offered money payment for the excess work hours, *H.T.(5/13)* 353-383, 396-397, and U-136 (A-D). Ms. Johnson was told by her supervisors there was no money for overtime, but she could receive compensatory time if she worked the excess work hours, *Id* at 382-383. Ms. Johnson testified she had an illness three to four years ago, which resulted in her having negative leave balances, *H.T.(5/13)* 384-385. Ms. Johnson testified the management required a priority business reason for her to switch her day off, *H.T.(5/13)*386-388. Ms. Johnson testified compensatory time could not be used until it appeared on her leave and earnings statement, *H.T.(5/13)* 394-395. And U-136-B(3).

Rita Montoya, Mediator, became employed with the EEOC in January 1977, left the agency and returned in March 1985, *H.T.(5/13)* 276-277. Ms. Montoya became a Mediator in September 2001; her immediate supervisor was Tom Alley until January 2006; and in January 2006, her immediate supervisor became Yvonne Gloria Johnson, *H.T.(5/13)* 278-279. All charges of discrimination which are filed with the office are assigned to Ms. Montoya, to attempt mediation, *H.T.(5/13)* 281-282. Ms. Johnson rarely travels to Albuquerque due to budget constraints, *Id*. Ms. Montoya testified she completes the overtime form for excess work hours; submits the form to Ms. Marchbanks; a discussion was held with Ms. Johnson; and Ms. Marchbanks agreed to approve excess work hours, *H.T.(5/13)* 287-288, 306-308, 315- and U-139-A. Ms. Montoya testified she had worked excess work hours; was not offered money payment for the hours; and supervisors stated there is no money payment for excess work hours, *H.T.(5/13)* 289-290, 325, U-138, and U-139(A-B). Ms. Johnson instituted new forms for recording excess work hours,

H.T.(5/13) 291-292, 296-297, and 316-317. Ms. Montoya testified she submits excess work hours for approval, after she has completed working the hours, *H.T.(5/13)* 293-295, 314-U-139-A and U-139-B. Ms. Montoya recorded her excess work hours in the Other Leave category on the CABTS, *H.T.(5/13)* 299-302 and U-139-A. Ms. Montoya testified Ms. Marchbanks does not permit her to adjust her work hours to accommodate excess work hours, *H.T.(5/13)* 327-328, 342, 332. Ms. Montoya testified the Outreach events she attends are usually on Friday and Saturday and she receives instruction from her supervisor to attend, *H.T.(5/13)* 336-338.

San Francisco

Jonathan Peck, Supervisory Trial Attorney, became employed with the EEOC in 1971, *H.T.(5/22)* 860-861. On cross examination, Mr. Peck testified the General Counsel's office has money to pay for excess work hours; he was aware the employee could elect money payment or compensatory time for excess work hours; and it was his understanding the employee could only have money payment if Jeff Smith in Finance approved the payment, *H.T.(5/22)*890-893 and J-1. Mr. Peck did not have authority to approve excess work hours, unless the Regional Attorney was absent, *H.T. (5/22)* 902-904 and A-15.

David Skillman, Paralegal Specialist, became employed with EEOC in September 1991, *H.T.(5/14)* 417. Mr. Skillman serves as the Union steward, *H.T.(5/13)* 431. Mr. Skillman worked excess work hours; he would turn the excess work hours in to the time and attendance clerk; and does not record the excess work hours on the CABTS, *H/T(5/14)* 420-423, 424-425 , 430, U-143, and A-14. Mr. Skillman was not offered money payment for excess work hours; he has had discussions with management about the failure to be paid for the excess work hours; and

he did not need to accumulate compensatory time for personal reasons, *H/T (5/13)* 428, 434-435, 440-441, 447- 449.

Seattle

Roderick Ustanik, Supervisor, became employed with the EEOC in July 1979, *H.T.(5/22)*905-906. On cross examination Mr. Ustanik testified the office work hours are established under the guidelines in the CBA; the office director set the hours for Intake; supervisors make up the schedule for Intake; and Investigators are required to sign up for Intake, *H.T.(5/22)* 938-942. Mr. Ustanik testified Outreach is a duty for Investigators; he had not been informed Investigator's would be evaluated on Outreach; and he evaluates Investigators on their contribution to the office goals, *H.T.(5/22)* 943-945. Mr. Ustanik testified he certifies time and attendance for Investigators; excess work hours are not recorded on the CABTS; credit hours are given to him in an e-mail; and he did not have authority to approve excess work hours for compensatory time or money payment, *H.T.(5/22)* 974-981, 987-992, A-5D, and A-15