

STATE OF MONTANA
DEPARTMENT OF LABOR AND INDUSTRY
HEARINGS BUREAU

IN THE MATTER OF THE WAGE CLAIMS	)	Case Nos. 1856-2004, 1857-2004,
OF DAVID L. CLOUSE, LYNN B. MICHEL,	)	1904-2004, 1963-2004, 2384-2004
JACK B. SHAMLEY, MICHAEL H.	)	2576-2004, 2578-2004, 2579-2004,
MCFERRIN, JOHN A. LAMB, VIRGIL A.	)	2580-2004, 2581-2004, 2582-2004,
WOLFE, TIMOTHY A. ZARSKE, WAYDE A.	)	2583-2004, 2584-2004,
	)	2585-2004,
COOPERIDER, STEVEN J. ADSEM,	)	2586-2004, 2587-2004, 2588-2004,
ALAN R. HUGHES, KENNETH L. GETZ,	)	2589-2004, 2590-2004, 2591-2004,
KELLY W. BLIXT, BRETT L. FRIEDE,	)	2592-2004, 2593-2004,
	)	2594-2004,
RICHARD D. BROADWATER, DENNIS E.	)	2595-2004, 2596-2004, 2597-2004,
NYLAND, JOANI L. TOMPKINS,	)	2598-2004, 2599-2004, 2600-2004,
CORY W. OLSON, RAYMOND L. POTTER,	)	2601-2004, 2602-2004,
	)	2603-2004,
CHRISTOPHER T. CORNISH, DAVID J.	)	2604-2004, 2670-2004, 2681-2004,
FRADETTE, DIRK ANDERSON, SCOTT E.	)	2758-2004, 285-2005, 468-2005,
LINDGREN, PHILLIP J. CLARK, JASON T.	)	901-2005
GRIMMIS, MICHAEL J. MCCARTHY,)	
DANIEL F. O'MALLEY, KEVIN H. WRIGHT,)	
SHANE M. HILDENSTAB, VANCE E.)	
LAVINDER, SAM A. MAHLUM, BRIAN R.)	
ROBINSON, GARY L. WEISNER, DAVID L.)	
PETERSON, WILLIAM A. KUSSMAN,)	
LISA K. HOWE, LARRY W. PLATTS,))
ROBERT C. BOURASSA, URIAH S. WOOD,)	
AND GREGORY S. TODD,)	
)	
Claimants,)	
)	
vs.)	
)	
LEWIS & CLARK COUNTY,)	
)	
Respondent.)	

* * * * *

FINAL AGENCY DECISION

* * * * *

I. INTRODUCTION

David L. Clouse, Lynn B. Michel, Jack B. Shamley, and Michael H. McFerrin filed claims with the Department of Labor and Industry on February 2, 2004, February 25, 2004, March 3, 2004, and March 9, 2004, respectively. The claims alleged the Lewis and Clark County Sheriff's office had improperly calculated the salary the claimants were owed, and thus, the respondent owed wages to the claimants. Clouse claimed additional wages for the period July 1, 2001 to December 31, 2003. Michel claimed additional wages for the period July 1, 2001 to July 31, 2003. Shamley claimed additional wages for an unspecified period that ended on April 14, 2000. McFerrin claimed additional wages for a 4-year period ending March 29, 2000.

Lewis and Clark County responded to the Clouse and Michel claims on March 15, 2004, the Shamley claim on March 17, 2004, and the McFerrin claim on March 19, 2004. It denied the Clouse claim on the merits, contending that Clouse had in fact been overpaid wages. It contended the Michel, Shamley and McFerrin claims were barred by the statute of limitations.

On May 5, 2004, John Lamb filed a claim with the department, claiming additional wages for the period February 2002 through November 2002. The County filed a response on May 10, 2004, contending Lamb's claim was barred by the statute of limitations.

On June 1, 2004, the Lewis and Clark Sheriff's Employees' Association filed a related charge with the Board of Personnel Appeals contending that, by unilaterally changing the manner in which it paid longevity pay to sheriff's deputies, the County had committed an unfair labor practice.

Also on June 1, 2004, 28 additional claims were filed by sheriff's deputies against Lewis and Clark County. These claimed wages for the period July 1, 2001 to June 30, 2004, except for Alan Hughes (claim period November 18, 2002 to June 30, 2004), Sam Mahlum (claim period February 2002 to June 2004), Shane Hildenstab (claim period October 25, 2001 to June 30, 2004), and Kevin Wright (claim period November 19, 2002 to June 2004). On June 11, 2004, June 14, 2004, and June 24, 2004, respectively, William Kussman, Lisa Howe, and Larry Platts filed claims for additional wages for the period July 1, 2001 to June 30, 2004.

On June 23, 2004, the department's Wage and Hour Unit issued determinations in the claims of Clouse, Michel, McFerrin, Shamley, and Lamb. The compliance

specialist held that the claimants were due additional wages and statutory penalties. She rejected the statute of limitations defenses posed by the County. She was unable to calculate the wages due Lamb, and requested that the County calculate the pay due under her analysis and submit it to the department.

On June 30, 2004, the County filed a response denying additional wages were due the 31 claimants who filed their claims in June 2004.

On July 12, 2004, the County appealed the determinations in the claims of Clouse, Michel, McFerrin, Shamley, and Lamb.

On July 22, 2004, the Wage and Hour Unit issued a determination in the wage claim of Wayde A. Cooperider, *et al.*, apparently intended to cover all of the claimants who had filed their claims in June 2004. The compliance specialist found the claimants were due additional wages, but she was unable to calculate the amounts, and requested that the County calculate the pay due under her analysis and submit it to the department. On July 30, 2004, the County appealed this determination.

On August 11, 2004, Robert Bourassa filed a claim with the Wage and Hour Unit for additional wages for an unspecified period ending January 2, 1999. On August 31, 2004, the County filed a response to the claim contending it was barred by the statute of limitations. With the concurrence of the respondent, the Wage and Hour Unit treated the claim as covered by the previously issued determinations and transferred it to mediation, where the other claims were pending following the County's appeals.

On September 7, 2004, Uriah Wood filed a claim for additional wages for the period April 6, 2004 to September 7, 2004. On September 8, 2004, the Wage and Hour Unit compliance specialist notified the parties that she was transferring that claim to mediation, where the other claims were pending.

On September 16, 2004, an investigator for the Board of Personnel Appeals issued an order finding probable merit to the related unfair labor practice charge and transferred it to the Hearings Bureau for hearing.

On September 22, 2004, the Wage and Hour Unit transferred the 38 pending wage claims to the department's Hearings Bureau.

On September 24, 2004, J.C. Weingartner filed a notice of appearance in the Clouse, Michel, McFerrin, and Shamley cases. On October 5 and 15, 2004, the

hearing officer held pre-hearing conferences in the Clouse, Michel, McFerrin, and Shamley cases, and the related unfair labor practice charge. Weingartner and Deputy Lewis and Clark County Attorney K. Paul Stahl participated in the pre-hearing conference. Following the conference, based on the agreement of counsel and their representations that the case could be decided on stipulated facts, the hearing officer ordered counsel to determine prior to a December 10, 2004 pre-hearing conference whether the parties could arrive at stipulated facts in the cases.

On October 26, 2004, Weingartner filed a notice that he was representing all claimants, including Gregory Todd, whose claim was not yet filed, except Lamb and Bourassa.

On November 4, 2004, Todd filed a claim for additional wages due for the period June 16, 2003 to June 30, 2004. On November 5, 2004, the Wage and Hour Unit compliance specialist notified the parties that she was transferring that claim to the Hearings Bureau, where the other claims were pending. She transferred the claim on the same date.

At the December 10, 2004, pre-hearing conference, counsel had not determined whether they could arrive at stipulated facts. They stipulated to a revision of the deadlines to complete stipulated facts. The hearing officer, based on the stipulation, ordered counsel to file their stipulated facts by January 31, 2005, or to notify the hearing officer that they were unable to arrive at stipulated facts.

As of February 10, 2005, the parties had neither filed stipulated facts in the case, nor notified the hearing officer that they were unable to arrive at stipulated facts. The hearing officer, *sua sponte*, issued a scheduling order that consolidated the 39 wage claims and set a hearing for March 30, 2005. On the same date, she issued an order setting the hearing for the unfair labor charge for March 23, 2005. On March 7, 2005, counsel moved to continue both hearing dates. In their motion, counsel requested that the hearing officer hold a scheduling conference, and that a “drop dead” hearing date be set in May 2005.

The hearing officer held a scheduling conference on March 16, 2005. Weingartner, Stahl, Lamb, and Bourassa participated. Following the conference, the hearing officer issued a revised scheduling order resetting the hearing date of the 39 wage claims to May 19, 2005, pursuant to the agreement of the parties. She set the hearing of the unfair labor practice charge for June 1, 2005.

In the pre-hearing conference, the hearing officer ordered the County to provide Lamb and Bourassa certain information necessary to calculate the wages to which they would be entitled under the determination made by the Wage and Hour Unit in their cases, by March 31, 2005. The hearing officer also ordered the parties to exchange and file their final contentions, issues statement, requests for relief, witness and exhibit lists, motions, and proposed stipulated facts by April 22, 2005. This deadline was extended to April 29, 2005, at the request of counsel. None of the other dates set in the March 16, 2005, scheduling order were changed.

On April 21, 2005, Lamb filed a request to default the County with respect to his claim, because the County had failed to provide him with information as ordered. The County did not respond to Lamb's request for default or provide the information ordered prior to hearing.

The hearing officer held a final pre-hearing conference on the wage claims on May 10, 2005, at 1:30 p.m. At the pre-hearing conference, Weingartner requested that the hearing officer decide the case on briefs. The hearing officer denied the request on the grounds that, in the absence of stipulated facts, an evidentiary hearing was necessary to decide the case. Weingartner also requested that the wage claims and the unfair labor practice charge be consolidated, in the interest of judicial economy. Deputy Lewis and Clark County Attorney Tara Harris agreed that the cases should be heard at the same time. The hearing officer ruled that even though the unfair labor practice charge was set for hearing on June 1, 2005, hearing on the charge could proceed on May 19, 2005 but that the cases would proceed consecutively and not be consolidated. The hearing officer also heard argument on Lamb's motion to default the County. Following the pre-hearing conference, the hearing officer denied the motion for default, but ruled that the County would be required to produce, at the hearing on May 19, 2005, all relevant personnel records from which a decision could be rendered, and established sanctions to be imposed for any failure to produce the records.

Hearing Officer Anne L. MacIntyre conducted a hearing in the case on May 19, 2005. The claimants, except Lamb and Bourassa, were represented by J.C. Weingartner, attorney at law. Claimants John Lamb, Robert Bourassa, David Clouse, Lynn Michel, Jack Shamley, Michael McFerrin, Wayde Cooperider, and Dennis Nyland were present for all or portions of the hearing. The other claimants did not attend the hearing, without objection from the County. Deputy County Attorney K. Paul Stahl represented the respondent, Lewis and Clark County. Shelia Cozzie was present as the County's representative. Cozzie, Clouse, Shamley, McFerrin, Lamb, and Bourassa testified. Exhibits 1, 2, 3, 5, 6, 7, A, B, C, E, F, G, I, J, K, L, M, N, and O-1 through O-39 were admitted into evidence by stipulation. Exhibits 4, D, and H were

withdrawn. The parties agreed that the hearing officer could take official notice of proposed exhibit 8. Exhibits 9, P, Q, R, S, T, U, V, W, X, Y, Z, AA, BB and CC were admitted into evidence. Exhibits DD and EE were admitted for demonstrative purposes. The parties stipulated that, with minor revisions, the facts and matters identified by the hearing officer in the pre-hearing order dated May 14, 2005 as the procedural history and as appearing to be undisputed were in fact undisputed.

All parties except Bourassa filed post-hearing briefs on or before June 10, 2005. At that time, the case was deemed submitted for decision.

II. ISSUE

The issue in this case is whether Lewis and Clark County owes wages, as alleged in the complaints filed by the claimants, and owes penalties or liquidated damages, as provided by law.

III. FINDINGS OF FACT

1. The Lewis and Clark County Sheriff's Employees' Association is the exclusive representative for employees in the sheriff's office. At all relevant times, the Association and Lewis and Clark County have been parties to a collective bargaining agreement governing the terms and conditions of employment for employees of the sheriff's office.

2. The collective bargaining agreement between the parties contains a rank structure and the percentage of the sheriff's salary accorded each rank.

3. Since at least 1991, the percentage associated with each rank has neither been negotiated nor changed. The percentage associated with each rank is:

Investigator/Captain	90%
Lieutenant	88%
Sergeant	86%
Patrolman I	82%
Patrolman II	78%
Patrolman III	76%
Patrolman Probationary	74%

4. Since 1981, Montana law has provided that deputy sheriffs, in addition to salary, are entitled to longevity payments. (Mont. Code Ann. § 7-4-2508)

5. Prior to July 1, 2001, the Commission set the sheriff's annual increase pursuant to Mont. Code Ann. (1999) § 7-4-2503. Beginning October 1, 2001, a County Compensation Board (Board) recommended to the Commission a salary schedule and any cost of living increase. The schedule and increase apply to the salaries of all elected officials.

6. Mont. Code Ann. § 7-4-2503, as it existed prior to July 1, 2001, allowed the Board of County Commissioners to freeze salaries or give a cost of living increase in the amount determined by the bureau of business and economic research of the University of Montana-Missoula.

7. The County has followed the dictates of Mont. Code Ann. § 7-4-2503 in whatever form in calculating salary and longevity every year since at least 1991, because compensation statutes relating to sheriffs and their deputies are construed in Montana, without exception, as exclusive and mandatory.

8. During the 2001 Legislative Session, the legislature amended Mont. Code Ann. § 7-4-2503. The amendments established a County Compensation Board (Board). The Board is required to recommend a compensation schedule for elected officials. This procedure and compensation schedule replaced the procedure wherein the County Human Resource Department (HRD) recommended to the Commission a cost of living increase as set by the bureau of business and economic research of the University of Montana-Missoula.

9. The Board recommended in October 2001 that the Commission adopt a 6% increase in the sheriff's salary. On October 25, 2001, the Commission adopted a resolution implementing the Board's recommendations with an effective date of July 1, 2001.

10. Each deputy sheriff received a cost of living increase after the salaries were recalculated, also effective July 1, 2001.

11. In July 2002, the second year of the Agreement, the Board convened to recommend a salary schedule and to increase the sheriff's salary as required by Mont. Code Ann. § 7-4-2504.

12. The Board recommended that the Commission adopt the HRD recommendation.
13. The Commission adopted a resolution implementing the Board's recommendation.
14. For fiscal year 2002-2003, the HRD calculated and implemented increases in longevity and salary without negotiation, effective July 1, 2002.
15. In July 2003, the Board met again for the purpose of establishing the salaries of elected officials. The Board recommended that the Commission adopt the HRD recommendation. The Commission adopted a resolution approving the Board's recommendation. These increases were calculated and implemented as of July 1, 2003.
16. In December 2003, a former deputy of Lewis and Clark County filed a wage claim with the State of Montana. The County subsequently lost the claim.
17. The HRD requested that the county attorney review the statutes governing deputy sheriffs' salary and longevity to advise whether the County was applying Mont. Code Ann. §§ 7-4-2503, 7-4-2508, and 7-4-2510 correctly.
18. On February 14, 2004, the county attorney's office issued an opinion regarding salary and longevity for sheriff's deputies. The opinion concluded that the County was not correctly applying the statutes when determining deputy's wages.
19. Based upon the county attorney's opinion, each sworn deputy's salary and longevity was recalculated by HRD.
20. On February 24, 2004, each deputy was provided a memo outlining what the individual change in his or her compensation would be as a result of this recalculation.
21. On March 19, 2004, the County issued checks to deputy sheriffs for back wages.
22. Under this recalculation, salary levels were increased while longevity amounts were decreased. The changes were effective with the pay period that ended February 23, 2002.

23. The sheriff's salary was computed using the following "formulas". (Computation of the sheriff's salary is necessary because the deputy sheriffs' salaries are computed using figures derived from computation of the sheriff's salary. Two formulas appear: "prior to 2001" and "after 2001". That is the year the legislature established the County Compensation Board).

- Prior to 2001, the sum of the following:

- A. Sheriff "base annual salary" [Mont. Code Ann. § 7-4-2503(1)(a)(ii)]:
 - + \$25,000 (first class counties)
 - + \$10 for each 100 persons as per 1990 census
- B. Sheriff "addition" [Mont. Code Ann. § 7-4-2503(2)(b)]:
 - + \$2,000
- C. Sheriff "longevity" [Mont. Code Ann. § 7-4-2503(2)(c)]:
 - + (1% "base annual salary" {not \$2,000 addition}) X (years of service)

- After 2001, the sum of the following:

- A. Sheriff "salary" [Mont. Code Ann. § 7-4-2503(1)(a)]:
 - + Set by Commission after Board recommendation
- B. Sheriff "addition" [Mont. Code Ann. § 7-4-2503(2)(b)]:
 - + \$2,000
- C. Sheriff "longevity" [Mont. Code Ann. § 7-4-2503(2)(c)]:
 - + (1% annual salary {not \$2,000 addition}) X (years of service)

24. Deputy sheriffs' salaries and longevity were computed by the County using the following formulas:

- Prior to 2001, the sum of the following.

- A. Deputy salary [Mont. Code Ann. § 7-4-2508(2)]; Article XII of the Agreement:
 - + (rank %) X (sheriff's "base annual salary")
 - + (rank %) X (sheriff's "addition" (\$2,000))

B. Deputy longevity [Mont. Code Ann. § 7-4-2510]:
 + (rank %) X (1% of sheriff's "base annual salary") X (years of service)

● After 2001 Compensation Board implementation, the sum of the following:

A. Deputy salary [Mont. Code Ann. § 7-4-2508(2)]:
 + (rank %) X (sheriff's "salary" {not including the \$2,000 addition})

B. Deputy longevity [Mont. Code Ann. § 7-4-2510]:
 + (rank %) X (1% of sheriff's base "salary" {not including \$2,000 "addition"}) X (years of service)

● After the February 14, 2004 county attorney opinion:

A. Deputy salary [Mont. Code Ann. § 7-4-2508(2)]:
 + (rank %) X (sheriff's "salary" {including \$2,000 "addition"})

B. Deputy longevity [Mont. Code Ann. § 7-4-2508(2)]:
 + Mont. Code Ann. § 7-4-2508 statutory minimum % [74%] X
 (1% of sheriff's "salary" {not including \$2,000 addition}) X
 (years of service)

25. The sheriff's salary for the period July 1, 2001 to June 30, 2002 was \$45,698.00. The sheriff's salary for the period July 1, 2002 to June 30, 2003 was \$47,983.00. The sheriff's salary for the period July 1, 2003 to June 30, 2004 was \$50,282.00. The sheriff's salary for the period July 1, 2004 to June 30, 2005 was \$52,504.00. All of these salary amounts include the \$2,000.00 "addition."

26. Based on these salaries, the following base rates of pay and longevity amounts were due to the deputies during the period of the claim:

Deputy base pay rates		Annual			Hourly		
		FY02	FY03	FY04	FY02	FY03	FY04
Captain/Investigator	90%	41,371	43,185	45,254	19.89	20.76	21.76
Lieutenant	88%	40,452	42,225	44,248	19.45	20.30	21.27
Sergeant	86%	39,532	41,265	43,243	19.01	19.84	20.79
Patrolman I	82%	37,694	39,346	41,231	18.12	18.92	19.82
Patrolman II	78%	35,855	37,427	39,220	17.24	17.99	18.86

Patrolman III	76%	34,936	36,467	38,214	16.80	17.53	18.37
Patrolman Probationary	74%	34,016	35,507	37,209	16.35	17.07	17.89

Deputy longevity rates (Bi-weekly)		FY02	FY03	FY04
1%		13.08	13.66	14.31
2%		26.17	27.31	28.62
3%		39.25	40.97	42.93
4%		52.33	54.63	57.24
5%		65.42	68.28	71.56
6%		78.50	81.94	85.87
7%		91.58	95.60	100.18
8%		104.67	109.25	114.49
9%		117.75	122.91	128.80
10%		130.83	136.57	143.11
11%		143.92	150.22	157.42
12%		157.00	163.88	171.73
13%		170.08	177.54	186.04
14%		183.16	191.19	200.35
15%		196.25	204.85	214.67
16%		209.33	218.51	228.98
17%		222.41	232.16	243.29
18%		235.50	245.82	257.60
19%		248.58	259.48	271.91
20%		261.66	273.13	286.22
21%		274.75	286.79	300.53
22%		287.83	300.45	314.84
23%		300.91	314.10	329.15
24%		314.00	327.76	343.46
25%		327.08	341.42	357.78
26%		340.16	355.07	372.09
27%		353.25	368.73	386.40
28%		366.33	382.39	400.71
29%		379.41	396.04	415.02
30%		392.50	409.70	429.33

27. Deputies were entitled to, and in most instances the County paid, increased bi-weekly longevity beginning in the pay period when the anniversary of a deputy's longevity date occurred. The County did not include the longevity pay amounts in the regular rate of deputies when paying overtime premium pay.

28. The Office of Lewis and Clark County Sheriff employed David L. Clouse beginning in 1970. He had a break in service and returned to work on January 6,

1975. The County treated his longevity date as January 6, 1974, to give credit for prior service. As of July 1, 2001, he had attained the rank of captain.

29. The County paid Clouse an hourly rate of \$18.91 for FY02, \$19.90 for FY03, and \$20.93 for FY04. It paid him longevity on a bi-weekly basis as follows:

Period	Bi-weekly Amount
7/1/01 to 12/29/01	408.41
12/30/01 to 6/29/02	423.53
6/30/02 to 1/25/03	445.68
1/26/03 to 7/12/03	461.60
7/13/03 to 12/31/03	485.58

30. Although the evidence shows that Clouse terminated employment with the sheriff's office on March 30, 2004, his final check containing his payout of sick leave and vacation was issued on January 9, 2004. The County calculated his hourly rate of pay at \$20.92, without longevity, and paid him this amount on a total of 1216.77 hours. On March 1, 2004, the County issued an additional check to Clouse to correct his termination pay to include longevity at a bi-weekly rate of \$485.58 or an hourly rate of \$6.07.

31. When the County issued corrected pay amounts for the deputies in March 2004, it concluded that Clouse had been overpaid longevity in an amount that exceeded the underpayment of base pay. It made no further adjustments to his pay.

32. The County underpaid Clouse's base salary by \$2,038.40 in FY02, by \$1,792.70 in FY03, by \$879.54 in FY04, and by \$1,058.59 in his final payout. The County overpaid Clouse's longevity by \$1,460.73 in FY02, by \$1,643.19 in FY03, by \$910.18 in FY04, and by \$855.54 in his final payout. Netting these sums, the County underpaid Clouse by \$899.59.

33. The sheriff's office employed Lynn B. Michel beginning September 22, 1980. As of July 1, 2001, he had attained the rank of captain. He terminated employment with the office on July 31, 2003. His final paycheck was issued August 15, 2003. On February 18, 2004, the County issued an additional check to Michel to correct his termination pay to include longevity.

34. The sheriff's office employed Jack B. Shamley beginning August 8, 1977. He terminated employment with the office on March 31, 2000. At that time, he was a sergeant. His final paycheck was issued on April 14, 2000.

35. The sheriff's office employed Michael H. McFerrin beginning October 6, 1975. He terminated employment with the office on March 24, 2000.¹ At that time, he was a lieutenant. His final paycheck was issued on March 29, 2000.

36. The sheriff's office employed John A. Lamb beginning August 12, 1999. As of July 1, 2001, he had attained the rank of patrolman III. He terminated employment with the office on October 20, 2002. His final paycheck was issued on October 23, 2002.

37. The sheriff's office employed Virgil A. Wolfe beginning November 26, 1999. As of July 1, 2001, he had attained the rank of patrolman III. On October 9, 2003, he was promoted to patrolman I.

38. The County paid Wolfe an hourly rate of \$15.97 for the first 16 pay periods of FY02 and \$16.71 for the remaining 10 pay periods, \$17.54 for FY03, and \$18.90 for FY04. It paid him longevity on a bi-weekly basis as follows:

Period	Bi-weekly Amount
7/1/01 to 11/16/01	12.77
11/18/01 to 2/9/02	25.55
2/11/02 to 6/29/02	24.89
6/30/02 to 11/16/02	26.18
11/17/02 to 6/28/03	39.26
6/29/03 to 11/15/03	41.31
11/16/03 to 6/30/04	55.08

39. When the County issued corrected pay amounts for the deputies in March 2004, it paid Wolfe retroactively at the patrolman II rate for time prior to his

¹The County's spreadsheet lists McFerrin's termination date as June 24, 2000. However, his final timesheet which was also included in the exhibits shows the last day worked as March 24, 2000. It is most likely he terminated in March.

promotion to that rank. He received \$253.31 extra base pay and \$31.63 extra overtime premium as a result of this error.

40. The County underpaid Wolfe's base salary by \$1,126.08 and overtime premium by \$39.65 in FY02. The County underpaid Wolfe's longevity by \$19.59 in FY02, by \$38.70 in FY03, and by \$51.51 in FY04. The County failed to include longevity in Wolfe's overtime premium pay during the period and owes him an additional \$141.90 in overtime for the period of the claim. Adding these sums, and subtracting the overpayment of salary and overtime for the beginning of FY04, the County underpaid Wolfe by \$1,132.48.²

41. The sheriff's office employed Timothy A. Zarske beginning December 6, 1993. As of July 1, 2001, he had attained the rank of patrolman I. On September 4, 2003, he was promoted to sergeant.

42. The County paid Zarske an hourly rate of \$17.23 for the first 16 pay periods of FY02 and \$18.03 for the remaining 10 pay periods, \$18.92 for FY03, and \$20.83 for FY04. It paid him longevity on a bi-weekly basis as follows:

Period	Bi-weekly Amount
7/1/01 to 12/15/01	96.47
12/16/01 to 2/9/02	110.25
2/10/02 to 6/29/02	99.54
6/30/02 to 11/30/02	104.71
12/1/02 to 6/28/03	117.79
6/29/03 to 12/27/03	123.92
12/28/03 to 6/30/04	137.69

43. When the County issued corrected pay amounts for the deputies in March 2004, it paid Zarske retroactively at the patrolman I rate for time prior to his promotion to that rank. He received \$322.33 extra base pay and \$29.97 extra overtime premium as a result of this error. The County also overpaid Zarske by

²Discrepancies of \$.05 or less in the totals of the amounts reflected in the findings are due to rounding in the spreadsheet program used by the hearing officer to calculate the wages in this matter.

\$181.30 for the pay period ending August 24, 2002 and \$82.49 for the pay period ending June 12, 2003, but it deducted these amounts from his pay adjustment.

44. The County underpaid Zarske's base salary by \$1,215.36 and overtime premium by \$42.82 in FY02. The County overpaid Zarske's longevity by \$16.65 in FY02, and underpaid it by \$126.78 in FY03, and by \$308.45 in FY04. The County failed to include longevity in Zarske's overtime premium pay during the period and owes him an additional \$369.37 in overtime for the period of the claim. Netting these sums, and subtracting the overpayment of salary and overtime for the beginning of FY04, the County underpaid Zarske by \$1,693.84.

45. The sheriff's office employed Wayde A. Cooperider beginning June 27, 1994. As of July 1, 2001, he had attained the rank of patrolman II. On August 5, 2003, he was promoted to patrolman I. He terminated employment with the office on October 27, 2004.

46. The County paid Cooperider an hourly rate of \$16.39 for the first 16 pay periods of FY02 and \$17.15 for the remaining 10 pay periods, \$18.00 for FY03, and \$19.86 for FY04. It paid him longevity on a bi-weekly basis as follows:

Period	Bi-weekly Amount
7/1/01 to 2/9/02	91.77
2/10/02 to 6/15/02	87.10
6/16/02 to 6/14/03	104.71
6/15/03 to 6/30/04	123.92

47. When the County issued corrected pay amounts for the deputies in March 2004, it paid Cooperider retroactively at the patrolman II rate for time prior to his promotion to that rank. He received \$160.68 extra base pay and \$12.05 extra overtime premium as a result of this error.

48. The County underpaid Cooperider's base salary by \$1,155.84 in FY02. The County underpaid Cooperider's longevity by \$37.30 in FY02, by \$112.58 in FY03, and by \$59.43 in FY04. The County failed to include longevity in Cooperider's overtime premium pay during the period and owes him an additional \$122.79 in overtime for the period of the claim. Adding these sums, and subtracting the overpayment of salary and overtime for the beginning of FY04, the County underpaid Cooperider by \$1,315.20.

49. The County properly included longevity pay in Cooperider's payout of sick and annual leave at the termination of his employment.

50. The sheriff's office employed Steven J. Adsem beginning June 23, 2000. As of July 1, 2001, he was a patrolman probationary. Effective with the pay period ending July 14, 2001, he was assigned to the position of patrolman III.

51. The County paid Adsem an hourly rate of \$15.97 for the first 16 pay periods of FY02 and \$16.71 for the remaining 10 pay periods, \$17.54 for FY03, and \$18.41 for FY04. It paid him longevity on a bi-weekly basis as follows:

Period	Bi-weekly Amount
7/1/01 to 2/9/02	12.77
2/10/02 to 6/29/02	24.89
6/30/02 to 6/14/03	99.54
6/15/03 to 9/6/03	39.26
9/7/03 to 12/27/03	37.33
12/28/03 to 6/30/04	41.31

52. The County underpaid Adsem's base salary by \$1,126.08 and overtime premium by \$42.75 in FY02. The County underpaid Adsem's longevity by \$12.08 in FY02, by \$62.30 in FY03, and by \$103.30 in FY04. The County failed to include longevity in Adsem's overtime premium pay during the period and owes him an additional \$155.16 in overtime for the period of the claim. Adding these sums, the County underpaid Adsem by \$1,501.66.

53. The sheriff's office employed Alan R. Hughes as a patrolman probationary beginning November 18, 2002. On November 18, 2003, he was promoted to patrolman III.

54. The County paid Hughes an hourly rate of \$17.08 for FY03, \$17.93 for the first 13 pay periods of FY04, and \$18.41 thereafter. It paid him longevity on a bi-weekly basis of \$13.77 beginning November 16, 2003 through the end of his employment.

55. When the County issued corrected pay amounts for the deputies in March 2004, it failed to reflect Hughes' promotion from patrolman probationary to

patrolman III in the pay adjustment until the first pay period in December. The County underpaid Hughes \$115.20 in base pay and \$19.92 in overtime premium.

56. The County underpaid Hughes' longevity by \$8.82 in FY04. The County failed to include longevity in Hughes' overtime premium pay during the period and owes him an additional \$24.95 in overtime for the period of the claim. Adding these sums, and adding the underpayment of salary and overtime for the beginning of FY04, the County underpaid Hughes by \$168.89.

57. The sheriff's office employed Kenneth L. Getz beginning October 31, 1995. As of July 1, 2001, he was a patrolman II. On August 4, 2003, he was promoted to patrolman III.

58. The County paid Getz an hourly rate of \$16.39 for the first 16 pay periods of FY02 and \$17.15 for the remaining 10 pay periods, \$18.00 for FY03, and \$19.86 for FY04. It paid him longevity on a bi-weekly basis as follows:

Period	Bi-weekly Amount
7/1/01 to 8/25/01	70.59
8/26/01 to 2/9/02	78.66
2/10/02 to 6/29/02	74.66
6/30/02 to 10/19/02	78.53
10/20/02 to 6/28/03	91.62
6/29/03 to 6/30/04	110.15

59. When the County issued corrected pay amounts for the deputies in March 2004, it paid Getz retroactively at the patrolman I rate for time prior to his promotion to that rank. He received \$200.85 extra base pay and \$19.77 extra overtime premium as a result of this error. The County also underpaid Getz by \$171.63 for the pay period ending November 13, 2003, but it included this amount in his pay adjustment.

60. The County underpaid Getz's base salary by \$1,155.84 in FY02. The County overpaid Getz's longevity by \$36.57 in FY02, underpaid it by \$98.87 in FY03, and overpaid it by \$0.39 in FY04. The County failed to include longevity in Getz's overtime premium pay during the period and owes him an additional \$157.18 in overtime for the period of the claim. Netting these sums, and subtracting the

overpayment of salary and overtime for the beginning of FY04, the County underpaid Getz by \$1,154.31.

61. The sheriff's office employed Kelly W. Blixt beginning June 21, 2000. As of July 1, 2001, he was a patrolman probationary. Effective with the pay period ending July 14, 2001, he was assigned to the position of patrolman III.

62. The County paid Blixt an hourly rate of \$15.97 for the first 16 pay periods of FY02 and \$16.71 for the remaining 10 pay periods, \$17.54 for FY03, and \$18.41 for FY04. It paid him longevity on a bi-weekly basis as follows:

Period	Bi-weekly Amount
7/1/01 to 9/22/01	12.97
9/23/01 to 2/9/02	12.77
2/10/02 to 6/15/02	12.44
6/16/02 to 5/3/03	24.89
5/4/03 to 5/31/03	0
6/1/02 to 6/14/03	24.89
6/15/03 to 6/30/04	41.31

63. The County overpaid Blixt by \$100.80 for the pay period ending July 12, 2003, but it deducted this amount from his pay adjustment in March 2004.

64. The County underpaid Blixt's base salary by \$1,126.08 in FY02. The County underpaid Blixt's longevity by \$36.42 in FY02, by \$110.03 in FY03, and by \$61.29 in FY04. The County failed to include longevity in Blixt's overtime premium pay during the period and owes him an additional \$31.84 in overtime for the period of the claim. Adding these sums, the County underpaid Blixt by \$1,365.66.

65. The sheriff's office employed Brett L. Friede beginning September 20, 1989. As of July 1, 2001, he was a temporary captain. On August 11, 2001, he was assigned to the position of sergeant.

66. The County paid Friede an hourly rate of \$18.07 for the first 16 pay periods of FY02 and \$18.91 for the remaining 10 pay periods, \$19.84 for FY03, and \$20.83 for FY04. It paid him longevity on a bi-weekly basis as follows:

Period	Bi-weekly Amount
7/1/01 to 7/28/01	149.32
7/29/01 to 8/11/01	142.96
8/12/01 to 8/25/01	162.90
8/26/01 to 2/9/02	173.45
2/10/02 to 6/29/02	149.32
6/30/02 to 9/7/02	157.06
9/8/02 to 6/28/03	170.15
6/29/03 to 6/30/04	192.77

67. The County underpaid Friede's base salary by \$1,487.04 and overtime premium by \$15.44 in FY02. The County overpaid Friede's longevity by \$149.03 in FY02, and underpaid him by \$189.23 in FY03, and by \$127.92 in FY04. The County failed to include longevity in Friede's overtime premium pay during the period and owes him an additional \$969.65 in overtime for the period of the claim. Netting these sums, the County underpaid Friede by \$2,640.25.

68. The sheriff's office employed Richard D. Broadwater beginning December 23, 1985. As of July 1, 2001, he was a sergeant.

69. The County paid Broadwater an hourly rate of \$18.07 for the first 16 pay periods of FY02 and \$18.91 for the remaining 10 pay periods, \$19.84 for FY03, and \$20.83 for FY04. It paid him longevity on a bi-weekly basis as follows:

Period	Bi-weekly Amount
7/1/01 to 2/9/02	216.81
2/10/02 to 3/9/02	186.64
3/10/02 to 6/29/02	199.09
6/30/02 to 12/14/03	208.41
12/15/03 to 6/28/03	222.50
6/29/03 to 12/27/03	234.07
12/28/03 to 6/30/04	247.84

70. The County underpaid Broadwater's base salary by \$1,274.88 and overtime premium by \$27.38 in FY02. The County overpaid Broadwater's longevity by \$149.35 in FY02, and underpaid him by \$244.46 in FY03, and by \$263.93 in FY04. The County failed to include longevity in Broadwater's overtime premium pay during the period and owes him an additional \$505.40 in overtime for the period of the claim. Netting these sums, the County underpaid Broadwater by \$2,166.70.

71. The sheriff's office employed Dennis E. Nyland beginning June 24, 2000. As of July 1, 2001, he was a patrolman III.

72. The County paid Nyland an hourly rate of \$15.97 for the first 16 pay periods of FY02 and \$16.71 for the remaining 10 pay periods, \$17.54 for FY03, and \$18.41 for FY04. It paid him longevity on a bi-weekly basis as follows:

Period	Bi-weekly Amount
7/1/01 to 2/9/02	12.77
2/10/02 to 6/15/02	12.44
6/16/02 to 6/29/02	24.89
6/30/02 to 6/14/03	26.18
6/15/03 to 6/28/03	39.26
6/29/03 to 6/30/04	41.31

73. The County underpaid Nyland's base salary by \$1,126.08 and overtime premium by \$45.22 in FY02. The County underpaid Nyland's longevity by \$12.08 in

FY02, by \$30.05 in FY03, and by \$61.29 in FY04. The County failed to include longevity in Nyland’s overtime premium pay during the period and owes him an additional \$170.85 in overtime for the period of the claim. Adding these sums, the County underpaid Nyland by \$1,445.57.

74. The sheriff’s office employed Joani L. Tompkins beginning October 5, 2000. As of July 1, 2001, she was a patrolman probationary. On December 30, 2001, she was assigned to the position of patrolman III.

75. The County paid Tompkins an hourly rate of \$15.55 for the first 13 pay periods of FY02, \$15.97 for the next 3 pay periods, and \$16.71 for the remaining 10 pay periods, \$17.54 for FY03, and \$18.41 for FY04. It paid her longevity on a bi-weekly basis as follows:

Period	Bi-weekly Amount
1/13/02 to 2/9/02	12.77
2/10/02 to 6/29/02	12.44
6/30/02 to 10/5/02	13.09
10/6/02 to 6/28/03	26.18
6/29/03 to 10/18/03	27.54
10/19/03 to 6/30/04	41.31

76. The County underpaid Tompkins’ base salary by \$1,204.00 and overtime premium by \$1.21 in FY02. The County underpaid Tompkins’ longevity by \$98.95 in FY02, by \$39.16 in FY03, and by \$52.67 in FY04. The County failed to include longevity in Tompkins’ overtime premium pay during the period and owes her an additional \$41.50 in overtime for the period of the claim. Adding these sums, the County underpaid Tompkins by \$1,437.49.

77. The sheriff’s office employed Cory W. Olson beginning October 25, 1993. As of July 1, 2001, he was a probationary investigator. On December 29, 2001, he was assigned to the position of investigator.

78. The County paid Olson an hourly rate of \$18.49 for the first 12 pay periods of FY02, \$18.91 for the next 4 pay periods, and \$19.79 for the remaining 10 pay periods, \$20.77 for FY03, and \$21.80 for FY04. It paid him longevity on a bi-weekly basis as follows:

Period	Bi-weekly Amount
7/1/01 to 10/20/01	103.55
10/21/01 to 12/15/01	118.34
12/16/01 to 2/9/02	121.01
2/10/02 to 6/29/02	99.54
6/30/02 to 11/30/02	104.71
12/1/02 to 6/28/03	117.79
6/29/03 to 11/1/03	123.92
11/2/03 to 6/30/04	137.69

79. The County underpaid Olson's base salary by \$1,737.60 and overtime premium by \$108.15 in FY02. The County overpaid Olson's longevity by \$164.56 in FY02, and underpaid him by \$167.75 in FY03, and by \$152.00 in FY04. The County failed to include longevity in Olson's overtime premium pay during the period and owes him an additional \$469.68 in overtime for the period of the claim. Netting these sums, the County underpaid Olson by \$2,470.62.

80. The sheriff's office employed Raymond L. Potter beginning September 21, 1989. As of July 1, 2001, he was an investigator.

81. The County paid Potter an hourly rate of \$18.91 for the first 16 pay periods of FY02 and \$19.79 for the remaining 10 pay periods, \$20.77 for FY03, and \$21.80 for FY04. It paid him longevity on a bi-weekly basis as follows:

Period	Bi-weekly Amount
7/1/01 to 9/8/01	166.39
9/9/01 to 2/9/02	181.51
2/10/02 to 6/29/02	149.32
6/30/02 to 9/7/02	157.06
9/8/02 to 6/28/03	170.15
6/29/03 to 6/30/04	197.77

82. The County underpaid Potter's base salary by \$1,334.40 and overtime premium by \$91.88 in FY02. The County overpaid Potter's longevity by \$305.22 in FY02, and underpaid him by \$189.23 in FY03, and by \$113.60 in FY04. The County failed to include longevity in Potter's overtime premium pay during the period and owes him an additional \$786.81 in overtime for the period of the claim. Netting these sums, the County underpaid Potter by \$2,210.71.

83. The sheriff's office employed Christopher T. Cornish beginning October 18, 1995. As of July 1, 2001, he was a patrolman I.

84. The County paid Cornish an hourly rate of \$17.23 for the first 16 pay periods of FY02 and \$18.03 for the remaining 10 pay periods, \$18.92 for FY03, and \$19.86 for FY04. It paid him longevity on a bi-weekly basis as follows:

Period	Bi-weekly Amount
7/1/01 to 10/6/01	68.91
10/7/01 to 2/9/02	82.69
2/10/02 to 6/29/02	74.66
6/30/02 to 10/5/02	78.53
10/6/02 to 6/28/03	91.62
6/29/03 to 10/4/03	96.38
10/5/03 to 6/30/04	110.15

85. The County underpaid Cornish's base salary by \$1,215.36 and overtime premium by \$20.07 in FY02. The County overpaid Cornish's longevity by \$32.78 in FY02, and underpaid him by \$99.43 in FY03, and by \$110.31 in FY04. The County failed to include longevity in Cornish's overtime premium pay during the period and owes him an additional \$445.01 in overtime for the period of the claim. Netting these sums, the County underpaid Cornish by \$1,857.40.

86. The sheriff's office employed David J. Fradette beginning December 29, 1993. As of July 1, 2001, he was a patrolman I.

87. The County paid Fradette an hourly rate of \$17.23 for the first 16 pay periods of FY02 and \$18.03 for the remaining 10 pay periods, \$18.92 for FY03, and \$19.86 for FY04. It paid him longevity on a bi-weekly basis as follows:

Period	Bi-weekly Amount
7/1/01 to 12/15/01	96.47
12/16/01 to 2/9/02	110.25
2/10/02 to 6/29/02	99.54
6/30/02 to 12/28/02	104.71
12/29/02 to 6/28/03	117.79
6/29/03 to 12/27/03	123.92
12/28/03 to 6/30/04	137.69

88. The County overpaid Fradette by \$163.17 for the pay period ending July 26, 2003, but it deducted this amount from his pay adjustment in March 2004.

89. The County underpaid Fradette's base salary by \$1,215.36 and overtime premium by \$18.73 in FY02. The County overpaid Fradette's longevity by \$29.73 in FY02, and underpaid him by \$125.63 in FY03, and by \$135.52 in FY04. The County failed to include longevity in Fradette's overtime premium pay during the period and owes him an additional \$378.00 in overtime for the period of the claim. Netting these sums, the County underpaid Fradette by \$1,843.51.

90. The sheriff's office employed Dirk Anderson beginning April 1, 1980. As of July 1, 2001, he was a sergeant.

91. The County paid Anderson an hourly rate of \$18.07 for the first 16 pay periods of FY02 and \$18.91 for the remaining 10 pay periods, \$19.84 for FY03, and \$20.83 for FY04. It paid him longevity on a bi-weekly basis as follows:

Period	Bi-weekly Amount
7/1/01 to 2/9/02	303.53
2/10/02 to 3/23/02	273.74
3/24/02 to 6/29/02	286.19
6/30/02 to 3/22/03	287.94
3/23/03 to 10/18/03	301.03
10/19/03 to 12/27/03	314.12
12/28/03 to 6/30/04	316.69

92. The County underpaid Anderson's base salary by \$1,274.88 and overtime premium by \$30.54 in FY02. The County overpaid Anderson's longevity by \$446.02 in FY02, and underpaid him by \$329.16 in FY03, and by \$570.40 in FY04. The County failed to include longevity in Anderson's overtime premium pay during the period and owes him an additional \$1,146.38 in overtime for the period of the claim. Netting these sums, the County underpaid Anderson by \$2,905.33.

93. The sheriff's office employed Scott E. Lindgren beginning October 4, 2000. As of July 1, 2001, he was a patrolman probationary. Effective with the pay period ending October 20, 2001, he was assigned to the position of patrolman III.

94. The County paid Lindgren an hourly rate of \$15.55 for the first 7 pay periods of FY02, \$15.97 for the next 9 pay periods, and \$16.27 for the remaining 10 pay periods, \$17.54 for FY03, and \$18.41 for FY04. It paid him longevity on a bi-weekly basis as follows:

Period	Bi-weekly Amount
9/23/01 to 2/9/02	12.77
2/10/02 to 6/29/02	12.44
6/30/02 to 9/21/02	13.09
9/22/02 to 6/28/03	26.18
6/29/03 to 9/20/03	27.54
9/21/03 to 6/30/04	41.31

95. When the County issued corrected pay amounts for the deputies in March 2004, it failed to reflect Lindgren's promotion from patrolman probationary to patrolman III in the pay adjustment for FY02.

96. The County underpaid Lindgren's base salary by \$1,465.76 and overtime premium by \$10.58 in FY02, including correction for the error in the March 2004 pay adjustment. The County underpaid Lindgren's longevity by \$9.56 in FY02, by \$26.07 in FY03, and by \$39.44 in FY04. The County failed to include longevity in Lindgren's overtime premium pay during the period and owes him an additional \$112.13 in overtime for the period of the claim. Adding these sums, the County underpaid Lindgren by \$1,663.55.

97. The sheriff's office employed Phillip J. Clark beginning June 22, 2000. Effective with the pay period ending July 14, 2001, he was assigned to the position of patrolman III. On September 9, 2003, he was assigned to the position of patrolman II.

98. The County paid Clark an hourly rate of \$15.97 for the first 16 pay periods of FY02 and \$16.71 for the remaining 10 pay periods, \$17.54 for FY03, \$18.41 for the first 13 pay periods of FY04, and \$18.90 thereafter. It paid him longevity on a bi-weekly basis as follows:

Period	Bi-weekly Amount
7/1/01 to 2/9/02	12.77
2/10/02 to 6/15/02	12.44
6/16/02 to 6/14/03	26.18
6/15/03 to 6/30/04	41.31

99. When the County issued corrected pay amounts for the deputies in March 2004, it failed to reflect Lindgren's promotion from patrolman III to patrolman II for 8 pay periods of the pay adjustment for FY04. He was underpaid \$285.28 in base pay and \$36.21 in overtime premium as a result. The County also underpaid Clark by \$176.05 for the pay period ending April 19, 2003, but it included this amount in his pay adjustment.

100. The County underpaid Clark's base salary by \$1,126.08 and overtime premium by \$35.93 in FY02. The County underpaid Clark's longevity by \$10.79 in FY02, by \$28.00 in FY03, and by \$59.67 in FY04. The County failed to include longevity in Clark's overtime premium pay during the period and owes him an additional \$172.16 in overtime for the period of the claim. Adding these sums, including the underpayment of salary and overtime in FY04, the County underpaid Clark by \$1,754.11.

101. The sheriff's office employed Jason T. Grimmis beginning November 30, 1998. As of July 1, 2001, he was a patrolman III. On September 11, 2003, he was assigned to the position of patrolman II.

102. The County paid Grimmis an hourly rate of \$15.97 for the first 16 pay periods of FY02 and \$16.71 for the remaining 10 pay periods, \$17.54 for FY03, \$18.41 for the first 13 pay periods of FY04, and \$18.90 thereafter. It paid him longevity on a bi-weekly basis as follows:

Period	Bi-weekly Amount
7/1/01 to 11/17/01	25.55
11/18/01 to 2/9/02	38.32
2/10/02 to 6/29/02	37.33
6/30/02 to 11/16/02	39.26
11/17/02 to 6/28/03	52.35
6/29/03 to 11/29/03	55.08
11/30/03 to 6/30/04	68.85

103. When the County issued corrected pay amounts for the deputies in March 2004, it failed to reflect Grimmis' promotion from patrolman III to patrolman II for 8 pay periods of the pay adjustment for FY04. He was underpaid \$285.28 in base pay and \$56.99 in overtime premium as a result.

104. The County underpaid Grimmis' base salary by \$1,126.08 and overtime premium by \$66.29 in FY02. The County underpaid Grimmis' longevity by \$30.94 in FY02, by \$53.53 in FY03, and by \$65.19 in FY04. The County failed to include longevity in Grimmis' overtime premium pay during the period and owes him an additional \$390.30 in overtime for the period of the claim. Adding these sums, including the underpayment of salary and overtime for the beginning of FY04, the County underpaid Grimmis by \$2,074.59.

105. The sheriff's office employed Michael J. McCarthy beginning January 10, 1985. As of July 1, 2001, he was a patrolman I. On October 27, 2003, he was assigned to the position of sergeant.

106. The County paid McCarthy an hourly rate of \$17.23 for the first 16 pay periods of FY02 and \$18.03 for the remaining 10 pay periods, \$18.92 for FY03, \$19.86 for the first 8.5 pay periods of FY04, and \$20.83 thereafter. It paid him longevity on a bi-weekly basis as follows:

Period	Bi-weekly Amount
7/1/01 to 1/12/02	234.29
1/13/02 to 2/9/02	248.07
2/10/02 to 6/29/02	211.53
6/30/02 to 12/28/02	222.50
12/29/02 to 6/28/03	235.59
6/29/03 to 12/27/03	247.84
12/28/03 to 6/30/04	261.61

107. The County overpaid McCarthy by \$232.41 for the pay period ending July 26, 2003, but it deducted this amount from his pay adjustment in March 2004.

108. The County underpaid McCarthy's base salary by \$1,215.36 and overtime premium by \$61.55 in FY02. The County overpaid McCarthy's longevity by \$278.81 in FY02, and underpaid him by \$261.23 in FY03, and by \$263.85 in FY04. The County failed to include longevity in McCarthy's overtime premium pay during the period and owes him an additional \$2,186.00 in overtime for the period of the claim. Netting these sums, the County underpaid McCarthy by \$3,709.17.

109. The sheriff's office employed Daniel F. O'Malley beginning December 1, 1998. As of July 1, 2001, he was a patrolman III. On September 13, 2003, he was assigned to the position of patrolman II.

110. The County paid O'Malley an hourly rate of \$15.97 for the first 16 pay periods of FY02 and \$16.71 for the remaining 10 pay periods, \$17.54 for FY03, and \$18.90 for FY04. It paid him longevity on a bi-weekly basis as follows:

Period	Bi-weekly Amount
7/1/01 to 11/17/01	25.55
11/18/01 to 2/9/02	38.32
2/10/02 to 6/29/02	37.33
6/30/02 to 11/30/02	39.26
12/1/02 to 5/17/03	52.35
5/18/03 to 5/31/03	0
6/1/03 to 6/28/03	52.35
6/29/03 to 11/15/03	55.08
11/16/03 to 6/30/04	68.85

111. When the County issued corrected pay amounts for the deputies in March 2004, it paid O'Malley retroactively at the patrolman II rate for time prior to his promotion to that rank. He received \$211.09 extra base pay and \$50.30 extra overtime premium as a result of this error.

112. The County underpaid O'Malley's base salary by \$1,126.08 and overtime premium by \$49.56 in FY02. The County underpaid O'Malley's longevity by \$30.94 in FY02, by \$105.31 in FY03, and by \$51.42 in FY04. The County failed to include longevity in O'Malley's overtime premium pay during the period and owes him an additional \$410.95 in overtime for the period of the claim. Adding these sums, and subtracting the overpayment of salary and overtime for the beginning of FY04, the County underpaid O'Malley by \$1,512.87.

113. The sheriff's office employed Kevin H. Wright as a patrolman probationary beginning November 19, 2002. On November 19, 2003, he was assigned to the position of patrolman III.

114. The County paid Wright an hourly rate of \$17.08 for FY03, and \$18.41 for FY04. It paid him longevity on a bi-weekly basis as follows:

Period	Bi-weekly Amount
11/16/03 to 6/30/04	13.77

115. When the County issued corrected pay amounts for the deputies in March 2004, it paid Wright retroactively at the patrolman III rate for time prior to his promotion to that rank. He received \$416.97 extra base pay and \$119.55 extra overtime premium as a result of this error.

116. The County underpaid Wright's longevity by \$8.82 in FY04. The County failed to include longevity in Wright's overtime premium pay during the period and underpaid him an additional \$14.65 in overtime for the period of the claim. Netting the overpayment of salary and overtime for the beginning of FY04 with the underpayment of longevity and related overtime premium, the County overpaid Wright by \$513.06.

117. The sheriff's office employed Shane M. Hildenstab as a patrolman probationary beginning November 9, 2001. On November 9, 2002, he was assigned to the position of patrolman III.

118. The County paid Hildenstab an hourly rate of \$15.55 for the FY02 pay periods from November 9, 2001 through February 9, 2002, and \$16.27 for the remaining 10 pay periods, \$17.08 for FY03, and \$18.41 for FY04. It paid him longevity on a bi-weekly basis as follows:

Period	Bi-weekly Amount
10/19/02 to 6/28/03	12.44
6/29/03 to 6/30/04	27.54

119. When the County issued corrected pay amounts for the deputies in March 2004, it failed to reflect Hildenstab's promotion from patrolman probationary to patrolman III for 16.5 pay periods of the pay adjustment for FY03. He was underpaid \$594.00 in base pay and \$67.90 in overtime premium as a result.

120. The County underpaid Hildenstab's base salary by \$485.28 in FY02. The County overpaid Hildenstab's longevity by \$5.41 in FY03, and by \$100.34 in FY04. The County failed to include longevity in Hildenstab's overtime premium pay during the period and owes him an additional \$56.17 in overtime for the period of the claim. Netting these sums, and adding the underpayment of salary and overtime for FY03, the County underpaid Hildenstab by \$1,097.59.

121. The sheriff's office employed Vance E. Lavinder beginning April 19, 1999. As of July 1, 2001, he was a patrolman III. On September 9, 2003, he was assigned to the position of patrolman II.

122. The County paid Lavinder an hourly rate of \$15.97 for the first 16 pay periods of FY02 and \$16.71 for the remaining 10 pay periods, \$17.54 for FY03, \$18.41 for the first 13 pay periods of FY04 and \$18.90 thereafter. It paid him longevity on a bi-weekly basis as follows:

Period	Bi-weekly Amount
7/1/01 to 2/9/02	25.55
2/10/02 to 4/6/02	24.89
4/7/02 to 6/29/02	37.33
6/30/02 to 4/5/03	39.26
4/6/03 to 6/28/03	52.35
6/29/03 to 6/30/04	55.08

123. When the County issued corrected pay amounts for the deputies in March 2004, it failed to reflect Lavinder's promotion from patrolman III to patrolman II for 8 pay periods of the pay adjustment for FY04. He was underpaid \$285.28 in base pay and \$33.80 in overtime premium as a result. The County also overpaid Lavinder by \$50.40 for the pay period ending November 16, 2002, but it deducted this amount from his pay adjustment in March 2004.

124. The County underpaid Lavinder's base salary by \$1,126.08 and overtime premium by \$33.45 in FY02. The County underpaid Lavinder's longevity by \$26.49 in FY02, by \$47.86 in FY03, and by \$132.76 in FY04. The County failed to include longevity in Lavinder's overtime premium pay during the period and owes him an additional \$186.00 in overtime for the period of the claim. Adding these sums, including the underpayment of salary and overtime for the beginning of FY04, the County underpaid Lavinder by \$1,871.73.

125. The sheriff's office employed Sam A. Mahlum as a patrolman probationary beginning February 11, 2002. On February 11, 2003, he was assigned to the position of patrolman III.

126. The County paid Mahlum an hourly rate of \$16.27 during FY02, \$17.08 for FY03, and \$18.41 for FY04. It paid him longevity on a bi-weekly basis as follows:

Period	Bi-weekly Amount
2/9/03 to 6/28/03	13.09
6/29/03 to 6/30/04	13.77

127. When the County issued corrected pay amounts for the deputies in March 2004, it failed to reflect Mahlum's promotion from patrolman probationary to patrolman III for 10 pay periods of the pay adjustment for FY03. He was underpaid \$360.00 in base pay and \$49.59 in overtime premium as a result. The County also overpaid Mahlum by \$147.24 for the pay period ending November 30, 2002, but it deducted this amount from his pay adjustment in March 2004.

128. The County underpaid Mahlum's base salary by \$67.20 in FY02. The County underpaid Mahlum's longevity by \$5.67 in FY03, and by \$161.63 in FY04. The County failed to include longevity in Mahlum's overtime premium pay during the period and owes him an additional \$63.82 in overtime for the period of the claim. Adding these sums, including the underpayment of salary and overtime for the end of FY03, the County underpaid Mahlum by \$707.91.

129. The sheriff's office employed Brian R. Robinson beginning June 26, 2000. Effective with the pay period ending July 14, 2001, he was assigned to the position of patrolman III. On September 12, 2003, he was assigned to the position of patrolman II.

130. The County paid Robinson an hourly rate of \$15.97 for the first 16 pay periods of FY02 and \$16.71 for the remaining 10 pay periods, \$17.54 for FY03, and \$18.90 for FY04. It paid him longevity on a bi-weekly basis as follows:

Period	Bi-weekly Amount
7/1/01 to 2/9/02	12.77
2/10/02 to 6/15/02	12.44
6/16/02 to 6/29/20	24.89
6/30/02 to 6/14/03	26.18
6/15/03 to 6/28/03	39.26
6/29/03 to 6/30/04	41.31

131. When the County issued corrected pay amounts for the deputies in March 2004, it paid Robinson retroactively at the patrolman II rate for time prior to his promotion to that rank. He received \$211.09 extra base pay and \$39.41 extra overtime premium as a result of this error.

132. The County underpaid Robinson's base salary by \$1,126.08 and overtime premium by \$28.50 in FY02. The County underpaid Robinson's longevity by \$12.08 in FY02, by \$30.05 in FY03, and by \$61.29 in FY04. The County failed to include longevity in Robinson's overtime premium pay during the period and owes him an additional \$152.44 in overtime for the period of the claim. Adding these sums, and subtracting the overpayment of salary and overtime for the beginning of FY04, the County underpaid Robinson by \$1,159.92.

133. The sheriff's office employed Gary L. Weisner beginning September 2, 1988. As of July 1, 2001, he was a patrolman I.

134. The County paid Weisner an hourly rate of \$17.23 for the first 16 pay periods of FY02 and \$18.03 for the remaining 10 pay periods, \$18.92 for FY03, and \$19.86 for FY04. It paid him longevity on a bi-weekly basis as follows:

Period	Bi-weekly Amount
7/1/01 to 8/25/01	148.42
8/26/01 to 2/9/02	179.16
2/10/02 to 6/29/02	161.76
6/30/02 to 8/24/02	170.15
8/25/02 to 6/28/03	183.23
6/29/03 to 6/30/04	206.54

135. The County underpaid Weisner's base salary by \$1,215.36 and overtime premium by \$28.10 in FY02. The County underpaid Weisner's longevity by \$8.59 in FY02, by \$204.75 in FY03, and by \$156.46 in FY04. The County failed to include longevity in Weisner's overtime premium pay during the period and owes him an additional \$784.04 in overtime for the period of the claim. Adding these sums, the County underpaid Weisner by \$2,397.29.

136. The sheriff's office employed David L. Peterson beginning March 1, 1993. As of July 1, 2001, he was a patrolman I. For reasons that are not explained in the record, his longevity date was November 14, 1995. On May 19, 2003, he was promoted to the position of sergeant.

137. The County paid Peterson an hourly rate of \$17.23 for the first 16 pay periods of FY02 and \$18.03 for the remaining 10 pay periods, \$18.92 for FY03, and \$20.83 for FY04. It paid him longevity on a bi-weekly basis as follows:

Period	Bi-weekly Amount
7/1/01 to 11/3/01	68.91
11/4/01 to 2/9/02	82.69
2/10/02 to 6/29/02	74.66
6/30/02 to 11/2/02	78.53
11/3/02 to 2/22/03	91.62
2/23/03 to 6/28/02	104.71
6/29/03 to 11/15/03	110.15
11/16/03 to 12/28/03	123.92
12/29/03 to 6/30/04	137.69

138. When the County issued corrected pay amounts for the deputies in March 2004, it failed to reflect Peterson's promotion from patrolman III to sergeant for 3 pay periods of the pay adjustment for FY03. He was underpaid \$220.80 in base pay and \$39.33 in overtime premium as a result.

139. The County underpaid Peterson's base salary by \$1,215.36 and overtime premium by \$145.84 in FY02. The County overpaid Peterson's longevity by \$22.39 in FY02, by \$19.51 in FY03, and by \$422.30 in FY04. The County failed to include longevity in Peterson's overtime premium pay during the period and owes him an additional \$998.51 in overtime for the period of the claim. Netting these sums, and adding the underpayment of salary and overtime for the end of FY03, the County underpaid Peterson by \$2,155.65.

140. The sheriff's office employed William A. Kussman beginning October 17, 1995. As of July 1, 2001, he was a patrolman II. Effective with the pay period ending July 14, 2001, he was assigned to the position of patrolman I.

141. The County paid Kussman an hourly rate of \$17.23 for the first 16 pay periods of FY02 and \$18.03 for the remaining 10 pay periods, \$18.92 for FY03, and \$19.86 for FY04. It paid him longevity on a bi-weekly basis as follows:

Period	Bi-weekly Amount
7/1/01 to 10/6/01	68.91
10/7/01 to 2/9/02	82.69
2/10/02 to 6/29/02	74.66
6/30/02 to 10/5/02	78.53
11/6/03 to 6/28/03	91.62
6/29/03 to 6/30/04	110.15

142. The County underpaid Kussman's base salary by \$1,215.36 and overtime premium by \$21.41 in FY02. The County overpaid Kussman's longevity by \$23.78 in FY02, and underpaid him by \$99.43 in FY03, and by \$13.92 in FY04. The County failed to include longevity in Kussman's overtime premium pay during the period and owes him an additional \$276.82 in overtime for the period of the claim. Netting these sums, the County underpaid Kussman by \$1,603.15.

143. The sheriff's office employed Lisa K. Howe beginning June 27, 2000. As of July 1, 2001, she was a patrolman probationary. Effective with the pay period ending July 14, 2001, she was assigned to the position of patrolman III.

144. The County paid Howe an hourly rate of \$15.97 for the first 16 pay periods of FY02 and \$16.71 for the remaining 10 pay periods, \$17.54 for FY03, and \$18.41 for FY04. It paid her longevity on a bi-weekly basis as follows:

Period	Bi-weekly Amount
7/1/01 to 2/9/02	12.77
2/10/02 to 6/15/02	12.44
6/16/02 to 6/29/02	24.89
6/30/02 to 6/14/03	26.18
6/15/03 to 6/30/04	41.31

145. The County underpaid Howe's base salary by \$1,126.08 and overtime premium by \$17.97 in FY02. The County underpaid Howe's longevity by \$22.37 in FY02, by \$28.00 in FY03, and by \$47.47 in FY04. The County failed to include

longevity in Howe's overtime premium pay during the period and owes her an additional \$117.87 in overtime for the period of the claim. Adding these sums, the County underpaid Howe by \$1,359.74.

146. The sheriff's office employed Larry W. Platts beginning June 21, 1989.³ As of July 1, 2001, he was an investigator.

147. The County paid Platts an hourly rate of \$18.91 for the first 16 pay periods of FY02 and \$19.79 for the remaining 10 pay periods, \$20.77 for FY03, and \$21.80 for FY04. It paid him longevity on a bi-weekly basis as follows:

Period	Bi-weekly Amount
7/1/01 to 2/9/02	181.51
2/10/02 to 6/29/02	149.32
6/30/02 to 6/14/03	170.15
6/15/03 to 6/28/03	183.23
6/29/03 to 6/30/04	192.77

148. The County overpaid Platts by \$159.20 for the pay period ending July 13, 2002, but it deducted this amount from his pay adjustment in March 2004.

149. The County underpaid Platts' base salary by \$1,334.40 and overtime premium by \$47.04 in FY02. The County overpaid Platts' longevity by \$314.76 in FY02, and underpaid him by \$192.64 in FY03, and by \$218.07 in FY04. The County failed to include longevity in Platts' overtime premium pay during the period and owes him an additional \$526.96 in overtime for the period of the claim. Netting these sums, the County underpaid Platts by \$2,004.36.

150. The sheriff's office employed Robert C. Bourassa beginning January 1, 1979. He terminated employment on December 31, 1998. His final paycheck was issued on January 6, 1999.

³Although the County's exhibit states that Platts's longevity date was September 19, 1989, it regularly adjusted his longevity based on the June 21, 1989 date. This decision therefore uses the June date.

151. The sheriff's office employed Uriah S. Wood as a patrolman probationary beginning April 6, 2003. On April 6, 2004, he was assigned to the position of patrolman III.

152. The County paid Wood an hourly rate of \$16.36 for FY03, and \$17.93 for FY04. It paid him no longevity.

153. When the County issued corrected pay amounts for the deputies in March 2004, it failed to include Wood for 6 pay periods of the pay adjustment for FY03. He was underpaid \$345.60 in base pay as a result. Further, the County did not increase Wood's base pay to \$18.37 per hour when he was promoted to patrolman III, and he was underpaid \$243.67 as a result.

154. The County underpaid Wood's longevity by \$90.16 in FY04. Adding his amount to the underpayment of salary for the ends of both FY03 and FY04, the County underpaid Wood by \$679.43.

155. The sheriff's office employed Gregory S. Todd as a patrolman probationary beginning June 16, 2003. On June 29, 2004, he was assigned to the position of patrolman III.

156. The County paid Todd an hourly rate of \$17.08 for FY03, and \$17.93 for FY04. The County did not increase Todd's base pay to \$18.37 per hour when he was promoted to patrolman III, or pay him longevity on his anniversary date. He was underpaid \$7.08 in base pay and \$18.60 in longevity, for a total of \$25.68.

IV. DISCUSSION AND ANALYSIS⁴

In a statute commonly referred to as the Wage Payment Act, Montana law establishes a mechanism for employees claiming unpaid wages to seek recovery of those wages through the Department of Labor and Industry. Mont. Code Ann. § 39-3-201 *et seq.* The Act requires that employers pay employees wages within 10 days of when they become due. Mont. Code Ann. § 39-3-204. Employees may pursue claims for unpaid wages under the Act through the department, even when the claim is based on an independent statute such as the federal Fair Labor Standards Act. *Hoehne v. Sherrodd*,

⁴Statements of fact in this discussion and analysis are incorporated by reference to supplement the findings of fact. *Coffman v. Niece* (1940), 110 Mont. 541, 105 P.2d 661.

Inc. (1983), 205 Mont. 365, 668 P.2d 232; *State v. Holman Aviation* (1978), 176 Mont. 31, 575 P.2d 925.

The claimants in this matter seek recovery of wages they claim to have been underpaid as a result of the manner in which Lewis and Clark County has applied the various statutes governing compensation for deputies of County sheriffs. In particular, they contend that the County improperly determined the longevity component of deputy compensation due under Mont. Code Ann. § 7-4-2508(2) in 2004. As a result, when the County adjusted their pay in accordance with the opinion of the Lewis and Clark county attorney, the pay adjustments were less than the amounts actually due the claimants. In addition, those deputies who terminated employment claim that the longevity amounts were not incorporated into their payouts of sick and annual leave made pursuant to Mont. Code Ann. §§ 2-18-617 and 2-18-618. Claimants Michel and Lamb also claim that their salaries were improperly calculated after July 1, 2001, but because they had terminated employment before the March 19, 2004 pay adjustment, they never received the increased base pay paid to those deputies still employed. The County contends that the longevity of the deputies was properly calculated and that the claims of the deputies who terminated employment, except for Clouse, are barred by the statute of limitations. It also contends that it properly calculated the wages due the claimants.

A. Statute of Limitations for Claims under the Wage Payment Act

The statute of limitations set forth in the Wage Payment Act provides that “an employee may recover all wages and penalties . . . by filing a complaint within 180 days of the default or delay in the payment of wages.” Mont. Code Ann. § 39-3-207(1). With respect to deputies who were employed by the County on March 19, 2004, and thereafter, the initial claimed default in longevity pay occurred on that date, and an additional default or delay occurred with each pay period thereafter. All of the deputies who were current employees at the time they filed their claims filed within 180 days of the claimed default or delay in the payment of their wages. Their claims were therefore timely filed.

Clouse, Michel, Shamley, McFerrin, Lamb, and Bourassa had terminated employment prior to filing their claims. Therefore, the last claimed default or delay in the payment of their wages occurred when they received their final paychecks. Clouse received his final paycheck either on January 9, 2004 or March 1, 2004. He filed his claim on February 2, 2004. Michel terminated employment on July 31, 2003. The last claimed default or delay in the payment of his wages occurred on or about August 15, 2003, when he received his final check. He filed his wage claim with the

department on February 25, 2004, 195 days later. Shamley terminated employment on March 31, 2000. The last claimed default or delay in the payment of his wages occurred on or about April 14, 2000, when he received his final check. He filed his wage claim with the department on March 3, 2004, nearly 4 years later. McFerrin terminated employment on March 24, 2000. The last claimed default or delay in the payment of his wages occurred on or about March 29, 2000, when he received his final check. He filed his wage claim with the department on March 9, 2004, nearly 4 years later. Lamb terminated employment on October 20, 2002. The last claimed default or delay in the payment of his wages occurred on or about October 23, 2002, when he received his final check. He filed his wage claim with the department on May 5, 2004, 560 days later. Bourassa terminated employment on December 31, 1998. The last claimed default or delay in the payment of his wages occurred on or about January 6, 1999, when he received his final check.

Based on the plain language of the statute of limitations contained in the Wage Payment Act, the claims of the deputies who had terminated employment, except for Clouse, are untimely.⁵ The claimants argue for relief from the statute of limitations set forth at Mont. Code Ann. § 39-3-207, contending that other statutes of limitation, particularly Mont. Code Ann. §§ 27-2-202 and 27-2-203 apply to the claims, that the limitations period did not commence until the claimants learned that the County was improperly paying the deputies, and that the limitations period should be extended for various equitable reasons.

Although the hearing officer specifically requested briefing on how any statute of limitations other than Mont. Code Ann. § 39-3-207 could apply to this case, the parties provided no persuasive authority to support such a contention. Prior to 1999, the Wage Payment Act contained no specific statute of limitation, and the limitations period for wage claims was determined with reference to the general statutes of limitations contained in Title 27, Ch. 2, Mont. Code Ann. The statute most often applied was Mont. Code Ann. § 27-2-202, because an employment agreement is a contract, and the action to recover wages is therefore founded on contract. *Pope v. Keefer* (1979), 180 Mont. 454, 463, 591 P.2d 206, 212. Further, as noted in an opinion of the Attorney General, the wage claims of public officers, including sheriffs' deputies, were considered to be governed by the 2-year statute of limitations contained in Mont. Code Ann. § 27-2-211 because they arise out of a statutory liability rather than contract. 43 Op. Att'y Gen. No. 58 (1990). The 1999 legislature, however, amended the Wage Payment Act expressly to establish the shorter statute of limitations

⁵Bourassa's claim is not subject to the 180-day statute of limitations for reasons that are discussed *infra*. It is nevertheless untimely.

that is now set forth at Mont. Code Ann. § 39-3-207. Although the claimants may have had other causes of action available to them under other legal theories that would have been subject to the statutes of limitation set forth in Title 27, the department's authority is limited to that set forth in the Wage Payment Act. Accordingly, to avail themselves of the forum and remedies afforded by the Wage Payment Act, claimants must file timely claims with the department as provided for in that Act.

The hearing officer is aware of no authority applying Mont. Code Ann. § 27-2-203, governing actions for relief on the ground of fraud or mistake, to claims for unpaid wages, but even if this statute might have applied, it was superseded by the 1999 amendment of the statute, in the same manner that Mont. Code Ann. § 27-2-202 was superseded.

Regarding the contention that the statute should not begin to run until the claimants had knowledge of the claims, this contention is foreclosed by Mont. Code Ann. § 27-2-102, which establishes rules of construction for statutes of limitation. It states:

Unless otherwise provided by statute, the period of limitation begins when the claim or cause of action accrues. *Lack of knowledge of the claim or cause of action, or of its accrual, by the party to whom it has accrued does not postpone the beginning of the period of limitation.*

Emphasis added. A cause of action for the failure to pay wages when due accrues at each payday when the failure occurs. *Pope v. Keefer, supra*. In enacting the 1999 amendments to the Wage Payment Act, the legislature made no provision to extend the time for the running of the statute based on lack of knowledge. *Compare* Mont. Code Ann. § 49-2-501(4), in which the legislature establishes the statute of limitations for claims under the Human Rights Act as "180 days after the alleged discriminatory practice occurred *or was discovered*." [Emphasis added]. There is no comparable language in the Wage Payment Act. Thus, lack of knowledge does not extend the time to file a wage claim.

Claimants also rely on Mont. Code Ann. § 27-2-102(3), contending that the County concealed the actual manner in which it was paying the deputies, and that when Clouse attempted to inquire into the payment methodology, then Sheriff McCormack directed him to drop the matter. There are numerous problems with this contention. First of all, Mont. Code Ann. § 27-2-102(3) is applicable to claims for injury to person or property. The claims at issue here are wage claims, not injury claims. Second, the statute requires that the facts constituting the claim be by their

nature concealed or self-concealing, or that the defendant has taken action to prevent the claimant from discovering the injury or its cause. The claims in this case involve wage payments. The claimants received their pay on a regular basis, and had to know as a matter of fact what they were paid. The facts that would establish what they should have been paid were the official acts of public bodies, the County Compensation Board and the Board of County Commissioners. These facts were not by their nature concealed or self-concealing, and the evidence does not support a finding that the County took action to prevent discovery of the facts. Third, even if the other requirements of the statute are met, the limitations period begins to toll when the facts have been discovered or could have been discovered in the exercise of reasonable diligence.

When the statute of limitations issue involves the time at which the plaintiff, through the use of reasonable diligence, should have discovered the facts, “the test is whether the plaintiff has information of circumstances sufficient to put a reasonable person on inquiry, or has the opportunity to obtain knowledge from sources open to his or her investigation.”

Osterman v. Sears, ¶127, 2003 MT 327, 318 Mont. 342; 80 P.3d 435. Again, the claimants knew what they were being paid. That knowledge is sufficient to put a reasonable person on inquiry into whether the manner of payment was proper. No evidence supports a finding that the claimants, through the exercise of reasonable diligence, could not have discovered the facts that formed the basis for the County’s compensation determinations at or about the time they received their paychecks.

Even if Mont. Code Ann. § 27-2-102(3) or some other equitable theory⁶ operated to extend the time when the statute of limitations began to toll, the claimants did not prove concealment by the County as a matter of fact. The evidence on which the claimants’ theory of concealment rests is the testimony of Clouse that, sometime in 2001, the sheriff ordered him not to pursue the issue of how the County had determined deputy compensation, and that the County failed to provide the Lewis and Clark County Sheriff’s Employees’ Association with an addendum to the collective bargaining agreement after 2001 that showed how compensation was calculated.

⁶Statutes of limitation generally are subject to tolling on equitable principles. *See, e.g. Chance v. Harrison* (1995), 272 Mont. 52; 899 P.2d 537. However, the claimants have not raised any equitable theories other than concealment.

Clouse testified that he considered the directive of the sheriff to drop the issue of deputy compensation to be an order for which he could have been disciplined for his failure to comply. His testimony that the sheriff and other County officials intimidated him was not credible. Even if it had been, Clouse himself filed a timely complaint. It is unclear how the purported order to Clouse could excuse the failure of other officers to timely file their complaints. In particular, the claims of Bourassa, Shamley and McFerrin accrued between 1999 and 2000, long before any discussions about FY02 compensation between Clouse and McCormack. As to the failure to provide information, Clouse's testimony was not clear as to whether the County failed to supply the addenda, or simply failed to include the salary of the sheriff, the beginning point of the calculation, on the addenda. The addenda themselves were in evidence and had obviously been prepared by the County. However, any suggestion that the County intentionally concealed the true manner by which it determined deputy compensation is pure speculation. And as noted, *supra*, the claimants did not exercise reasonable diligence to attempt to obtain such information. The facts do not support relief from the statute of limitations based on concealment.

Lamb contends that Mont. Code Ann. § 39-3-207(2) makes his claim timely because it allows recovery of wages for a period of two years. However, this interpretation is not consistent with the plain language of the statute. The complete text of Mont. Code Ann. § 39-3-207 states:

(1) An employee may recover all wages and penalties provided for the violation of 39-3-206 by filing a complaint within 180 days of default or delay in the payment of wages.

(2) Except as provided in subsection (3), an employee may recover wages and penalties for a period of 2 years prior to the date on which the claim is filed if the employee is still employed by the employer or for a period of 2 years prior to the date of the employee's last date of employment.

(3) If an employer has engaged in repeated violations, an employee may recover wages and penalties for a period of 3 years from the date on which a claim is filed if the employee is still employed by the employer or for a period of 3 years prior to the date of the employee's last date of employment.

The rules of statutory construction require that the language of a statute be construed according to its plain meaning. *Lovell v. St. Comp. Mut. Ins. Fund* (1993), 260 Mont. 279, 860 P.2d 95. Where the language is unambiguous, the tribunal must look at the plain meaning of the statute and may not go further and apply other means

of interpretation. *Tongue River Electric Co-op v. Montana Power Company* (1981), 195 Mont. 511, 636 P.2d 862. Furthermore, a tribunal must find legislative intent from the plain meaning of the language by reasonably and logically interpreting the statute as a whole without omitting or inserting anything or determining intent from a reading of only a part of the statute. *Gaub v. Milbank Ins. Co.* (1986), 220 Mont. 424, 715 P.2d 443.

The plain language of the statute compels the conclusion that the legislature imposed a 180-day statute of limitations on wage claims. Subsections (2) and (3) of the statute do not change the 180-day limitation by permitting an employee to file a wage claim more than 180 days after the time the last cause of action accrues. Rather, these subsections serve only to define the remedy available provided that the employee files a timely claim. If, however, more than 180 days elapses from the time that the claim accrues, then the claim is barred by Mont. Code Ann. § 39-3-207(1), unless some legal basis for relief from the statute of limitations exists.

Lamb also maintains that the County initially told him he would receive back pay, and points out that the County human resource officer testified at hearing she thought he should have been included in the group that received back pay. However, at the time the County began consideration of back pay for the deputies, in about the spring of 2004, the time for Lamb to file a claim with the department was long past. When Lamb filed his claim in May 2004, the County immediately raised the statute of limitations defense. Because the time to file had already elapsed, Lamb did not rely to his detriment on representations of the County that he had a claim. Nor did the County waive the statute of limitations defense. The hearing officer is unaware of any other legal theory that might support relief from the statute of limitations on Lamb's claim.

When the legislature adopted the 180-day statute of limitations, it made it applicable to claims accruing on or after April 23, 1999. Section 30, Ch. 442, L. 1999. Bourassa's claim accrued before April 23, 1999, and is therefore not subject to the 180-day statute of limitations.⁷ However, as noted by the Attorney General in 43 Op. Att'y Gen. No. 58 (1990), the wage claims of sheriffs' deputies prior to the 1999 amendment of the Wage Payment Act were subject to the 2-year statute of limitation contained in Mont. Code Ann. § 27-2-211. Bourassa's claim accrued on January 6, 1999, when the County issued his final paycheck. He filed his claim with the

⁷Ch. 442, L. 1999, also changed the appeal procedure for claims under the Wage Payment Act, which will affect any subsequent appeals of Bourassa's claim.

department on August 11, 2004, more than 5 years after his claim accrued. It was therefore not timely filed.

Based on this analysis, the claims of Michel, Shamley, McFerrin, Lamb, and Bourassa were not timely filed with the department, and they are not entitled to any recovery in this proceeding.

B. Deputy Base Pay

The County conceded, when it recalculated deputy pay in March of 2004, that Mont. Code Ann. § 7-4-2508 required the \$2,000.00 addition to be included in the salary of the sheriff when computing deputy base pay. However, the County began miscalculating base pay effective with pay periods beginning on July 1, 2001. It made adjustments in an effort to correct these errors effective with the pay period beginning February 10, 2002.

The County limited the back pay amounts to the period starting February 10, 2002, apparently because it considered any claims the deputies might have to be subject to a 2-year statute of limitation. However, as noted above, the claims were in fact subject to Mont. Code Ann. § 39-3-207, which sets limits on both the time to file claims and on the recovery available to claimants. The statute provides that when an employer has engaged in repeated violations, the period of recovery is limited to 3 years from the date on which a claim is filed if the employee is still employed. The County in this case engaged in repeated violations, with respect to the number of deputies who were improperly paid, with respect to the number of successive pay periods over several years, and with respect to the failure to properly calculate wages even when the County adjusted the pay. All of the claimants who filed timely claims were still employed when they filed their claims, and thus are entitled to back pay for a period of 3 years. Of them, those claimants who were employed between July 1, 2001 and February 9, 2002 are entitled to back pay for that period.

The County maintains that it should not be subject to a recovery period of 3 years, and that a regulation of the U.S. Department of Labor (USDOL) should govern whether the County engaged in repeated violations. That regulation, 29 C.F.R § 578.3, provides that the USDOL will deem a violation “repeated” when the employer has violated the law with notice from a responsible official that the employer was in violation, or when a court or other tribunal has held that the employer has previously violated the law. This regulation was promulgated to implement a provision of the FLSA that allows USDOL to impose civil money penalties on employers. Civil money penalties under the FLSA are paid to the government, not to employees who have been

improperly paid. Although a regulation of this nature may be entirely appropriate to limit the discretion of the *agency* to recover penalties, it has no applicability to restrict the ability of workers to recover wages and penalties due to the *workers*.

Further, the regulation has no applicability to interpretation of Montana law, and to apply it here would violate the plain meaning rule of statutory construction, discussed above. *Lovell v. St. Comp. Mut. Ins. Fund, supra*. The plain meaning of the word “repeated,” according to *The American Heritage Dictionary of the English Language, 4th Ed.*, is “said, done, or occurring again and again.” The plain language of the statute does not require notice of a potential violation for it to be deemed “repeated.” The County engaged in repeated violations, and the claimants are entitled to the 3-year recovery period.

Also on the subject of base pay, the claimants contended at hearing that the County still failed to compute deputy base pay properly even after March 2004 because the sheriff’s salary was in fact \$2,000.00 per year more than that found by the hearing officer in paragraph 25 of the findings of fact. In essence, the claimants contended that the resolutions of the Board of County Commissioners setting elected official pay did not include the \$2,000.00 addition. This contention is not a fair inference from the evidence. Mont. Code Ann. § 7-4-2503(1) requires the County to establish a salary level for a group of elected officials, including the treasurer, clerk and recorder, clerk of district court, assessor, superintendent of schools, sheriff, surveyor, justice of the peace, and auditor. Mont. Code Ann. § 7-4-2503(3)(b) then provides for the \$2,000.00 addition to that base for the salary of the sheriff. The resolutions of the Board of County Commissioners show a base salary for the positions of auditor, justice of the peace, and clerk of court to be one figure, and the base salary of the sheriff to be another figure that is exactly \$2,000.00 more than the base salary for the other officials. It is clear that the County incorporated the \$2,000.00 addition when computing the sheriff’s “base salary” for purposes of the salary resolution.

After the County revised deputy salary in March 2004, with minor exceptions, it properly calculated base salary.

C. Longevity Pay for Sheriffs’ Deputies

As the facts demonstrate, prior to March 2004, the County determined the longevity for deputies to be 1% per year of the sheriff’s base annual salary, i.e. not including the \$2,000.00 “addition.” In March 2004, pursuant to an opinion of the Lewis and Clark county attorney’s office, the County determined that deputy longevity

should be 1% per year of 74% of the sheriff's base annual salary, not including the \$2,000.00 addition. At the same time, the County determined it had improperly calculated the base pay of the deputies by not including the \$2,000.00 addition in sheriff's salary to which the rank percentage applied. The County then recalculated the salaries of the deputies beginning July 1, 2001, increasing each deputy's base salary and reducing each deputy's longevity pay. It netted these sums together, and paid each employee an adjustment. The issue therefore is whether the County properly determined deputy longevity pay.

Mont. Code Ann. § 7-4-2510 establishes longevity pay for sheriffs' deputies in Montana, and provides:

Beginning on the date of his first anniversary of employment with the department and adjusted annually, a deputy sheriff or undersheriff is entitled to receive a longevity payment amounting to 1% of the *minimum base annual salary* for each year of service with the department, but years of service during any year in which the salary was set at the same level as the salary of the prior fiscal year may not be included in any calculation of longevity increases. This payment shall be made in equal monthly installments.

Emphasis added. This statute was enacted by the 1981 legislature as House Bill 558, Sec. 4, Ch. 603, L. 1981. The key language of this statute is the phrase "minimum base annual salary." This phrase is not defined by the statute itself, and it is not clear on its face what salary is the minimum base annual salary. The claimants contend that it is the salary of the sheriff, in accordance with the historic practice of the County. The County contends that it is the lowest base salary provided for deputies in Mont. Code Ann. § 7-4-2508(2) that is applicable to a county of the size of Lewis and Clark, or 74% of the sheriff's salary, not including the \$2,000.00 addition.

The Montana Attorney General has issued two opinions since the enactment of the longevity statute indicating that the "minimum base annual salary" for deputies is the salary provided for in Mont. Code Ann. § 7-4-2508. In a 1981 opinion, Attorney General Mike Greely stated:

Another issue raised by section 5 of HB 558 concerns the proper figure upon which to calculate the 1% longevity payment for deputy sheriffs and undersheriffs. In the early stages of the legislative process,

HB 558 referred to “1% of his minimum base annual salary,” [sic]⁸ thereby requiring calculation based on the specific salary level of each individual undersheriff or deputy sheriff. After being considered by a conference committee, however, the bill’s language was changed to establish the amount of payment as “1% of the minimum base annual salary.” From this change, it must be concluded that the Legislature intended to standardize the base figure for longevity payment calculations by statutorily setting that figure at the minimum permissible level for each county, as set forth in the categories in section 2(1) and (2) of HB 558.

...

The “minimum base annual salary” for calculating longevity payments under House Bill 558 is the statutory minimum level for the county involved, as specified in section 2(1) and (2) of the bill.

39 Op. Att’y Gen. Mont. No. 21 (1981). This opinion is consistent with House Bill 558 because both the change in the language of section 5 from “his annual salary” to “*the minimum base annual salary*” and the creation of the population schedule set forth in section 2(2) were integral parts of the free conference committee report on the bill. Section 7 of the bill was a construction clause which stated:

If there is a conflict between sections 2 through 5 and any other law, sections 2 through 5 govern with respect to undersheriffs and deputy sheriffs.

Thus, it appears that the legislature intended sections 2 through 5 of the bill to be construed together.

In 1989, Attorney General Marc Racicot issued another opinion addressing minimum base annual salary under Mont. Code Ann. § 7-4-2510. That opinion stated:

Your second question involves section 7-4-2510, MCA. . . . For [calculation of compensation for] a deputy sheriff, the statutory scheme is based on county population and a percentage of the sheriff’s salary. § 7-4-2508(2)(a), MCA. *This question has been answered by a prior Attorney General’s Opinion, 39 Op. Att’y Gen. No. 21 at 82 (1981).* The “minimum base annual salary” of a deputy sheriff or undersheriff for purposes of

⁸The original bill actually stated “1% of his annual salary.”

determining longevity payments under section 7-4-2510, MCA, is based on the sheriff's base salary as set forth in section 7-4-2508, MCA.

...

The "minimum base annual salary" of a deputy sheriff or undersheriff for purposes of determining longevity payments under section 7-4-2410, MCA, is based on the sheriff's base salary as set forth in section 7-4-2508, MCA.

43 Op. Att'y Gen. No. 44 (1989) (emphasis added).

In holding that the basis for determining deputy longevity was "the sheriff's base salary as set forth in section 7-4-2508," the 1989 opinion introduced additional ambiguity into the issue of calculation of deputy longevity. It is apparently on this basis that the County has excluded the \$2,000.00 addition from the sheriff's salary for purposes of computing longevity for deputies, since the \$2,000.00 addition is not part of the sheriff's base. But the sheriff's base salary is not set forth in Mont. Code Ann. § 7-4-2508. Rather, it is set forth in Mont. Code Ann. § 7-4-2503.

Reading the 1989 opinion as a whole, and particularly the sentence stating, "This question has been answered by a prior Attorney General's Opinion," it is clear that the Attorney General did not intend to depart from the 1981 opinion on this issue. It is probable that the use of the phrase "sheriff's base salary" was inadvertent. The term "minimum base annual salary" in Mont. Code Ann. § 7-4-2510 means the lowest percentage of the salary of the sheriff applicable to the particular county under the schedule set forth in Mont. Code Ann. § 7-4-2508(2). The phrase "salary of the sheriff" in Mont. Code Ann. § 7-4-2508 cannot mean one thing for one purpose and another for another purpose. "Salary of the sheriff" in Mont. Code Ann. § 7-4-2508, includes the \$2,000.00 addition, and the County has conceded this for purposes of calculating deputy base salary. It must also include the \$2,000.00 for purposes of longevity pay. Thus, for purposes of this case, the "minimum base annual salary" is 74% of the salary of the sheriff, inclusive of the \$2,000.00 addition.

The other issue relating to longevity pay is that the County has never included longevity pay in the hourly rate of deputies for purposes of computing overtime premium pay. The hearing officer inquired of the County's witness about this issue at the hearing, and she confirmed that the County did not include the longevity amount for purposes of calculating overtime.

The County is subject to the provisions of the federal Fair Labor Standards Act (FLSA), which requires employers to compensate employees who work in excess of 40 hours in a single work week at a rate not less than one and one-half times the regular rate at which the employee is employed for the excess hours. 29 U.S.C. § 207(a)(1); *Phillips v. Lake County* (1986), 222 Mont. 42, 721 P.2d 326. In the case of law enforcement personnel, the FLSA allows public agencies to establish alternate work weeks, so that the requirement for overtime premium pay does not accrue until an employee has worked more than 171 hours in a 28 day period. 29 U.S.C. § 207(k); 29 C.F.R. 553.201. Under the FLSA, the “regular rate” at which an employee is employed includes all remuneration for employment paid to, or on behalf of, the employee. 29 U.S.C. § 207(e). The regular hourly rate of pay of an employee is determined by dividing his total remuneration for employment (except statutory exclusions) in any workweek by the total number of hours actually worked by him in that workweek for which such compensation was paid. 29 C.F.R. 778.109. Longevity pay is not among the statutory exclusions, and must be added to the hourly rate when computing overtime premium pay.

D. Determination of Compensation Owed

The claimants are entitled to recover the salary, longevity, and overtime premium that they were underpaid. In many cases, the County overpaid deputies the longevity component of their compensation prior to February 9, 2002.⁹ In other cases, the County overpaid deputies when it adjusted their pay in March 2004. Those overpayments are properly netted against the sums that were overpaid to arrive at the wages due each claimant. In every timely claim except that of Wright, the County owes additional wages to the claimant after the deduction for overpayment. A summary spread sheet showing each element of compensation for each claimant as calculated by the hearing officer is set forth as attachment A to this decision.

The calculation of compensation owing to the claimants presented many challenges, primarily because of gaps and other problems in the evidence. First, the evidence presented by the County concerning compensation paid to the individual claimants did not include the full claim period. There was no evidence concerning compensation during the pay periods ending February 9, 2002 and December 26, 2003, nor was there evidence for any period after February 2004, despite the hearing officer’s order to produce the information for the period of the claims, which in most instances was through June 30, 2004. In addition, because the County did not

⁹After February 9, 2002, the County netted the overpayments of longevity against the underpayments in other compensation.

implement its FY02 pay increases until several months after the commencement of the fiscal year, it paid the deputies retroactively for the increases that were effective on July 1, 2001. However, it is not possible to determine from the evidence how much of the retroactive pay represented salary and how much represented longevity. Also, the pay information for each employee after January 26, 2002, was presented in cumulative totals for the periods 2/02 to 6/02, 7/02 to 6/03, 7/03 to 12/12/03, and January - February 2004. Because of the cumulative totals, the hearing officer could not tell when deputies worked overtime.

Because of the evidentiary problems, the hearing officer has drawn certain inferences from the evidence. Regarding the claim periods for which no evidence exists, the hearing officer has assumed the County continued to pay the claimants the same salary and longevity amount as in February 2004. Although some claimants were entitled to pay and longevity increases after February 2004 but before June 30, 2004, the evidence is not adequate to prove that the County implemented these increases.

Regarding the FY02 pay increases, the hearing officer has assumed that, except for a few deputies who had changes in their pay and longevity rates between July 1, 2001 and the retroactive pay for FY02, the hourly and longevity amounts following the retroactive pay were the amounts paid for the period beginning July 1, 2001. Regarding the overtime hours, the hearing officer generally has prorated the overtime amounts between longevity periods.

E. Penalties and Liquidated Damages

Montana law provides for a penalty to be assessed against an employer that fails to pay wages within 10 days of when they become due pursuant to Mont. Code Ann. § 39-3-204. The penalty is to be paid to the employee in an amount not to exceed 110% of the wages due and unpaid. Mont. Code Ann. § 39-3-206(1). Unless the claim is for minimum wages or overtime, or unless special circumstances are present, the rules of the department provide for a 55% penalty to be imposed. Admin. R. Mont. 24.16.7566(1). Therefore, the County owes the deputies a penalty of 55% on wages, other than overtime, for the period of the claim.

Regarding the failure to pay overtime premium, Mont. Code Ann. § 39-3-408 provides that the liquidated damages provision of the FLSA, not the statutory penalty provisions of the state Minimum Wage and Overtime Act, apply to cases subject to FLSA. The liquidated damages provision of the FLSA states:

Any employer who violates the provisions of Section 206 or Section 207 of this title shall be liable to the employee or employees affected in the amount of their unpaid . . . wages . . . and in an additional equal amount as liquidated damages.

29 U.S.C. § 216.

However, the Portal to Portal Act alters the liquidated damages provision of the FLSA.

In any action commenced prior to or on or after the date of the enactment of this Act to recover unpaid minimum wages, unpaid overtime compensation, or liquidated damages, under the Fair Labor Standards Act of 1938, as amended, if the employer shows to the satisfaction of the court that the act or omission giving rise to such action was in good faith and he had reasonable grounds for believing that his act or omission was not a violation of the Fair Labor Standards Act of 1938, as amended, the court may, in its sound discretion, award no liquidated damages or award any amount thereof not to exceed the amount specified in section 16 of such Act.

29 U.S.C. § 260. The court may refuse to award liquidated damages if the employer demonstrates it acted reasonably and in good faith.

To demonstrate “good faith” under this exception, an employer must show “the act or omission giving rise to [the violation] was in good faith and that [it] had reasonable ground for believing that [its] act or omission was not a violation of the [FLSA].” *Brock v. Shirk* (9th Cir. 1987), 833 F.2d 1326, 1330. This test has both subjective and objective components. *Id.* Good faith requires an honest intention and no knowledge of circumstances which might have put the employer on notice of FLSA problems. *Id.* *See also Key West, Inc. v. Winkler*, 2004 MT 186, ¶¶ 29-32, 322 Mont. 184, 191, 95 P.3d 666, 671.

The County failed to pay overtime premium based on the correct regular rate of pay during the period July 1, 2001 through February 9, 2003, and failed to include longevity in the regular rate of pay for the entire period of the claims. It has not shown that it acted reasonably and in good faith in these actions, and the deputies are entitled to liquidated damages for the overtime portions of their claims.

V. CONCLUSIONS OF LAW

1. The State of Montana and the Commissioner of the Department of Labor and Industry have jurisdiction over this claim under Mont. Code Ann. § 39-3-201 *et seq.* *State v. Holman Aviation* (1978), 176 Mont. 31, 575 P.2d 925.

2. A claim for recovery of wages that accrued on or after April 23, 1999 must be filed with the Department of Labor and Industry within 180 days of the default or delay in the payment of wages. Mont. Code Ann. §§ 39-3-206 and 39-3-207.

3. Lynn B. Michel, Jack B. Shamley, Michael H. McFerrin, John A. Lamb, filed claims for recovery of wages that accrued after April 23, 1999. Their claims were filed more than 180 days after the default or delay in the payment of their wages, and they are therefore not entitled to any recovery.

4. A claim for recovery of wages owing to sheriff's deputies under Mont. Code Ann. §§ 7-4-2508 or 7-4-2510 that accrued before April 23, 1999 must be filed with the Department of Labor and Industry within 2 years of the default or delay in the payment of wages. 43 Op. Att'y Gen. No. 58 (1990).

5. Robert C. Bourassa filed a claim for wages that accrued before April 23, 1999. His claim was filed more than 2 years after the default or delay in the payment of his wages, and he is therefore not entitled to any recovery.

6. The period of recovery for timely claims filed against an employer that has engaged in repeated violations of the wage payment laws is 3 years prior to the date on which the claim is filed.

7. The term "salary of the sheriff" as used in Mont. Code Ann. § 7-4-2508 for purposes of calculating deputy salaries includes the \$2,000.00 sheriff addition provided for in Mont. Code Ann. § 7-4-2503.

8. The term "minimum base annual salary" as used in Mont. Code Ann. § 7-4-2510 for purposes of calculating deputy longevity means the minimum base percentage of the salary of the sheriff applicable to the specific county based on population. In the case of Lewis and Clark County, it is 74% of the salary of the sheriff. The term salary of the sheriff includes the \$2,000.00 addition. Sheriff's deputies are therefore entitled to longevity payments of 1% per year of service of 74% of the salary of the sheriff.

9. Longevity pay must be included in the regular rate of employees for purposes of calculating overtime premium pay. 29 C.F.R. 778.109.

10. Lewis and Clark County violated Mont. Code Ann. § 39-3-204 by failing to pay its sheriff's deputies properly pursuant to Mont. Code Ann. §§ 7-4-2508 and 7-4-2510 from July 1, 2001 through June 30, 2004. The deputies who have been improperly paid are entitled to recover additional wages and overtime premium.

11. Lewis and Clark County owes the claimants who have been underpaid wages a penalty of 55% of the wages due. Mont. Code Ann. § 39-3-206 and Admin. R. Mont. 24.16.7566(1).

12. Lewis and Clark County owes the claimants who have been underpaid overtime premium liquidated damages of 100% of the overtime premium pay due. Mont. Code Ann. § 39-3-408 and 29 U.S.C. § 216.

13. Lewis and Clark County owes additional wages, overtime premium, penalties, and liquidated damages, as follows:

Claimant	Wages	Overtime	Penalty	Liquidated Damages	Total
David L. Clouse	\$899.59		\$494.77		\$1,394.36
Virgil A. Wolfe	\$982.57	\$149.92	\$540.41	\$149.92	\$1,822.82
Timothy A. Zarske	\$1,311.61	\$382.22	\$721.39	\$382.22	\$2,797.44
Wayde A. Cooperider	\$1,204.47	\$110.74	\$60.91	\$110.74	\$1,486.86
Steven J. Adsem	\$1,303.76	\$197.90	\$717.07	\$197.90	\$2,416.63
Alan R. Hughes	\$124.02	\$44.87	\$68.21	\$44.87	\$281.97
Kenneth L. Getz	\$1,016.90	\$137.41	\$559.30	\$137.41	\$1,851.02
Kelly W. Blixt	\$1,333.81	\$31.84	\$733.60	\$31.84	\$2,131.09
Brett L. Friede	\$1,665.16	\$985.09	\$915.84	\$985.09	\$4,551.18
Richard D. Broadwater	\$1,633.92	\$532.78	\$898.66	\$532.78	\$3,598.14

Claimant	Wages	Overtime	Penalty	Liquidated Damages	Total
Dennis E. Nyland	\$1,229.49	\$216.07	\$676.22	\$216.07	\$2,337.85
Joani L. Tompkins	\$1,394.78	\$42.71	\$767.13	\$42.71	\$2,247.33
Cory W. Olson	\$1,892.79	\$577.83	\$1,041.03	\$577.83	\$4,089.48
Raymond L. Potter	\$1,332.02	\$878.69	\$732.61	\$878.69	\$3,822.01
Christopher T. Cornish	\$1,392.32	\$465.08	\$765.78	\$465.08	\$3,088.26
David J. Fradette	\$1,446.78	\$396.73	\$795.73	\$396.73	\$3,035.97
Dirk Anderson	\$1,728.41	\$1,176.91	\$950.63	\$1,176.91	\$5,032.86
Scott E. Lindgren	\$1,540.83	\$122.71	\$847.46	\$122.71	\$2,633.71
Phillip J. Clark	\$1,509.81	\$244.30	\$830.40	\$244.30	\$2,828.81
Jason T. Grimmis	\$1,561.02	\$513.57	\$858.56	\$513.57	\$3,446.72
Michael J. McCarthy	\$1,461.63	\$2,247.54	\$803.90	\$2,247.54	\$6,760.61
Daniel F. O'Malley	\$1,102.66	\$410.21	\$606.46	\$410.21	\$2,529.54
Shane M. Hildenstab	\$973.53	\$124.07	\$535.44	\$124.07	\$1,757.11
Vance E. Lavinder	\$1,618.47	\$253.26	\$890.16	\$253.26	\$3,015.15
Sam A. Mahlum	\$594.50	\$113.41	\$326.98	\$113.41	\$1,148.30
Brian R. Robinson	\$1,018.40	\$141.52	\$560.12	\$141.52	\$1,861.56
Gary L. Weisner	\$1,585.16	\$812.13	\$871.84	\$812.13	\$4,081.26
David L. Peterson	\$971.96	\$1,183.69	\$534.58	\$1,183.69	\$3,873.92
William A. Kussman	\$1,304.93	\$298.22	\$717.71	\$298.22	\$2,619.08
Lisa K. Howe	\$1,223.91	\$135.83	\$673.15	\$135.83	\$2,168.72

Claimant	Wages	Overtime	Penalty	Liquidated Damages	Total
Larry W. Platts	\$1,430.36	\$574.00	\$786.70	\$574.00	\$3,365.06
Uriah S. Wood	\$679.43		\$373.69		\$1,053.12
Gregory S. Todd	\$25.68		\$14.12		\$39.80

14. Lewis and Clark County owes no additional wages to Kevin H. Wright.

VI. ORDER

1. Lewis and Clark County IS HEREBY ORDERED to tender cashier's checks or money orders payable to each of the claimants identified in paragraph 13 of the conclusions of law, *supra*, in the amount specified as owing to each claimant, and delivered to the Wage and Hour Unit, Employment Relations Division, P.O. Box 6518, Helena, Montana 59604-6518 no later than November 2, 2005. Lewis and Clark County may deduct applicable withholding from the wage and overtime premium portions, but not the liquidated damages or penalty portions, of the payments.

2. The claims of Lynn B. Michel, Jack B. Shamley, Michael H. McFerrin, John A. Lamb, Robert C. Bourassa, and Kevin H. Wright ARE HEREBY DISMISSED.

DATED this 3rd day of October, 2005.

DEPARTMENT OF LABOR AND INDUSTRY

By: /s/ ANNE L. MACINTYRE
 Anne L. MacIntyre
 Hearing Officer

NOTICE: Except regarding the claim of Robert C. Bourassa, a party wishing to appeal this final agency decision is entitled to judicial review in accordance with Mont. Code Ann. § 39-3-216(4), by filing a petition for judicial review in an appropriate district court within 30 days of service of the decision. See also Mont. Code Ann. § 2-4-702.

Regarding the claim of Robert C. Bourassa (Case No. 285-2005), a party wishing to appeal this decision may obtain review by filing a written notice of appeal postmarked

no later than October 18, 2005. This appeal time includes the 15 days provided for in Mont. Code Ann. (1997) § 39-3-216(3).

The notice of appeal shall consist of a written appeal of the decision of the hearing officer. It must set forth the specific errors of the hearing officer and the issues to be raised on appeal. Notice of appeal shall be mailed to:

Board of Personnel Appeals
Department of Labor and Industry
P.O. Box 6518
Helena, MT 59624-6518

If there is no appeal filed and no payment is made pursuant to this Order, the Commissioner of the Department of Labor and Industry will apply to the District Court for a judgment to enforce this Order pursuant to Mont. Code Ann. § 39-3-212. Such an application is not a review of the validity of this Order.