STATE OF MONTANA DEPARTMENT OF LABOR AND INDUSTRY HEARINGS BUREAU

IN THE MATTER OF THE WAGE CLAIM	1) Case No. 1732-2008
OF RONALD NEDENS,)
Claimant,)))
VS.) ORDER ON REHEARING
FARMERS UNION ASSOCIATION, BIG HORN COUNTY, MONTANA, a Montana corporation,))))
Respondent.)
* * * * * *	* * * * *

The hearing officer has read and considered the respondent's motion for rehearing. In the motion, the respondent correctly points out that the parties did not dispute that "Nedens agreed in writing to make a \$20,000.00 restitution payment to be taken out of his yearly bonus." Claimant's motion for summary judgment, page 2. The hearing officer had no basis upon which to determine that "Nedens entered into an agreement with FUA . . ." as stated in Finding of Fact Paragraph 6. Rather, in light of the parameters of the claimant's motion for summary judgment, the only purpose of placing finding of fact number 6 in the order granting summary judgment was to point out that the claimant did not seek to recoup the \$20,000.00 amount in this proceeding. It was not the intent of the hearing officer to make a finding of fact to create any type of collateral estoppel issue for either party with respect to the \$20,000.00 amount in the district court proceeding.

Mont. Code Ann. § 39-3-216 provides that a party may request either a rehearing or may appeal a final decision in a wage and hour matter to the district court. While there are no specific rules in either the wage and hour statutes or the applicable administrative rules that denote the parameters of granting a motion for rehearing, a useful framework exists in Mont. Code Ann. §§ 25-11-103 and 25-11-102. Under those two statutes, a rehearing may be granted after trial by the court where there has been irregularity in the proceedings of the court which has resulted in a party not receiving a fair trial. Under the Montana Administrative

Procedures Act, findings of fact must be based exclusively on the evidence and on matters officially noticed. Mont. Code Ann. § 2-4-623(2).

Summary judgment may only be rendered where "there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Rule 56, M.R. Civ. Pro. *See also, Sprunk v. First Bank Sys.*, 252 Mont. 463, 830 P.2d 103 (1992). Where the facts are disputed, summary judgment is not appropriate. *Id.*

In the summary judgment proceeding before this tribunal, it was unnecessary to determine whether any agreement existed as to the \$20,000.00. It was adequate to find that, for purposes of this litigation, the claimant was not seeking the \$20,000.00. It was inappropriate for the hearing officer to suggest or imply through finding of fact number 6 that FUA had entered into any agreement with Nedens regarding the \$20,000.00. Accordingly, the hearing officer agrees that entering a finding that "Nedens entered into an agreement with FUA" was beyond the power of this tribunal and amounted to an irregularity in the proceeding which must be corrected.

In light of the foregoing, the motion for rehearing is granted. Finding of Fact Paragraph 6 of the order granting Summary Judgment is modified *nunc pro tunc* to read as follows:

"Nedens agreed in writing to make a \$20,000.00 restitution payment to be taken out of his yearly bonus. Subtracting the \$20,000.00 amount, Nedens was due a net total of \$64,001.42 in bonus through December 31, 2007. Other than the \$20,000.00 amount, Nedens never agreed that FUA could withhold his bonus."

In all other respects, the summary judgment order issued on October 1, 2010 is affirmed.

DATED this <u>2nd</u> day of December, 2010.

DEPARTMENT OF LABOR & INDUSTRY HEARINGS BUREAU

By: <u>/s/ GREGORY L. HANCHETT</u> GREGORY L. HANCHETT Hearing Officer