

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MARION

DAVID YOUNG, et al.,
Plaintiffs,
v.
STATE OF OREGON,
Defendant.

Case No. 96C10933
Honorable Paul J. Lipscomb
ORDER RE: ADMINISTRATION OF CASE

This matter came before the court on September 25, 2000, on (1) plaintiffs’ motion for orders on unresolved issues; and (2) the State’s motions re: administration of case and scope of class-wide relief. Plaintiffs were represented by class counsel John Hoag; the State was represented by Assistant Attorney General Stephen K. Bushong. The court, having considered the oral and written arguments of the parties and being fully advised, issued rulings on some issues from the bench; the court’s ruling on one issue was set forth in a letter opinion dated October 13, 2000.

For the reasons expressed by the court from the bench, and in its October 13, 2000 letter opinion, it is hereby ORDERED as follows:

1. Notice shall be given to class members by first class mail and by publication in selected newspapers of general circulation. A postage-paid business reply envelope is not required. If the mailed notice sent to the home address of any current State employee is returned as undeliverable, a copy shall be delivered to the employee at work.
2. Plaintiffs’ counsel may retain the Oregon Survey Research Laboratory (OSRL) (at plaintiffs’ expense) to make a scripted, follow-up telephone call to any class members who do

1 not respond to the notice within five weeks, to determine whether the class member actually
2 received the notice.

3 3. OSRL's agreement with the State does not cover providing testimony at any
4 arbitration hearings on disputed claims. A party may subpoena OSRL or an OSRL
5 representative to testify at an arbitration hearing in the manner provided by law. The party
6 issuing any such subpoena will be initially responsible for OSRL's witness fees.

7 4. The notice to class members and instructions to arbitrators shall state that
8 estimates of overtime hours must be credible.

9 5. The administrative rule adopted by the Bureau of Labor and Industries concerning
10 lunch breaks and meal periods, OAR 834-020-0050, does not apply in this case. Lunch breaks
11 and meal periods shall count as time worked for purposes of ORS 279.340 only to the extent
12 state business is conducted during such periods.

13 6. OSRL and arbitrators selected to resolve disputed claims shall calculate overtime
14 awards on the basis of the "federal formula" (commonly referred to as the "half-time method")
15 used to calculate overtime under the Fair Labor Standards Act for employees who receive a fixed
16 salary for working fluctuating hours.

17 7. The State is not entitled to offset work hours below 40 per week in any week
18 during the claim period (excluding sick leave, vacation, or other leave time) against work hours
19 in excess of 40 hours per week in other weeks during the claim period, for purposes of
20 computing overtime awards.

21 8. The court declines to decide the issue of prejudgment interest on overtime awards
22 at this time. That issue may be addressed by the court at a later date after the issue is properly
23 framed by the pleadings and fully briefed by the parties.

24

25

26

1 9. The parties shall submit the final form of notice, the “Overtime Hours
2 Questionnaire,” and Instructions to Arbitrators to the court for final approval before notice to
3 class members is given.

4 It is so ORDERED this ____ day of November, 2000.

5

6

7

PAUL J. LIPSCOMB
Circuit Court Judge

8

Submitted by: Stephen K. Bushong
Assistant Attorney General
Of Attorneys for Defendant

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26