



U.S. Department of Homeland Security
Bureau of Immigration and Customs Enforcement

HQHRD 100/9.2

800 K Street NW
Washington, DC 20536

September 26, 2003

Re: FLSA Grievance

Dear Mr. Vitaro:

Herewith please find the Agency's response to your September 8, 2003 letter incorporating your August 5, 2003 order. The Agency apologizes for any undue delays in this matter. Due to the Homeland Security Act of 2002 and the subsequent restructuring of the bureaus under the Department of Homeland Security (DHS), the past months have been filled, and continue to be filled, with the priorities of transforming the former Immigration and Naturalization Service into the bureaus that will fulfill the DHS responsibility to prevent terrorists and terrorist weapons from entering the United States.

1. **Immediate payment of "old claimants":** The Agency transmitted the information to Mr. Goldberg on August 1, 2003, several days before the original date of the order. A copy of that transmittal is herein enclosed as Attachment A. The information identified the claimants, their eligibility periods, whether they filed a suffer and permit claim, and whether or not they are current or former employees. To date, there has been no response from the Union for the purpose of raising any issues disputing the members of the class as identified by the Agency. Please note that, with respect to the definitions referenced in your order, the Agency, as previously expressed, does not distinguish between old and new claimants.

Pursuant to your order and absent a specific response from the Union, the Agency will begin the computation process for all eligible claimants who have not submitted a FLSA suffer and permit claim. With regard to those claimants who filed an FLSA suffer and permit claim (see item 4 below), the Agency must yet determine the validity of their claims. Only upon completion of the validation process, can the Agency begin to the back pay computation process. The reason for this processing methodology for the FLSA suffer and permit claims is that each validated claim will require a retroactive entitlement calculation process that is significantly different than the one to be used in the majority of the cases. For most retroactive calculations, the

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existing database provides the foundation of the computation process. However, for the FLSA suffer and permit cases, the database must be subjected to changes in hours for each of the subject class members which will likely impact the entire FLSA calculation process.

2. **Deciding issues involving "newly excluded old claimants":** As of this writing, the Union has not provided the Agency with an explanation for the options it identified. It has yet to provide evidence of its inability to contact this class of claimants. Therefore, the Agency cannot respond accordingly. However, in the interests of clarity, it should be noted that the Union represented that it posted the April 2003 list provided to it by the Agency on its web site. The Agency would therefore suggest that the Union could update the list by using Attachment A on its website with the one provided to it and address the fact the original list contained ineligible claimants.
3. **Deciding issues involving new claimants:** This order has also already been fulfilled by the Agency when it transmitted a review of "new claimants" to Mr. Goldberg on May 5, 2003. See Attachment B. The Union has yet to reply to this information.
4. **Deciding issues involving suffer or permit claims:** First, please note that pursuant to your order, Attachment A, which was already provided to the Union as indicated above, lists those claimants that the Agency acknowledges to be members of the class. Second, the Union has identified six hundred seventy-two (672) class members that have filed an additional 800,000 FLSA "hours of work." See AFGE disk 3/13/2003 – Attachment C. One hundred eighty (180) of these claims have been filed by non-class members and were excluded accordingly and were not included in Attachment A. The list of exclusions, provided as Attachment D, contains the relevant reasons. This leaves four hundred ninety two (492) class members, who are also in our database (Attachment A), and whose claims must yet be validated as explained in item 1 above.

Given the enormity and complexity of resolving these matters, the Agency continues to work in good faith in resolving this issue and to bring the matter to a close using effective, efficient, and appropriate measures to satisfy the claimants, the Union, and the public interest.

Sincerely,



Ilir M. Tsungu
Acting Chief
Labor & Employee Relations Policy Section

cc: Mr. Goldberg

Attachments