



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

HQHRD 100/9.2

*800 K Street NW
Washington, DC 20536*

October 16, 2003

Mr. Sam Vitaro

Re: FLSA Grievance

Dear Mr. Vitaro:

I am writing this letter in response to Mr. Goldberg's September 29, 2003 Fax on the subject matter.

1. It is surprising that the Union makes a demand for actuating the methods, means, and timelines it proposed in its July 18, 2003, letter because the Agency was merely responding to the Arbitrator's Order. It seems that Union's counsel relies on his July 18, 2003, letter as the authority in deciding this case. The Agency believes that the parties are held to the Arbitrator's edicts.
2. The August 1, 2003, transmission to the Union was not the same information previously provided. A comparison of Attachments A and C would show that the latter information is more focused, accurate and relevant. The Union's allegation is not supported by any evidence, documentation, or representation of facts.
3. The Agency contends that the specific pay rates, grades, steps, and locality pay are not at issue in the grievance. What is at issue is employees' entitlement to FLSA coverage, which dictates the method of calculation of overtime reimbursement. Various payroll offices that are not part of this Agency maintain the data used to determine an employee's pay for any particular period. Payroll records include all of the information necessary to ensure proper payment including not only the employee's rates of pay and work schedule, but also information on the number of hours worked. The information the Agency provided the Union in order to identify legitimate claimants was gathered from personnel records, not payroll records.
4. The Agency addressed the complexities of computing separate payments for FLSA suffer and permit. A restatement of the process and principles would be redundant.

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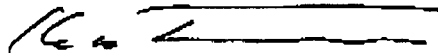
The Agency is unsure whether the Union is unable to appreciate these complexities or whether it simply refuses to acknowledge them.

5. The Agency has already represented that it would begin computing non-FLSA suffer and permit claims. To follow a timeline demanded by the Union would not be consistent with its capabilities and would not serve the interests of justice.
6. The Union is attempting to compel matters without discussion or decision. The Union's claim that the Agency has not objected to providing a detailed explanation of back pay was not a subject of the Arbitrator's Order. We simply are not there yet; the content and form of a notice that may be sent has not been fairly presented and resolved.
7. The Agency has not waived any defense on any issue the Union claims. The Agency responded in accordance with the Arbitrator's Order.

As previously discussed, the calculation process for payment to the claimants is exhaustingly complex. To prevent excessive errors and to avoid unnecessary duplications and costs, the sequential process described in the Agency's response, and that which was asserted by the Agency from the start, needs to be followed. To enforce the Union's demands on the methods, means, and timelines would add confusion to an already complex problem and unduly extend the resolution process.

The Agency requests that the Arbitrator deny the Union's demand dated September 29, 2003 and determine the actions based upon the responses to his Order.

Sincerely,



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

cc: Mr. Goldberg