



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

HQHRD 100/9.2

*800 K Street NW
Washington, DC 20536*

November 3, 2003

BY FACSIMILE
Mr. Samuel A. Vitaro

Re: FLSA Arbitration Hearing

Dear Mr. Vitaro:

The agency is in receipt of your notice for hearing for the subject matter. The agency requests that the hearing be held in the Washington, DC area instead of San Francisco. In addition, it requests that the date of hearing begin on a Tuesday rather than on a Monday.

Inasmuch as witnesses for this matter will be from the Washington, DC area, and because the proximity and accessibility of any required records or information is closer to this area than San Francisco, it would be more fiscally responsible to hold the hearing here. It is not necessary to present this matter in San Francisco. In addition, the agency requests that the hearing be held on December 9-10 with a possible carryover of December 11, 2003. Among other things, this would allow the arbitrator to travel on a Monday rather than a week-end day.

Notwithstanding the fact that the agency has made it clear that the issues raised by the Union with regard to class definition, suffer or permit claims, newly excluded claimants, and the like, are matters that have been sufficiently addressed in the information exchange, it is willing to go to hearing on the matter so that it can be made clear in the arbitrator's mind that the only issues that are truly relevant are those concerning the payment of employees.

To continue with a hearing process as opposed to working together with the Union on the list of employees so that payment can be effected to employees is counter-productive. Be that as it may, hearings will, of necessity, delay the process to pay employees because the Union is effectively intending to revisit the identification process. In the event that the Arbitrator concerns himself with the identification process and because any decision in that regard may

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affect the agency's listings of employees, it would be unwise for the agency to continue with any plans for the payment of employees until the matters raised by the Union are "fully resolved."

Thank you for your considerations.

Sincerely,



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

cc: Mr. Goldberg (by fax)