

November 4, 2005

Mr. Ilir Tsungu  
Acting Deputy Director

**Re: INS FLSA**

Dear Mr. Tsungu:

This letter is in a follow-up to our conference call with the Arbitrator on November 2, 2005, and our previous conference call with the Arbitrator on October 27, 2005. Several matters require our response.

- A. In a letter to you dated October 26, 2005, the Union provided you a list of one-hundred and fourteen (114) individuals who had sent inquires to the Union on payment or non-payment in the INS FLSA case. These inquires should have been (pursuant to the explanation letter sent to “old claimants”) copies of documents that had already been sent to the Agency by the claimant. Our October 26<sup>th</sup> letter contained a set of columns which provided you with the name of the person sending the inquiry (along with the address of that person), the social security number of the claimant, and the reason for the inquiry. Under the “Reason” column there were seven (7) possible notations. These notations were limited to the following: Calculation; Address; Check; Letter; Wrong SSN; Payment amount; and Survivor. You insisted that you did not understand these notations. While I did not understand your confusion over the notations (which seemed to the Union to be completely self-explanatory) you insisted that the Union provide you with an explanation of the notations in writing. So be it.
1. **Calculation**-The claimant disputed the calculations and payment as provided by the National Finance Center.
  2. **Address**-New address or updating address of claimant or survivor.

3. **Check-** The claimant had not received a check/payment or had received payment for the wrong person.
4. **Letter-** The claimant had not received an explanation letter or the wrong explanation letter.
5. **Wrong SSN-** The letter and/or payment information sent by the NFC contained the wrong Social Security Number and (it is assumed) therefore contained incorrect information for the person receiving the letter.
6. **Payment Amount-** The claimant was challenging the payment amount as calculated by the NFC or the payment letter did not match the payment received.
7. **Survivor-** The Agency was being notified that a claimant was deceased and the letter was informing the Agency of a survivor who might be eligible for payment.

During the October 26<sup>th</sup> and November 2<sup>nd</sup> conference calls with the Arbitrator, the Agency astounded the Union (yet again) with its idea of what constitutes “best practices” from a business standpoint. You informed the Arbitrator and the Union that the Agency had (and continues) to send the only copy of payment appeals to the NFC. The Agency was not retaining any copies of the appeal documents. Let’s see if I understand this. The NFC is/was based in New Orleans. At the time of essentially all of the appeal letters to the Agency (sent to Washington D.C. at the Agency’s request) New Orleans, and the NFC acting as a contractor for the Agency, was blown out of New Orleans by one of the most catastrophic hurricanes to hit the United States, Hurricane Katrina. According to the Agency the NFC has been dislocated<sup>1</sup> from New Orleans and is, at best, operating at a much reduced capacity out of several locations in Texas. You have repeatedly stated that communications with the displaced NFC are difficult and inconsistent. With this in mind, the Agency thought it was a “best business” practice to send the only copy of appeal documents to the crippled NFC and to a city (New Orleans) that, for all business purposes, doesn’t even exist. Well done.<sup>2</sup>

On a related matter, a group of approximately 752 checks were issued by the NFC just before Hurricane Katrina hit New Orleans. The NFC has stated that while the checks were sent, the explanatory letters were not sent before the NFC was displaced from New Orleans. During the November 2, 2005, conference call, the Union was informed that the displaced NFC did not have access to the data-base which is the basis of the individual explanatory records. The Union requested that the NFC transfer the required data-base to its current work location so that explanatory letters may be sent.

The Arbitrator requested the Union formulate our request to the NFC in writing. Here is the Union request/query: A data-base was constructed by the NFC pursuant to a

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<sup>1</sup> During the conference call of November 2, 2005, the NFC gave us a best case scenario that they would be returning to New Orleans in February/March 2006.

<sup>2</sup> A suggestion: Retain a copy of the documents you forward to NFC-you will need them later.

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contract with DHS (ICE(?)) that established the factual data for the computation of overtime pay owed by DHS to an identified class of DHS (and former DHS) employees. This data-base was used to calculate and issue payments to these employees during May-August, 2005. The data-base was also used to generate individual "explanatory letters" that were to follow the payments to each employee. In late August 2005 approximately 752 payments (checks and direct deposits) were made to employees. Hurricane Katrina displaced NFC from New Orleans before the follow-up explanatory letters were issued to these 752 payees. The NFC (Angelie Moffit-during a conference call on November 2, 2005) stated that it did not have current access to the data-base used to generate explanatory letters for the late August 2005 payments to the approximately 752 payees.

**QUERY: Would it be possible to transfer the required data-base of the payment information for the approximately 752 August 2005 payees to a location where the explanatory letters may be generated? If this is possible, what would be the approximate time line for the issuance of the approximately 752 payment explanation letters?**

Pursuant to the Arbitrator's request I would ask that this query be made to DHS by the Agency. I would, of course, be quite willing to make this inquiry myself if the Agency provides the current contact information for the NFC.

Sincerely,

Joe Goldberg  
Assistant General Counsel - Litigation

cc: Samuel A. Vitaro  
Jim Bonnette