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Iir M. Tsungu
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Joe Goldberg, Assistant General Counsel - Litigation
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Re: AFGE and NINSC / FLSA Grievance / January 26, 2006 Conf. Call /
Summary and other matters

(Sent to Mr. Goldberg and Mr. Tsungu by e-mail on January 31, 2006)

Dear Joe and Iir:

Thank you for participating in the January 26, 2006 telephone conference and thank you to the Union for arranging that call. In addition to the two of you, the others on the call were Ms. Smalls, Mr. Weaver, Mr. Lindsay, Ms. Sipio, and Ms. Rosario. There were several matters discussed and addressed as follows:

1) **Status of Explanatory Letters from NFC as to Remaining 200–**
Mr. Lindsay confirmed that these had been sent out.

2) **More Specific Letters to Claimants Who Are Contesting the Calculations** – We are still on the same schedule here; Mr. Lindsay confirmed that these letters cannot be sent out until Mid or end of February, after NFC fully returns to New Orleans, and is then able to access records. The Agency, through Ms. Smalls, and with the use of the spreadsheet she compiled, will seek to assure that NFC is clear on which letters are required (i.e., for those who have contested or sought clarification of their straight overtime payments).

3) **Suffer or Permit Calculations** – Ms. Smalls and Mr. Coleman are working on a breakdown of those entitled to compensation (approximately 242) to facilitate the CBP calculations and to focus on the specific needed payroll information. They are about half-way through and should finish in a week.

As to payroll records themselves, DOJ has the records for the June 1991 to October 1992 period. Ms. Smalls has been in contact with DOJ and will have an estimate from them this week, as to when they can provide the information needed for the calculations. NFC has already provided CBP with the automated records for the period between 1994 (roughly) and the end of the liability period in February. The records for 1992 through 1994 are possessed by NFC and are in microfisch and Mr. Lindsay is converting those. He has completed the records for 212 of the approximate 242 and will finish shortly.

The timeframe set for suffer or permit payment by the award is 60 days. The Agency has advised, for understandable reasons, that it will not be able to meet that timeframe and will provide a new suggested date this week. The Union emphasized the need to provide payments as promptly as possible, a goal shared by the Agency and this arbitrator.

CBP will perform the calculations but the actual mailings will be done by NFC. Again, the agency, through Ms. Smalls and her spreadsheet, shall seek to assure that any wrong address problems in the straight overtime mailings are not repeated for these suffer or permit payments (By the way, that is not a criticism of the previous mailing; NFC did a remarkable job overall in obtaining correct addresses for thousands of claimants). The parties agree that a short letter should precede the payment of the checks and the Union has volunteered to prepare a draft short letter, which it will provide to the Agency and this arbitrator.

4) **Information Required by the Award** – Both the Union and Agency will be submitting additional information (The Agency has already provided some and does not appear to need any additional time). The Union is collecting requested information and will be requesting additional time, for understandable reasons, some time this week. Much, if not all of the information that the Union is gathering is commute time. To the extent that the Union, despite its best efforts, is unable to gain that information, I will issue a supplemental Award, presuming a reasonable (but generous in favor of the Agency) presumptive commute time.

5) **Spreadsheet with Information as to Those Contesting Some Aspect of Straight Overtime Calculation or Processing** (Or Those Who Have Some Other Problem Such as Mailing) - This is a spreadsheet organized by SSA and prepared by Ms. Smalls for the Agency. It is the spreadsheet referred to above. Ms. Smalls will add a column showing the disposition, if any, of the problems addressed.

6) **Next Conference Call** – We have agreed to again talk on February 27 at 1:00 PM (EST). (scheduled to appropriately not conflict with Mardi Gras) The Agency will put through the call.

Please let me know if the above does not comport with your recollection or notes.

As to one other matter, the mistaken award for double payment to some suffer or permit claimants, I want those instances to be brought to my attention, as the Agency did as to 2 claimants (Case # 236, where the award should be 20 rather than 33 hours and Case # 247, where the award should be 71 rather than 75 hours). I have no authority to order double payment and these fall into the category of errors that will be remedied in a supplemental award. Similarly, the Union (or Agency) should bring to my attention other errors of miscalculation, as the Union did previously as to one claimant.

Thanks again for all of your hard work.

Sincerely,

Sam Vitaro