

January 30, 2003

Mr. Sam Vitaro

**Re: INS.FLSA**

Dear Arbitrator Vitaro:

During the January 17, 2003, conference call between the parties and yourself the Union was frankly appalled by the blatant refusal of the Agency to honor the commitments it made at our meeting in Washington, D.C., in August 2002. In short, the Agency has done nothing, and, in our January 17<sup>th</sup> conference call, would commit to do nothing. The Union therefore urgently suggests that this case be moved forward despite the Agency's malignant refusal to promptly pay employees from which it has illegally withheld pay.

Pursuant to the conference call between the parties and yourself on January 17, 2003, and the Union's representations made therein, the Union makes the following proposal to expedite the payment of "old claimants".

- A. "Old claimants" are those claimants that the Agency itself has acknowledged are/were INS employees during the backpay period covered by this case.
- B. The Union sees no reason that "old claimants" with pending "suffer or permit" claims be treated differently than those "old claimants" without "suffer or permit" claims pending. The possible issuance of a second check (for payment of the "suffer or permit" claim, if proved) is a mere bureaucratic inconvenience to the Agency, not a real problem. It is vital to have the claimant employees paid the backpay that is not at issue as soon as possible.
- C. Periods (pay periods) when "old claimants" may be outside the universe of employees subject to backpay under this case (i.e. when the employee was overseas, outside the AFGE bargaining unit, or in a position not subject to FLSA backpay) can be readily established by a computerized search using the location codes for each employee during each pay period. Similarly, each employees bargaining unit status and job can be established via a computerized search program using the data bases available to INS.

The Union therefore makes the following proposal:

1. The Agency will contract with any appropriate authority<sup>1</sup> to process the FLSA backpay claims within twenty (20) days of today's date. In negotiations with the contracting party the Agency will seek, in writing, that processing of the backpay claims of "old claimants" be completed and payments made within thirty (30) days of data submission by the Agency. The Agency will offer the contracting party payment of any premium necessary for the contracting party to complete its task within thirty (30) days of data submission. The Agency will include within all contracts with the contracting parties that a Union supplied explanation of benefits be included with any documents that are supplied by the contracting party to the claimants upon payment.
2. The Agency will establish and provide to the contracting party a list of all "old claimants", complete with those specific period when each claimant is and/or is not eligible for backpay, within twenty (20) days of today's date. Should the Agency fail to provide the list specified above within the time period provided, the Agency shall be deemed to waive any deduction for when a claimant may be overseas, outside the AFGE bargaining unit, or in a position not subject to FLSA backpay, during the backpay period.
3. Actual payment to claimants will occur within fourteen (14) calendar days of the payment computations by the contracting party. The claimants will be supplied by the contracting party, upon payment, with a worksheet specifying the method and data used in the payment calculation for each individual claimant.
4. Any claimant may file an objection to the payment within thirty (30) days of receiving the payment, the worksheet, and the Union's explanation memorandum. All objections shall be adjudicated by a joint labor-management committee which will consist of an equal number of union and Agency members. Notwithstanding any other contract or agreement, between the parties the Union members will be provided with travel and *per diem* expenses for their time and travel on the joint labor-management committee. No time utilized by any Union member of the committee shall be deducted from any block of time already established by any agreement as official or union time. Any decision by the joint labor-management committee will be by majority vote of the committee members. Any decision by the joint labor-management committee shall be reduced to writing and the claimant that filed the appeal will immediately be notified of the committee's decision along with a copy of the committee's decision. All objections that are not decided by the joint

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<sup>1</sup> The various payment centers (such as, *inter alia*, the National Finance Center) are the "contracting parties" referred to in the Union's proposal.

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labor-management committee by a majority vote, may at the Union's option, be referred to the arbitrator for final determination. The claimant shall have the right to make a written submission to the arbitrator in support of his/her appeal and to submit evidence in support of the appeal. The arbitrator shall issue his decision based upon the record. Notwithstanding any other agreement, the Agency shall pay the entire cost of the arbitrator on any specific case where the appeal to the arbitrator increases the backpay of the employee.

The Union looks forward to working with the Agency in refining the above proposal at the earliest possible time. The Union further notes that the parties will have a conference call with the Arbitrator on the week of February 10, 2003. The Union suggests the conference call take place Tuesday, February 11, 2003 at 7:00 a.m. PST/10:00 a.m. EST. The Union would also request that a meeting take place in San Francisco at the end of March to move this case forward as quickly as possible.

Sincerely,

Joe Goldberg  
Assistant General Counsel - Litigation

cc: Susan Dole