

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

HQHRD 100/9.2

800 K Street NW
Washington, DC 20536

Mr. Sam Vitaro

Dear Mr. Vitaro:

The Agency once again respectfully declines to attend a meeting in San Francisco for a pre-hearing conference. It is the Agency's position that there is no outstanding dispute at this time. A review of the procedural history of this case reveals that you have issued two arbitration awards, one on notice for suffered and permitted overtime, dated September 2001, and one issued on March 23, 2000 which made the following award:

- (1) The Union has properly initiated a grievance that seeks to enforce the Fair Labor Standards Act overtime compensation claims for its bargaining unit employees, without individual claimants opting into the arbitration proceeding.
- (2) The Union's FLSA grievance seeking overtime compensation for its bargaining unit employees covers those persons who left the bargaining unit prior to the date the Union filed its grievance on behalf of bargaining unit employees.

A review of the grievance dated June 2, 1994, asks, as remedies:

- (1) that the agency concede that there is no properly determined FLSA exemption for any bargaining unit employees;
- (2) that the agency make proper FLSA exemption determinations for each position in the bargaining unit;
- (3) that the agency take corrective action to include, *inter alia*, payment of all FLSA allowable back pay since 1979, interest and liquidated damages, suffered or permitted overtime, and all other wrongfully withheld payments or benefits to the full extent allowed under law, rule, regulation, or contract to all adversely affected bargaining unit employees, past and present.

Remedies (1) and (2) have been met. Under remedy (3) the back pay time period was agreed to, encompassing employees from June 2, 1991-June 30, 1998. Further, the Agency agreed to pay liquidated damages. Finally, the Agency has arbitrated the procedure for filing claims for suffer and permitted overtime.

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The Agency has acknowledged that certain employees were misclassified and need to receive back pay. The Agency has agreed to liquidated damages. The Agency is now identifying the employees and expects to be able to provide Mr. Goldberg a listing of all recognized class members, with eligibility periods, as indicated in the June 13, 2003 letter. The Agency expects to deliver this document to Mr. Goldberg by the end of July.

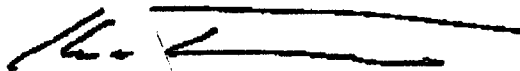
Therefore, the Agency respectfully disagrees with your assessment that there is an unresolved issue regarding the specific make-up of the class of employees. It is clear that this has been addressed in your March 23, 2000 ruling and the above acknowledgement. If Mr. Goldberg disagrees with the employee listings that the Agency will provide him, under the representations made in the June 13, 2003 letter, he may raise the matter as a dispute with the Agency and if we cannot agree, the Agency will then participate in a hearing before you for resolution of the dispute. Until such time that Mr. Goldberg has documentary evidence that can rise to the level of a dispute, the Agency feels it is untimely to schedule the matter before you and untimely to meet in a pre-hearing forum as you suggested.

The Agency also disagrees that processes and methodologies for the payment of the remedy need to be determined. There is nothing in the contract, the grievance, or in your awards compelling a particular method or process to facilitate payment.

Accordingly, the Agency will not attend the July 11, 2003 meeting in San Francisco and will not be bound by any outcome of such a meeting. Further, the Agency will not pay for any party's time or expense for any meetings to which it is not a party.

The Agency is working in good faith to identify and pay claimants and will continue to do so. Thank you for your attention to this matter.

Sincerely,



Ilir M. Tsungu
Acting Chief
Labor and Employee Relations Policy Section
Headquarters Human Resources Management