

August 6, 2003

Mr. Sam Vitaro

VIA FAX

Re: INS.FLSA

Dear Arbitrator Vitaro:

This letter is in response to your letter and order dated August 5, 2003, wherein you have required both parties to make submissions to you regarding various aspects of the Union's July 18, 2003, letter. I read your order to require the Union to respond to two (2) inquiries within ten (10) days of your August 5, 2003, order:

- 1. Provide an explanation for why it is necessary to pursue one of the suggested options identified in its July 18, 2003 letter (i.e. evidence as to why it is unable to contact the "newly excluded old claimants").**

In its letter dated July 18, 2003, the Union, *inter alia*, made the following request for an order:

Deciding Issues Involving "Newly Excluded Old Claimants"

- A. Within 10 days of this order the Agency will, at its option, do one of the following:
 1. The Union will prepare a letter that will explain to all **newly excluded old claimants**, their current status in the present case and invite them to resubmit their names (with contact information) utilizing a website to be opened by the Union. The Agency will, within 10 days, address and mail (via first class mail), to all **newly excluded old claimants** (at Agency cost), the Union letter approved by the arbitrator. The creation and maintenance of the website will be a cost chargeable by the Union in this case, or;
 2. Within 10 days of this order, the Agency shall provide the Union with a list (in either a standardized digital format or mailing labels) of names and current addresses (including email addresses, if known) of all **newly excluded old claimants**. The Union will utilize the information provided by the Agency to prepare a letter that will explain to all **newly excluded old claimants** their current status in the present case and invite them to resubmit their names (with contact information) utilizing a website to be opened by the Union. The Union will

provide any reasonable documentation the Agency may require so as to insure the confidentiality of the provided information and the Union will guarantee that the information gathered will not be used for any purpose outside the bounds of the present case), or;

3. Within 10 days of this order, the Agency shall provide a third party contractor with a list (in either a standardized digital format or mailing labels) of names and current addresses of all **newly excluded old claimants**. The contractor shall, as a cost chargeable by the Union in this case, use the address information provided by the Agency to affix mailing labels to envelopes, stuff the envelopes with a letter to be supplied by the Union (to be approved by the arbitrator), and mailed (first class) to all **newly excluded old claimants**. The letter will explain to all **newly excluded old claimants**, their current status in the present case and invite them to resubmit their names (with contact information) utilizing a website to be opened by the Union.
- B. Within 10 days of this order, the Union will open a website to allow **newly excluded old claimants** to register as new claimants. The cost of creation and maintenance of this website will be a cost chargeable to the Agency in this case. The new claimant category (which has been closed since February, 2002) will be reopened solely to those **newly excluded old claimants** who choose to apply.

One of the options, listed above, is vitally necessary.

Using a data set provided by the Agency in 2001, the Union opened a website where current and former INS employees could inquire as to their claimant status in the present case. A copy of the website postings¹ is contained in Section IV of the Meeting Handbook for the July 11, 2003, meeting. Please note on Bate stamped pg. 19 wherein the website instructs people who have accessed the site: “**How to Find Out if the Agency Recognizes You as a Claimant**” (emphasis in the original). On Bate stamped pg. 21, is the data entry screen where people who accessed the site may check their claimant status; i.e. whether the Agency recognizes them as “old claimants”. Bate stamped pg. 23 provides a copy of the screen that people who accessed the site would see if, upon accessing the data set provided by the Agency, the system recognized the inquirer as an “old claimant”. If a person was not recognized as a person who was part of the data base provided by the Agency, the inquirer would see the screen at Bate stamped pg. 24, was required to fill out the information screens found at Bate stamped pg. 25-6, and given a unique confirmation number as a “new claimant” at Bate stamped pg. 27.

Because of the faulty data set provided by the Agency, approximately 1000 persons could² have accessed the Union database and would have been informed that they **were** recognized by the Agency as an “old claimant”. The inquirer would not then, have been prompted to enter the “new claimant” data by the Bate stamped pg. 24 screen. There are therefore @1000 persons who might not have filled in a “new claimant” form because of the faulty data provided by the Agency. Unless these “newly excluded old claimants” can be contacted and invited to add their names to the “new claimant” list (with the information gathered on the Bate stamped pgs. 25-6 screens), these individuals will lose all rights to claim backpay. This loss of rights will be solely attributable to the errors of the Agency in its providing an inaccurate data.

¹ I have attached a copy of the relevant section for your convenience.

² There is no way to track anyone who accessed the website who did not fill out a “new claimant” form at Bate stamped pgs. 25-6.

The Agency has the names of these “newly excluded old claimants”. The Agency is also solely responsible for the faulty database that created the “newly excluded old claimant” problem. Further, the Agency either has the current address of these “newly excluded old claimants” (if they are current employees) or can get the addresses (through OPM, SSA, IRS) of those people who are not current employees. The Union has no access to the OPM, SSA, or IRS databases.

Considering the facts related above, the Agency should be required to contact or allow the Union to contact the “newly excluded old claimants” as specified in the alternatives provided by the Union at pgs. 3-4 of its July 18, 2003 letter.

2. Submit the names of individuals, with any supporting documentation to the Agency, who have made suffer or permit claims.

This information data set was provided by the Union to the Agency (in digital form) in early 2002.

I trust that the information provided above, is responsive to your order dated August 5, 2003. If further information or response is required, the Union, of course, will provide it. I respectfully remind the Arbitrator that the Agency, in its submission to the Union dated August 1, 2003 (as confirmed in my letter to you dated August 5, 2003) claims that it is moving unilaterally in its dealings with the various processing centers. Unless the Arbitrator intervenes in a timely fashion with appropriate orders protecting the various claimants, the Agency seems intent in facing both the Arbitrator and the claimants with a *fait accompli*.

Sincerely,

Joe Goldberg
Assistant General Counsel - Litigation

cc: Susan Dole
Randy Callahan