

Samuel A. Vitaro
ARBITRATOR / MEDIATOR / FACT - FINDER

[REDACTED]

August 30, 2005

Iir M. Tsungu
Chief, L&ER Policy Section
Bureau of Immigration and Customs Enforcement
Department of Homeland Security
800 K Street, Northwest, Suite 5000
Washington, D. C. 20536

Joe Goldberg, Assistant General Counsel - Litigation
AFGE(AFL-CIO)

[REDACTED]

Re: AFGE and NINSC / FLSA Grievance / Aug. 3, 2004 Conf. Call /
Summary

**(E-MAILED TO MR. TSUNGU at Iir.tsungu@dhs.gov AND FAXED
MR. GOLDBERG AT [REDACTED] ON AUGUST 30, 2005)**

Dear Joe and Iir:

Thank you for participating in the August 26, 2005 telephone conference and thank you to the Union for arranging that call. There were several others on the line with us. They were Randy Callahan, the Union's Executive Vice President, Jim Bonnette, the Union's Eastern Region Vice President and Angelee Moffett and Judy Sipio, from the National Finance Center. There were several matters discussed and addressed as follows:

- Status of straight overtime payments for 7856 claimants: Calculations have been made and payments (if entitled) have been sent by mail or directly deposited for all but 847 former employees. Of these 847, 112 involve former employees who are deceased and 735 involve employees who are separated or retired, and for whom current addresses were unavailable.
- NFC has been able to gain contact information for the 735 separated and retired employees and letters went out to them on August 23, 2005.
- The Agency, through NFC, will provide the Union with a list of the 7856 claimants by social security number with three data elements indicating

those who were not entitled to payment, those who are deceased (the 112 employees) and, the 47 employees, referred to below. Ilir, please get this to the Union by the end of this week.

- Of the 112 former employees who are deceased, NFC was able to process and provide payment to 51; Of the remaining 61 former deceased employees, (112-51=61), there are 14, for whom no payment is due but NFC has beneficiary information (and has or will presumably contact); 18, for whom, no payment is due and NFC does not have beneficiary information; and, 29, for whom payment is due and NFC does not have beneficiary information. Thus, there is a need to obtain contact information for 47 of these former employees (29 + 18). The Union will assist the Agency by publishing and searching for this information through its database and resources. The Agency (through NFC) will provide the Union with the complete names and social security numbers of these former employees, along with position, and last duty station if available (or any other identifying information that might be helpful). My less than perfect notes do not reflect a time line, but hearing no objection, Ilir, please get that to the Union by the end of this week.

- So far, there have been 72 claimants who have requested clarification as to the letters received from NFC. Reply letters have gone out to some but not all of them, as these inquiries are researched by NFC. Ilir provided a copy of the typical NFC letter to me (without identifying information) that responds to such requests, a copy of which I forwarded by e-mail to Mr. Bonnette and by fax to Joe Goldberg. This matter of disputes to calculated amounts is important. It will be a priority in our next conference call, scheduled for September 30, 2005 at 11:00 am, EST (and 8:00 am, PST).

- In the conference call, we discussed the matter of the "new claimants" (those claimants who are disputed as class members). As to their class membership and consequent application for payment, that issue will be decided as part of the decision which will address several legal-type and other issues as well as the nearly 500 individual suffer or permit claims for undisputed class members. In any event, to the extent that there are additional class members this will necessitate both the need to calculate straight overtime entitlement for them and the resolution of any suffer or permit claims made by these disputed class members. As to this last point – the resolution of any new suffer or permit claims – it was unclear whether suffer or permit information, as to these potential class members, had already been submitted to this arbitrator. The Union will review the record and seek to clarify this matter (presumably in our next conference call).

- I provided the parties with a brief summary of the status of my resolution of the suffer or permit claims for class members, and the other issues (such as class membership, referred to above), which I intend to resolve

in one decision. I am more than 1/2 way through the nearly 500 claims, and now expect to finish by the end of October 2005. This leads to a related matter, which was also discussed during the conference call. It is apparent that additional calculations will be necessary for a number of class claimants who will be awarded suffer or permit overtime (as well as for any now disputed class members as to both straight overtime and perhaps suffer or permit overtime). Each of the parties agree as to the need to plan for these calculations (e.g., to begin the process of contracting, etc.). This matter will be further discussed and addressed by the Agency in the next conference call.

- We also discussed the Union's concern that some supervisors and managers may be charging or attempting to charge compensated overtime against the current FY 2005 overtime limits. The parties are agreed that overtime should be charged to the fiscal year in which it is earned, and, if it is happening otherwise, it should be nipped in the bud (before it "cascades" as suggested by the Union). The Union will provide the Agency by e-mail with information as to the specific organizational areas where this is a problem, by early this week. In any event, the Agency will consider this matter and suggest a way to the arbitrator and the Union, by some time this week, in which this problem or potential problem can be addressed.

- As indicated above, we will talk by conference call on September 30, 2005 at 11:00 am, EST (and 8:00 am, PST). The Agency will initiate that call. (Of course, the Union should notify the Agency of who will participate in that call and the telephone numbers for them).

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

Sincerely,


Sam Vitaro