

April 25, 2003

Susan Dole, INS  
Labor Management Relations  
800 K Street, N.W. - Suite 5000  
Washington, D.C. 20536

**Re: INS FLSA**

Dear Ms. Dole:

This letter confirms our telephone conversation yesterday, wherein we agreed to meet at the AFGE General Counsel's Office at 10:00 a.m. on Tuesday, May 6, 2003.

During our conference call yesterday, Fred Tingley, for the Agency, informed the Union and the Arbitrator that the data base the Agency supplied the Union in 2001 for "old claimants"<sup>1</sup> was faulty. Mr. Tingley stated that the 8674 names the Agency supplied the Union was incorrect and now, two years later, was unilaterally modifying its "old claimant" to 7877. As you know, AFGE expended both money (over \$6000.00) and large amounts of staff resources to publicize the names the Agency recognized as "old claimants" through a specially designed web site. Further, AFGE spent both money and resources to identify persons who, after querying the data provided to AFGE by the Agency, either were satisfied that they were already claimants or filed (on the specially designed web page) as "new claimants". We provided you with the "new claimant" information in early 2002.

Now, you inform the Arbitrator and the Union that your "old claimant" data base was incorrect because someone on your side did not incorporate the correct backpay period (information that you have had for years). This incredibly sloppy data management has put at least 797 INS employees in limbo. The Agency had recognized these 797 employees as "old claimants" in 2001. Therefore, these employees did not need to file as "new claimants" on the AFGE web site. The "new claimant" category was closed to new applicants in February of 2002.

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1 "old claimants" were those persons the Agency admitted were subject to FLSA backpay calculations for the backpay period.

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Now the question is what does the Agency intend to do with these 797 employees that they have misled, either intentionally or through rank incompetence? Mr. Tingley's suggestion (during our conference call yesterday) that the removal of almost 800 employees from the claimant lists was of little significance is simply not acceptable. What does the Agency intend to do to fix the mess that it created?

I am most eager to hear from you on this matter as soon as possible. I would request that we receive the following computer reports (on disk/CD format):

1. A list of only those persons removed from the "old claimant" category by the Agency from 2001 to present.
2. A list of "new claimants" that the Agency has accepted as claimants it now recognizes as appropriate claimants.
3. A list of those current and former INS employees that the Agency currently recognizes as claimants.

Secondly, during the conference call yesterday the Agency suggested that it intended to include calculated backpay into the regular paycheck of Agency (or DHS) employees. Further, the Agency did not plan on providing any documentation for the overtime calculation or payment at the time of the payment.

The Union strenuously disagrees with this proposal. The Union suggests that a separate check (or direct deposit) be made solely for the backpay of individuals. This will allow claimants to readily identify the backpay component of any payment. This method is further suggested as many INS (DHS) employees have variable paychecks because of 31 Act or AUO, making identification of backpay both difficult and confusing. The Union again requests that a "plain language" calculation sheet be provided to each claimant so that the claimant can understand how the payment calculation was made.

Lastly, you indicated to me in our telephone conversation after the conference call that the Agency may not choose to finance the Agency's presence at a meeting ordered by the Arbitrator. The Agency does not have unilateral veto power over the reasonable procedural orders of the Arbitrator. The Union will be at the meeting with the Arbitrator. Whether the Agency shows up or not is up to you.

I will see you at our meeting on May 6th.

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Sincerely,

Joe Goldberg  
Assistant General Counsel-Litigation

cc: Arbitrator Vitaro  
Randy Callahan