

September 29, 2003

Mr. Sam Vitaro

VIA FAX

Re: INS.FLSA

Dear Arbitrator Vitaro:

The Union is in receipt of the letter dated September 26, 2003, from the Agency which purportedly finally responds to your order dated August 5, 2003. The Union has already commented on the seven (7) plus weeks that the Agency has taken to respond to your August 5, 2003, order. The Union respectfully suggests that the Agency has used this seven (7) plus week delay to do....nothing.

Old Claimants- As previously noted the information transmitted by the Agency on August 1, 2003, was merely a copy of information previously provided. The August 1, 2003, information failed to provide pay rates, grade/step rates, locality pay, and the other numerous data elements that would be necessary for an individual claimant to examine the information to be used by the payment centers for the calculations of any particular employee's backpay.

The Agency's response to the Union demand that "old claimants" that have filed "suffer or permit claims" is mere gibberish. Again, the Agency has failed to show how the timely payment of the backpay not at issue would harm the Agency; nor has the Agency even suggested that the payment of the non-contested portion of the backpay could (even theoretically) allow the possibility for overpayment.

The Agency has made no objection that the backpay for "old claimants" be issued in a separate check as the Union urged in its July 17, 2003, letter. Further, the Agency makes no objection to the Union's request that the backpay be accompanied by a detailed explanation letter of the backpay calculations by both the Agency (and, if desired, by the Union).

The Union notes that the Agency has not objected to any of the suggested timelines contained in the Union's July 18, 2003, proposals. The Union therefore respectfully urges the Arbitrator to immediately adopt the suggested timelines in an order to the Agency (complete with the suggested actions should the timelines be violated by the Agency).

Newly Excluded Old Claimants-The Agency has ignored the Union's letter to the Arbitrator dated August 6, 2003, which specifically addresses the issue as to why the Union does not have the location information necessary to contact the "newly excluded old claimants".

The Union notes that the Agency has not objected to any of the suggested timelines contained in the Union's July 18, 2003, proposals. The Union therefore respectfully urges the Arbitrator to immediately adopt the suggested timelines in an order to the Agency (complete with the suggested actions should the timelines be violated by the Agency).

New Claimants- The Union reads the Agency's failure to respond to either the August 5, 2003, order of the Arbitrator or the July 18, 2003, submission of the Union to mean that the Agency has waived any defense to any particular new claimant that it has not specifically raised before this date.

The Union notes that the Agency has not objected to any of the suggested timelines contained in the Union's July 18, 2003, proposals. The Union therefore respectfully urges the Arbitrator to immediately adopt the suggested timelines in an order to the Agency (complete with the suggested actions should the timelines be violated by the Agency).

Suffer or Permit Claims-The Agency has absolutely nothing new to offer in its September 26, 2003, letter and fails to address the issues and procedures raised by the July 18, 2003, proposal by the Union. The Agency also does not make any specific objections to the Union's July 18, 2003, proposals or procedures as ordered by the Arbitrator's letter dated August 6, 2003.

The Union notes that the Agency has not objected to any of the suggested timelines contained in the Union's July 18, 2003, proposals. The Union therefore respectfully urges the Arbitrator to immediately adopt the suggested timelines in an order to the Agency (complete with the suggested actions should the timelines be violated by the Agency).

Summer has now faded to fall and the Agency is still treading water. The Union urges the Arbitrator to set firm dates for the December, 2003, arbitration hearings in San Francisco on the "new claimant" and suffer or permit" issues and move this case forward. These hearings will deal with both the "new claimant" and "suffer or permit" issues.

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The Union urges the Arbitrator to immediately issue his order dealing with the Union's July 18, 2003, suggestions pursuant to his order dated August 6, 2003. The Agency's failure to respond in a timely manner and failure to contribute in any meaningful way to deal with the outstanding issues, urges that the hearings be scheduled immediately and that these hearings should be held in San Francisco.

Sincerely,

Joe Goldberg
Assistant General Counsel - Litigation

cc: Susan Dole
Randy Callahan