

Re: OSC File No. DI-13-1556

As the reporting employee I have been given the opportunity to respond to the Agency's report to the OSC on the misuse of AUO within ICE.

I have reviewed the report and am astounded by the contradictory language and citations. I begin to see why the Agency has been able to manipulate the system and abuse employees for so long without consequence. For instance:

Page 5 of the report directly quotes statute in the first section under the heading 'the words "require the employee to remain on duty" mean that:' where it states in pertinent part that "...performance of only callback overtime work does not meet this requirement...".

Then it references a June 07 memo to FODs and a September 07 memo from the Houston FOD stating "An AUO certified employee who is required to perform a callback assignment within the administrative workweek based on an unexpected or unscheduled event must claim AUO for overtime compensation."

Page 6 of the report has several issues.

Number 1, OPM guidance was not "specifically referenced" during the initial investigation but is being cited now. The Houston FOD told an employee last year that when you are asked a question and you *know* the intent but you do not fully answer the question, that is a lack of candor. Based on the reports the managers *knew* the direction and intent of the investigation. So why was this info omitted the first time? Was it that they didn't know what was in the OPM guidance? Or was it that they thought they could dazzle us with BS?

Number 2, the last paragraph of section III cites OPM Policy Memo 97-5A which tries to give management a work around so that they can direct employees to work AUO. But this policy memo *cannot* abrogate the statutory definition of "qualifying work".

Number 3, section IV (which runs over to the top of page 7) deals with the laughable reporting standards for AUO certified employees. I routinely used "cleaned up paperwork" because our duties were not completed until the detainees were booked in to the facility. But I was instructed in mid-2012 to use "casework" because the supervisor felt this was more defensible in an audit. I explained that "casework" was *administratively controllable*, but complied none-the-less. This brings us back to number 2: management directive *cannot* abrogate statute. But I submit that management approving more than half which were "noncompliant" and a full third that were "undetermined" shows a willful disregard for the statutes by management and anyone who gave them this horrible advice.

Section V begins on page 7 and encompasses the corrective actions the Agency has planned to move forward with. The first paragraph talks a good game about fixing this situation, but it has been my experience that **all** of the corrections will be aimed at the employees in a disciplinary tone. Managers will continue to behave as if nothing has changed.

Subsections A, B, and C reference memos, training, and Agency-wide directives to help correct this situation. Since this still seems like the fox securing the hen-house, can I request that the Union receive Pre-Decisional Involvement on all of these steps?

Paragraph E on page 8 indicates a position-by position review to confirm AUO qualification. Will the Agency perform this transparently so employees can see that managers are also being scrutinized and decertified?

Lastly, the final sentence of the third paragraph of section A on page 7 sums up the whole reason I reported this in the first place:

“Specifically, the guidance explains that where a duty can be readily scheduled in advance of the administrative workweek or performed during an employee’s next tour of duty, it does not warrant AUO.”

Sincerely,

A handwritten signature in black ink, appearing to read "Tre Rebstock", with a horizontal line extending to the right.

Tre Rebstock