



## NATIONAL BORDER PATROL COUNCIL

## LOCAL 2266

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES AFFILIATED WITH AFL-CIO

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November 22, 2013

John C. Pfeifer  
Chief Patrol Agent  
Swanton Sector

Cc: Raulan Masada (Designee)

***Re: Union Initiated Grievance***

Chief John C. Pfeifer,

In accordance with Article 33 F of the 1995 Agreement between the U.S. Immigration and Naturalization Service and the National Border Patrol Council ("CBA"), the following constitutes a Union Initiated Grievance regarding the failure of Patrol Agent in Charge (PAIC) Paul Kuhn to adhere to the negotiated CBA<sup>1</sup>.

Synopsis

PAIC Kuhn did not to allow Local 2266 the opportunity to be the exclusive representative and, more specifically, the documented designated representative of a bargaining unit member at a formal discussion between one or more management representatives and one or more bargaining unit employees concerning a possible grievance and/or personnel policy and/or practice and/or condition of employment. PAIC Kuhn and Beecher Falls management tried to coerce a bargaining unit member into changing an already designated Union Representative, documented on file by form G-956<sup>2</sup> to another Union Representative of management's choosing. Beecher Falls management intentionally bypassed the Union and communicated directly with a bargaining unit employee concerning a possible grievance, disciplinary action and other matters relating to the collective bargaining relationship where management had the knowledge the employee was specifically represented by the Union<sup>3</sup>.

On October 30, 2013, Supervisory Border Patrol Agent (SBPA) Jeremy Forkey contacted Border Patrol Agent (BPA) Dan Dolan via service radio. SBPA Forkey ordered BPA Dolan to return to the Beecher Falls station. BPA Dolan returned to the station and met SBPA Forkey and SBPA Gales near the front desk of the Mission Support Specialist. SBPA Forkey presented BPA Dolan a copy of his current G-956, which had been signed and designated Vice President Sean Walsh as his representative. SBPA Forkey and SBPA Gales requested that BPA Dolan change his designated Union Representative. BPA Dolan declined the two supervisors' insistence on changing his already designated Union

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<sup>1</sup> See attached: 1995 Agreement between the U.S. Immigration and Naturalization Service and National Border Patrol Council "CBA"

<sup>2</sup> 1995 Collective Bargaining Agreement between the NBPC and the I&NS Page 101, "Designation Representative and Authorization to Release Information."

<sup>3</sup> Bastrop; Dep't of HHS, SSA, Balt., Md, 39 FLRA 298, 311 (1991); see also U.S. DOJ, INS, N.Y. Office of Asylum, Rosedale, N.Y., 55 FLRA 1032, 1038 (1999) and *IRS and NTEU*, 4 FLRA 488, 497 (1980)

Representative. BPA Dolan further stated that he and the Union have the right to designate a representative of its own choosing. SBPA Forkey replied “Really? Because I have to go bring this to my boss, and he’s not going to be happy.” The discussion then ended between BPA Dolan, SBPA Gales and SBPA Forkey.

### Violations

PAIC Kuhn, SBPA Forkey and SBPA Gales violated Article 6 of the CBA by placing restraint, interference and coercion against BPA Dolan and the Union by contacting him directly and attempting to change his designated Union Representative. In addition, the Federal Labor Relations Authority has held that the agency must afford the Union sufficient prior notice of a formal discussion to allow the union to designate its own representative to attend. Management’s attempt was a calculated attempt to bypass and restrain employees in the exercise of their rights to organize and designate a representative of their own choosing. The following timeline demonstrates management’s actions were premeditated by ordering an Agent out of the field in order to unlawfully bypass the Union.

1. SBPA Forkey contacted BPA Dolan via the service radio.
2. SBPA Forkey ordered BPA Dolan to return to the station.
3. SBPA Forkey and SBPA Gales both met BPA Dolan near the front desk.
4. SBPA Forkey had readily in his possession the signed G-956.
5. SBPA Forkey and SBPA Gale were both present.
6. After BPA Dolan denied signing another G-956 in order to change representatives, SBPA Forkey replied, “Really? Because I have to go bring this to my boss, and he’s not going to be happy.”

PAIC Kuhn, SBPA Forkey and SBPA Gales failed to abide by Article 6 of the CBA by not allowing Union officials to perform and discharge the duties and responsibilities that may be properly assigned to them as stated in the CBA. These actions may have and conceivably placed bargaining members in an improperly represented scenario. The consequences of bypassing the Union can have adverse and detrimental results towards the bargaining unit employees and their conditions of employment. Management’s reluctance to accept the Local 2266 Vice President to properly represent a Union Representative in possible disciplinary actions based solely on Union activities indicates a refusal to bargain in good faith<sup>4</sup>.

PAIC Kuhn, SBPA Forkey and SBPA Gales failed to abide by Article 7 of the CBA by not allowing representational activity to be held on duty time. Management’s failure to notify the Union resulted in the failure to allow proper representational activity to be held on duty. Management’s intentional acts of not notifying the Union forced BPA Dolan to handle this situation without his designated Representative and therefore failing to allow *any* representational activity to be on duty time.

On October 30, 2013, PAIC Kuhn, SBPA Forkey and SBPA Gales failed to give the Union an opportunity to be represented. Management’s attempt meets all aspects of a formal discussion<sup>5</sup> and, as such, unmistakably violated Articles 4 and 31 of the CBA. The agency violated the bargaining unit employee’s right to due process and to Union representation. The agency held this meeting with a bargaining unit employee for the sole purpose of discussing an unwarranted change in his Union Representative in an agency-initiated action that may lead to an adverse action. The agency planned and scheduled this meeting without notice or the consent of the Union. The Union has the exclusive representation of this employee. The agency violated Article 4, Section I of the CBA and Article 31, Section A of the CBA. The Union had the right to be present and a right to advise the bargaining unit member in the course of his decisions and actions.

<sup>4</sup> DHHS, SSA, Dallas Region and AFGE, Nat’l Council of SSA Field Operations Locals, 23 FLRA 807, 813 (1986)

<sup>5</sup> In order for a union to have a right to be represented under § 7114(a)(2)(A) of the Statute, there must be: (1) a discussion; (2) which is formal; (3) between a representative of the agency and a unit employee or the employee’s representative; (4) concerning any grievance or any personnel policy or practice or other general condition of employment.

Remedies

1. Immediate and full adherence to all laws, government-wide regulations and the 1995 Agreement between the U.S. Immigration and Naturalization Service and the National Border Patrol Council ("CBA")
2. Swanton Sector management will provide the designated Union Representative with prior notice of any action before addressing such action with a bargaining unit member. Such notice will be given to the Union Representative as far in advance as possible. In addition, the Union will always be given the opportunity to be present at all formal discussions between the agency and the bargaining unit member(s).
3. Swanton Sector management, specifically Beecher Falls management, not retaliate on any bargaining unit member for their involvement in protected Union activities.
4. Swanton Sector management will distribute via email a notice to all Swanton Sector employees stating that Swanton Sector management violated the CBA and Federal Labor Relations Statutes. The notice will be written to the satisfaction of the Union and given to the Union for approval prior distribution.

Respectfully,

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