



**U.S. Customs and
Border Protection**

December 18, 2013

Mr. Sean P. Walsh
Vice President, Local 2266
National Border Patrol Council
2224 Vt. Rte. 111
Derby, VT 05829

Dear Mr. Walsh:

This is in response to your Union initiated grievance (UIG) dated November 22, 2013, concerning an alleged failure of Patrol Agent in Charge (PAIC) Paul Kuhn to adhere to the Collective Bargaining Agreement (CBA). The grievance is filed under the negotiated grievance procedures contained in the U.S. Immigration and Naturalization Service and National Border Patrol Council Collective Bargaining Agreement (CBA), dated February 6, 1995, that is in force between the parties.

In the grievance, you requested that the following:

1. Immediate and Full adherence to all laws, government-wide regulations and the 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 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.

The Union is alleging that management officials violated Article 6 of the CBA by placing restraint, interference and coercion against Border Patrol Agent (BPA) Dan Dolan and the Union by contacting him directly and attempting to change his designated Union Representative. In addition, the union claims that management did not afford the Union sufficient notice of a formal discussion to allow the Union to designate its own representative to attend. The Union alleges that management officials failed to abide by the 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. The Union also claims that 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.

Additionally, the Union alleges that management officials failed to abide by Article 7 of the CBA by not allowing representational activities to be held on duty time. The Union claims that management's failure to notify the Union resulted in the failure to allow proper representational activity to be held on duty. The Union claims that 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 held on duty time.

The Union claims that on October 30, 2013, management officials failed to give the Union an opportunity to be represented. The Union claims that management's attempt to meet all aspects of a formal discussion and as such, unmistakably violated Article 4 and 31 of the CBA. The Union claims that the Agency violated the bargaining unit employee's right to due process and to Union representation. It claims that the Agency held a 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 adverse action. The Union claims that it had a right to be present and a right to advise the bargaining unit member in the course of his decisions and actions.

I have reviewed the grievance and find that the Union's arguments are either misplaced or without merit for the following reasons:

The use and reason for the Form G-956, Designation of Representation and Authorization to Release Information, is found in Article 32 A., Disciplinary and Adverse Actions, which states, "When the Union is designated as the representative in a disciplinary or adverse action, the employee will furnish to the Service written designation and authorization on Appendix VII. The designation and authorization form will serve to release to the representative the information and documentation which, as provided in this Article and relating to the disciplinary or adverse action, the employee is entitled to receive...The designation and authorization will include the name and address of the representative where the Service will promptly provide the materials and copies of all correspondence addressed to the employee. If time and distance is a factor in the designation and authorization, it may be furnished to the local supervisor in writing and that supervisor may attest to its authenticity by telephone to the releasing official." The Form G-956, found in Appendix VII, the employee designates a Union representative, "...in the disciplinary/adverse action proposed against me" which is signed and dated by the employee.

The intent of the Form G-956 is for a bargaining unit employee to use to officially designate a Union representative and authorize release of information to the Union representative in connection with a disciplinary or adverse action (an Article 32 action) proposal and for no other reason. Apparently, BPA Dolan has submitted numerous G-956's designating you as his representative that are not connected or related to his proposed disciplinary action that he received on September 21, 2013. BPA Dolan is apparently under the impression that any

discussion with a supervisor that is not related to his disciplinary action proposal that he received on September 21, 2013, must include you. The Form G-956 is being incorrectly used by BPA Dolan.

Additionally, it is the Agency's position that the October 30, 2013 meeting with BPA Dolan was not an investigative interview, was not an examination of BPA Dolan in connection with an investigation, was not a grievance meeting, and he had not been served any disciplinary action proposal notices; therefore, there was no valid reason requiring union notice or for BPA Dolan to designate a Union Representative.

Moreover, the meeting held with BPA Dolan on October 30, 2013, was not a formal discussion as contained in the Federal Service Labor-Management Relations Statute at 5 USC 7114 (a)(2)(A). The meeting with BPA Dolan was not related to a grievance, did not involve a change of personnel policies or practices, or general conditions of employment affecting the bargaining unit members or that of BPA Dolan, therefore, does not contain that specific elements to qualify as a formal discussion to require Union notification.

In conclusion, management has not posed any restraint to Agent Dolan or any bargaining unit employee in their rights to officially designate a Union Representative in connection his/her disciplinary/adverse action proposal. The service recognizes and will continue to adhere to the provisions contained in Article 4, 6, and 31 of the CBA.

It is therefore for the above cited reasons; your grievance and remedies requested are denied.

Sincerely,

A handwritten signature in black ink, appearing to read "John C. Pfeifer", with a stylized flourish at the end.

John C. Pfeifer
Chief Patrol Agent
Swanton Sector

cc: Luis Cadavid, LER Specialist