



LOCAL 2266

NATIONAL BORDER PATROL COUNCIL

LOCAL 2266

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES AFFILIATED WITH AFL-CIO

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August 26, 2013

Michael J. Flemmi (designee)
Assistant Chief Patrol Agent
Swanton Sector

Re: Union Initiated Grievance.

Mr. Flemmi

In accordance with Article 33 F of the 1995 Agreement between the U.S. Immigration and Naturalization Service and National Border Patrol Council ("CBA"), the following constitutes a Union Initiated Grievance (UIG). Chief Patrol Agent (CPA) Pfeifer failed to adhere to the negotiated CBA Articles three and fifteen of the Collective Bargaining Agreement.

Synopsis:

CPA Pfeifer violated the CBA with the most recent unilateral selections of bargaining unit members for the long-term detail to augment the ongoing South Texas Campaign (STC/RGV) Operations, to include Operation Genesis II and Operation Valley Shield.

I. Violation of Article 3A

Article 3A, section (A) of the CBA states, in pertinent part:

The parties recognize that from time to time during the life of the agreement, the need will arise requiring the change of existing Service regulation covering personnel policies, practices, and/or working conditions not covered by this agreement. The Service shall present the changes it wishes to make to existing rules, regulations, and existing practices to the Union...

At no time before, during, and subsequent to the selection of an agent to the STC/RGV Operations detail did CPA Pfeifer or any other agency official present the changes the agency wanted to make. The agency did not seek to negotiate any supplemental agreements, policies or procedures regarding the selection of a detail, collateral duty, or training. At no time has the Union been notified of any change in policy or procedure of selecting an Agent for a detail, collateral duty, or training by the process used most recently in STC/RGV Operations detail. CPA Pfeifer did not select agents in a fair and equitable manner and/or consistent with prior practices. These changes were never negotiated with the Union nor was the Union provided with the requisite notice called for in Article 3A of the CBA.

II. Violation of Article 15

Article 15 section (A), (B), (C) and (E) of the CBA states, in pertinent part:

A. The Service and the Union agree that the training and development of employees within the unit is a matter of primary importance to the parties. Through the procedures established for employee-management cooperation, and consistent with the needs of the Service, the parties shall seek the maximum training and development of all employees. The Service agrees to develop and maintain forward-looking effective policies and programs designed to achieve this purpose, consistent with its needs.

B. The Service and the Union recognize that each employee is responsible for applying reasonable effort, time, and initiative in increasing his or her potential value to the Service through self-development and training. Employees are encouraged to take advantage of training and educational opportunities needed to increase their efficiency in the performance of their duties and possible advancement in the Service.

C. The nomination of employees to participate in training and career development programs and courses shall be based on Service needs but will be free of personal favoritism.

E. The Service encourages the individual employee to develop a personal plan for career self-development. In developing this plan the employees may seek counseling and advice from his or her supervisor.

CPA Pfeifer has not established a procedure that seeks the maximum training and development of all employees. The most recent solicitation and selection to the STC/RGV Operations detail violated the CBA and therefore failed to abide by “the procedures established for employee-management cooperation.” CPA Pfeifer unilaterally decided to choose the two bargaining members without regard to past practices and the CBA. CPA Pfeifer failed to develop and maintain a forward-looking effective policy designed to achieve this purpose. CPA Pfeifer selected bargaining members not consistent with a fair and equitable manner. Local 2266 has learned CPA Pfeifer selected bargaining members not consistent with seniority. Multiple bargaining members who were equally qualified but more senior were not selected for this detail.

The Service failed to give employees reasonable time to increase their potential value to the Service through self-development and training by publicizing a detail opportunity that contained a false opportunity for many senior qualified agents. As noted in the announcement email string, two Agents with Checkpoint backgrounds were to be selected. This email announcement also mentioned to start a rotation with one from the “E-Cog and one from the W-Cog.” However, both bargaining unit members selected under this announcement were from the “W-Cog.” Without a properly negotiated forward-looking effective policy, the Service denied agents possible career advancement and development within the Service. CPA Pfeifer also discouraged employees opportunities needed to increase their efficiency by failing to select agents in a fair and equitable manner and/or consistent with prior practices.

CPA Pfeifer has established a pattern of personal favoritism when selecting agents for details, collateral duties and/or training. The most recent solicitation and nomination to attend the STC/RGV Operations detail was not fair and/or equitable nor consistent with past practices. CPA Pfeifer’s selection, by utilizing anything other than past practices and/or a fair and equitable manner demonstrated this selection was not free of personal favoritism.

CPA Pfeifer’s intended violations of the CBA discouraged individual employees to develop a personal plan for career self-development. The unilaterally implemented policies and changes used in the selection of details within Swanton Sector have discouraged bargaining members by exemplifying personal favoritism.

Remedies:

1. CPA Pfeifer as soon as possible, implement the detail policy included with this grievance.
2. CPA Pfeifer pay any overtime missed and the per diem rate for the length of the detail to all agents that were improperly denied the detail.

PLEASE NOTE OUR LOCAL UNION WILL ACCEPT ELECTRONIC SUBMISSION OF A RESPONSE TO THIS LETTER, PROVIDED THAT THE SUBMISSION IS MADE BY ELECTRONIC MAIL TO THE FOLLOWING ADDRESS: Local2266@gmail.com AND LOCAL 2266 ALSO REQUIRES THAT THE AGENCY TELEPHONE THE UNION PRESIDENT AT (518) 645-5353 TO CONFIRM RECEIPT OF THE ELECTRONIC MESSAGE.

Sincerely,

Christian Porras
President
AFGE/NBPC
Local 2266