



LOCAL 2266

NATIONAL BORDER PATROL COUNCIL

LOCAL 2266

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES

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John C. Pfeifer
Chief Patrol Agent
Swanton Sector

Re: Union Initiated Grievance, Bypass of the Exclusive Representative

Chief 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 Agency's failure to adhere to the negotiated CBA, Agency Policies and Federal Law including but not limited to 5 USC 7114.

Synopsis:

On February 11, 2016, the Agency failed to provide the Union the right to be represented at a formal discussion with a bargaining unit employee concerning an individual disciplinary matter that resulted in a termination and possible grievance. The agency was fully aware the Union, specifically Michael P. Baranic, Esq., NBPC Legal Division had been designated to represent BPA Dolan in his disciplinary and or termination proceedings. Nevertheless, PAIC Paul Kuhn deliberately held a meeting to deliver CPA Daniel Hiebert's final decision to remove BPA Dolan and to hand him a copy of that decision. The Union represented BPA Dolan in his earlier reply to the proposal to remove him. Furthermore, the Union was not served with a copy of the decision.

Violations:

Swanton Sector Management violated the CBA including but not limited to Article 2, Article 4, Article 6, Article 31, Agency Policies, CBP Directive NO. 51735-013A and Federal Law specifically 5 USC 7114 when it bypassed the Union and delivered an individual disciplinary and or termination matter to a bargaining unit employee.

The Agency's failure to provide notice to the Union and to honor BPA Dolan's request for representation constituted a bypass of the exclusive representative. The Agency was fully aware that the Union represented BPA Dolan in his disciplinary and or termination proceedings. Therefore, the agency had an obligation to ensure the Union was given the opportunity to be at the meeting and be provided a copy of the decision letter. The Union, specifically Michael P. Baranic, Esq., NBPC Legal Division had been designated to represent BPA Dolan in his disciplinary and or termination proceedings and sent a signed G-956 from BPA Dolan to the agency on September 18, 2016. Therefore, the agency denied BPA Dolan

and the Union their rights provided to them in the CBA including but not limited to Article 4, Article 6, Article 31 and Article 32.

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. This meeting met all aspects of a formal discussion and, as such, unmistakably violated the 5 USC 7114 and the CBA.

Management planned and scheduled this meeting without notice or the consent of the Union. The Union has the exclusive representation of this employee in this disciplinary matter. 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.

Swanton Sector Management deliberately bypassed and restrained employees in the exercise of their rights to organize and designate a representative of their own choosing. The disregard of a union and attempts to deal with employees individually concerning grievances, final disciplinary actions, termination proceedings and personnel policies and practices are acts in derogation of the representative's right to represent employees.

Management failed to allow BPA Dolan's designated representative the ability to properly represent him on February 11, 2016, in violation of the CBA including but not limited to Articles 4, 6, 31, and 32. In addition, management did not allow Union officials to perform and discharge the duties and responsibilities that may be properly assigned to them as further stated in Article 6. 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. Swanton Sector Management's most recent and blatant violation is neither a one-time mistake nor, is it a misinterpretation of the CBA and or Federal Laws. Swanton Sector Management's actions support our belief that these types of violations are intentional and are intended to restrain, interfere and coerce the bargaining unit in the exercise of our rights. Examples of the Agency's continual violations include but are not limited to the following:

- The Union submitted a similar grievance on July 7, 2015.
 - On July 1, 2015, the Agency failed to provide the Union and its members the right to be represented at a formal discussion with a bargaining unit employee concerning an individual disciplinary matter and possible grievance. The agency was fully aware the Union had been designated to represent BPA ██████ in his disciplinary proceedings. Yet, the agency deliberately held a meeting to deliver DCPA Robert Garcia's final decision to discipline BPA ██████ even though the Union was designated to represent BPA ██████ in his earlier reply to the proposal to suspend him. Furthermore, the Union was not served with a copy of the decision.
 - The Agency denied the grievance and stated in part, "Management does acknowledge the fact that management failed to provide the union representative a copy of the decision letter upon service in this instance. This was a miscommunication on management's part of which management admits fault."
- The Union submitted a similar grievance on June 8, 2015.
 - On June 3, 2015, DPAIC Qualter met with BPA Dan Dolan regarding an official time request that was a part of Union Initiated Grievance submitted on December 5, 2014. DPAIC Qualter requested BPA Dolan to give him his Time and Attendance sheet for pay

period 21 of 2014. DPAIC Qualter further stated that he was amending COSS to reflect 15 minutes of approved official time because the time should not have been denied.

- The Agency denied the grievance and stated in part, “The union claims the agency held this meeting for the sole purpose of discussing an adjustment of a grievance. This was not a formal discussion. A correction was made to the employee's pay record and the employee was notified of this correction. Management also was not settling the grievance as official time had already being approved. It is my decision to deny your grievance and requested remedies.”
- The Union submitted a similar grievance on August 30, 2013.
 - On August 12, 2013, the Agency failed to provide the Union and its members the right to be represented at a formal discussion with a bargaining unit employee concerning an individual disciplinary matter and possible grievance. The agency was fully aware the Union had been designated to represent BPA ██████ in his disciplinary proceedings. Yet, the agency deliberately held a meeting to deliver DCPA Butler’s final decision to discipline BPA ██████ even though the Union was designated to represent BPA ██████ in his earlier reply to the proposal to suspend him. Furthermore, the Union was not served with a copy of the decision.
 - The Agency denied the grievance and stated in part, “a union representative is not required when the employee is just acknowledging receipt of paperwork because this is not a formal discussion. If the employee has a designated union representative, Swanton Sector will continue to provide a copy to the union representative..... Also, Swanton Sector provides the union with all of the copies (e.g., proposals, disciplinary actions, final decision letters, etc.). Not providing a copy of the final decision letter issued to BPA ██████ to the union was an oversight. Once management realized that a copy was not provided, a copy was sent to you via email. The union was not harmed by the oversight in this case as you clearly became aware of the decision letter on or before August 30, 2013 the date of this grievance. Accordingly, your grievance is denied in its entirety.”
- The Union submitted a similar grievance on November 22, 2013.
 - On October 30, 2013, the Agency 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. In particular, SBPA Jeremy Forkey contacted 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 to another representative.
 - The Agency denied the grievance and stated in part, “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.

Simply put the agency communicated directly with a bargaining unit employee concerning grievances, disciplinary actions, and other matters relating to the collective- bargaining relationship and the agency knew BPA Dolan was represented by the Union. *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). In addition, the agency delivered a decision to terminate BPA Dolan even though the agency knew the union represented BPA Dolan in the above mentioned matter. *McGuire AFB*, 28 FLRA 1112 (1987); *Dep't of the Air Force, Sacramento Air Logistics Ctr., McClellan Air Force Base, Cal.*, 35 FLRA 345 (1988).

For the above reasons, the agency's actions were clear and blatant breaches of the CBA, CBP Policy, CBP Directive NO. 51735-013A, and all other related laws and regulations.

Please consider this UIG a report of misconduct under these provisions.

REMEDIES:

- 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").
- 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 Statues. The agency communicated directly with a bargaining unit employee concerning grievances, disciplinary actions, and other matters relating to the collective- bargaining relationship even though the agency knew the bargaining unit employee was represented by the Union. In addition, the agency unlawfully delivered a decision to terminate a bargaining unit employee without notifying his designated representative and allowing the Union to be present.

To insure compliance, NBPC Local 2266 President will be provided an advanced copy for approval before the messages are disseminated. Upon issuance to employees via Government electronic mail, Local 2266 President will be included in all mailings.

- Rescind the termination against BPA Dolan given to him on February 11, 2016 and remove all official documents concerning this from his official file. After destruction of such documents, notify BPA Dolan's Union Representative in writing of the removal.
- Reimbursement for any legal fees incurred by the Union, to include all costs of hiring attorneys, arbiters and any other expenses, in an effort to resolve this violation.
- Any other remedy deemed necessary.

Respectfully,

Sean Walsh
Vice President
AFGE/NBPC Local 2266