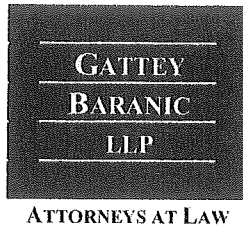


James M. Gattey
Michael P. Baranic*
Jason L. Aldrich
* Also admitted in Arizona and
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February 5, 2007

Sheila Brown, Director of Labor Relations
Department of Homeland Security
Ronald Reagan Building
1300 Pennsylvania NW
1400 I Street NW
Washington, DC 20229

VIA FACSIMILE AND U.S. CERTIFIED MAIL

RE: Checkpoint Overtime - Arbitration Request

Dear Ms. Brown:

Our office is counsel to American Federation of Government Employees, National Border Patrol Council, Local 2554. Please be advised that Local 2554 is requesting arbitration in the referenced matter.

Pursuant to Article 32(F) and Article (34) of the Collective Bargaining Agreement between the Immigration and Naturalization Service and National Border Patrol Council, this letter is a request to submit to arbitration the union initiated grievance dated December 22, 2006, and which is attached hereto. The union initiated grievance was served on Chief Patrol Agent Carl McClafferty on December 22, 2006. The agency's response to the union initiated grievance was due on January 22, 2007; no response was issued.

As always, thank you for your courtesy and cooperation in this matter.

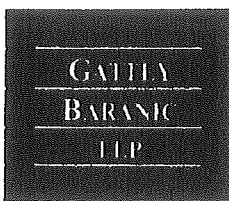
Very truly yours,

GATTEY BARANIC LLP

A handwritten signature in black ink, appearing to read "Jason L. Aldrich", is written over the typed name below it.

Jason L. Aldrich

c: Chief Patrol Agent
AFGE/NBPC Local 2554



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December 22, 2006

Carl McClafferty
Chief Patrol Agent
U.S. Customs and Border Protection
United States Border Patrol
1111 N. Imperial Avenue
El Centro, CA 92243

VIA FACSIMILE AND CERTIFIED U.S. MAIL

RE: UNION INITIATED GRIEVANCE PURSUANT TO ARTICLE 33.F.(1)
REQUIREMENT OF PAYMENT OF FLSA SUFFER OR PERMIT PAY
(Fixed-Area Work Assignments Requiring Attendance Beyond 8-Hour
Shift)

Dear Chief McClafferty:

The following constitutes a Union Initiated Grievance pursuant to Article 33.F(1) of the Collective Bargaining Agreement between the National Border Patrol Council ("NBPC") and the Legacy I&NS (hereinafter, "CBA").¹ This grievance concerns the Agency's failure to compensate bargaining unit members assigned to fixed-area assignments (such as traffic checkpoints and "X" assignments) Fair Labor Standards Act ("FLSA") Suffer or Permit pay, also known as "45 Act" pay.

FACTUAL BASIS FOR GRIEVANCE

Border Patrol Agents are routinely assigned to work "fixed post" assignments, such as traffic checkpoints and "X" assignments along the border. When assigned to these locations, Agents are under a standing order to work their regular eight hour shift, and continue to work beyond the eight hour shift until their relief arrives. These hours worked beyond the eight hours have been compensated as "administratively uncontrollable overtime" ("AUO"), however, law, regulation, the CBA, and prior litigation between the National Border Patrol Council and the Agency require the compensation to be that as FLSA Suffer or Permit Pay.

¹ Despite the dissolution of the Immigration and Naturalization Service, the CBA maintains its effect with the Department of Homeland Security.

THE DISPUTE AND REASON FOR DISSATISFACTION

The issue presented here by this Union Initiated Grievance has already been addressed to the Agency by the NBPC. Attached please find a copy of Arbitrator Samuel J. Nicholas, Jr.'s decision of a grievance presented for arbitration by the NBPC. Arbitrator Nicholas was mutually agreed to by the NBPC and the Agency, and his decision on the matter issued on March 22, 2001. At page 20 of his decision, Arbitrator Nicholas "reiterated his understanding of the very essence of [that] case:"

The central character of AUO work is lack of control by management *when and whether* such work is performed by its employees. Indeed one of the other defining characteristics of AUO is that the employee himself/herself makes the decision whether the nature of his/her position demand that he/she perform the overtime at hand. Here, that discretion on the part of the employees was lacking, since the agents participating in Operation Rio Grande were not given the latitude to leave or not leave their AOR [area of responsibility] at then end of their shifts. Rather, for all practical purposes, they were under a standing directive from management to remain at their area of responsibility until relief arrived. As such, I cannot say this properly falls within the domain of AUO work.

Thus, I conclude that Agency took improper advantage of the language of the AUO regulations and erroneously paid Grievants AUO pay for work which was routine, predictable, and under Management's control.

(Emphasis in original.)

The law, regulation, and provisions of the CBA as presented by the Union and Arbitrator Nicholas in the attached decision by Arbitrator Nicholas, and specifically, 5 U.S.C. § 5542, § 5545(c), 5 C.F.R. § 550.151 and § 550.153, are incorporated herein to this Grievance as if fully set forth here. Please also note that Article 30 of the CBA requires the Agency to pay bargaining unit members "equal pay for equal work."

Here, the standing order is the same as that of the "Operation Rio Grande" grievance. Border Patrol Agents are under a standing order to remain at fixed area assignments until relief arrives. These posts include all traffic checkpoints within the Sector, "X" assignments, and any other assignment that requires a bargaining unit member to remain at the location beyond the eight hour shift until his/her relief arrives.

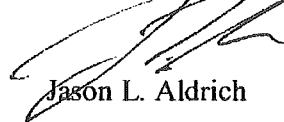
CORRECTIVE ACTION DESIRED

The National Border Patrol Council demands the Agency:

1. Cease and desist from violating the decision rendered by Arbitrator Samuel J. Nicholas, Jr., issued March 22, 2001, by not paying bargaining unit members FLSA Suffer or Permit pay to bargaining unit members who work fixed location assignments beyond an eight hour shift and who may not leave that assignment until relief arrives.
2. By compliance with number 1, above, begin paying bargaining unit members FLSA Suffer or Permit pay ("45 Act" pay) when the bargaining unit member works beyond an eight hour work assignment and is not permitted to leave until his/her relief arrives.
3. Pay all affected bargaining unit members backpay in accordance with number 2, above, and as required by the Backpay Act, codified at 5 U.S.C. § 5596.

Very truly yours,

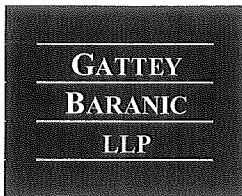
GATTEY BARANIC LLP



Jason L. Aldrich

Enclosure

c: AFGE/NBPC President T.J. Bonner
AFGE/NBPC Southwest Region Vice President George McCubbin II
AFGE/NBPC Local 2554 President Lombardo Amaya



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FACSIMILE TRANSMITTAL SHEET

Date: February 5, 2007

To: Sheila Brown, Director of Labor Relations
Department of Homeland Security

From: Jason L. Aldrich, Esq.
GATTEY BARANIC LLP

RE: Checkpoint Overtime – Arbitration Request

FAX No. Sending to: (202) 863-6290

FAX No. Sending from: (619) 234-4553

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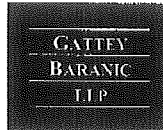
Thank you.

Message Confirmation Report

FEB-05-2007 05:43 PM MON

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Name : LAW OFFICES OF GK&D

Name/Number : 12028636290
Page : 5
Start Time : FEB-05-2007 05:41PM MON
Elapsed Time : 01' 22"
Mode : STD ECM
Results : [O.K]



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Thank you