



**NATIONAL BORDER PATROL COUNCIL  
LOCAL 2554**

American Federation of Government Employees  
Affiliated with AFL-CIO

**"Protecting Those Who Protect Our Borders"**

**DELIVER VIA ELECTRONIC MAIL**

March 3, 2010

Jeffrey Calhoon  
Chief Patrol Agent  
U.S. DHS / Customs and Border Protection  
El Centro Border Patrol Sector  
211 West Aten Road  
Imperial, CA 92243

**Union Initiated Grievance RE: Bargaining Unit Agents, specifically Interns at  
Indio Border Patrol Station**

Dear Mr. Calhoon,

In accordance with Article 33 F of the 1995 Agreement between the U.S. Immigration and Naturalization Service and National Border Patrol Council, the following constitutes a Union Initiated Grievance. This is on the behalf of Indio Border Patrol Station (IDO) Bargaining Unit Agents, specifically Interns.

This grievance was initially submitted as a Step I on 2/18/10. The Union had previously met informally, on different dates, with IDO management representing individual agents, specifically Interns. In every case, the Union promoted awareness concerning their rights. Unfortunately, it appears that IDO management believed Interns did not have any privileges afforded to them under Customs and Border Protection (CBP) rules, regulations and did not have Collective Bargaining Unit rights, therefore, the problems continued.

In agreement with Labor and Management Relations, El Centro Sector, Julie Brown, this is now being submitted as a Union Initiated Grievance at the Step II level.

**SYNOPSIS**

The Union has received numerous and detailed complaints arising from bargaining unit agents, specifically Interns and/or "Trainees" while on probation in the IDO Field



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Training Unit (FTU). The concerns, in essence, are that the bargaining unit agents, specifically the Interns are being unprofessionally treated in various ways to include verbal directives and mentoring guidance to *not* seek Union help. It is with a very strong appearance that by doing so, any Intern will be set up for failure, retaliated against or their employment will be terminated.

#### **FACTUAL BASIS FOR GRIEVANCE**

A 9/09/2008, decision, in the Matter of an Arbitration between AFGE, National Border Patrol Council, Local 2554 and Department of Homeland Security, Bureau of Customs and Border Protection, United States Border Patrol (Grievant: Joseph Stefan), sustained the right an Intern has. An Intern does not give up his Collective Bargaining Agreement (CBA) rights upon entering the Agency and signing an "Employment Agreement" covering his two years of Internship.

Furthermore, CBP policy is to treat all individuals in a non-discriminatory manner, without regard to their protected status under the Federal Law, Regulations or policy. CBP Policy prohibits discriminatory harassment against coworkers, subordinates, members of the trade, traveling public and individuals detained for law enforcement purposes.

The vast majority of complaints, the Union received, were directed against IDO Supervisory Border Patrol Agent (SBPA) R. Brewer. A few minor complaints were against some of the FTU Agents (Journeyman Field Training Officers) and *Acting* Patrol Agent in Charge ([A]PAIC) Wetjen.

During one informal meeting, (A)PAIC Wetjen stated to Union Representatives that he too believed and was under the notion that Interns had no right to the Union and/or rights to contest any employment assessment. This demonstrates IDO higher management does not understand certain rights guaranteed towards all bargaining unit agents, hence, lower ranking management and supervisors in charge of the FTU (SBPA R. Brewer) may not also be aware. This is a serious injustice due to many past Interns having been disciplined and up to their employment terminated and no rights were granted on their behalf. Many "rights" the Union is requesting IDO management acknowledge do not require any legal schooling but do demand "common sense," adherence to core CBP policies, the CBA and simple caring for those in the Border Patrol that lack the experience and have faith and rely that the Service will look out after and for them. Unfortunately, it appears that the Service has shamefully let many, if not all, of the Interns down.



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For example-

- Many Interns are being told that because they are Interns (probationary agents) they have no Union rights; therefore, they believe they are not eligible to contact the Union for any concerns.
- Some Interns are being or have been told that they do *not* have the right to seek Union Representation (advice), be given Weingarten notices (31B Forms), or allowed to choose their own Union Representatives when ordered to write Official Memorandums or when being compelled to make oral statements concerning possible violations of personnel policy or practice or condition of their employment. This does not include "Performance based" actions.
- Most, if not all, Interns are directed what to write in any official memorandum which will be later used against them. Interns are ordered to write whatever the FTU dictates to write. For example - This includes the wording, direction, and title explaining their unspecified fault or association with it. In the end, the only thing remaining **true** on the Official Memorandum is the Interns' signature. Everything else written or stated is entirely from the FTU agent or supervisor who compelled it.
- Some Interns believe that they are penalized for taking a break and/or eating "lunch." Some Interns have complained that they have to "ask" to use restroom facilities, and/or get something to eat in between "down" periods of work inactivity.
- Some Interns believe that they cannot bring up possible Health and Safety violations (i.e. vehicles), or ask for back-up or they will be written up for "performance based" issues. I.e. - Interns have been transporting detainees by themselves and it has been implied that they cannot ask for help/additional partner without being seen as "weak" and not capable of conducting their duty solo.
- Some Interns are being unprofessionally treated by the following means: Cursed at with profane and obscene vulgar words, intimidated, threatened, harassed, and/or bullied for trivial matters not related to the Service Mission.

Interns, the Union spoke with, *all* had the *perception* that they will be retaliated against if they contact the Union and/or raise their concerns to higher IDO management about



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any alleged mistreatment from the FTU. Interns believe they have no where or who to turn to.

Comments made by supervisors or managers that chill, interfere, or *imply* retaliation due to any IDO Intern or bargaining unit agent seeking their Collective Bargaining Unit or EEO Rights is a violation (Vincent v. U.S. Postal Service, 109 LRP 51661 (EEOC OFO 08/03/09)).

Comments that chill Union activity violate regulations and other laws. A supervisor or manager's knowledge of specific Union activity is *not* required for liability. Simply the "Mere utterance" of threatening words is enough to trigger a violation.

CBP employees are responsible for reporting allegations of discrimination, Health and Safety violations and other complaints or concerns. How can Interns be expected to bring forth allegations or concerns to their 1<sup>st</sup> line supervisor when past examples have demonstrated what will happen to them if they do? (For example – At IDO, being placed on the BP Alert detail is infamously known as the detail where an Intern believes they will soon be fired for "making waves") It appears that IDO management does nothing to rid itself of this perception held by all or most of the Interns. The selection process for BP-Alert is alleged to be unfair further making the program seem so.

Also, many of the problems stem from FTU SBPA R. Brewer and some Agents directly under his command, making it harder for any Intern to make a complaint against them. In essence, the Interns believe they have to withstand the unprofessional behavior directed against them and not make any type of protest or recommendation or they will be set up for failure, retaliated against or fired.

In order to make the FTU behavior consistent with *all* Interns and to **avoid** and **prevent** *future* cases involving discrimination, Unfair Labor Practices and EEO, the Union is hoping that IDO management simply adheres to CBP core principles in that:

- Each IDO Supervisor or Manager shall take prompt and appropriate action whenever any allegation of misbehavior is brought to his or her attention. Supervisors and managers are reminded that even if an agent's behavior does not rise to the level of discrimination under the Federal Civil Rights Laws, regulations or policies, it could still violate CBP's Standards of Conduct. Every CBP employee is accountable for upholding these standards of ethical and professional conduct at all times.

Interns should not have to stand, sit or remain still while a Border Patrol Supervisor or other FTU agent uses profanity, unprofessionally yells at or intimidates them. This



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includes speaking with any Intern in a public setting where other Interns can be intimidated by either viewing or hearing the unprofessional "Counseling" session. This causes great embarrassment to the subject Intern(s) and any others who may be nearby.

Interns have been ordered to write memorandums, which will be placed in their Official Files, without being given "Weingarten" (31B) warnings. Although, some memorandums are used for Intern "training" and can be construed as "Performance based" in order to assess their writing style for example, many of the mandated memorandums are later used against them.

For example - Interns are being told that their memorandums "are nothing," and "will go nowhere." Unfortunately, these same "nothing" memorandums are later used against them in future decisions deciding their retention.

The alleged unprofessional activity creates an intimidating and hostile environment. It interferes with work productivity, performance and seriously harms the entire morale of the station. Worse is when Interns believe that IDO management condones it and does nothing to counter it. This allows some FTU agents and other supervisors to further the mistreatment against Interns, believing that IDO management will support them. In other words, agents learn from leadership examples.

### **THE DISPUTE AND REASON FOR DISSATISFACTION**

#### ***Collective Bargaining Agreement***

#### ***Article 1 - Recognition***

***The Service recognizes the American Federation of Government Employees (National Border Patrol Council) as the bargaining agent for all Border Patrol Personnel of the Immigration and Naturalization Service assigned to Border Patrol Sectors except professionals and those excluded from coverage by the Civil Service Reform Act. [Underlined Emphasis added.]***

#### ***Article 4 - Rights and Obligations***

***E. Employees shall have and shall be protected in the exercise of the right, freely and without fear of penalty or reprisal, to form, join, and assist the affiliated locals of this Union....***



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***I. The Union shall be given the opportunity to be represented at any formal discussion between one or more management representatives and one or more bargaining unit employees concerning any grievance or personnel policy or practice or condition of employment.***

#### **Article 6 - Status of Employee Representatives**

***A. The Service shall not impose any restraint (except as may otherwise be provided in the CSRA or this agreement), interference, coercion, or discrimination against employees in the exercise of their rights to organize and designate representatives of their own choosing for the purposes of collective bargaining, Labor-Management Relations, or upon duly designated employee representatives acting on behalf of an employee or group of employees within the bargaining unit.***

#### **Article 21 - Personnel Files**

***A. No derogatory material of any nature which might reflect adversely upon the employee's character or Service career will be placed in his or her Official Personnel File (OPF) or Employee Performance File (EPF) without his or her knowledge.***

#### **Article 31 - Formal Meetings and Investigative Interviews**

***A. The Union shall be given the opportunity to be represented at any formal discussion between one or more representatives of the Service and one or more employees in the unit or their representatives concerning any grievance or any personnel policy or practices or other general conditions of employment.***

***B. (1) The Service will provide the Union (or another person of the employee's choice not involved in the investigation) the opportunity to be represented at any examination of an employee in the unit by a representative of the Service if:***

***a. the employee reasonably believes that the examination may result in disciplinary action against the employee; and***

***b. the employee requests representation.***



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*(3) The Service agrees prior to taking a written or sworn statement from an employee, or when an employee is going to be interrogated before witnesses which may lead to disciplinary action against the employee, he or she will be advised in writing of his or her right to be represented by the Union.*

*D. (1) Any guarantee of administrative immunity offered to induce the employee to submit to interrogation will be bona fide and in writing, with a copy provided to the employee and his or her representative.*

#### **Article 32 - Disciplinary and Adverse Actions**

*N. Although termination of a probationary or temporary employee is not an appealable adverse action, the Service agrees that when it deems advance notice of termination to be in the best interests of the operations of the Service, the affected employee will be given two (2) weeks advance notice prior to the effective date of such action.*

#### **CBP Standards of Conduct**

##### **6.7 GENERAL CONDUCT.**

*6.7.3 Employees will be professional in their contact with members of the public and co-workers. "Professional" for the purposes of this provision, means being polite, respectful, and considerate.*

*This requirement to be professional must be adhered to even under difficult conditions, in times of personal stress, and in the face of provocation so long as it does not compromise employee safety or impede the performance of official duties.*

*6.7.8 CBP does not tolerate violence in the workplace. Therefore, employees will not participate in, or condone activities that involve violence in the workplace. Such violence includes communicating a direct or indirect threat of physical, mental, or emotional harm. Threats can take the form of written or verbal statements, stalking activity, and facial expressions or physical gestures.*

#### **REMEDY**

The Union respectfully finds the following remedies warranted and, if placed into effect, will promote the efficiency of the Indio Border Patrol Station and Field Training Unit:



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1. All IDO bargaining unit agents, specifically Interns, should be told, instructed and guided that it is their right to seek Union Representation at *any* time. It is not a privilege.
2. IDO bargaining unit agents, specifically Interns seeking Union Representation will not be retaliated against in any manner or form. This will not be condoned.
3. IDO management will not imply or condone any intimidation or threats concerning IDO bargaining unit agents, specifically Interns seeking their Union rights as per the CBA.
4. IDO management will no longer use or condone obscene or profane language at bargaining unit agents, specifically Interns, outside any type of pre-approved training.
5. The Union shall be provided with advance notice of any future formal discussions between IDO management or any other Agency official and one or more bargaining unit agents, specifically Interns regarding a grievance or personnel policy or practice or condition of employment.
6. Meetings concerning possible retention or other issues with bargaining unit agents, specifically Interns, will be held in private settings. This is to guard the privacy of the Intern and not to demonstrate intimidation, fear or threats to any other Interns who may be nearby.
7. All IDO bargaining unit agents, specifically Interns writing ordered memorandums or compelled to give oral statements will be told *prior*, whether or not their statement(s) or memorandum are for training purposes, performance based or if the statements they give will be used against them later when deciding retention on their behalf. The FTU can help, guide, or dictate Interns to write memorandums or give statements concerning *training purposes only*. IDO management cannot assign themselves or any other agent to act as a Union Representative on the behalf of NBPC Local 2554 without explicit permission.

This prevents liability and true "Author" issues arising from IDO management telling or ordering bargaining unit agents, specifically Interns what to write and/or say regarding non-training, non-performance based memorandums or statements.



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8. If bargaining unit agents, specifically Interns' compelled statement(s) or memorandums are to be used against them (even in thought), all questioning will cease and reasonable time will be allotted until the bargaining unit agents, specifically Interns can seek a Union Representative of their own choosing. This includes seeking the advice and representation from any NBPC assigned Labor Attorneys.
9. Bargaining unit agents, specifically Interns' will be given a Form "31 B" or Weingarten statement *prior* to any examination consisting of compelled statement(s) or memorandums, which does not concern training or performance based purposes.
10. IDO management or the FTU should make the "BP-Alert" program one which is scheduled *impartially* (well known in advance and not suddenly and randomly selected for "unknown" reasons at any given time) among *all* bargaining unit agents, specifically Interns and not seen as a precursor to any bargaining unit agents, specifically Interns either being "set up for failure" or thought of for future termination.
11. IDO management will not set up for failure bargaining unit agents, specifically Interns, with details, mandates or orders without allowing the Intern to be fully trained and understanding alternatives meant for their own safety and/or their own personal or Agency liability. There is no reason, to include manpower issues, that a current Intern on probation should conduct enforcement duties *solo*. (This is with the exception of all unforeseen and exigent *emergencies*.) For example, Interns should not have to transport solo long distances with detainees in their care. This *sets them up for failure* if and when an emergency occurs. Most, if not all, Interns do not have the necessary experience and will be placed in a "Catch-22" situation based on *CBA Article 17*, subsections - A, F and G.
12. IDO management should encourage bargaining unit agents, specifically Interns to freely show initiative and not have to *ask* for simple needs such as using the bathroom and/or getting something to eat. This is a basic human need.
13. Any and all past memorandums, not relating to training or performance, in current bargaining unit agents, specifically Interns' *Official Personnel Files* should be returned to the Intern. If the Agency or IDO management still has the need for the memorandum, the Intern will have the option of seeking Union Advice or Representation first, without any fear, threat or insinuation concerning retaliation. In order to avoid any more allegations of potential retaliation or intimidation, this



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can be done with IDO management and the Union present while the memorandums are returned to the Interns.

14. A committee or working group should be started in order to investigate how many past and previous Interns were terminated or "forced" to resign without due regard to their individual rights as per the CBA or CBP regulations. At least one Union Representative, as per the Locals' choosing will be on the committee. The Union in good faith is hoping to bargain over this issue, however, the Union will be within its rights to contact an outside Agency (i.e., Office of Special Counsel) if the Service cannot, hesitates or refuses to investigate this due to some unknown reason. The Union strongly believes many previous Interns' employment were *wrongly and prejudicially* terminated or forced to resign.
15. Bargaining unit agents, specifically Interns will be given two weeks advanced notice in any case regarding an adverse action against them. By adhering to the CBA, this will prevent any future issues regarding Interns being proposed with and their employment suddenly terminated and immediately escorted off the property on the same day without any warning.
16. No bargaining unit FTU agents should be removed or retaliated against. They are not the ones responsible for creating the atmosphere. The Agency is responsible for the proper supervision and training.
17. IDO management/supervisors in charge of or overseeing the IDO FTU should be given additional training concerning their obligations and duties, be removed altogether from the program or given corrective action in order for this *not to happen again*.

The Union has begun monitoring the IDO FTU for future problems.

IDO bargaining unit agents, specifically Interns are the future of the Border Patrol. Although, the Agency compels new employees to sign documentation that states their employment is at will, this does not afford the Agency or IDO management and/or the FTU the opportunity to trample over the basic Human, Civil and Labor rights of any bargaining unit agent, specifically Interns. How Interns, who through the majority lack experience but are full of faith towards the Service, are treated defines the Station, Sector and the entire Border Patrol.



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Both IDO management and the Union can agree that simply being on probation does not mean that Interns cannot exercise nor have any rights. The Union hopes that these issues and remedies can easily be solved. The Union would like to meet in person and amiably and professionally discuss these issues, in good faith, with IDO management.

Respectfully,

SPA Lombardo Amaya  
President  
AFGE/NBPC Local 2554  
El Centro, California

cc: Executive Board Local 2554  
Mike Baranic (Gatley & Baranic LLP)  
Arturo Alcaraz Lead Rep RIV Station