



NATIONAL BORDER PATROL COUNCIL

of the

American Federation of Government Employees

Affiliated with AFL-CIO



September 28, 2006

Office of Human Resource Management
Bureau of Customs and Border Protection
Department of Homeland Security
1300 Pennsylvania Avenue, N.W.
Washington, D.C. 20229
ATTENTION: Sheila H. Brown
Director, Labor Relations Office
1400 L Street, 7th Floor

CERTIFIED MAIL # 7005 1820 0006 3566 5718

Dear Ms. Brown,

On August 29, 2006, the Union's Local in San Diego received notice from the Chief Patrol Agent of the San Diego Sector that the Office of Border Patrol and Bureau of Immigration and Customs Enforcement (ICE) had entered into an agreement wherein ICE Immigration Enforcement Agents would no longer provide transportation and detention services for the Border Patrol. Said notice explained that, as a result of the aforementioned agreement, the Border Patrol is now responsible for providing its own transportation and detention services. It also asserted that this change created an "operational exigency" that necessitated immediate implementation, but offered to bargain over the "post implementation impact" of the change. Inasmuch as this is a nationwide change, the aforementioned notice should have been delivered to the undersigned for response, and the time frames outlined in the Negotiated Agreement for proposed changes in conditions of employment at the national level apply.

Although the Union agrees that transportation and detention services are critical to the accomplishment of the agency's mission, it questions whether the instant "operational exigency" is actually outside the agency's control since the transfer of duties resulted from an agreement between two bureaus within the same department. Subsequent to receiving the aforementioned notice, the Union became aware of an undated memorandum from the Assistant Director for Management of ICE addressed to all Immigration Enforcement Agents assigned to Border Patrol Station/Sectors. That document outlines four phases of the transition, and references a pending CBP contract for land transportation services.

In order to fully respond to these changes in conditions of employment, the Union requests the following information pursuant to 5 U.S.C. § 7114(b)(4):

- A. A copy of the agreement between CBP and ICE regarding the transfer of transportation and detention duties back to the Office of Border Patrol.¹
- B. A copy of all policies that govern Border Patrol employees engaged in the transportation and/or detention of persons in the custody of the Border Patrol.²
- C. A copy of any notices sent to the Union proposing to implement such policies, along with a copy of proof of delivery for all such notices.³
- D. A copy of the training syllabus being used to train Border Patrol agents to perform transportation and/or detention duties.⁴
- E. An estimate of the length of time that Border Patrol agents will perform transportation and/or detention duties before other classes of employees assume those duties.⁵
- F. An explanation of the Bureau's long-range plans concerning which occupation(s) will handle transportation and/or detention duties.
- G. A copy of the contract for land transportation services referenced in the memorandum from the ICE Director for Management.
- H. A copy of all documents relating to the contracting-out of the land transportation services, including those indicating that appropriate approval to do so has been requested and/or obtained.⁶

The Union has a number of concerns regarding the aforementioned changes in conditions

¹ This information is necessary in order for the Union to be able to fully understand the scope of the instant changes, as well as the ramifications thereof, enabling the Union to perfect its bargaining proposals.

² The Union needs a copy of these policies in order to be able to fully understand the requirements for employees assigned to transportation and/or detention duties, as well as to be able to evaluate the impact of such requirements. This will assist the Union in perfecting those bargaining proposals that are designed to ameliorate any potential adverse effects.

³ This information will enable the Union to determine whether the Bureau has already satisfied its collective bargaining obligations with respect to any of the policies that the Bureau intends to utilize.

⁴ The Union needs this information in order to evaluate whether the training will adequately prepare Border Patrol agents for transportation and/or detentions duties. Following such analysis, the Union will be in a better position to formulate proposals designed to ensure that employees have sufficient familiarity with all of the applicable policies and procedures.

⁵ This information, as well as that requested in paragraph F. and G., is needed in order to obtain a better understanding of the Bureau's plan regarding the provision of transportation and/or detention services in the future. This information will assist the Union in formulating counter-proposals that are responsive to the duration of the proposed change.

⁶ The Union needs this information in order to verify the Bureau's compliance with all laws and regulations concerning the contracting-out of work, enabling it to fulfill its representational responsibilities.

of employment, and accordingly makes known its demand to bargain over these matters to the fullest extent allowable under law. In light of the obvious immediate need to have these duties performed, the Union is willing to engage in post-implementation bargaining if the Bureau agrees to apply all agreements reached retroactively. Otherwise, the Union would be left with no choice other than to insist that the implementation of the instant changes be rescinded and held in abeyance pending the completion of all phases of bargaining, including the resolution of all attendant third-party proceedings.

The following initial bargaining proposals are submitted at this time:

1. To the maximum extent possible, all agreements herein will be applied retroactively to the time that the instant changes were unilaterally implemented.
2. The assignment of Border Patrol employees to perform transportation and/or detention duties will be accomplished in a fair and equitable manner.
3. When performing transportation and/or detention duties, employees will not be required to report directly to a work location other than their assigned duty station.
4. Employees will be provided as much advance notice as possible of their assignment to transportation and/or detention duties.
5. Involuntary assignments to transportation and/or detention duties will not exceed five consecutive work days, except in *bona fide* operational emergencies.
6. Following an involuntary assignment to transportation and/or detention duties, an employee will not be required to perform such duties again until all other available and qualified employees at his or her station who do not volunteer for such duties have also been assigned to perform them.
7. Management will ensure that rotation wheels are established and maintained in order to facilitate the fair, equitable, and orderly functioning of the foregoing process.
8. All employees who are assigned to perform transportation and/or detention duties will receive adequate training in all aspects of such duties.
9. All employees who are assigned to perform transportation and/or detention duties will receive a copy of all relevant policies and procedures governing the performance of such duties.
10. The amount, type and duration of all formal and on-the-job training will be thoroughly documented, with a copy of such documentation provided to the employee.
11. The degree to which an employee may be held accountable for adherence to the policies and procedures governing the performance of transportation and/or detention duties will be commensurate with amount and level of training provided to that employee in such matters.

12. No Border Patrol agent will be required to obtain a commercial driver's license as a condition of employment.

13. Border Patrol agents who choose to obtain a commercial driver's license in order to perform transportation duties will receive all training associated therewith on duty time and at no personal cost, and will also be reimbursed for all related fees.

The foregoing proposals are by no means all-inclusive, and are subject to modification and/or augmentation at any time prior to the completion of all phases of bargaining.

The Union stands ready to bargain over these matters following receipt of the information requested herein. Please contact the undersigned to schedule negotiations.

Sincerely,

T.J. Bonner
President
National Border Patrol Council
AFGE, AFL-CIO
P.O. Box 678
Campo, CA 91906