



National Border Patrol Council Local 1613
Affiliated with AFGE, AFL-CIO & PORAC

Shawn P. Moran • Vice President

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"Protecting Those Who Protect Our Borders"

May 10, 2007

Michael J. Fisher
(Acting) Chief Patrol Agent
United States Border Patrol
2411 Boswell Road.
Chula Vista, CA 91914

2007 MAY 10 PM 12:06
[Handwritten signature]

RE: "No Confidence" Notice Removal

Dear Mr. Fisher,

In accordance with Article 33 F of the 1995 *Collective Bargaining Agreement between the NBPC and the I&NS* (hereinafter CBA) this union-initiated grievance is being filed regarding the order to remove official Union correspondence from the Union bulletin board at the Imperial Beach Border Patrol Station. In accordance with Article 33 F (2), I have been designated by T.J. Bonner, President of the National Border Patrol Council, to file this grievance.

Due to the fact that the violations complained of herein appear to have occurred as a result of actions initiated by San Diego Sector, Imperial Beach Border Patrol Station (IMB) Assistant Patrol Agent In Charge (APAIC) Mark Moody, the Union has determined that the action in question was initiated within SDC. In accordance with Article 33 J of the *Agreement*, if management deems this to be an inappropriate level for this grievance, the grievance will be considered timely and management will forward the grievance to the level that it designates as being responsible for the action being grieved.

Background

On or about March 21, 2007, Vice President Shawn Moran posted a Union notice on the Union bulletin board, which is located in the mailroom at IMB. The notice notified members of the unanimous vote of "No Confidence" in Chief David Aguilar by Union officers in attendance at the February 28, 2007 National Border Patrol Convention. The notice was 8 ½ by 11 inches and contained the words "NO CONFIDENCE" followed by Chief Aguilar's official photo and a one paragraph summary of the vote.

On May 9, 2007, LUR Chris Harris was ordered by APAIC Mark Moody to remove the "No Confidence" notice concerning Chief Patrol Agent David Aguilar from the Union bulletin board.

Violation

The order by APAIC Moody to remove the “No Confidence” flyer violates Article 8 Section B of the CBA, which reads:

Each Immigration and Naturalization Service installation will provide bulletin board space in a place of prominence for posting material published by the local AFGE Local, by the National Headquarters of the AFGE, and the National Border Patrol Council. In each Sector Headquarters the Service will provide one locked bulletin board of a size approximately 3' by 3' for posting of material. The bulletin boards will be permanently attached to the walls where building management regulations permit such permanent installations. Arrangements for space and installation of bulletin boards will be made with the appropriate Chief Patrol Agent.

In addition, miscellaneous items such as notices of items for sale, etc., may be posted upon approval of the Union. The Union shall be responsible for all matters on the bulletin board and each item placed thereon shall be initialed and dated by a Union official. The Union agrees to keep its bulletin board space in a neat and acceptable manner.

Literature or notices posted will neither violate any law nor contain libelous material.

The Union contends that the notice did not violate any law nor did it contain libelous material. Instead, the Union Notice merely contained factual information about the vote and a brief explanation to justify the vote of “no confidence”. To further prove this point, the Union will dissect the informational portion of the Union notice:

FACT: “On February 28, 2007 at the National Border Patrol Council convention in Corpus Christi, TX, Local 1613 put forth a resolution for a vote of “no confidence” in the leadership of Border Patrol Chief David Aguilar.”

FACT: “The motion passed unanimously.”

FACT: “The disconnect between Chief Aguilar and the frontline agents of the Border Patrol grows daily.” From the perspective of the exclusive representative and the frontline agents, Chief David Aguilar has become detached from the frontline agents of the Border Patrol. This is evident through ill-conceived policies that have negatively impacted the bargaining unit. Some examples of these policies are: the cancellation of over 140 transfers after the agents patiently waited to be transferred for three or more years and were consistently misled to believe they would be transferred once funding was received; unilaterally changed the procedures for handling spousal and compassionate transfers; unilaterally changed the policy regarding no-cost details; unilaterally changed the shift hours at every U.S. Border Patrol Station; unilaterally increased involuntary details to 45 days and Academy details to ten months; unilaterally reduced the statutorily established overtime cap from \$35,000 to \$30,000; attempted to eliminate a reasonable reimbursement for Border Patrol Agents to relocate; attempted to unilaterally implement the new rough duty uniform that was proposed and developed by the Union and wasted millions of taxpayer money by refusing to allow the use of the old rough duty uniform for a reasonable period after the new uniform was implemented; instructed the Labor Employee Relations division to handle all communications with the exclusive representative at the Headquarters and Sector levels, thereby eliminating any meaningful

communications between management and the exclusive representative; recently advocated on behalf of a temporary guest worker program as a means to accomplish the goal of securing the border; etc,

FACT: "Chief Aguilar has shown more concern for his career than for the well-being of Border Patrol Agents." Again, please refer to the aforementioned list of ill-conceived policies implemented by Chief David Aguilar.

FACT: "Instead of showing strong leadership to Border Patrol Agents at this difficult time, Chief Aguilar remains silent and advances policies which contribute to low morale and high attrition." Chief David Aguilar remained silent throughout the unjust prosecution of Border Patrol Agents Ignacio Ramos and Jose Compean. Chief Aguilar allowed the prosecution to misapply and misinterpret the Border Patrol Pursuit Policy and the Border Patrol Firearms policy. The evidence pertaining to the misapplication has been reported in newspapers around the country. As for the policies, please refer to the above list.

FACT: "This vote is unprecedented and reflects the lack of faith that Border Patrol Agents have in their leadership."

The Union believes this action to be part of a concerted effort to stifle dissent prior to the visit of Chief David Aguilar on May 12, 2007. The order by APAIC Mark Moody directly interferes with the right of the Union to communicate with the bargaining unit and to disseminate Union literature in accordance with the CBA.

REMEDIES

To remedy the situation the following actions must occur:

1. APAIC Mark Moody will rescind the order to remove the "No Confidence" notice.
2. Imperial Beach Station management will abide by Article 8 Section B of the Collective Bargaining Agreement and respect the Union's right to maintain its bulletin board without interference from management officials.

The Union regards this as a very important issue and the undersigned is available to discuss it at any time.

Sincerely,



Shawn P. Moran