

UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY
OFFICE OF ADMINISTRATIVE LAW JUDGES
WASHINGTON, D.C. 20424

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U.S. DEPARTMENT OF JUSTICE, .
U.S. IMMIGRATION AND .
NATURALIZATION SERVICE, .
U.S. BORDER PATROL, .
WASHINGTON, D.C. .

Respondent .

and .

Case No. 4-CA-90547

AMERICAN FEDERATION OF .
GOVERNMENT EMPLOYEES, .
NATIONAL BORDER PATROL .
COUNCIL, AFL-CIO .

Charging Party .

.....

Richard Linnemann, Esq.
For the Respondent

T. J. Bonner
For the Charging Party

Philip T. Roberts, Esq.
For the General Counsel

Before: SALVATORE J. ARRIGO
Administrative Law Judge

DECISION

Statement of the Case

This case arose under the Federal Service Labor-Management Relations Statute, Chapter 71 of Title 5 of the U.S. Code, 5 U.S.C. Section 7101, et seq. (herein the Statute).

Upon an unfair labor practice charge having been filed by the captioned Charging Party (herein the Union) against the captioned Respondent, the General Counsel of the Federal Labor Relations Authority (herein the Authority), by the

Regional Director for Region IV, issued a Complaint and Notice of Hearing alleging Respondent violated the Statute by refusing Union representation to unit employees when conducting examinations in connection with an investigation.

A hearing on the Complaint was conducted in Atlanta, Georgia, at which all parties were afforded full opportunity to adduce evidence, call, examine and cross-examine witnesses and argue orally.^{1/} Briefs were filed by Respondent, the Charging Party and the General Counsel and have been carefully considered.

Upon the entire record in this case, my observation of the witnesses and their demeanor, and from my evaluation of the evidence, I make the following:

Findings of Fact

At all times material the Union has been the exclusive collective bargaining representative of all Respondent's nonsupervisory, nonprofessional Border Patrol personnel. At all times material the parties were governed by the terms of an agreement negotiated in 1976.

The Immigration and Naturalization Service operates a training facility for Border Patrol Agents in Glynco, Georgia known as the Border Patrol Academy (herein the Academy). When Agents are first employed by the Border Patrol they report to their assigned duty stations for a short period and then report to the Academy for eighteen weeks' of training. Border Patrol Agent Trainees are all within their first year of employment and thus are probationary employees. At the Academy Trainees are under the supervision and control of Academy instructors and the Academy has the authority to discipline and indeed terminate Border Patrol Trainees where warranted. All instructors at the Academy have supervisory status. There are no permanent bargaining unit employees at the Academy nor any Union stewards.

On Saturday evening March 4, 1989 six Trainees from the Academy went to a bar in a nearby town. They returned to their motel rooms provided Trainees by the Academy with a number of prostitutes. Two Trainees each took a prostitute to his room and the other Trainees left.

^{1/} The Charging Party's unopposed motion to correct the transcript is hereby granted.

One Trainee who was not involved with a prostitute informed the Academy of the incident and the Academy instituted an investigation of the matter. Accordingly, on Monday morning March 6 the remaining five Trainees were removed from their classes and individually interrogated by supervisory personnel in the Academy's Administrative Building.^{2/} Every supervisor wore a distinctive insignia. The following occurred to the individual Trainees:^{3/}

William C.^{4/}

William C. was taken out of a class by supervisor Jose Estrada and driven to the Administrative Building. On the way, supervisor Estrada asked William C. if there was anything he needed to tell him. Estrada would not elaborate. When they arrived at his office Estrada put a note on the outside of his office door which said "Interrogation in Progress." After closing the door Estrada asked William C. what occurred during the incident with the women at the motel on Saturday night. Estrada indicated it was a criminal offense in the State of Georgia to procure prostitutes. William C. told Estrada he was concerned about his future, had a wife and child to support, didn't think he was capable of defending himself and would like to speak to a lawyer or somebody to advise him on this. Estrada replied that it was just an administrative proceeding and they were simply trying to get the facts.^{5/} No representative was provided.

During this session Estrada asked William C. to write out his version of the incident. William C. complied and

^{2/} The Administrative Building was normally off-limits to Trainees.

^{3/} One Trainee resigned shortly after the incident and is not the subject of this proceeding.

^{4/} The parties agreed that for the purpose of this decision the Trainees involved would be designated only by first name and last initial.

^{5/} William C. testified he was not sure whether he said lawyer and a Union representative, representation, someone to advise him or someone to assist him. Estrada testified he did not recall William C. making a request for representation, but stated, "the possibility is there." I credit William C.'s version of this meeting as stated above.

Estrada took the statement and left for a time, then came back and told William C. he noticed some inconsistency and didn't think William C. was telling the truth, so he would have to write another more detailed statement. William C. wrote another which Estrada took and left again. Estrada returned with another supervisor. Both supervisors insinuated that William C. was lying, but upon further reflection and consultation decided he was not. Estrada instructed William C. to type out a third statement, which he did.

Timothy M.

On Monday morning Timothy M. was taken out of his class by a supervisor and brought to the Administrative Building without being informed as to the reason for the action. He was taken to a second supervisor's office who asked Timothy M. to write a statement describing the weekend incident. Timothy M. provided a statement and the supervisor asked if the statement was accurate. Timothy M. affirmed its accuracy and the statement was received without objection. Timothy M. did not ask for Union representation.

Robert M.

Early Monday morning while in class Robert M. was told by his instructor to report to the Administrative Building where he was placed in an office with a supervisor. The supervisor informed Robert M. that he was aware there were some "problems" that occurred on Saturday night and asked Robert M. to write a full statement detailing what had happened. The supervisor was not satisfied with Robert M.'s statement, told him he was lying, and told him to write another statement and then another until Robert M. had written three statements in all. Robert M. typed his final statement and was brought into a room with several other people, including Robert Atwood, Assistant Chief of the Academy and in charge of the investigation. Again, Robert M. was told that he was lying and was threatened with criminal prosecution if he did not tell the truth. Robert M. insisted his statement was truthful. Robert M. did not ask for a Union representative.

Frank P.

Frank P. was taken out of class Monday morning by a supervisor and with no explanation was escorted to an office in the Administrative Building. After remaining in the room

alone for some time, a supervisor named Sanchez arrived, closed the door, and questioned Frank P. about what had happened over the weekend. Frank P. responded and Sanchez asked him to write everything down on a note pad. Frank P. complied and Sanchez took the statement and left. Sanchez returned some 15 or 20 minutes later and asked Frank P. to rewrite the statement contending it was too vague. Frank P. again complied and Sanchez left with the statement. Sanchez returned and asked Frank P. to come with him into another room where Academy Chief Patrol Agent Charles Huffman, Assistant Chief Atwood and supervisor Estrada were waiting. Atwood told Frank P. he was lying and, if he didn't tell the truth, they would take him down to the District Attorney's office where they would press charges against him for procuring prostitutes. Estrada made the same threats and Frank P. responded that he would write anything they wanted him to write. Sanchez returned Frank P. to the prior room where he wrote another statement which was typed and which Frank P. signed under oath.^{6/} Frank P. did not ask for a Union representative.

Later on Monday March 6 Assistant Chief Atwood gave William C., Timothy M., Robert M., and Frank P. each a letter notifying them that they were to appear on March 9 before a Special Probationary Board. The letter stated:

"You are hereby directed to appear before a Special Probationary Board on Thursday, March 9, 1989, in Room 138, Building 64, Federal Law Enforcement Training Center, Glynco, Georgia at 8:00 AM.

"At this time the Board will conduct an inquiry into your alleged failure to comply with the Conduct and Integrity Standards of the U.S. Border Patrol.

"When you appear before the Board you will have the right to be represented by a union representative or any other person of your choosing as provided by Article 31(a) of the Agreement between the U.S. Immigration and Naturalization Service and the American

^{6/} It appears from the record that this statement was the only one signed under oath, all other statements from the Trainees having been given in unsworn memorandum form.

Federation of Government Employees (National Border Patrol Council). You will at this time be afforded the opportunity to respond to the allegations.

"At the conclusion of their deliberation the Board will make a recommendation to the Director of Training, Officer Development and Training Facility, as to whether you should be retained in the Service or your probationary appointment as a Border Patrol Agent (Trainee) terminated."

Upon receipt of the letters the four Trainees conveyed to Assistant Chief Atwood their desire for Union representation. Atwood responded by giving them the business card of John Claydon, Border Patrol Council National Vice-President for the Southeastern Region, with jurisdiction over Florida and Georgia, located in Jacksonville, Florida. The Trainees attempted unsuccessfully to contact Claydon by telephone that evening and left messages on his answering machine.

The next day, Tuesday, March 7, 1989, the four Trainees were called back to the Administrative Building, where they spent the better part of the day waiting. All four made numerous unsuccessful attempts to contact Union representative Claydon during the day. They advised Assistant Chief Atwood that they had been unable to contact Claydon to which Atwood responded that if they wished a postponement of appearance before the Board, they should make such a request in writing.

On Wednesday March 8, 1989 the four Trainees again returned to the Administrative Building. One of the Trainees advised Assistant Chief Atwood of the difficulty they were having contacting Union representative Claydon. Atwood made a telephone call to Florida and located Claydon who advised that he would not be available for the hearing on Thursday, and indeed might not be available on Friday or the following Monday. Thereafter, supervisor Estrada asked temporary supervisor Charles Park, who previously had been a Union representative, if he could assist the Trainees. Although Park, like all instructors at the Academy was a supervisor and therefore ineligible to act as a Union representative, he nevertheless received permission to assist the Trainees in locating a Union representative. Park attempted to contact the President of the Local Union

in Laredo, Texas but was unsuccessful.^{7/} Park did contact the President of a local in New Orleans, Park's permanent duty station, but he was not available on Thursday, March 9. Eventually, Park contacted a steward at the Freer, Texas Border Patrol Station, Robert Porrás, and arranged for him to speak by telephone with the four Trainees.^{8/} That afternoon the four Trainees spoke with Porrás over the telephone. Porrás told the Trainees he would attempt to get in touch with someone to represent them and, if not, he would try to get to Glynco before the Trainees met with the Board. Porrás also told the Trainees they should make a written request for a postponement in the event he was unable to get to Glynco for the hearing until the following Monday.^{9/}

Assistant Chief Atwood testified that while the Park-Porrás contacts were taking place he had a telephone conversation with National Vice-President Claydon during which time Atwood told Claydon of having contacted Porrás and Claydon told Atwood that Union steward Porrás would have to handle the Academy matter since he was unable to get to Glynco. Later that day Atwood talked with Porrás and Porrás indicated he would not be able to attend the Board proceeding on the following day and the Union had no objection to the Board proceeding without a Union representative being present.^{10/}

On Thursday, March 9, the Trainees were introduced as a group to the two member Probationary Board. The Trainees were told that the statements they had written earlier in the week would not be used and the Board wanted the Trainees to each write out a new memorandum explaining what had happened concerning the incident. The Trainees were told

^{7/} All four Trainees were from the Laredo, Texas Sector of the Border Patrol.

^{8/} Several of the Trainees were assigned to the Freer Station.

^{9/} By the end of the day the four Trainees each submitted to the Academy a request for a postponement of the Special Probationary Board. The requests, which were all quite similar, generally indicated the Trainees desired but were having difficulty in obtaining Union representation for March 9.

^{10/} Neither Claydon nor Porrás was called to testify.

that they could come back later, one at a time, and the Board would listen to whatever the Trainee had to say, but would not ask any questions. William C. and Robert M. asked the Board for Union representation and were told that representation could not be made available in time for the proceedings. The Trainees were then escorted to separate rooms where they wrote their memoranda.^{11/} Subsequently, each Trainee returned to meet the Board individually and spoke without being questioned by the Board.

Article 31A of the collective bargaining agreement provides:

The Agency 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 will be advised in writing of his right to be represented by the Union or any other person of his choice. The failure to obtain representation will not delay the interrogation for more than 48 hours from the time the employee receives notice of the interrogation. Upon request, a reasonable extension of time will be granted when a representative cannot be present. . . .

Bruce Fuller, Deputy Chief Patrol Agent in the Laredo Border Patrol Sector and Chairman of the Special Probationary Board which heard the matter involving the Trainees herein testified that prior to the proceeding the Board was notified that the Trainees had requested Union representation but the Union was unable to provide it. Accordingly, the Board decided that to be fair to the Trainees and in order not to violate Article 31 of the negotiated agreement, supra, the Board would merely require "operational memoranda" from the Trainees and would not interrogate them. Fuller explained that in his view a sworn statement is obtained using the question and answer mode and an "operational memorandum" allows the Trainee to provide whatever information he wishes and the opportunity to make an oral statement without

^{11/} One Trainee was separately told by Assistant Chief Atwood to type out another statement but not to be concerned because he was going to be "allright."

questions being asked apparently, in Fuller's view, would not be a statement within the meaning of Article 31. However, Fuller was not examined in detail on this interpretation and offered no explanation as to the meaning of "written" statement as opposed to "sworn" statement as used in Article 31A. In any event, the Board met, considered the memoranda submitted and found no nexus between what occurred on the night in question and the Trainees' official position. As to the charge of lying or misrepresentation of material facts which had been alleged, the Board found no differences between the various Trainees' accounts of the incident. Board Chairman Fuller informed Academy Chief Huffman that they were unable to make a determination on the misrepresentation issue and asked if there was any other evidence available to assist the Board. Huffman provided Fuller with the memoranda taken from the Trainees on March 6 and from a review of these documents the Board concluded two Trainees had lied when first providing statements on the incident. Upon the Board's recommendation to Huffman, Robert M. and Frank P. were terminated on March 10, 1989.

Assistant Chief Atwood testified that in the two years he has been assigned to the Academy he was involved in "12 to 15, if not more" incidents of Trainee misconduct which involved such matters as writing bad checks, utilization of stolen credit cards, drunkenness and associated misconduct, destruction of property and fighting. Atwood testified without contradiction that investigation of those incidents proceeded by requiring the Trainee involved to write an incident report or memorandum on the matter. If from what was disclosed from the investigation it was determined that further proceedings before the Probationary Board was necessary, then the Trainee was served with a notice which included being informed of his rights under Article 31A of the collective bargaining agreement, but not before. National Union Vice-President Claydon would normally arrive on behalf of the Union to represent the accused before the Board if the Union made an appearance at the proceeding. The Union, according to Atwood, never objected to the above practice.

Further Findings, Discussion and Conclusions

The General Counsel alleges Respondent violated the Statute by: (1) denying William C. a Union representative at the March 6, 1989 meeting; (2) its conduct on March 6 of requiring statements from the Trainees which the General Counsel urges constituted a repudiation of Article 31 of the parties' collective bargaining agreement; and (3) refusing to postpone the Special Probationary Board hearing held on

March 9. Counsel for the General Counsel and the Union urges that if a violation of the Statute as alleged is found, then the two Trainees who were terminated should be reinstated with backpay.

Respondent contends: (1) the evidence fails to support the allegation that William C. requested or was denied a Union representative on March 6; (2) no repudiation of the contract occurred since the Union acquiesced in the existing practice concerning the conduct of the hearing by the Probationary Board; and (3) a remedy requiring reinstatement of probationary employees is not available under the Statute.

Section 7114(a)(2)(B) of the Statute provides:

"(2) An exclusive representative of an appropriate unit in an agency shall be given the opportunity to be represented at-

. . . .

"(B) any examination of an employee in the unit by a representative of the agency in connection with an investigation if-

"(i) the employee reasonably believes that the examination may result in disciplinary action against the employee; and

"(ii) the employee requests representation."

Clearly the interviews or interrogations of the four Trainees on March 6, 1989 by Respondent's supervisors wherein the Trainees were ordered to appear for the interrogations and instructed to write out their versions of the incident which occurred the prior Saturday night were examinations within the meaning of Section 7114(a)(2)(B) of the Statute. Accordingly, if any employee being interrogated requested representation, failure to provide the Union with an opportunity to be represented at the interrogation would violate the Statute. Three Trainees made no request for representation during the March 6 examinations. However, as I have found above, a fourth Trainee, William C., told his

interrogator that he wanted to speak to a lawyer or somebody to advise him.

In my view such a statement constitutes a valid request for a Union representative. The provisions of Section 7114(a)(2)(B) grant Federal employees a right to representation during employee examinations similar to those rights held by private sector employees as set forth in NLRB v. J. Weingarten, 420 U.S. 251 (1975). See United States Department of Justice, Bureau of Prisons, Metropolitan Correctional Center, New York, New York, 27 FLRA 874 (1987). Under both the Statute and the National Labor Relations Act substantial leeway is given an employee with regard to the language used in requesting union representation. Thus, in Bureau of Prisons, id., an employee's statement "maybe I need to see a union rep" was sufficient to constitute a request for union representation. In the private sector, the National Labor Relations Board held in Southwestern Bell Telephone Company, 227 NLRB 1223 (1977) that an employee's remark, "I would like to have someone there that could explain to me what was happening" was all that Weingarten required to invoke the employee's right to representation. Accordingly I conclude William C.'s statement that he wanted to speak to a lawyer or somebody to advise him was sufficient to put supervisor Estrada on notice that he was requesting representation and Respondent's failure to provide such representation violated Section 7116(a)(1) and (8) of the Statute.

As to the contention that Respondent repudiated the agreement, Article 31A of the parties' bargaining agreement, supra, clearly requires that employees be advised of their right to representation prior to the agency taking a written or sworn statement which may lead to disciplinary action and such language appears to be clear and unambiguous and not susceptible to various interpretations. Thus, counsel for the General Counsel urges that when the multiple statements were taken from the four Trainees herein without being advised of their right to representation, Respondent repudiated Article 31A of the agreement in violation of section 7116(a)(1) and (5) of the Statute, citing for support Rolla Research Center, U.S. Bureau of Mines, Rolla, Missouri, 29 FLRA 107 (1987). However, the record herein reveals, according to the unrefuted testimony of Assistant Chief Atwood, that over at least the past two years 12 to 15 and perhaps more incidents have openly occurred at the Academy wherein investigations of incidents involving Trainees proceeded without providing Trainees with Article 31A notification. Therefore, Respondent argues a past practice

modifying the application of Article 31A exists whereby Article 31A notification was not construed to cover pre-Probationary Board statements provided during investigations of incidents involving possible misconduct at the Academy. The Union and the General Counsel urge that Article 31A should be interpreted literally and applies to pre-Probationary Board statements such as the ones taken from Trainees on March 6. Thus resolution of this dispute requires an interpretation of the collective bargaining agreement as to what effect the current practice at the Academy had upon Article 31A of the Agreement. In all the circumstances herein I find that since this dispute presents different but arguable interpretations of Article 31A of the contract, I conclude the proper forums in which to resolve this dispute is the negotiated grievance procedure of the parties collective bargaining agreement. Cf. Immigration and Naturalization Service Newark District, 30 FLRA 486 (1987); Letterkenny Army Depot and National Federation of Federal Employees, Local 1429, 5 FLRA 272 (1981); and Letterkenny Army Depot, 34 FLRA 606 (1990) at 610-611.

With regard to the contention that Respondent's failure to grant the Trainees a reasonable postponement of the Probationary Board proceeding which they requested violated section 7114(a)(2)(B) of the Statute, Assistant Chief Atwood testified without contradiction that National Vice-President Claydon, who was clearly the recognized Union representative servicing the Academy, authorized Union steward Porrás to be the Union's representative for the Probationary Board hearing and Porrás told Atwood the Union had no objection to the Board proceeding without a Union representative being present. I credit Atwood's testimony.^{12/} While under section 7114(a)(2)(B) of the Statute the Union possessed the right to be represented at the Probationary Board hearing, it may waive its right if it so chooses. The Union did not request a postponement of the Probationary Board proceeding. Rather I find by the conversations described above an authorized Union representative waived the Union's right to

^{12/} Counsel for the General Counsel and the Union representative urge that Atwood should not be credited concerning this issue suggesting Atwood's testimony was "preposterous," "internally inconsistent" and "suspicious." However neither Claydon nor Porrás were called as a witness in this hearing and I perceive no independent reason supportable by this record for discrediting Atwood.

be represented at the proceeding. Accordingly in these circumstances I conclude Respondent did not violate the Statute when it conducted the Probationary Board proceeding without the presence of the Union and failed to grant the employees the postponement they requested.

Turning now to the employees' contractual rights, the four Trainees on March 8, 1989 had each requested a postponement of the Probationary Board proceeding citing unavailability of a representative.^{13/} No reply was given to the employees and the proceeding commenced as scheduled, notwithstanding Article 31A of the agreement. Article 31A provides for no more than a 48-hour delay in interrogation of an employee from the time the employee receives notice of the interrogation (herein notice of the Probationary Board proceeding was given late on March 6) and, further provides that "Upon request, a reasonable extension of time will be granted when a representative cannot be present." The language of Article 31A is unambiguous and the record disclose no reliable evidence bearing on interpretation or application of this language of the contract which might vary or modify it as stated regarding obtaining written statements from employees.

It is beyond question that the Board envisioned taking unsworn written statements from the Trainees when the proceedings commenced. Indeed the notice given to the four Trainees by Assistant Chief Atwood late in the day of March 6, indicated the meeting with the Probationary Board was an Article 31A proceeding, supra. In my view such statements are clearly encompassed by Article 31A. Accordingly I conclude Respondent's failure to provide the four Trainees with a reasonable extension of time to procure a representative prior to appearing before the Probationary Board and supplying written statements to the Board constituted a repudiation of Article 31A of the parties' collective bargaining agreement and thereby violated section 7116(a)(1) and (5) of the Statute. See Rolla Research Center, supra.

^{13/} Two Trainees indicated a representative would be available on Friday, March 10 and one Trainee indicated a representative would not be available until after March 10. One Trainee cited Article 31A to support his request. Two of the four Trainees asked for a written response to the request.

Counsel for the General Counsel urges that the employees who failed to obtain rights granted under the Statute or because Respondent repudiated contractual provisions be reinstated with backpay since their discharges might have been prevented if they had been provided a representative when dealing with the Academy during the investigation of the incident in question. However, I have found that the only violation of the Statute affecting the two discharged Trainees, Robert M. and Frank P., was Respondent's failure to grant them a reasonable extension of time to obtain a representative to assist with their appearance before the Probationary Board. The record reveals that on March 9 the Probationary Board had the Trainees supply statements regarding the incident but these statements were not used in reaching the decision to terminate Robert M. and Frank P. Thus the March 9 statements ultimately played no part in the discharge. Rather, the Board relied on the prior statements which the Trainees provided on March 6 to reach their decision to recommend discharge, concluding Robert M. and Frank P. were not candid when writing up their initial statements recounting the events surrounding the incident giving rise to the inquiry. Therefore, since Respondent's repudiation of the terms of Article 31A of the collective bargaining agreement concerning its failure to provide an extension of time to secure representation when the March 9 statements were taken from the Trainees was not causally related to the discharges, I shall not require reinstatement for Robert M. and Frank P. as requested.

Accordingly, having found Respondent to have violated section 7116(a)(1), (5) and (8) of the Statute as set forth above, I hereby issue the following:

ORDER

Pursuant to section 2423.29 of the Federal Labor Relations Authority's Rules and Regulations and section 7118 of the Statute, it is hereby ordered that the U.S. Department of Justice, U.S. Immigration and Naturalization Service, U.S. Border Patrol, Washington, D.C., shall:

1. Cease and desist from:

(a) Requiring any bargaining unit employee to take part in an examination in connection with an investigation without representation by the American Federation of Government Employees, National Border Patrol Council, AFL-CIO, the exclusive collective bargaining representative, if such representation has been requested by the employee

and if the employee reasonably believes that the examination may result in disciplinary action against the employee.

(b) Failing and refusing to grant upon request a reasonable extension of time to an employee when the Agency is taking a written or sworn statement from an employee and the employee requests a representative and the representative cannot be present as provided in Article 31A of the parties' collective bargaining agreement dated September 30, 1976.

(c) In any like or related manner interfering with, restraining or coercing its employees in the exercise of rights assured them by the Federal Service Labor-Management Relations Statute.

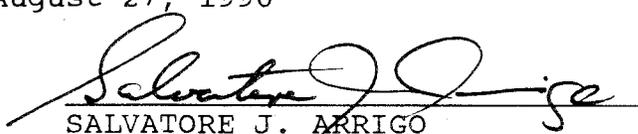
2. Take the following affirmative action in order to effectuate the purposes and policies of the Statute:

(a) Upon request, grant a reasonable extension of time to an employee when the Agency is taking a written or sworn statement from an employee and the employee requests a representative and the representative cannot be present as provided in Article 31A of the parties' collective bargaining agreement dated September 30, 1976.

(b) Post at its Training facilities at Glynco, Georgia, copies of the attached notice on forms to be furnished by the Federal Labor Relations Authority. Upon receipt of such forms, they shall be signed by the Chief Patrol Agent, and shall be posted and maintained by him for 60 consecutive days thereafter in conspicuous places, including all bulletin boards and other places where notices to employees are customarily posted. Reasonable steps shall be taken to insure that such notices are not altered, defaced, or covered by any other material.

(c) Pursuant to section 2423.30 of the Authority's Rules and Regulations, notify the Regional Director, Region IV, Federal Labor Relations Authority, Atlanta, Georgia, in writing, within 30 days from the date of this Order, as to what steps have been taken to comply herewith.

Issued, Washington, D.C., August 27, 1990


SALVATORE J. ARRIGO
Administrative Law Judge

NOTICE TO ALL EMPLOYEES

AS ORDERED BY THE FEDERAL LABOR RELATIONS AUTHORITY

AND TO EFFECTUATE THE POLICIES OF THE

FEDERAL SERVICE LABOR-MANAGEMENT RELATIONS STATUTE

WE NOTIFY OUR EMPLOYEES THAT:

WE WILL NOT require any bargaining unit employee to take part in an examination in connection with an investigation without representation by the American Federation of Government Employees, National Border Patrol Council, AFL-CIO, the exclusive collective bargaining representative, if such representation has been requested by the employee and if the employee reasonably believes that the examination may result in disciplinary action against the employee.

WE WILL NOT fail and refuse to grant upon request a reasonable extension of time to an employee when the Agency is taking a written or sworn statement from an employee and the employee requests a representative and the representative cannot be present as provided in Article 31A of the parties' collective bargaining agreement dated September 30, 1976.

WE WILL NOT in any like or related manner interfere with, restrain or coerce our employees in the exercise of rights assured them by the Federal Service Labor-Management Relations Statute.

WE WILL, upon request, grant a reasonable extension of time to an employee when the Agency is taking a written or sworn statement from an employee and the employee requests a representative and the representative cannot be present as provided in Article 31A of the parties' collective bargaining agreement dated September 30, 1976.

(Agency or Activity)

Dated _____ By _____
(Signature) (Title)

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced or covered by any other material.

If employees have any questions concerning this Notice or compliance with its provisions, they may communicate directly with the Regional Director for the Federal Labor Relations Authority whose address is: 1371 Peachtree St., N.E., Suite 736, Atlanta, GA 30367, and whose telephone number is: (404) 347-2324