

UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY

Office of Administrative Law Judges
WASHINGTON, D.C. 20424-0001

MEMORANDUM

DATE: November 20, 2002

TO: The Federal Labor Relations Authority

FROM: WILLIAM B. DEVANEY
Administrative Law Judge

SUBJECT: DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE
U.S. BORDER PATROL
TUCSON SECTOR
TUCSON, ARIZONA

Respondent

and

Case No. DE-CA-02-0234

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES
NATIONAL BORDER PATROL COUNCIL

Charging Party

Pursuant to section 2423.34(b) of the Rules and Regulations 5 C.F.R. § 2423.34(b), I am hereby transferring the above case to the Authority. Enclosed are copies of my Decision, the service sheet, and the transmittal form sent to the parties. The transcript and exhibits of the proceedings are due in this office December 2, 2002, and will be forwarded when received by this office.

Enclosures

UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY
Office of Administrative Law Judges
WASHINGTON, D.C. 20424-0001

DEPARTMENT OF JUSTICE IMMIGRATION AND NATURALIZATION SERVICE, U.S. BORDER PATROL TUCSON SECTOR TUCSON, ARIZONA Respondent	
and AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, NATIONAL BORDER PATROL COUNCIL Charging Party	Case No. DE-CA-02-0234

NOTICE OF TRANSMITTAL OF DECISION

The above-entitled case having been heard before the undersigned Administrative Law Judge pursuant to the Statute and the Rules and Regulations of the Authority, the undersigned herein serves his Decision, a copy of which is attached hereto, on all parties to the proceeding on this date and this case is hereby transferred to the Federal Labor Relations Authority pursuant to 5 C.F.R. § 2423.34(b).

PLEASE BE ADVISED that the filing of exceptions to the attached Decision is governed by 5 C.F.R. §§ 2423.40-2423.41, 2429.12, 2429.21-2429.22, 2429.24-2429.25, and 2429.27.

Any such exceptions must be filed on or before **DECEMBER 23, 2002**, and addressed to:

Federal Labor Relations Authority
Office of Case Control
607 14th Street, NW, 4th Floor
Washington, DC 20424-0001

WILLIAM B. DEVANEY
Administrative Law Judge

Dated: November 20, 2002
Washington, DC

FEDERAL LABOR RELATIONS AUTHORITY
Office of Administrative Law Judges
WASHINGTON, D.C.

DEPARTMENT OF JUSTICE IMMIGRATION AND NATURALIZATION SERVICE, U.S. BORDER PATROL TUCSON SECTOR TUCSON, ARIZONA <p style="text-align: center;">Respondent</p>	
<p style="text-align: center;">and</p> AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, NATIONAL BORDER PATROL COUNCIL <p style="text-align: center;">Charging Party</p>	Case No. DE-CA-02-0234

Hazel E. Hanley, Esquire
For the General Counsel

Ms. Karen Rubio
For the Respondent

Mr. Edward Tuffly, II
For the Charging Party

Before: WILLIAM B. DEVANEY
Administrative Law Judge

DECISION

This proceeding, under the Federal Service Labor-Management Relations Statute, Chapter 71 of Title 5 of the United States Code, 5 U.S.C. § 7101, et seq. 1, and the Rules and Regulations issued thereunder, 5 C.F.R. § 2423.1, et seq., concerns whether Respondent's implementation of a change in shift reporting times at the Douglas Border Patrol Station without giving Local 2544, the certified Union,

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For convenience of reference, sections of the Statute hereinafter are, also, referred to without inclusion of the initial, "71", of the statutory reference, i.e., Section 7116(a) (5) will be referred to, simply, as, "\$ 16(a) (5)".

notice and an opportunity to bargain about the change in reporting times violated the Statute.

This case was initiated by a charge filed on February 6, 2002 which alleged a violation of § 16(a)(5) and (1) of the Statute and by a First Amended Charge, filed on May 28, 2002. The Complaint and Notice of Hearing issued July 25, 2002 and set the hearing for November 14, 2002, in or near Tucson, Arizona.

On October 30, 2002, Notice designating the place of hearing issued. Prior to the hearing, during a prehearing conference, the parties agreed to hold the hearing on November 15, 2002, pursuant to which a hearing in this matter opened on November 15, 2002.

After opening, the hearing was recessed while waiting for General Counsel's witnesses to arrive. The General Counsel's witnesses did not appear and Charging Party determined that they were not going to appear. Thereafter, the Charging Party withdrew its charge with the acquiesce of General Counsel. Whereas, I, on the Record dismissed the complaint.

It is therefore recommended that the Authority adopt the following:

ORDER

The complaint in Case Number DE-CA-02-0234 is hereby, dismissed.

DEVANEY
Judge

WILLIAM B.
Administrative Law

Dated: November 20, 2002
Washington, D.C.

CERTIFICATE OF SERVICE

I hereby certify that copies of this DECISION issued by WILLIAM B. DEVANEY, Administrative Law Judge, in Case No. DE-CA-02-0234, were sent to the following parties in the manner indicated:

CERTIFIED MAIL AND RETURN RECEIPT

CERTIFIED NOS:

Hazel E. Hanley 7000 1670 0000 1175 1617
Counsel for the General Counsel
Federal Labor Relations Authority
1244 Speer Boulevard, Suite 100
Denver, CO 80204-3581

Karen Rubio 7000 1670 0000 1175
1624
Labor Relations Specialist
INS Western Region
24000 Avila Road
P.O. Box 30070
Laguna Niguel, CA 92607-0070

Edward Tuffly, II 7000 1670 0000 1175
1631
Union Representative
AFGE, NBPC Local 2544
8862 North Myrtle Place
Tucson, AZ 85737-3526

REGULAR MAIL:

National President
American Federation of Government
Employees, AFL-CIO
80 F Street, NW
Washington, DC 20001

Dated: November 20, 2002
Washington, DC