

U.S. Department of Homeland Security
Washington, DC 20229



U.S. Customs and
Border Protection

Mr. T.J. Bonner
President, NBPC
P.O. Box 678
Campo, CA 91906

APR 14 2005

Re: Border Patrol Agent Details

Dear Mr. Bonner:

As you are aware, Article 26 of the Negotiated Agreement (NA) limits the detail of employees represented by the National Border Patrol Council (NBPC) to 35 calendar days unless the employee volunteers for a longer period of time. Today's border security environment requires U.S. Customs and Border Protection (CBP) to constantly appraise security risks and to calculate the requisite workforce for impeding terrorism and border security threats. In response to intelligence and security data, CBP must be able to rapidly reposition its employees to perform critical functions for unspecified amounts of time.

Contract provisions that are inconsistent with law, rule or regulation, namely management's 5 U.S.C. §7106(a)(2)(b) right to assign work, are unenforceable and outside of the scope to bargain. Inherent to management's ability to assign work is the ability to determine when a work assignment should begin and end (see 49 FLRA 302 and 37 FLRA 828). For the aforementioned reasons, CBP cannot be bound by any contractual provision that hinders its ability to determine the length of time necessary for an employee to complete assigned tasks requisite to the accomplishment of CBP's anti-terrorism mission. As Article 26(O) contradicts management rights defined in 5 U.S.C. §71, effective immediately, CBP will no longer be bound to adhere to any restriction on the time lengths of details for its employees.

CBP looks forward to the continued support of the NBPC in furthering the Agency's ability to impede continual terror and other related threats along U.S. borders. Any further correspondence related to this matter should be directed to Mr. Nathan Walker, Labor Relations Specialist. He can be reached by phone at (202) 344-2512 or by email at Nathan.Walker@dhs.gov.

Sincerely,

A handwritten signature in cursive script that reads "Sheila H. Brown".

Sheila H. Brown
Director, Labor Relations Division