

BUN 100/5



**U.S. Customs and
Border Protection**

February 22, 2011

MEMORANDUM FOR: All Personnel
Buffalo Sector

FROM: Daniel R. Hiebert 
Acting Chief Patrol Agent
Buffalo Sector

SUBJECT: Garrity Statement Memorandum of Understanding

The attached local *Garrity* Statement Memorandum of Understanding between the Office of Border Patrol, Buffalo Sector, and the National Border Patrol Council Local 2724 is effective immediately. This agreement reduces the amount of text Bargaining Unit employees place on compulsory written statements hereby saving time and presenting a more professional and credible product.

The rights, gained from the landmark case *Garrity v New Jersey*, 385 U.S. 493 (1967) remain in place and are not magnified, diminished, or changed based on any *Garrity* statement being inserted into official correspondence. Instead, the attached sample "Notice of Rights" will be afforded to any Bargaining Unit members in Buffalo Sector prior to being compelled to write a statement.

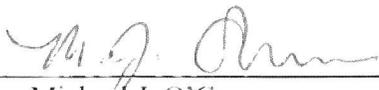
If you have further questions, please contact Mission Support Director Robert B. Richardson at (716) 774-7200.

Attachments

Memorandum of Understanding

The Buffalo Border Patrol Sector (Agency) and NBPC Local 2724 (Union) enter into the following agreement/ understanding. The agreement is entered into so that bargaining unit employees can reduce the amount of text on compulsory written statements, thereby saving time and resources.

1. Bargaining unit employees submit compulsory written statements as a condition of employment. In view of possible discipline for insubordination, they have no alternative but to abide by an order from a manager to submit a written statement.
2. Employees have the right to Union representation and assistance prior to submitting any compulsory written statements. The failure to obtain representation will not delay the interrogation by more than 48 hours.
3. It is the employees' belief and understanding that the Agency requires the statements solely and exclusively for internal Agency purposes, and will not release them to any other agency. It is also the employees' understanding that the statements, since compelled, will not and cannot be used against them in any criminal proceeding. The employees may authorize the release of any statements to their attorney or designated Union representative.
4. The employees may submit additional information at a later time to clarify previously submitted statements. This does not mean that the employees may make intentionally false or misleading statements.
5. The employees specifically rely on the protection afforded them under the doctrines set forth in Garrity v. New Jersey, 385 U.S. 493 (1967) and in Spevack v. Klein, 385 U.S. 511 (1967) when submitting compulsory statements.



Michael J. O'Connor
President
NBPC Local 2724



Daniel R. Hiebert
Acting Chief Patrol Agent
Buffalo Sector

2/16/11

Date

2/16/11

Date

BUN 100/9

MEMORANDUM FOR:

BORDER PATROL AGENT
Buffalo Station

FROM:

Supervisory Border Patrol Agent
Buffalo Station

SUBJECT:

Notice of Rights

Under Article 31, Subsection b (3) of the Collective Bargaining Agreement between the National Border Patrol Council and the Immigration and Naturalization Service, you are provided with the following information.

The Civil Service Reform Act gives employees in units represented by an exclusive labor organization the right to have a union representative present at a meeting which involves an examination by a representative of the agency in connection with an investigation if the employee believes the examination may result in disciplinary action.

Section 7114(a)(2) of the Civil Service Reform Act of 1978 states:

“(2) An exclusive representation of an appropriate unit in an agency shall be given the opportunity to be represented if-

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.”

Signature of Agent

Title

Date and Time of Notice

This is a compelled statement, and as such falls within the protections prescribed in *Garrity v. New Jersey*, 385 U.S. 493 (1967).

Signature of Agent

Title

Date and Time of Notice