

**Graves, Karen T (IA)**

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**From:** BRESLIN, JOHN H  
**Sent:** Tuesday, January 13, 2009 2:56 PM  
**To:** JOINT INTAKE  
**Subject:** HUMPHREY, Kenneth  
**Attachments:** DOC002.PDF

Joint Intake,

This file was sent up back on November 13, 2008. It appears that it may not have made it. I am sending a second time. Any questions feel free to call.

John H. Breslin  
Labor Relations Specialist  
South Florida, Miami  
(305) 810-5101  
Fax: (305) 810-5119

**BRESLIN, JOHN H**

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**From:** BRESLIN, JOHN H  
**Sent:** Tuesday, January 13, 2009 2:25 PM  
**To:** PIGNONE, CHRIS W (IA)  
**Subject:** Status

Chris,

Checking on a few cases. If you can pass on to someone to give me an update I would appreciate.

1. [REDACTED] file# 200801974, assigned to IA, [REDACTED] (actual incident dates back to 2006)
2. HUMPHREY, Kenneth, Called into the JIC on 11/13/08, might have been assigned with IA or DHS IG, have not heard anything.
3. [REDACTED], Called into the JIC on or about 10/20/08, again heard nothing might be with DHS IG or IA

If the last two were not received, let me know and I will resend them again.

John

John H. Breslin  
Labor Relations Specialist  
South Florida, Miami  
(305) 810-5101  
Fax: (305) 810-5119

U.S. DEPARTMENT OF HOMELAND SECURITY  
 Bureau of Customs and Border Protection

**FACSIMILE TRANSMITTAL**

CD 2110-035

Date: 11/13/2008

Control Number:

<b>TO</b>	Name:	Joint Intake Center
	Organization:	
	Fax Number:	(202) 344-3390
	Number of Pages (including cover):	3

<b>FROM</b>	Sender:	A-TCET Chief Sergio Bello
	Originating Location:	MIA
	Return FAX Number:	305-869-2644
	Voice Number:	305-525-1595

<b>REMARKS</b>	Police Report concerning CBPO Kenneth Humphrey concerning earlier email
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MIAMI-DADE POLICE DEPARTMENT  
AIRPORT DISTRICT  
MIAMI, FLORIDA  
USA



FAX COVER SHEET

Confidential - Requires immediate pick-up

DATE: 11/13/08

TO: Chris Mason

PHONE: \_\_\_\_\_

FAX: 305/869-2822

FROM: Capt Luis Bazo

PHONE: \_\_\_\_\_

FAX: (786)-265-9767

SUBJECT: Offense - Incident Report

2 NUMBER OF PAGES INCLUDING COVER SHEET

REMARKS: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The information contained in this facsimile is CONFIDENTIAL information intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, or copy of this communication is strictly PROHIBITED and will be considered as a tortious interference in our confidential business relationships. Additionally, unauthorized dissemination of this confidential information subjects you to criminal and civil penalties. If you have received this communication in error, please immediately notify us by telephone.

# OFFENSE-INCIDENT REPORT

Agency Code **30** Gang Related

MIAMI-DADE POLICE DEPARTMENT

Agency Report Number **P.D. 081112538397**

ADMI Date of Supplement  Original Date Reported **Wed 11-12-2008** Time (mi) **1722** Time Dispatched (mi) **1722** Time Arrived (mi) **1727** Time Completed (mi) **2000**

1. Factory 2. Traffic 3. Misdemeanor 4. Traffic Misdemeanor 5. Ordinance 6. Other Incident: Day **Wed** Date **11-12-2008** Time (mi) **1715** To Day **11-12-2008** Time (mi) **1715**

OFF/INC # **1** Type **9** Description **Disturbance** A-Attempted C-Committed Statute Violation Number **7** NCC/UCR Code **7**

OFF/INC # **2** Type **9** Description **Disturbance** A-Attempted C-Committed Statute Violation Number **7** NCC/UCR Code **7**

EVENT DATA Incident Location (Street, Apt. Number) **HIGH INTERNATIONAL AIRPORT** City **MIAMI** Zip **33159** District **A1** Grid **1154** Area **1154** Zone **1154**

Business Name/Area Identifier **GATE E-22**

Location Type 01. Residence-Single 06. Gas Station 11. Specialty Store 16. Storage 21. Airport 26. Highway/Roadway 29. Other 02. Apartment/Condo 07. Liquor Sales 12. Drug Store/Hospital 17. Gov't Public Bldg. 22. Bus/Rail Terminal 27. Park/Woodlands/Field 03. Residence-Other 08. Bar/Nightclub 13. Bank/Financial Inst. 18. School/University 23. Construction Site 28. Lake/Waterway 04. Hotel/Motel 09. Supermarket 14. Commercial/Office Bldg. 19. Jail/Prison 24. Other Structure 29. Motor Vehicle 05. Convenience Store 10. Dept/Discount Store 15. Industrial/Mfg. 20. Religious Bldg. 25. Parking Lot/Garage 30. Other Mobile

# OFF/INC. **01** # Victims **00** # Offenders **00** # Prem. Ent. **000** # Veh. Stolen **000** Type Weapon **00** 01. Handgun 02. Rifle 03. Shotgun 04. Firearm 05. Knife/Cutting Instrument 06. Blunt Object 07. Hands/Fist/Feet 08. Poison 09. Explosives 10. Fire/Incendary 11. Threat/Intimidation 12. Simulated Weapon 13. Drugs 14. Other 15. Other 16. Other 17. Other 18. Other 19. Other 20. Other 21. Other 22. Other 23. Other 24. Other 25. Other 26. Other 27. Other 28. Other 29. Other 30. Other

V/W Code **P-Proprietor** Victim Type **0** Race **N-N/A** Sex **N-N/A** Residence Type **0** Residence Status **0** Extent of Injury **0**

W-Witness **Z-Other** Victim Type **1** Race **W-White** Sex **M-Male** Residence Type **1** Residence Status **0** Extent of Injury **0**

C-Reporting Person Victim Type **2** Race **U-Unknown** Sex **U-Unknown** Residence Type **2** Residence Status **0** Extent of Injury **0**

Injury Type 01. N/A 04. Laceration 07. Loss of Tooth 02. N/A 05. Unconscious 08. Burns 03. N/A 06. Poss. Broken Bones 09. Abrasions/Bruiases 04. N/A 07. Poss. Internal Injury 99. Other 01. N/A 02. N/A 03. N/A 04. N/A 05. N/A 06. N/A 07. N/A 08. N/A 09. N/A 10. N/A 11. N/A 12. N/A 13. N/A 14. N/A 15. N/A 16. N/A 17. N/A 18. N/A 19. N/A 20. N/A 21. N/A 22. N/A 23. N/A 24. N/A 25. N/A 26. N/A 27. N/A 28. N/A 29. N/A 30. N/A

OFF/INC Indicator **1** V/W Code **1** V. Type **2** Name (Last, First, Middle or Business) **ANDINO JOSE** Residence Phone **( )**

Address (Street, Apt. Number) **M.E.A. COMPLEX DOLOPHIN GARAGE 1ST FLR** City **MIAMI** State **FL** Zip **33157** Business Phone **(305) 876-0885**

Other Contact Info. (Time Available, Interpreter, etc.)

# V/W Code **W** Race **W** Sex **M** Date of Birth or Age **06/26/1965** Res. Type **1** Res. Status **1** Extent of Injury **0** Injury Type(s) **00** Relationship **00** Ethnicity **00** Will victim prefer charges? **Yes**  **No**

OFF/INC Indicator **1** V/W Code **2** V. Type **02** Name (Last, First, Middle or Business) **HUMPHREY KENNETH** Residence Phone **( )**

Address (Street, Apt. Number) **6601 NW 25 ST.** City **MIAMI** State **FL** Zip **33122** Business Phone **(305) 874-5444**

Other Contact Info. (Time Available, Interpreter, etc.)

# V/W Code **B** Race **M** Sex **M** Date of Birth or Age **04/26/1945** Res. Type **1** Res. Status **1** Extent of Injury **0** Injury Type(s) **00** Relationship **00** Ethnicity **00** Will victim prefer charges? **Yes**  **No**

OFF/INC Indicator **1** Support Code **S-Suspect** Coda **J** Name (Last, First, Middle) **ANDINO JOSE** Residence Phone **( )**

Maiden Name **ANDINO JOSE** Nickname/Street Name **ANDINO JOSE** Place of Birth **( )**

Last Known Address (Street, Apt. Number) **( )** City **( )** State **( )** Zip **( )** Residence Phone **( )**

Occupation **( )** Employer/School **( )** Address **( )** Business Phone **( )**

Driver's License State Number **( )** Immigration and Naturalization Number **( )** Other I.D. Number **( )** Social Security Number **( )**

DOB Number (Arrest) **( )** POB/NOB **( )**

Scars/Marks/Tattoos (Location/Describe) **( )** Hair Style **( )**

Complexion **( )** Build **( )** Facial Hair **( )** Teeth **( )** Speech/Voice **( )** Special Identifiers **( )** Eye Color **( )** Hair Color **( )** Hair Length **( )**

PERSONAL INFORMATION

Person/Unit Notified **( )** Time **( )** Related Report Number(s) **( )**

Officer(s) Reporting **( )** I.D. Number(s)/Lessor Code **( )** Unit **( )** Agency Code **( )**

Officer Reporting Application **( )** Routed To **( )** Returned To **( )** Assigned To **( )** By **( )** Date **( )**

Case Status **( )** Clearance Type **( )** A-Adult J-Juvenile Date Cleared **( )** Jail Number **( )** Number Arrested **( )**

1. Arrest 2. Exceptional 3. Unbonded 4. Open Bond 5. Prosecution Declined 6. Juvenile No Custody

NARRATIVE

**2<sup>nd</sup> AND 2<sup>nd</sup> BECAME INVOLVED IN A VERBAL INTERACTION REFERENCE 2<sup>nd</sup> WAS PERFORMING HIS REGULAR DUTIES AND CLEARING AN INBOUND INTERNATIONAL FLIGHT AS 2<sup>nd</sup> WAS ALSO PERFORMING HIS REGULAR DUTIES AND SECURING THE AREA FOR AN OUTBOUND FLIGHT. UPON ARRIVAL, THE DISAGREEMENT HAD BEEN RESOLVED AND NO POLICE ACTION WAS TAKEN.**

ADMINISTRATIVE

Person/Unit Notified **( )** Time **( )** Related Report Number(s) **( )**

Officer(s) Reporting **( )** I.D. Number(s)/Lessor Code **( )** Unit **( )** Agency Code **( )**

Officer Reporting Application **( )** Routed To **( )** Returned To **( )** Assigned To **( )** By **( )** Date **( )**

Case Status **( )** Clearance Type **( )** A-Adult J-Juvenile Date Cleared **( )** Jail Number **( )** Number Arrested **( )**

1. Arrest 2. Exceptional 3. Unbonded 4. Open Bond 5. Prosecution Declined 6. Juvenile No Custody

\*\*\*\*\*  
 \*\*\* ERROR TX REPORT \*\*\*  
 \*\*\*\*\*

TX FUNCTION WAS NOT COMPLETED

TX/RX NO 0458  
 DESTINATION TEL # 12023443390  
 DESTINATION ID  
 ST. TIME 11/13 18:07  
 TIME USE 00'00  
 PAGES SENT 0  
 RESULT NG #0018 BUSY/NO SIGNAL

U.S. DEPARTMENT OF HOMELAND SECURITY  
 Bureau of Customs and Border Protection

**FACSIMILE TRANSMITTAL**

CD 2110-035

Date: 11/13/2008

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	Originating Location:	MIA
	Return FAX Number:	305-869-2644
	Voice Number:	305-525-1595

<b>REMARKS</b>	Police Report concerning CBPO Kenneth Humphrey concerning earlier email
	A-000037

**BELLO, SERGIO J**

**From:** BELLO, SERGIO J  
**Sent:** Wednesday, November 19, 2008 12:27 PM  
**To:** MATTINA, THOMAS  
**Cc:** BLANCO, MARTA M  
**Subject:** FW: Humphrey  
**Attachments:** image003.jpg; image001.png

FYI

On Thursday, November 13, Chief Blanco and I informed him that he would be assigned to ATU until the investigation is complete. He then took Annual Leave and went home.

Thursday, November 13 A/L  
Friday, November 14 RDO  
Saturday, November 15 RDO  
Sunday, November 16 S/L  
Monday, November 17 S/L  
Tuesday, November 18 S/L  
Wednesday, November 19 A/L  
Thursday, November 20 A/L

Thank you.

Chief Bello  
Tactical Operations  
305-869-2702 Office  
305-525-1595 Nextel

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**From:** CHATFIELD, PAUL V  
**Sent:** Wednesday, November 19, 2008 10:45 AM  
**To:** BELLO, SERGIO J; BLANCO, MARTA M; MATTINA, THOMAS; RALEIGH, DWIGHT A  
**Cc:** PIERRE, MARCNEL; PROKOLYSHEN, STEVEN A; SAVAGE, FRANCES A; SKINKIS, HEATHER M; STUMPF, MARK J  
**Subject:** Humphrey

All,

This is to inform you that Officer Humphrey called at 10:35 to request two days of annual leave for Wednesday, 11/19/08, and Thursday, 11/20/08. I granted his request.

Thank you,

  
Supervisory CBP Officer  
U.S. Customs and Border Protection  
Anti-Terrorism Contraband Enforcement Team  
Tactical Operations Branch, Miami Service Port  
(305) 869-2708 \* Fax (305) 869-2793  
VIGILANCE \* SERVICE \* INTEGRITY

4/13/2009

A-000038

SSN [REDACTED] AG CU PERHIS SF 50B DATA ELEMENTS 10/31/11 YR 1R522  
 SCREEN 000 NAME KENNETH D HUMPHREY PERHIS RCD. 0002  
 YR EFF. 2008 RECORD 0002  
 DATE OF BIRTH [REDACTED] 45 PERS ACTN EFF 10 26 08  
 NAT ACT 1ST 3 POS 000 NAT ACT 2ND 3 POS 840  
 NAT ACT AUTH 1ST NAT ACT AUTH 2ND  
 APPOINT NTE 00 00 00 PROM NTE 00 00 00 NON PAY NTE 00 00 00  
 POSITION TITLE CBP OFFCR  
 WORKING TITLE MR/IP S1043A 00007772  
 PAY-PLAN GS OCC SERIES 1895 GRADE 11 STEP 05  
 SALARY RATE CODE PA TOTAL SALARY 64996.00 SCHEDULED SALARY 54568.00  
 GEOGRAPHIC ADJ RATE 10428.00 ADJ SALARY 64996.00 OTHER PAY .00  
 ORG STRUCTURE CODE CU 13 52 0009 01 01 20 00 (PF2 = ORG-NAME)  
 VETERANS PREF CODE 2 TENURE GROUP 1 AGENCY USE 1 P20080706  
 VETERANS PREF RIF 2 FEGLI CODE C0 AGENCY USE 2  
 PAY RATE DETER CODE 0 RETIREMENT COVERAGE CODE O SCD LEAVE 06 05 95  
 WORK SCHEDULE F TOUR OF DUTY HOURS 080.00 ANNUITANT IND 9  
 POSITION OCCUPIED 1 FLSA E BARGAINING UNIT STATUS 0081  
 DUTY STA CD 12 2010 086 NAME FL MIAMI MIAMI-DADE  
 REMARKS CODES 499P66000000000000000000000000000000 AUTHENTICATION DATE 11 08 08  
 DEPARTMENT CODE HS AGENCY CODE CU POI 2885 PERS ACTION CODE 2  
 INQUIRY COMPLETE - PRESS ENTER OR PF KEY TO CONTINUE 0000  
 PF8 = PG/DWN PF12 = PREV  
 PF1 = SUB MENU PF5 = HELP ENTER = INQUIRY CLEAR = EXIT

*October 2008*

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SSN ██████████ AG CU PERHIS SF 50B DATA ELEMENTS * 10/31/11 Y PR522
SCREEN 000 NAME KENNETH D HUMPHREY PERHIS RCD. 0002
YR EFF. 2008 RECORD 0002
DATE OF BIRTH ██████████ 45 PERS ACTN EFF 10 26 08
NAT ACT 1ST 3 POS 000 NAT ACT 2ND 3 POS 840
NAT ACT AUTH 1ST NAT ACT AUTH 2ND
APPOINT NTE 00 00 00 PROM NTE 00 00 00 NON PAY NTE 00 00 00
POSITION TITLE CBP OFFCR
WORKING TITLE MR/IP S1043A 00007772
PAY-PLAN GS OCC SERIES 1895 GRADE 11 STEP 05
SALARY RATE CODE PA TOTAL SALARY 64996.00 SCHEDULED SALARY 54568.00
GEOGRAPHIC ADJ RATE 10428.00 ADJ SALARY 64996.00 OTHER PAY .00
ORG STRUCTURE CODE CU 13 52 0009 01 01 20 00 (PF2 = ORG-NAME)
VETERANS PREF CODE 2 TENURE GROUP 1 AGENCY USE 1 P20080706
VETERANS PREF RIF 2 FEGLI CODE C0 AGENCY USE 2
PAY RATE DETER CODE 0 RETIREMENT COVERAGE CODE 0 SCD LEAVE 06 05 95
WORK SCHEDULE F TOUR OF DUTY HOURS 080.00 ANNUITANT IND 9
POSITION OCCUPIED 1 FLSA E BARGAINING UNIT STATUS 0081
DUTY STA CD 12 2010 086 NAME FL MIAMI MIAMI-DADE
REMARKS CODES 499P6600000000000000000000000000 AUTHENTICATION DATE 11 08 08
DEPARTMENT CODE HS AGENCY CODE CU POI 2885 PERS ACTION CODE 2
INQUIRY COMPLETE - PRESS ENTER OR PF KEY TO CONTINUE 0000
PF8 = PG/DWN PF12 = PREV
PF1 = SUB MENU PF5 = HELP ENTER = INQUIRY CLEAR = EXIT

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*December 2008*

SSN [REDACTED] AG CU \* PERHIS SF-50B DATA ELEMENTS \* 10/31/11 Y IR522  
 SCREEN 000 NAME KENNETH D HUMPHREY PERHIS RCD. 0001  
 YR EFF. 2009 RECORD 0010  
 DATE OF BIRTH [REDACTED] 45 PERS ACTN EFF 03 01 09  
 NAT ACT 1ST 3 POS 000 NAT ACT 2ND 3 POS 721  
 NAT ACT AUTH 1ST NAT ACT AUTH 2ND N2M  
 APPOINT NTE 00 00 00 PROM NTE 00 00 00 NON PAY NTE 00 00 00  
 POSITION TITLE CBP OFFCR  
 WORKING TITLE MR/IP S1043A 00007772  
 PAY-PLAN GS OCC SERIES 1895 GRADE 11 STEP 05  
 SALARY RATE CODE PA TOTAL SALARY 67496.00 SCHEDULED SALARY 56148.00  
 GEOGRAPHIC ADJ RATE 11348.00 ADJ SALARY 67496.00 OTHER PAY .00  
 ORG STRUCTURE CODE CU 13 52 0009 01 01 40 00 (PF2 = ORG-NAME)  
 VETERANS PREF CODE 2 TENURE GROUP 1 AGENCY USE 1 P20080706  
 VETERANS PREF RIF 2 FEGLI CODE C0 AGENCY USE 2  
 PAY RATE DETER CODE 0 RETIREMENT COVERAGE CODE 0 SCD LEAVE 06 05 95  
 WORK SCHEDULE F TOUR OF DUTY HOURS 080.00 ANNUITANT IND 9  
 POSITION OCCUPIED 1 FLSA E BARGAINING UNIT STATUS 0081  
 DUTY STA CD 12 2010 086 NAME FL MIAMI MIAMI-DADE  
 REMARKS CODES 00000000000000000000000000000000 AUTHENTICATION DATE 03 10 09  
 DEPARTMENT CODE HS AGENCY CODE CU POI 2885 PERS ACTION CODE 2  
 INQUIRY COMPLETE - PRESS ENTER OR PF KEY TO CONTINUE 0000  
 PF8 = PG/DWN PF12 = PREV  
 PF1 = SUB MENU PF5 = HELP ENTER = INQUIRY CLEAR = EXIT

April 2009

EXHIBIT F18a

## BID, ROTATION AND PLACEMENT

In the interest of providing opportunities for employees to receive work assignments in accordance with their preferences, CBP Officers and CBP Agriculture Specialists within the Office of Field Operations shall be afforded an annual opportunity to bid on specific assignments or work units within the area of responsibility of their Port Director.

### Section 1. Definitions.

- A. *Bid* is the term used to refer to an individual's request to be assigned to a specific work unit. Similarly, *bidding* refers to the process of submitting a request for assignment to a work unit or higher level unit in accordance with this procedure. Such a bid constitutes an employee commitment to be assigned to those requested work units in the event (s)he is selected in accordance with these policies and procedures.
- B. *Covered employees* include all CBP Officers and CBP Agriculture Specialists assigned to a port of entry who have successfully completed the formal academy and structured post-academy training programs, and are not the subject of any pending performance or disciplinary action, or the subject of an investigation of alleged misconduct that may prevent the performance of the full scope of required duties. Employees on a temporary light duty assignment may participate in the bid process, provided the Agency possesses evidence that the employee will no longer be on light duty at the time of placement.
- C. *Duration* refers to the length of time an employee serves within an assignment.
- D. *Mutual agreement* refers to the ability of the local parties (e.g., a NTEU Chapter President and Port Director) to vary from the procedures set forth in this policy only if both parties agree to do so voluntarily. A "by mutual agreement" provision does not confer or infer any right or obligation to engage in bargaining, or to submit any disagreement over a proposed variation to grievance, arbitration or any other impasse dispute procedures. Such agreements must be placed in writing and signed by the parties, and will be binding until such time as either party provides written notice to the other of its intent to withdraw. Withdrawals will be effective at the beginning of the annual bid cycle (i.e., August 1<sup>st</sup>) following receipt of the notice.
- E. *Placement* refers to a change in an employee's assignment in accordance with these procedures, other than through rotation.

F. *Qualifications* refers to the knowledges, skills and abilities for particular assignments and for the composition of particular work units. Such qualifications will be uniformly applied throughout the unit, and limited to those established consistent with law and regulation.

G. *Random selection* means to arbitrarily and indiscriminately choose through an appropriate system. Unless specifically described or mutually agreed to at the local level, the default system for random selection from a defined group of employees shall be based on the matching of a randomly selected number ranging from zero (0) to nine (9) to the last digit of an appropriate numerical unique identifier assigned to each employee. This process shall be repeated using the second to last, third to last, etc. numbers to new randomly selected numbers until a single employee is identified.

H. *Rotation* refers to a change in an employee's assignment immediately following the annual bidding process.

I. *Seniority* will be determined by:

- (1) The total time an employee has served in his or her occupation (i.e. CBP Officer or CBP Agriculture Specialist), including time in an equivalent position (i.e. Customs Inspector, Immigration Inspector or PPQ Officer) at the employee's heritage agency.
- (2) In the event it is necessary to resolve ties after step (1), the total time an employee has served in CBP and heritage agency, regardless of position, will be used.
- (3) In the event it is necessary to resolve ties after step (2), the total time in Federal government service (i.e. SCD) will be used.
- (4) In the event it is necessary to resolve ties after step (3), the methodology provided by the local NTEU Chapter President for the port of entry will be used. Such methodology shall be provided prior to the bid cycle each year. Absent identification, the default methodology will be coin flip.

*Need to  
Identified*

J. *Work unit* means the smallest organizational component, operational or equivalent level to which groups of employees are normally assigned and for which qualifications for positions are defined and applied. Such units are

specific to the configuration of each Port. Examples of work units are: airport, seaport, cargo, and passenger, and to the extent they exist, A-TCET, PAU, PERT, NIL, ICAT and Outbound.

**Section 2. Policies.**

- A. To the extent consistent with operational requirements, on an annual basis each Port of Entry will solicit bids and rotate approximately twenty-five percent (25%) of covered employees within each work unit under these procedures.**
- B. Management may limit the number of rotations to less than twenty-five percent (25%) when it determines such limits are needed based on operational and mission requirements. In such circumstances, management will notify NTEU prior to the call for employee bids (at either the national or local level) as required by law.**
- C. Other limitations may be made only by mutual agreement between CBP and NTEU (at either the national or local level).**
- D. Management may, at its discretion, increase the percentage of opportunities available to more than twenty-five percent (25%), after informing and upon request, consulting with NTEU (at either the national or local level).**
- E. In processing employee bids under these procedures, management is responsible for ensuring employees are assigned to a particular work unit so as to ensure continuity of, and to prevent unnecessary disruption to, Agency operations. This responsibility includes determining the appropriate numbers, types (e.g., CBP Officers and Agriculture Specialists) and grades of employees with specific skill sets needing to be assigned or retained within a particular work unit or assignment. Nothing in this subsection is intended to permit the creation of a work unit based solely on grade.**
- F. Where management involuntarily extends the assignment of an employee to a particular work unit or assignment as a result of fulfilling its responsibility in Section 2.E., it will take reasonable steps to train others to replace the employee so that the retained or extended employee may rotate within six months, but no later than the beginning of the next bid cycle. Management will also make reasonable efforts to alleviate any adverse impact on the extended or retained employee.**

G. Employees selected for assignments pursuant to these procedures will normally perform the work assigned for a minimum of one full bid cycle period (e.g., October through September). As an exception, CBP may establish longer assignment durations in connection with assignments requiring specialized training involving significant investment of time and/or money by the Agency. Employees in such assignments may be required to remain on the assignment for one full bid cycle from the end of the cycle wherein the employee received the specialized training. Assignments to which this exception applies shall be identified prior to the call for employee bids, and will normally apply uniformly throughout the country.

H. Employees may not receive reimbursement for any travel or relocation costs associated with assignments made under these procedures.

### Section 3. Procedures.

A. During the month of September of each calendar year, each port of entry shall conduct a bid, rotation and placement process for covered employees in accordance with the below procedures.

- (1) No later than August 1<sup>st</sup> of the first year this procedure is used, CBP will provide NTEU, at the national level, advance copies of standardized bid opportunity announcements for work units associated with national CBP programs (e.g., AASP/PAX Secondary, A-TCET, ATS/ATU, Cargo, CTR, PERT, PAU, Training Teams or other teams/assignments open to this process) for review. Such announcements will include a description of the work unit, the assignment's duration, as well as identify the knowledges, skills and abilities CBP intends to use to determine if an employee is qualified for such assignments. For subsequent years, CBP will similarly provide advance copies of announcements for work units for which the qualifications have changed from the previous year, or for newly established teams/assignments.
- (2) NTEU shall provide its issues or concerns regarding the announcements to CBP no later than August 15<sup>th</sup> of each year.
- (3) No later than August 1<sup>st</sup> of the first year this procedure is used, CBP will provide NTEU, at the local level, advance copies of bid opportunity announcements for work units associated with localized

functions (e.g., admin, scheduling, trusted traveler/enrollment center, or other teams/assignments open to this process) for review. NTEU shall provide its issues or concerns regarding the announcements to CBP no later than August 15<sup>th</sup> of each year. For subsequent years, CBP will similarly provide advance copies of the announcements for work units associated with localized functions for which the qualifications have changed from the previous year, or for newly established work units.

- (4) By local mutual agreement, qualifications for nationally defined work units may be supplemented by one (1) knowledge, skill or ability. Absent agreement, only the nationally established qualifications shall be used.
- (5) On or about September 1<sup>st</sup> of each year, CBP will identify and post (or distribute) the bid opportunity announcements at each Port.
- (6) Concurrent with the posting, CBP will make available (or distribute) a bid preference and qualifications statement form. To the extent practicable, CBP will standardize this form. Included on the form will be an area for the employee to identify and self-certify his/her seniority, as well as to provide up to four (4) prioritized bid preferences. In lieu of expressing a preference for a particular work unit, the employee may indicate (in any of the four (4) bid preferences) his/her desire to be placed anywhere within the next higher level from the posted bidding opportunity (e.g., A-TCET would be the next higher level for Outbound). By mutual agreement, the parties may increase or decrease the number of bid preferences.
- (7) Employees wishing to bid on one or more available assignments must submit a completed bid preference and qualifications form within ten (10) calendar days of the posting (or distribution) of the bid opportunity announcement postings. By mutual agreement, the parties may extend or adopt a longer bidding period.
- (8) For the purpose of providing transparency of process and procedural compliance awareness, local bid and rotation committees, consisting of at least two (2) representatives each from NTEU and CBP management shall review and process employee submissions. The committee may be a different size by mutual agreement. To ensure the committee is prepared to implement these procedures each year, it

will review these procedures as well as the employee submissions prior to doing so.

- (9) Upon request by the rotation committee, an employee may be required to provide proof of his/her seniority. Requests will be made only when necessary, as determined by at least one (1) member of the committee. In the event proof is not provided, the employee's bid request will be removed from consideration.
- (10) Management shall select qualified employees bidding for one or more assignments in seniority order, except when an obvious difference in qualifications exists among employees that would impact the performance of the work unit. To clarify, employee bids will be placed in seniority order, with the most senior processed first. The processing of bids will continue until the identified number (normally twenty-five percent (25%)) of new placements within each work unit is made.

When processing a bid, the employee will be placed in his/her highest priority bid for which (s)he is qualified and more senior than an employee currently assigned to that work unit. To accommodate this placement, the employee with the least seniority assigned to the work unit will be displaced. Absent the placement of the displaced employee through the processing of his/her bid preference and qualifications form, (s)he will be assigned to the Port's core function(s).

By mutual agreement, the parties may establish a different method for determining which employee is affected by the placement of a more senior qualified employee bidding to the work unit (e.g., first in - first out). Any such agreement must be made prior to, and publicized concurrently with, the bid opportunity announcements postings.

- (11) Bid preference and qualifications statements of employees who were not selected for any assignment during the annual bid and rotation cycle will be retained for use in accordance with Section 6 below.

#### Section 4. Work Schedule Preference

A. Concurrent with the bid procedure, employees will be permitted to express a preference for available shifts or schedules within each work unit or assignment.

B. Selections for available shifts and/or work schedules will be made in a manner consistent with the policies and procedures delineated above. Such work schedule preferences, however, will not be limited to 25%.

**Section 5. Announcement and Implementation.**

Absent unusual circumstances, CBP will announce and implement bid and rotation and work schedule bid results within thirty (30) calendar days of the close of the employee bid submission period.

**Section 6. Post-Rotation Vacancies**

A. As they arise between bid cycles, CBP has elected to fill vacancies in work units subject to the annual bid and rotation process through one of the following methods:

- (1) Placement of employees who submitted a bid preference and qualifications statement and were not selected for any assignment during the annual bid and rotation. Under this method, the most senior employee who bid to and was found qualified for the work unit will be placed. Employees placed through this method will be expected to perform the work assigned through the current bid cycle, or the identified assignment duration, whichever is greater.
- (2) Placement of employees who were not selected for any assignment during the annual bid and rotation process, regardless of whether they submitted a bid preference and qualifications statement form. Under this method, employees will be identified and placed by random selection. Employees placed through this method will normally be assigned to the work unit for a period of six (6) months. Management has elected to limit the number of employees serving under such assignments to not more than twenty-five percent (25%) of a work unit. Upon conclusion of the assignment, the employee will be assigned to the Port's core function(s). The vacated position may be

continue to be filled through this procedure, or that defined under Section 6.A.(1) above.

- B. Absent unusual and unforeseen circumstances that would create a significant personal hardship for the employee, (s)he must accept placement under this procedure.
- C. Once all employees who submitted a bid preference and were qualified for a particular work unit are placed, management may assign employees through any appropriate method.

**Section 7. Assignment Dispute Procedure.**

A. The following procedure has been developed for the purpose of expediting a final resolution to claims of violations of this procedure. With this in mind, unless CBP and NTEU agree otherwise (at the national level), it shall serve as the exclusive procedure for addressing such claims.

- (1) In those cases which an employee or the union believes (s)he has not been assigned in accordance with these procedures, either shall be entitled, upon request, to a face-to-face meeting with the responsible management official to discuss the reasons for the his/her assignment. An employee shall be entitled to be accompanied by one (1) union representative at such meetings.
- (2) If the meeting in Section 7.A.(1) above does not resolve the matter, the union or employee will notify the Port Director (or designee) in writing of the claimed violation, including the nature of the error and requested remedy, within fourteen (14) calendar days of notice of the assignment decision.
- (3) If the notification includes a request for a meeting, the Port Director (or designee) will schedule one within seven (7) calendar days of receiving the submission, and the employee and the union representative will be entitled to reasonable travel and per diem, if appropriate, as well as time to travel and attend the meeting.
- (4) A written decision will be issued by the Port Director (or designee) no later than seven (7) calendar days following the meeting (or receipt of

*Who from Management?*

the employees submission if no meeting was requested). The decision shall include an explanation for the decision.

- (5) If the matter is not resolved to the union's (or employee's) satisfaction by the Port Director (or designee), it may be referred in writing to the appropriate Director of Field Operations (or designee) within seven (7) calendar days from the date of decision. The referral must identify the specific deficiency contained in the Port Director's decision.
  - (6) The Director of Field Operations (or designee) shall provide a final decision on the matter within seven (7) calendar days following receipt of the referral.
  - (7) In the event the Port Director or Director of Field Operations (or designees) determines that absent a management error, the employee should have been provided a different assignment, such assignment shall be made immediately to the extent the assignment is available. If not available, or at the employee's (or union's) request, the employee will be placed at the top of the list(s) of work units or assignments for which (s)he bid for placement under Section 6(A)(1) above. In the event more than one employee is placed on these lists in accordance with this procedure, they will be listed in seniority order. Once placed from the bid list, the employee will remain in the position for at least one (1) full bid cycle (i.e., rotation to rotation).
  - (8) If the final decision is not acceptable to the union, it may be submitted to arbitration as if it was a final grievance decision. The parties are encouraged to combine related grievances submitted to arbitration within a port to be heard by a single arbitrator. At a minimum, where necessary to avoid arbitration decisions that could reasonably result in two or more employees being placed in the same position, such grievances will be combined and heard before a single arbitrator.
- B. Upon request, the time frames contained in the above procedure may be extended by mutual agreement of the involved parties.
- C. The placement of an employee under this dispute procedure (e.g., through the granting of a grievance or implementation of an arbitration award), or the impact of such a placement on other employees, is not subject to grievance or arbitration.

**MEMORANDUM OF UNDERSTANDING**

This Memorandum of Understanding (MOU) documents the agreement between U.S. Customs and Border Protection (CBP) and the National Treasury Employees Union (NTEU) to implement the attached Bid, Rotation and Placement (BR&P) and Alternative Work Schedule (AWS) contract articles in advance of the completion of the full national collective bargaining agreement.

Furthermore, in order to assist in the effective and efficient implementation of these documents, CBP and NTEU have agreed to the following:

- (1) At the national level, CBP and NTEU will develop and issue a joint statement announcing this agreement to employees. CBP and NTEU will coordinate the release of the announcement so that it is done as simultaneously as possible.
- (2) CBP will immediately commence efforts to move forward with the terms of the BR&P policy so that employee rotations will be effective no later than January 31, 2009. The annual process will resume in August of 2009 as written in the attached policy.
- (3) Except by mutual agreement, the AWS agreement and BR&P policy will remain in effect while the parties continue to negotiate over the CBP-NTEU national collective bargaining agreement, and shall be included in any such agreement.
- (4) Neither party is prohibited from proposing the establishment of a bid, rotation and placement process for personnel not covered by this BR&P policy during continued contract negotiations.
- (5) An area of interest raised by NTEU representatives during the negotiation of the BR&P policy was the creation of a mechanism by which employees could request or be considered for placement among Ports within their commuting area. CBP and NTEU acknowledge the BR&P policy does not provide a mechanism by which employees may request or be considered for placement at other Ports within the same commuting area as their current duty station. However, CBP and NTEU are committed to addressing this subject through continued negotiations the week of October 27, 2008, and in the event voluntary agreement is reached, will implement such agreement in advance of the completion of contract negotiations.
- (6) Until the procedures referenced in provision number five (5) are negotiated and implemented, OFO will use existing procedures (e.g., reassignment opportunity bulletins) to fill vacancies as needed. However, CBP has elected

to cease the practice of placing new hires at the Port of San Diego (airport and seaport). Instead, all new hire placement offers will be made to San Ysidro. In addition, when filling vacancies at the Port of San Diego through reassignment opportunity bulletins, CBP has elected to limit the area of consideration to current CBP employees at San Ysidro.

- (7) Unless CBP and NTEU agree otherwise (at the national level) arbitrations arising from any grievance initiated under the procedures contained in the BR&P policy must be invoked within thirty (30) calendar days of receipt of the final grievance decision. Furthermore, CBP and NTEU agree to process such arbitrations in accordance with the arbitration procedures contained in the USCS - NTEU national collective bargaining agreement (i.e., Article 32). All such arbitrations shall be processed using the expedited arbitration procedures (Section 11). This provision is designed to provide a temporary procedure for resolving all grievances arising under this agreement, and shall not be considered precedential in future negotiations.
- (8) Unless CBP and NTEU agree otherwise (at the national level), the following ground rules, along with all statutory requirements to bargain in good faith, shall apply to local level negotiations resulting from requests to bargain over changes initiated under the attached AWS article:
- a. The party initiating a change shall send clear and specific notice of the desired change to the receiving party's designated representative;
  - b. Within fourteen (14) calendar days, the parties shall establish a date on which negotiations shall commence;
  - c. The parties shall be permitted to have the same number of representatives present during negotiations. The union may always have at least two (2) employee representatives, and neither party shall exceed a total of four (4). Employees serving as union representatives shall be provided a reasonable amount of official time to prepare for and participate in negotiations, a reasonable amount of official time to travel to and from such negotiations, as well as reasonable travel and per diem reimbursement if appropriate; and
  - d. Negotiations shall be conducted during traditional business hours (e.g., 9 AM to 5 PM) at space provided by the employer. Employee representative schedules shall be adjusted so that they may participate on official time during those hours.
- (9) Unless CBP and NTEU agree otherwise (at the national level), the grievance-arbitration process contained in the BR&P policy and supplemented by this

implementation agreement will be used to address grievances involving allegations of AWS agreement violations.

This MOU serves as the full and final agreement between the parties regarding the implementation of the AWS agreement and BR&P policy. Therefore, the attached documents, as supplemented by this MOU, supersede any and all existing policies and agreements between CBP and NTEU, as well as any agreements made between former unions and their heritage agencies regarding these subjects. However, those working under existing practices will continue on those practices to the extent that they comply with the provisions of this Article and changes are implemented in accordance with the bargaining obligations of law.

This Agreement is effective upon signature of both parties, and shall expire upon the implementation of a completed national collective bargaining agreement between CBP and NTEU.

For CBP:

Michael J. Wenzler 10/29/08  
Michael J. Wenzler Date  
Chief Negotiator

Donald Stakes 10/29/08  
Donald Stakes Date  
Deputy Chief Negotiator

Casey Owen Durst 10/29/08  
Casey Owen Durst Date  
Office of Field Operations

Terry L. Estel 10/29/08  
Terry L. Estel Date  
Office of Field Operations

Joseph Wilson 10/29/08  
Joseph Wilson Date  
Office of Field Operations

For NTEU:

Frank Ferris 10/29  
Frank Ferris Date  
Executive Vice President

Jonathan Levine 10/29/08  
Jonathan Levine Date  
Assistant Council for Negotiations

Harold Washington 10/29/08  
Harold Washington Date  
President, Chapter 105 San Diego

Donna H. Hart 10/29/08  
Donna H. Hart Date  
President, Chapter 136 Norfolk

Thomas O'Keefe 10/29/08  
Thomas O'Keefe Date  
President, Chapter 138 Champlain

**BID, ROTATION AND PLACEMENT PREFERENCE SHEET**

LAST NAME	FIRST NAME	MIDDLE INITIAL	HASH-ID	CURRENT GRADE	CURRENT T SERIES	CURRENT PORT ASSIGNED	CURRENT WORK LOCATION
HUMPHREY	KENNETH	D	BFEGIF...	GS-11	1895	Miami Service Port	A-TCET

**SENIORITY TIE-BREAKERS**

<b>SENIORITY DATE</b>	<b>TOTAL TIME IN CBP</b>	<b>TOTAL TIME IN FEDERAL GOVERNMENT</b>
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The total time an employee has served in his or her current occupation, for example CBPO or CBPAS, including time in equivalent position in heritage agency such as Inspector.

1/3/2000

.08 Years 11 Months 29 Days 13 Years 00 Months 0 Days

A-000054

**BID FOR WORK UNIT**

BID 1

BID 2

BID 3

BID 4

A-TCET

A-TCET

A-TCET

A-TCET

**PREFERENCE FOR AVAILABLE WORK SCHEDULE**

PREFERENCE FOR BID 1 PREFERENCE FOR BID 2 PREFERENCE FOR BID 3 PREFERENCE FOR BID 4

1500-2300, RDO Fri/Sat or Sun/Mon 1500-2300, RDO Fri/Sat or Sun/Mon 1500-2300, RDO Fri/Sat or Sun/Mon 1500-2300, RDO Fri/Sat or Sun/Mon

Please Review the KSA's for each of Your BID Preferences, Enter Your Qualifications and Submit Your Preferences When Complete

**ASSIGNMENT (To be completed by Bid & Rotation Committee ONLY)**

Work Unit Assigned To: Work Schedule Assigned: Assignment Start Date: Date Bid Sheet was Submitted:

EXHIBIT F18c

000310

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Passenger Processing

2/1/2009

2008-12-17

**Required Knowledge, Skills and Abilities for BID Preference I**

- Knowledge of laws, rules, regulations, programs, and procedures concerning import/export of merchandise • Skill in physical detection of anomalies in conveyances, vehicles, luggage, merchandise, etc. (e.g. false compartments) • Ability to detect inconsistencies in information gathered from interviewing individuals through observational techniques and automated systems to identify high risk travelers • Ability to conduct effective secondary inspections/examinations and to document the findings in a timely and accurate manner in the appropriate automated systems • Ability to perform duties, which are technical in nature, such as utilizing specialized equipment to aid in the unloading or examination of cargo and surveillance (i.e. Reference CBP 3290-013C, Consolidated National Inspectional Anti-Terrorism Contraband Enforcement Team Policy) in multiple environments (i.e. Sea/Air) Assignment Duration • A-TCET members who have attended specialized training (i.e. NII to include VACIS, HCV, RPM, ATS-AT, ATS-N, AES, etc.) will remain in their position for a minimum of two bid cycles after the completion of the training. Officers will be aware of this commitment prior to the training.

This is my Bid Preference for Work Placement, ONLY IN A-TCET, and this also serves as a written Request for Protection against any Discriminatory and/or Retaliatory Practices in **BID, ROTATION, AND PLACEMENT ACTIVITIES** at MIA CBP.

I swore from beginning employment with US Customs, to serve on America's Frontline to safeguard in protection against Terrorism and other illicit challenges. I never agreed to take part in what seems as conspiracies **pretending** to mitigate the risks of Terrorism or other Threats to critical Government operations. Never have I joined the conspiracies of taking passive approaches by only accomplishing the simple tasks that involved no risks.

This Bid Sheet does not 'Blow Smoke' in highlighting skill sets or skill systems that any CBP Members can accomplish competencies in, in very short duration. This Bid for A-TCET Placement, states that "ACE FACTORS" have been pursued daily with the help of the few mutual supporting A-TCET members to foil Terrorist/Smugglers operations that have quickly found CBP Systems weaknesses.

Terrorist/Smugglers appear to be bringing illicit movements in numerous operations:

- unmanifested shipments;
- doctored and re-amended data entries;
- shuttled outbound bundles bypasses;
- altered passenger's data entries-records-tickets;
- and many, many trafficking maneuvers

with no fear of any CBP members taking any risks to ever challenge. (this is a gross conspiracy).

No Terrorist/Smuggler Groups would ever allow and reward those that are adapt at 'Blowing Smoke', while overlooking, with true negligence – the "ACE FACTOR" striving A-TCET team members.

My A-TCET SKILL BASE evolves around developing in unison with the other few mutual supporting strivers of "ACE FACTORS" such as:

- Enhanced Situational Awareness
- Sharpen Spatial Abilities
- Crusading Actionable Information (by taking the necessary challenging risks)

These "ACE FACTORS" are grounded works in CBP's CORE VALUES.

By allowing the Bid Qualifications to be based on 'Blowing Smoke' inputs mostly, is nothing short of conspiratory. The above "ACE FACTORS" is demonstrated greatly by a few CBPO's who have also agreed to serve the American Public with VIGILANCE, INTEGRITY AND PROFESSIONALISM, and from these personal efforts have gained a sense of accomplishment, self-worth and self-development, that has led A-TCET activities to protect against any harm or damage to America's Public or Economy.

About three years ago during an interview process, I wrote in my essay statement for a 'CBPO Supervisory position', that Radiation Damage seems not to be the available threat poised to be used by Terrorist/Smugglers groups. The A-TCET "ACE FACTORS" members see obvious gaping holes that hold limited chances of detecting, deterring or hindering in movement as illicit contraband trafficking of **harmful chemical and biological materials**, which would do the total opposite of insuring America's Domestic Tranquility.

It is conspiratory that mismanagement of **HUMAN CAPITAL** has allowed CBP to remain clueless to the movement avenues of unmanifested and/or falsely-manifested cargo and people.

The almost eight years of A-TCET experiences at MIA has allowed me to try mastering my A-TCET "ACE FACTOR" on a daily basis, while in the past few years of receiving discriminatory and retaliatory decisions against me. Mutual Support in accomplishing above 1% seizures of the possible total illicit trafficking materials, is what I have tried to surpass with a few A-TCET members as we are always attempting to be "ACE FACTORS" and not the 'Blowing Smoke' entitled A-TCET members.

This Bid Preference for Work Placement only in A-TCET is a plea for accountable measurements broken

000312

down to look for ways to really improve A-TCET Executions, to actually make some catches in detecting, deterring and hindering the numerous operational movements of the undocumented/false documented very dangerous trafficking.

Past CBP/DHS Human Resources SURVEYS results have demonstrated how conspiratory managerial CBP Practices really are. The managerial practices of enhancing the 'Blowing Smoke' CBP members who benefit from taking no risks, but are 'Ball and Chains' to other achieving CBP Team Members, is not mutual support and it surely makes meaningless, preaching of CBP CORE VALUES by management.

**Required Knowledge, Skills and Abilities for BID Preference 2**

- Knowledge of laws, rules, regulations, programs, and procedures concerning import/export of merchandise • Skill in physical detection of anomalies in conveyances, vehicles, luggage, merchandise, etc. (e.g. false compartments) • Ability to detect inconsistencies in information gathered from interviewing individuals through observational techniques and automated systems to identify high risk travelers • Ability to conduct effective secondary inspections/examinations and to document the findings in a timely and accurate manner in the appropriate automated systems • Ability to perform duties, which are technical in nature, such as utilizing specialized equipment to aid in the unloading or examination of cargo and surveillance (i.e. Reference CBP 3290-013C, Consolidated National Inspectional Anti-Terrorism Contraband Enforcement Team Policy) in multiple environments (i.e. Sea/Air) • Assignment Duration • A-TCET members who have attended specialized training (i.e. NII to include VACIS, HCV, RPM, ATS-AT, ATS-N, AES, etc.) will remain in their position for a minimum of two bid cycles after the completion of the training. Officers will be aware of this commitment prior to the training.
- (SEE THE ABOVE REQUIRED KNOWLEDGE, SKILLS AND ABILITIES FOR BID PREFERENCE 1)

**Required Knowledge, Skills and Abilities for BID Preference 3**

- Knowledge of laws, rules, regulations, programs, and procedures concerning import/export of merchandise • Skill in physical detection of anomalies in conveyances, vehicles, luggage, merchandise, etc. (e.g. false compartments) • Ability to detect inconsistencies in information gathered from interviewing individuals through observational techniques and automated systems to identify high risk travelers • Ability to conduct effective secondary inspections/examinations and to document the findings in a timely and accurate manner in the appropriate automated systems • Ability to perform duties, which are technical in nature, such as utilizing specialized equipment to aid in the unloading or examination of cargo and surveillance (i.e. Reference CBP 3290-013C, Consolidated National Inspectional Anti-Terrorism Contraband Enforcement Team Policy) in multiple environments (i.e. Sea/Air) • Assignment Duration • A-TCET members who have attended specialized training (i.e. NII to include VACIS, HCV, RPM, ATS-AT, ATS-N, AES, etc.) will remain in their position for a minimum of two bid cycles after the completion of the training. Officers will be aware of this commitment prior to the training.

000313

(SEE THE ABOVE REQUIRED KNOWLEDGE, SKILLS AND ABILITIES FOR BID PREFERENCE 1)

**Required Knowledge, Skills and Abilities for BID Preference 4**

- Knowledge of laws, rules, regulations, programs, and procedures concerning import/export of merchandise • Skill in physical detection of anomalies in conveyances, vehicles, luggage, merchandise, etc. (e.g. false compartments) • Ability to detect inconsistencies in information gathered from interviewing individuals through observational techniques and automated systems to identify high risk travelers • Ability to conduct effective secondary inspections/examinations and to document the findings in a timely and accurate manner in the appropriate automated systems • Ability to perform duties, which are technical in nature, such as utilizing specialized equipment to aid in the unloading or examination of cargo and surveillance (i.e. Reference CBP 3290-013C, Consolidated National Inspectional Anti-Terrorism Contraband Enforcement Team Policy) in multiple environments (i.e. Sea/Air) • Assignment Duration • A-TCET members who have attended specialized training (i.e. NI to include VACIS, HCV, RPM, ATS-AT, ATS-N, AES, etc.) will remain in their position for a minimum of two bid cycles after the completion of the training. Officers will be aware of this commitment prior to the training.

(SEE THE ABOVE REQUIRED KNOWLEDGE, SKILLS AND ABILITIES FOR BID PREFERENCE 1)

00314

*This document represents guidance, advice, counsel and training related specifically to collective bargaining. In accordance with 5 USC § 7114 (b)(4)(C), this document is exempt from disclosure to the bargaining units exclusive representative or its authorized representative.*

## **Interpretation and Implementation Guidance for Labor and Employee Relations Specialists**

### **BID, ROTATION AND PLACEMENT**

In the interest of providing opportunities for employees to receive work assignments in accordance with their preferences, CBP Officers and CBP Agriculture Specialists within the Office of Field Operations shall be afforded an annual opportunity to bid on specific assignments or work units within the area of responsibility of their Port Director.

- *This article represents a benefit to front-line CBP Officers and Agriculture Specialists.<sup>1</sup>*
- *The procedures and policies contained in this article are not to be used as a staffing plan or an assignment policy.*

#### **Section 1. Definitions.**

A. **Bid** is the term used to refer to an individual's request to be assigned to a specific work unit. Similarly, **bidding** refers to the process of submitting a request for assignment to a work unit or higher level unit in accordance with this procedure. Such a bid constitutes an employee commitment to be assigned to those requested work units in the event (s)he is selected in accordance with these policies and procedures.

B. **Covered employees** include all CBP Officers and CBP Agriculture Specialists assigned to a port of entry who have successfully completed the formal academy and structured post-academy training programs, and are not the subject of any pending performance or disciplinary action, or the subject of an investigation of alleged misconduct that may prevent the performance of the full scope of required duties. Employees on a temporary light duty assignment may participate in the bid process, provided the Agency possesses evidence that the employee will no longer be on light duty at the time of placement.

- Due to variations in formal post-academy employee training plans among ports, no specific time period was identified in the article. Both parties acknowledged that the training requirements for newly hired

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<sup>1</sup> All guidance annotations are highlighted in yellow.

*This document represents guidance, advice, counsel and training related specifically to collective bargaining. In accordance with 5 USC § 7114 (b)(4)(C), this document is exempt from disclosure to the bargaining units exclusive representative or its authorized representative.*

CBP Officers and Agriculture Specialists are normally completed within fourteen (14) or sixteen (16) months (including pre-academy, academy and post-academy training).

- Employees who are not “covered” will continue performing their limited assignments, e.g., admin functions, cashier.
- If the employee is clear to resume normal duties in between the bid cycle, the employee will return to the port’s core operations, e.g., primary or passenger processing, until the next opportunity to bid.
- Pre-bid cycle, port management may be reaching out to you to verify if an employee is “covered”, e.g., is a certain employee pending performance or disciplinary action.

C. **Duration** refers to the length of time an employee serves within an assignment.

D. **Mutual agreement** refers to the ability of the local parties (e.g., a NTEU Chapter President and Port Director) to vary from the procedures set forth in this policy only if both parties agree to do so voluntarily. A “by mutual agreement” provision does not confer or infer any right or obligation to engage in bargaining, or to submit any disagreement over a proposed variation to grievance, arbitration or any other impasse dispute procedures. Such agreements must be placed in writing and signed by the parties, and will be binding until such time as either party provides written notice to the other of its intent to withdraw. Withdrawals will be effective at the beginning of the annual bid cycle (i.e., August 1<sup>st</sup>) following receipt of the notice.

- Deviations are only authorized where specifically stated within this agreement and intended to be made in advance of the bid cycle. Other deviations are not authorized.
- If agreement is not achieved, the provisions of this national agreement are binding.

E. **Placement** refers to a change in an employee’s assignment in accordance with these procedures, other than through rotation.

- For example, an assignment made through the “remnant” bid lists or random selection for 6 month exposure assignments is considered a “placement.” In contrast, see Section 1.H. below.

F. **Qualifications** refers to the knowledges, skills and abilities for particular assignments and for the composition of particular work units. Such

UNSWORN DECLARATION

**SUBJECT:** Discrimination Complaint of Kenneth D. Humphrey and Janet Napolitano, Secretary, U.S. Department of Homeland Security, Case Number HS-09-CBP-003066-090104.

UNSWORN DECLARATION UNDER PENALTY OF PERJURY

In accordance with the following provisions of 28 U.S.C. 1746, I, the undersigned, do hereby make the following unsworn declaration, under penalty of perjury, pertinent to the above stated complaint:

1. What is your full name?

A: **Thomas Mattina**

2. What is your current title, series, grade, division and duty location?

A: **Assistant Port Director (APD); Series 0340; GS-15; Tactical Enforcement Branch, Miami Airport.**

3. For how long have you been in your current position? In the event that you were in a different position at any time between November 2008 and February 2009, please identify that position by title, series, grade, division and duty location.

A: **June, 2006.**

4. Who are your immediate and second level supervisors? Were these your supervisors during the period November 2008 through February 2009? If no, please indicate who your immediate and second level supervisors were during that period.

A: **Christopher Maston, Port Director, Miami Airport; Harold Woodward, Director of Field Operations, Miami Field Office**

5. Do you now have, or have you ever had, a direct work relationship to Kenneth Humphrey? If so, please describe the nature and duration of that work relationship.

Page 1 of 11

Initials 

: 00133

000133

A-000061

A: I have never had a direct work relationship with Officer Humphrey; I am his third line Supervisor.

*INVESTIGATOR'S NOTE: For comparative purposes in EEO investigations, witnesses are asked to identify themselves by the protected bases delineated in the complaint (in the complaint in question, those bases are race, national origin, color and age). Please be aware that provision of this comparative information is voluntary. If you are comfortable providing this information, please identify yourself by bases in Questions 6 through 9.*

6. Please identify yourself by race.

A: **Caucasian.**

7. Please identify yourself by national origin.

A: **American/Italian.**

8. Please identify yourself by color.

A: **White.**

9. Please identify yourself by date of birth.

A: **4/26/53**

10. Did you have any role in the decision to remove Mr. Humphrey from AT-CET field duties and assign him to desk duties, effective November 12, 2008? If so, please describe your role in that decision.

A: **As the APD, A-TCET, I was advised by A-TCET Supervisor Marcnel PIERRE (via e-mail) of an incident involving Officer Humphrey on 11/12/08. Due to the circumstances as reported, Supervisor Pierre consulted with Chief Blanco and it was decided to remove him from the field for the remainder of the evening. I concurred with this decision.**

**On 11/12/08, at 8:23 PM, I advised PD Maston (via e-mail) as to what had transpired.**

**On 11/13/08, I was on 8 Hours Annual Leave status; Chief Blanco was to serve as the Acting APD in my absence. However, I was able to review (via my CBP assigned Blackberry) message traffic and communicate with Acting APD Blanco. Based upon this event as well as the fact that an**

Page 2 of 11

Initials     

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A-000062

ongoing investigation was pending (relating to an incident that occurred on 11/2/08), I instructed Acting APD Marta Blanco to discuss this matter with PD Maston after the 11/13/08 scheduled morning Staff Meeting. PD Maston had asked "Any history with this guy? Any witnesses?" in responding to my 11/12/08 message; said inquiry was contained in PD Mastons' e-mail message to me on 11/13/08 at 7:21 AM.

Acting APD Blanco spoke with PD Maston after the Staff Meeting; reminded him of past incidents; and informed him that last night we removed Officer Humphrey from the field and assigned him to desk duty pending the outcome of the investigations; PD Maston agreed with this decision. In addition, Labor and Employee Relations (LER) Specialist Lenny DORMAN was advised. This was reported to me via an e-mail sent by Acting APD Blanco on Thursday, 11/13/08 at 9:41 AM.

At 9:46 AM, Acting APD Blanco issued/sent an e-mail message to all A-TCET managers advising them that "Effective immediately Officer Humphrey will be assigned to desk duty; he cannot be assigned to the field either on regular time or overtime."

At 9:50 AM, Acting APD Blanco sent an e-mail message to LER/Dorman stating "as per our conversation these were my instructions to the A-TCET Supervisors and Managers." This message contained the 9:46 AM message cited above.

11. In the event that you had a role in the decision to remove Mr. Humphrey from field duties and assign him to desk duties, by whom was the decision made and what were the specific reasons for that decision.

A: Officer Humphrey confiscated the Miami-Dade Airport Security ID's of Miami-Dade Aviation Department employee Jose ANDINO, and his Supervisor, Nicolson PIERRE contrary to regulations and CBP policy.

In addition, Officer Humphrey also had a confrontation with American Airlines Crew Chief Mark BAYLEY-HAY. Miami-Dade

Police were summoned by Miami-Dade Aviation Supervisor Nicolson PIERRE due to the seriousness of the event as

Page 3 of 11

Initials 

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confiscation of the ID's precludes these individuals from working on the ramp in the designated security zones and, as such, they were being prevented from conducting their mission critical tasks.

12. If you did not have a role in the decision to remove Mr. Humphrey from field duties and assign him to desk duties, do you know by whom that decision was made? If so, who was involved in that decision?

A: See Item # 10.

13. If you did not have a role in the decision to remove Mr. Humphrey from field duties and assign him to desk duties, do you have any information as to the reasons why that decision was made? If so, please detail your understanding of the reasons for that decision.

A: See Item # 10 and 11.

14. Mr. Humphrey states it is his understanding that he was removed from field duties and assigned to desk duties pending an investigation into incidents in which he was involved on November 2 and November 12, 2008.

Is this accurate? If so, please detail (if you have not already done so) your understanding of what occurred with Mr. Humphrey during the November 2 and November 12 incidents in question (to include how these incidents came to your attention).

A: This is accurate.

As for what transpired on 11/2/08, Officer Humphrey had a confrontation with two Continental Airline employees whereby statements submitted by said individuals report that:

- he allegedly detained the individuals for no valid reasons;

- he allegedly asked one individual for his Social Security Number and told him that he will stay until he gave him a number or would be arrested;

- he allegedly told one individual that "you're getting arrested" and allegedly ripped his Miami-Dade

Aviation ID from his neck;

- he allegedly told said individual to get out of his vehicle (that being a golf cart); stand with his hands behind his back; spread his legs; lean against the vehicle; shoved him against the vehicle; and told him he was getting arrested and going to jail; and asked that if he went back to Cuba would he have to go thru Customs.

Regarding the November 12<sup>th</sup> incident, See Item # 11

15. Why, and by whom, was the decision made that an investigation would be conducted into the November 2 and November 12 incidents in question?

A: **I referred both matters for investigation with the concurrence of the PD and LER.**

16. Mr. Humphrey states that it is not uncommon for AT-CET Officers to experience conflicts or confrontations with individuals whom they are evaluating or questioning. He asserts that, when white or white Hispanic Officers have some type of conflict or confrontation in the course of their duties, management treats it as a normal occurrence and no actions are taken against the Officers. He states this is not the case for non-white AT-CET Officers, evidenced by the fact that he was placed under investigation and assigned to desk duties for incidents which he describes as fairly routine.

Please respond to Mr. Humphrey's allegation that his race, color and national origin were factors in the decision to investigate him for the November 2 and November 12 incidents, and to remove him from field duties pending the outcome of that investigation.

A: **Race, color and/or national origin were not factors in the decision to investigate the events of 11/2/08 or 11/12/08. The events were referred for investigation based upon the allegations and facts as reported.**

17. Mr. Humphrey further alleges that younger AT-CET employees were treated much more favorably than him. Please respond to Mr. Humphrey's allegation that his age was a factor in the decision to investigate him for the November 2 and November 12 incidents, and to remove him from field duties

Page 5 of 11

Initials *pm*

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pending the outcome of that investigation.

A: Age was not a factor; the events were referred for investigation based upon the allegations and facts as reported.

18. Has the aforementioned investigation been completed? If so, what was the outcome of that investigation?

A: The investigation regarding the event of 11/2/08 was completed and forwarded to the APD, Passenger Processing Branch, MIA for review and recommendation. This was due to the fact that Officer Humphrey is now assigned to said Branch and, as such, they are responsible for addressing the matter. I am unaware as to the recommendation that was forwarded to LER from said APD via the PD.

As for the 11/12/08 event, I believe the investigation is still pending.

19. Mr. Humphrey notes that a Canine Officer named Alfredo Flores was also present during the November 2 incident.

Was Mr. Flores also the subject of an investigation regarding his role in the November 2 incident, and was Mr. Flores removed from field duties pending the outcome of such investigation? If not, why not?

A: The allegations made by the two Continental Airlines employees involved the actions of Officer Humphrey and not Canine Officer Flores; therefore the initial investigation pertained to only Officer Humphrey, and Canine Officer Flores was not removed from field duties. However, as cited in Item # 18, the Investigation Report was forwarded to the APD, Passenger and will contain a litany of statements pertaining to this event. Not having reviewed said document, I can not attest to the fact that it does or does not have information relating to Canine Officer Flores.

20. Mr. Humphrey alleges that, following his assignment to desk duties, his requests to work overtime were repeatedly denied by Julian Acosta. Did Mr. Acosta discuss Mr. Humphrey's overtime requests with you and/or did you have any role in the decision to deny Mr. Humphrey's overtime

Page 6 of 11

Initials 

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requests? If so, please detail the reasons why Mr. Humphrey's requests to work overtime were denied during the period November 12, 2008 through mid-February 2009 (when he was reassigned to Passenger).

A: **Officer Acosta did not discuss this matter with me. My managerial responsibilities include management of the A-TCET overtime budget allocation.**

21. Mr. Humphrey states he submitted a bid rotation request on January 1, 2009, on which he requested to remain in AT-CET. He asserts he learned on approximately January 17, however, that his request was denied.

Did you have any role in the decision to deny Mr. Humphrey's request? If so, what was your role, by whom was the decision made, and why was the decision made to deny his bid rotation request?

A: **I had no role in this matter.**

22. If you were not involved in the decision to deny Mr. Humphrey's bid rotation request, do you have any information regarding the denial of that request? If so, by whom was the decision made and what were the reasons for that decision?

A: **Bid requests for all MIA employees were processed in accordance with the negotiated policy between CBP and NTEU.**

Per an e-mail message from A-TCET Chief Sergio Bello (dated 1.27/09) sent to Officer Humphrey (whereby I received a cc: copy) in response to an e-mail inquiry from Officer Humphrey states the following:

*CBPO Humphrey:*

*The basis for your Bid submission not being granted is in the mutually agreed upon Bid, Rotation and Placement policy; namely section 1 B, which states "Covered employees include all CBP Officers and Agriculture Specialists assigned to a port of entry who have successfully completed formal academy and structured post-academy training programs, and are not the subject of any pending performance or disciplinary action, or the subject of an*

*investigation of alleged misconduct that may prevent the performance of the full scope of required duties."*

23. Mr. Humphrey states he was informed that Section 1.D. of the Union Agreement indicates that bid rotation requests are not accepted for employees who were under investigation for "egregious acts."

23.1. Is it accurate that bid rotation requests submitted by employees under investigation for "egregious acts" are voided/denied?

A: **I am unaware as to what transpired regarding bid requests submitted by other employees.**

23.2. Was Mr. Humphrey under investigation for an "egregious act" at the time he submitted his bid request? If so, what was the egregious act for which he was being investigated, and was this a factor in the voiding of his bid request?

A: **See Item # 11 and Item # 14.**

24. Were Mr. Humphrey's race, national origin, color and/or age in any way factors in the denial of his bid request?

A: **No.**

25. Have you ever been involved in voiding/denying a bid request submitted by any other employee who was under investigation for an "egregious act"? If so, please identify those individuals by race, national origin, color and age.

A: **No.**

26. Mr. Humphrey states he learned that he had been reassigned to Passenger Control in the beginning of February 2009. Did you have any role in the decision to remove Mr. Humphrey from AT-CET and assign him to Passenger Control? If so, what was your role, by whom was the decision made, and why was that decision made?

A: **See Item # 21 and Item # 22.**

Page 8 of 11

Initials           

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27. In the event that you did not have a role in the decision to reassign Mr. Humphrey to Passenger Control, do you have any knowledge regarding that decision? If so, by whom was the decision made and what were the reasons for that decision?

A: **See Item # 21 and Item # 22.**

28. Mr. Humphrey alleges his race, national origin, color and age were factors in the decision to remove him from AT-CET, and asserts AT-CET management has demonstrated a pattern of removing older, non-white employees from the team. He contends Jose Victoria, Joseph Negron, Coretta Carr and Marnel Pierre have all been removed from AT-CET without being given any real explanation for their removal, while white AT-CET Officers have not been similarly removed from the team.

Please respond to Mr. Humphrey's allegation that his race, national origin, color and age were factors in his removal from AT-CET.

A: **See Item # 21 and Item # 22.**

29. Have you ever been involved in removing any other employee from AT-CET? If so, please identify those individuals by race, color, national origin and age, and indicate the reasons for their removal from the team.

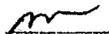
A: **No.**

30. Are there any witnesses who can provide first-hand information to corroborate your testimony? If yes, please provide names, contact information, and a brief explanation of the first-hand testimony each witness will be able to provide.

A: **Chief Marta Blanco; A-TCET (events of 11/2/08 and 11/12/08)  
Chief Sergio Bello; A-TCET (Bid rotation issue)  
Supervisor Marcnel Pierre (event of 11/12/08)**

31. Is there any corroborating documentation that you would

Page 9 of 11

Initials 

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A-000069

like to submit for inclusion in the file? If yes, please detail any documentation you will be providing.

A: **Statements/allegations from Continental Airline employees Ernesto VEGA and John REINOSA summarizing the event of 11/2/08.**

**E-mail message from A-TCET Supervisor Marcnel Pierre regarding what transpired on 11/12/09.**

**Copy of the Miami-Dade Police Department Offense-Incident Report of 11/12/08.**

32. Is there anything you would like to add into the record?

A: **No.**

Page 10 of 11

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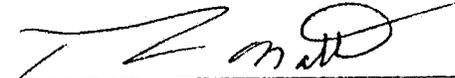
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I have received and reviewed CBP Directive No. 51713-010 (Guidance for Witness Participation during the Processing of a Formal EEO Complaint), and I declare under penalty that the foregoing is true and correct.

Executed on 4/9/09 at Miami, Florida  
(Date) (City/State)

Signature: 

Name (Please print): Thomas Mattina

Title: Assistant Port Director, Tated Export Branch

Address: 6601 NW 25<sup>th</sup> St  
Miami, Florida 33122  
\_\_\_\_\_  
\_\_\_\_\_

Page 1 of 2

EXHIBIT F18d

**BELLO, SERGIO J**

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**From:** BELLO, SERGIO J  
**Sent:** Monday, February 02, 2009 9:35 AM  
**To:** HUMPHREY, KENNETH D  
**Cc:** OTERO, MARIA C; LAMBOGLIA, JOSE A; GARCIA, EDWIN  
**Subject:** RE: ILLEGAL BID, ROTATION AND PLACEMENT

CBPO Humphrey:

Unfortunately, I cannot comment to you about another employee, it would be inappropriate.

The bid requests for all MIA employees were processed in accordance with the negotiated policy between CBP and NTEU. Further, in general and all other factors being equal, employees in like situations were treated in a similar manner in accordance with the policy.

Thank you,

Chief Bello  
Tactical Operations  
305-869-2702 Office  
305-525-1595 Nextel

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**From:** HUMPHREY, KENNETH D  
**Sent:** Tuesday, January 27, 2009 4:01 PM  
**To:** BELLO, SERGIO J  
**Cc:** BLANCO, MARTA M; OTERO, MARIA C; LAMBOGLIA, JOSE A; BRESLIN, JOHN H; DORMAN, LEONARD  
**Subject:** RE: ILLEGAL BID, ROTATION AND PLACEMENT

CHIEF BELLO,

IF YOUR REPLIED STATEMENT IS CORRECT, AND NO BIASNESS IS INVOLVED IN THIS DECISION MAKING AS TO THE REASONS I AM NOT ALLOWED TO REMAIN IN THE SAME PLACEMENT HELD SINCE 11-12-08. CAN YOU INTERPRET HOW DID CBPO [REDACTED] HOLD HER PLACEMENT UNDER INVESTIGATIVE CIRCUMSTANCES, IF THIS IS NOT A SELECTIVE DETERMINATION?

---

**From:** BELLO, SERGIO J  
**Sent:** Tue 1/27/2009 10:42 AM  
**To:** HUMPHREY, KENNETH D  
**Cc:** BLANCO, MARTA M; OTERO, MARIA C; LAMBOGLIA, JOSE A; GARCIA, EDWIN; MATTINA, THOMAS  
**Subject:** RE: ILLEGAL BID, ROTATION AND PLACEMENT

CBPO Humphrey,

The basis for your Bid submission not being granted is in the mutually agreed upon Bid, Rotation and Placement policy; namely section 1 B, which states "*Covered employees*

4/20/2009

A-000072

include all CBP Officers and CBP Agriculture Specialists assigned to a port of entry who have successfully completed the formal academy and structured post-academy training programs, and are not the subject of any pending performance or disciplinary action, or the subject of an investigation of alleged misconduct that may prevent the performance of the full scope of required duties."

Thank you,

Chief Bello  
Tactical Operations  
305-869-2702 Office  
305-525-1595 Nextel

---

**From:** HUMPHREY, KENNETH D  
**Sent:** Thursday, January 22, 2009 3:02 PM  
**To:** BELLO, SERGIO J  
**Cc:** BLANCO, MARTA M; OTERO, MARIA C; LAMBOGLIA, JOSE A  
**Subject:** ILLEGAL BID, ROTATION AND PLACEMENT

Chief Sergio Bello;

This is a request for legal and fair Bid, Rotation and Placement - according to 'NATIONAL STANDARD BID OPPORTUNITY ANNOUNCEMENT' procedures. This is a legal step in requesting the grounds for placement in other than my bid choice for the bid rotation, beginning 02-01-2009.

I ask in this request, the authority and individuals making the determination to refute my BID choice submitted twice on 01-01-2009.

At this point, it is important for me to find the legal standings for the determinations, and the basis for such determinations, made by whom.

If the Miami Field Office operates on some other unpublished criteria's outside the realm of Fair Labor Practices, it is now the best time for me to document such is the case. If this is not the case, I request on this date to be notified on what public and published grounds are labor practices being conducted.

There are US National Standards of FAIR LABOR PRACTICES and there are other practices. Please understand that all should be operating under one correct documented proceedings in such a situation as the Bid, Rotation and Placement of CBP employees.

This is my statement of the continued grieving of unfair Labor Practices in relationship to my being allowed equal and fair employment opportunities in CBP.

I sincerely hope that this is viewed as an urgent request for fair and equal response-treatment at CBP.

Truly, Kenneth D Humphrey, CBPO, MIA A-TCET

4/20/2009

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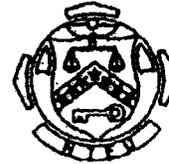
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EXHIBIT F18e

02-17-09:11 AM:

### National Treasury Employees Union

Customs and Border Protection Chapter 137



February 18, 2009  
Grievance # 137-09-004

Ms. Maria Otero  
Station Chief, Passenger Processing  
Customs and Border Protection  
Miami International Airport  
Miami, Florida 33122

Dear Ms. Otero,

NTEU is requesting a meeting to discuss CBP violations of the bid rotation and placement procedures agreed in the MOU signed by CBP and NTEU. There are four major areas of concern that we would like to discuss, these are as follows:

1. Officers were not allowed bidding due to CBP'S interpretation of the definition of "covered employees", and/or medical reasons although they provided adequate and timely documentation stating their release to full duty status. NTEU contends that management should only exclude those employees that cannot perform the full range of required duties. So, if an employee has their firearm and access to all computer systems, they should not be excluded just because of an investigation or medical reasons. This is a violation of Section 1.B "Covered Employees". The Following officers were affected by this violation: [REDACTED] and Kenneth Humphrey.
2. CBP'S failure to allow officers to rectify any data entry errors either electronically or via hard copy. It should be noted that some officers made attempts to rectify their mistakes before the due date and the share point system did not accept these changes. The following officers were considered at fault by CBP and were not allowed to receive work assignments or shift preference in accordance wit their bid submission: [REDACTED]
3. CBP'S inability to identify those officers that submitted their bid under the "Group Log-On". Apparently these bids were never recorded in the system, placing these officers in passenger processing by default. There were several officers affected by this process.

P.O. Box 52-0807 - Miami, FL 33152  
Phone (305) 871-3861 - Fax (305) 871-3866  
NTEU137@aol.com

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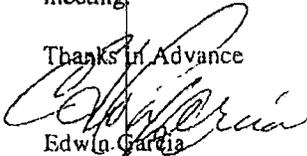
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4. CBP'S failure to utilize seniority to assigned shift preferences.
5. CBP eliminated shifts that were part of the work units during and after the bid solicitation process.

In accordance with the MOU, this meeting should take place at a mutually agreeable time and place within seven calendar days of receipt of this letter. Further, if you are not the management official who was responsible for and/or do not have the authority to resolve this matter, please forward this request to the appropriate management official and provide me with the name and contact information for that official as soon as possible but no later than the above mentioned time limit:

Please contact me so that we may agree upon a mutually acceptable date and time for this meeting.

Thanks in Advance



Edwin Garcia  
Executive Vice President, NTEU Chapter 137

Cc: Steven Flig, NTEU Assistant Counsel

**BELLO, SERGIO J**

---

**From:** BELLO, SERGIO J  
**Sent:** Thursday, November 13, 2008 4:14 PM  
**To:** 'Joint.Intake@dhs.gov'; PACE, JESSICA (IA)  
**Cc:** MATTINA, THOMAS; BLANCO, MARTA M  
**Subject:** CBPO Humphrey Incident  
**Attachments:** RE: ; RE: Investigation; FW: E20 Incident; FW: Officer Humphrey; E20 Incident; FW: Incidents at Gate E22 w/Flt AA1244 ; MIA Customs.pdf; To who it may concern.docx

Intake Center,

Attached are the emails concerning the two incidents reported earlier involving CBPO Kenneth Humphrey. The second incident also involved to a lesser degree CEO Alfredo Flores as his partner, but not mentioned in the statements.

The first and last two attachments (Re, Re:Inv, MIA, To Whom) all involve the first incident.

The three "FW" attachments and the "E20" statement all involve last night's incident.

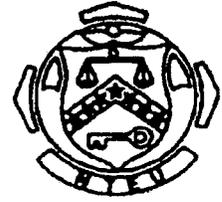
I will fax over the police report separately.

Thank you,

Chief Sergio Bello  
Tactical Operations  
A-TCET Miami Airport  
305-869-2702 Office  
305-525-1595 Nextel  
305-869-2644 Fax

# National Treasury Employees Union

Customs and Border Protection Chapter 137



March 10, 2009  
Grievance # 137-09-004

Ms. Maria Otero  
Station Chief, Passenger Processing  
Customs and Border Protection  
Miami International Airport  
Miami, Florida 33122

Dear Ms. Otero,

Please be advised that NTEU Chapter 137 has reviewed all the data provided by you and your staff in response to the areas of concern outlined in grievance #137-09-004. It is our decision that CBP has met all requirements in the agreed MOU between CBP and NTEU concerning the issues in this grievance.

NTEU Chapter 137 is hereby withdrawing grievance #137-09-004.

Thank you for your diligent efforts and spirit of partnership you provided to solve the outline issues in grievance #137-09-004. We hope that in the future we can continue to work together to solve the delicate issues that affect our members.

Sincerely,

A handwritten signature in cursive script, appearing to read "Edwin Garcia".

Edwin Garcia  
Executive Vice President, NTEU Chapter 137

Cc: Steven Flig, NTEU Assistant Counsel  
Harold Woodward, DFO Miami  
Lenny Doorman, LER Miami

<p style="text-align: right;">Page 1</p> <p style="text-align: center;">UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF FLORIDA</p> <p style="text-align: center;">CASE NO.: 11-CV-20651-O'SULLIVAN</p> <p>KENNETH D. HUMPHREY,</p> <p style="padding-left: 40px;">Plaintiff,</p> <p>vs.</p> <p>UNITED STATES OF AMERICA,</p> <p style="padding-left: 40px;">Defendant.</p> <hr style="width: 20%; margin-left: 40px;"/> <p style="padding-left: 40px;">99 Northeast 4th Street, Suite 300 Miami, Florida Friday, October 21, 2011 8:52 a.m. - 11:29 a.m.</p> <p style="text-align: center;">DEPOSITION OF KENNETH HUMPHREY</p> <p style="padding-left: 40px;">Taken before Rinele Abramson, Notary Public in and for the State of Florida at Large, pursuant to Notice of Taking Deposition filed in the above cause.</p> <p style="text-align: center;">-----</p>	<p style="text-align: right;">Page 3</p> <p style="text-align: center;">I N D E X</p> <p>WITNESS: KENNETH HUMPHREY PAGE: 4</p> <p>DIRECT EXAMINATION BY MR. MACCHIAROLI: 4</p> <p style="text-align: center;">- - -</p> <p style="text-align: center;">E X H I B I T S</p> <p style="text-align: center;">- - -</p> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left;">DESCRIPTION</th> <th style="text-align: right;">PAGE:</th> </tr> </thead> <tbody> <tr><td>DEFENDANT'S EXHIBIT NO. 1</td><td style="text-align: right;">37</td></tr> <tr><td>DEFENDANT'S EXHIBIT NO. 2</td><td style="text-align: right;">43</td></tr> <tr><td>DEFENDANT'S EXHIBIT NO. 3</td><td style="text-align: right;">97</td></tr> <tr><td>DEFENDANT'S EXHIBIT NO. 4</td><td style="text-align: right;">57</td></tr> <tr><td>DEFENDANT'S EXHIBIT NO. 5</td><td style="text-align: right;">73</td></tr> <tr><td>DEFENDANT'S EXHIBIT NO. 6</td><td style="text-align: right;">79</td></tr> <tr><td>DEFENDANT'S EXHIBIT NO. 7</td><td style="text-align: right;">94</td></tr> <tr><td>DEFENDANT'S EXHIBIT NO. 8</td><td style="text-align: right;">135</td></tr> <tr><td>DEFENDANT'S EXHIBIT NO. 9</td><td style="text-align: right;">146</td></tr> <tr><td>DEFENDANT'S EXHIBIT NO. 10</td><td style="text-align: right;">148</td></tr> <tr><td>DEFENDANT'S EXHIBIT NO. 11</td><td style="text-align: right;">148</td></tr> <tr><td>DEFENDANT'S EXHIBIT NO. 12</td><td style="text-align: right;">149</td></tr> <tr><td>DEFENDANT'S EXHIBIT NO. 13</td><td style="text-align: right;">150</td></tr> </tbody> </table>	DESCRIPTION	PAGE:	DEFENDANT'S EXHIBIT NO. 1	37	DEFENDANT'S EXHIBIT NO. 2	43	DEFENDANT'S EXHIBIT NO. 3	97	DEFENDANT'S EXHIBIT NO. 4	57	DEFENDANT'S EXHIBIT NO. 5	73	DEFENDANT'S EXHIBIT NO. 6	79	DEFENDANT'S EXHIBIT NO. 7	94	DEFENDANT'S EXHIBIT NO. 8	135	DEFENDANT'S EXHIBIT NO. 9	146	DEFENDANT'S EXHIBIT NO. 10	148	DEFENDANT'S EXHIBIT NO. 11	148	DEFENDANT'S EXHIBIT NO. 12	149	DEFENDANT'S EXHIBIT NO. 13	150
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<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES:</p> <p>2</p> <p>3 On behalf of the Plaintiff:</p> <p>4 Kenneth Humphrey (pro se)</p> <p>5</p> <p>6 On behalf of the Defendant:</p> <p>7 Assistant United States Attorney</p> <p>8 99 Northeast 4th Street</p> <p>9 Miami, Florida 33132</p> <p>10 BY: CHRISTOPHER MACCHIAROLI, ESQUIRE</p> <p>11</p> <p>12 ALSO PRESENT:</p> <p>13 Carolyn Sarnecki, Esquire</p> <p>14</p> <p>15 -----</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 4</p> <p>1 Thereupon:</p> <p>2 KENNETH HUMPHREY,</p> <p>3 was called as a witness, and after being first</p> <p>4 duly sworn, was examined and testified under</p> <p>5 oath as follows:</p> <p>6 DIRECT EXAMINATION</p> <p>7 BY MR. MACCHIAROLI:</p> <p>8 Q. Good morning, Mr. Humphrey. We met</p> <p>9 earlier today, and of course, throughout this</p> <p>10 litigation, we've met at various court</p> <p>11 conferences.</p> <p>12 I'll be taking your deposition today.</p> <p>13 Have you ever been deposed before?</p> <p>14 A. Probably once, that I can remember.</p> <p>15 I can't tell you for what reason or for -- it</p> <p>16 was probably a lawsuit or something.</p> <p>17 Q. Okay. We will get to that prior</p> <p>18 deposition later.</p> <p>19 A. I don't remember, basically.</p> <p>20 Q. We will ask some questions and maybe,</p> <p>21 hopefully, that will jog your memory.</p> <p>22 A. I don't remember. I vaguely remember</p> <p>23 going someplace and I don't even remember</p> <p>24 swearing in.</p> <p>25 Q. Was there somebody recording your</p>																												

Page 13	Page 15
<p>1 duties. And every time she would just</p> <p>2 reprimand me, I would just continue with my</p> <p>3 duties.</p> <p>4 Q. What kind of reprimands did you</p> <p>5 receive?</p> <p>6 A. She would always accuse me of -- she</p> <p>7 would just falsely accuse me of everything.</p> <p>8 It was just -- it was just being falsely</p> <p>9 accused without even giving me a chance to</p> <p>10 expound on any activities that took place.</p> <p>11 She would just automatically accuse me without</p> <p>12 even hearing my version of any incident.</p> <p>13 Q. Who is the individual you are</p> <p>14 referring to as "she"?</p> <p>15 A. Dana Martin, Supervisor Dana Martin.</p> <p>16 Q. Do you recall when these reprimands</p> <p>17 occurred?</p> <p>18 A. It was just continuous. It was</p> <p>19 continuous from -- it was almost like she had</p> <p>20 lower regards for black males. So it was just</p> <p>21 continuous. It was continuous throughout the</p> <p>22 whole period.</p> <p>23 Q. When was she your supervisor?</p> <p>24 A. I think she retired in 2007, 2008.</p> <p>25 I'm not sure.</p>	<p>1 A. That's a possibility.</p> <p>2 Q. Okay.</p> <p>3 Since your employment ended with CBP</p> <p>4 have you looked for subsequent employment?</p> <p>5 A. I've basically been dealing with this</p> <p>6 case most of the time and I haven't had an</p> <p>7 opportunity.</p> <p>8 Q. Are you looking for new work?</p> <p>9 A. I will be.</p> <p>10 Q. Will you be looking for work in law</p> <p>11 enforcement?</p> <p>12 A. That depends.</p> <p>13 Q. Have you sent any resumes out?</p> <p>14 A. No.</p> <p>15 Q. Gone to any job interviews?</p> <p>16 A. No.</p> <p>17 Q. Solicited any positions?</p> <p>18 A. No.</p> <p>19 Q. Do you consider yourself retired?</p> <p>20 A. For health reasons, I am.</p> <p>21 Q. Are those physical or mental issues?</p> <p>22 A. I hope not mental, but physical.</p> <p>23 Q. Are you classified medically as</p> <p>24 disabled?</p> <p>25 A. No.</p>
Page 14	Page 16
<p>1 Q. Is it fair to say that she was your</p> <p>2 supervisor from 2002/2003 through 2007/2008?</p> <p>3 A. She was one of the supervisors. I</p> <p>4 basically didn't acknowledge -- I didn't -- I</p> <p>5 avoided relating to her.</p> <p>6 Q. Did you -- I'm sorry. I interrupted</p> <p>7 you. Go ahead, sir.</p> <p>8 A. I just made sure I never worked her</p> <p>9 shift. Any shift that she was on, I avoided</p> <p>10 her shift.</p> <p>11 Q. When you left CBP, did you receive</p> <p>12 any kind of pension or compensation for your</p> <p>13 government service?</p> <p>14 A. A very small, insignificant amount.</p> <p>15 Q. What do you define as "small and</p> <p>16 insignificant"? How much do you receive?</p> <p>17 A. Probably 578.</p> <p>18 Q. \$578?</p> <p>19 A. Uh-huh.</p> <p>20 Q. Is that per month?</p> <p>21 A. Uh-huh.</p> <p>22 Q. And you will continue to receive \$578</p> <p>23 per month for the rest of your life?</p> <p>24 A. Unless the government just flops.</p> <p>25 Q. I hope not. I might lose my job too.</p>	<p>1 Q. You said prior to your employment</p> <p>2 with CBP, you worked for the airlines. Was</p> <p>3 that American?</p> <p>4 A. Uh-huh.</p> <p>5 Q. What was your term of employment with</p> <p>6 American Airlines?</p> <p>7 A. International Security Agent and</p> <p>8 Passenger Airport Agent.</p> <p>9 Q. What was the period of time of your</p> <p>10 service with American Airlines? How long did</p> <p>11 you work there?</p> <p>12 A. For approximately ten years.</p> <p>13 Q. Were you working at Miami</p> <p>14 International Airport?</p> <p>15 A. Uh-huh, yes.</p> <p>16 Q. During that ten-year period, did you</p> <p>17 ever file any claims of discrimination against</p> <p>18 American Airlines?</p> <p>19 A. No.</p> <p>20 Q. Were you ever disciplined in any</p> <p>21 capacity?</p> <p>22 A. No.</p> <p>23 Q. No letters of reprimand?</p> <p>24 A. No.</p> <p>25 Q. No censures?</p>

Page 25	Page 27
<p>1 going to take a long lunch break, that I was                  2 not going to sit around and talk in groups in                  3 front of all the workers, that I was not going                  4 to be on the airport environment playing                  5 around in front of public view. And I                  6 basically told them that if they wanted to go                  7 ahead and just slack off, count me out. I                  8 will leave you in a minute and I will go on my                  9 own and do surveillance on my own.                  10 If that was the attitude they were                  11 going to take, I was not involved in it. Each                  12 airline employee knew when they were assigned                  13 with me, they were going to work. And                  14 sometimes they were reluctant to be assigned                  15 with me because they didn't want to work, but                  16 I was not going to -- all right.                  17 Q. Did they tell you that?                  18 A. They pretty much passed the word                  19 around that the hard-working employees who                  20 really excel and made good interdictions of                  21 contraband, they always chose me to be on                  22 their team.                  23 So the employees that were the                  24 hard-working, senior personnel who were gung                  25 ho -- not gung ho, but really did the job they</p>	<p>1 knowledgeable one as to being able to curtail                  2 the conflict that was taking place. They just                  3 relied on me being the one to resolve the                  4 conflict.                  5 So my team members relied on me.                  6 Management had no idea what was going on on                  7 the field. They were oblivious to what was                  8 happening on the field. But in the line of                  9 action, my team members relied on me as being                  10 the most knowledgeable one, the most                  11 experienced one and the one that was capable                  12 of confronting aggressive activities from ramp                  13 workers, who were basically veterans of                  14 20-year employment and 25-year employment.                  15 Q. Is there anyone else on your team who                  16 dealt with confrontations more than you?                  17 A. I doubt it.                  18 Q. You talked about your work with                  19 American Airlines; you worked there for ten                  20 years.                  21 Prior to American Airlines, did you                  22 work for Continental Airlines?                  23 A. I worked for Continental East, Air                  24 Florida, Air Canada.                  25 Q. Were you jumping back and forth</p>
Page 26	Page 28
<p>1 were hired to do, they always requested that I                  2 be on their team.                  3 So they -- from the senior personnel                  4 who were the hardest workers, they always                  5 asked for Humphrey to be on that team.                  6 Q. Did Humphrey have more allegations by                  7 Miami employees of, you know, or complaints                  8 than his colleagues?                  9 A. My colleagues didn't work. A lot of                  10 them didn't work. A lot of them didn't work.                  11 Q. So the answer to that question would                  12 be yes?                  13 A. Well, I answered the question in a                  14 manner that's correct, that I can confront to                  15 you.                  16 Okay, my team members from 2005 to                  17 2008 relied on me to be the leader. So they                  18 are -- if there was a conflicted situation,                  19 they came to me to be the one to try to                  20 resolve it or to basically make determination                  21 on the scene with the persons who were being                  22 belligerent to resolve the belligerent                  23 activity of the activities they encountered on                  24 the field.                  25 They relied on me to be the most</p>	<p>1 between airlines?                  2 A. No, I worked for FedEx on the airport                  3 ramp. I worked the airport ramp for Federal                  4 Express. I worked the airport ramp for                  5 Continental Airlines.                  6 Q. Let's back up. You worked for                  7 American Airlines for ten years.                  8 A. Yes.                  9 Q. Where did you work prior to American                  10 Airlines?                  11 A. That's difficult. I worked a number                  12 of different jobs before American Airlines. I                  13 worked American Airlines and Federal Express                  14 at the same time, starting off in 2000 -- not                  15 2000. I started off in 1990. I worked for                  16 those two companies at the same time on the                  17 ramp, on the Miami ramp.                  18 Q. Why did you leave those positions and                  19 go to American Airlines?                  20 A. I was at American Airlines. Why did                  21 I leave --                  22 Q. Continental and Federal Express to go                  23 to American?                  24 A. I didn't leave. Federal Express, I                  25 worked at the same time I worked at American</p>

Page 29	Page 31
<p>1 So I didn't leave Federal Express to go to</p> <p>2 American Airlines. I was working both jobs at</p> <p>3 the same time.</p> <p>4 Q. Okay. You said you were working</p> <p>5 initially with Continental and Federal Express</p> <p>6 at the same time.</p> <p>7 A. No, American Airlines and Federal</p> <p>8 Express.</p> <p>9 Q. When were you working for</p> <p>10 Continental?</p> <p>11 A. Probably '79 to maybe '81, '82,</p> <p>12 somewhere around there.</p> <p>13 Q. Why did you leave Continental in '82,</p> <p>14 1982?</p> <p>15 A. I think they were giving me bad</p> <p>16 opportunities, gave me no opportunities for</p> <p>17 advancement.</p> <p>18 Q. What do you mean by that?</p> <p>19 A. It's just that I put in for a</p> <p>20 promotion and didn't get the promotion, so --</p> <p>21 Q. Did you think that they discriminated</p> <p>22 against you?</p> <p>23 A. I'm pretty sure I filed a suit.</p> <p>24 Q. So you filed a suit against</p> <p>25 Continental for discrimination?</p>	<p>1 receptionists that I had on my route.</p> <p>2 Q. And you believe they took that</p> <p>3 because of a discriminatory motive?</p> <p>4 A. They were not suspending anybody that</p> <p>5 was Anglo or Hispanic/white. It was a</p> <p>6 Valentine's -- I went to a -- I got along with</p> <p>7 all the office workers that are on my route.</p> <p>8 So before Valentine's day, I went in</p> <p>9 the gift shop and they had a whole lot of</p> <p>10 trinkets. I bought a little cheap Valentine's</p> <p>11 gift. It was just a little garter belt with a</p> <p>12 Valentine's on it. I gave it out to 11 office</p> <p>13 receptionists on my route.</p> <p>14 Q. That's a lot of garter belts.</p> <p>15 A. Well, it's just people that you see</p> <p>16 every day and establish rapport with.</p> <p>17 So half of the office workers were</p> <p>18 grandmothers, and it was just something just</p> <p>19 in humor. So it was nothing. I never asked</p> <p>20 any office workers for a date. I never asked</p> <p>21 for their telephone numbers or anything like</p> <p>22 that.</p> <p>23 One office worker, a young person, a</p> <p>24 Hispanic female, told her manager and her</p> <p>25 manager called my supervisor and my supervisor</p>
Page 30	Page 32
<p>1 A. Uh-huh.</p> <p>2 Q. Was it an EEO complaint or a federal</p> <p>3 court action?</p> <p>4 A. I really don't know what happened to</p> <p>5 that suit. I can't -- it might never have</p> <p>6 gotten out of their operations. I filed a</p> <p>7 complaint, but I don't think it got out of the</p> <p>8 Continental operations headquarters.</p> <p>9 Q. Did you ever file a complaint against</p> <p>10 Federal Express?</p> <p>11 A. Uh-huh.</p> <p>12 Q. What kind of complaint did you file</p> <p>13 against Federal Express?</p> <p>14 A. Discrimination.</p> <p>15 Q. And that was during your employment?</p> <p>16 A. It was at the end of my employment.</p> <p>17 Q. Were there circumstances surrounding</p> <p>18 that discrimination complaint?</p> <p>19 A. I didn't understand. Repeat the</p> <p>20 question.</p> <p>21 Q. I'm sorry.</p> <p>22 What were the circumstances</p> <p>23 surrounding that discrimination complaint?</p> <p>24 A. They put me on suspension because I</p> <p>25 gave a Valentine's gift to about 11 office</p>	<p>1 suspended me for 30 days.</p> <p>2 Q. And this, you alleged in your</p> <p>3 complaint against Federal Express, that it was</p> <p>4 race discrimination?</p> <p>5 A. Because they took the word of a</p> <p>6 co-worker that I might have been involved in a</p> <p>7 major theft from the company of some sunglass</p> <p>8 from Sun Hut (sic), I think the eyeglass</p> <p>9 company was Sun Hut or something like that.</p> <p>10 They came out and inspected -- went through my</p> <p>11 car and inspected my car and everything.</p> <p>12 Q. Did they find any sunglasses?</p> <p>13 A. No, it's stupid. I did not work the</p> <p>14 shift the Sunglass Hut glasses came in. I</p> <p>15 never worked that shipment. I had no -- when</p> <p>16 I got to work at, I think, 3:00 or 4:00, the</p> <p>17 Sunglass Hut shipment had already been picked</p> <p>18 up by other workers, had already been shipped</p> <p>19 off, was never even in the warehouse when I</p> <p>20 got there.</p> <p>21 So I don't even know how I got</p> <p>22 involved in Sunglass Hut. I never even</p> <p>23 delivered to Sunglass Hut, never picked up any</p> <p>24 deliveries for Sunglass Hut, never worked</p> <p>25 their merchandise, never touched their</p>