

MEMORANDUM OF UNDERSTANDING
BETWEEN
U.S. CUSTOMS AND BORDER PROTECTION (CBP)
AND
NATIONAL TREASURY EMPLOYEES UNION (NTEU)

I. Introduction

This Memorandum of Understanding (MOU) is entered into by, and between the United States Customs and Border Protection, (hereinafter referred to as "Agency") and the National Treasury Employees Union (hereinafter referred to as "Union").

II. Background

1. On February 9, 2012 the Union filed a National Grievance concerning **Article 42: Awards and Recognition** of the parties' Collective Bargaining Agreement (CBA). The parties met on April 30, 2012 for the grievance meeting. After the grievance meeting, the Union granted the Agency time to come up with a settlement proposal to attempt to settle the grievance. On November 19, 2012 the Agency presented the Union with a settlement offer to settle the grievance that was not accepted by the Union. However, the parties came to an agreement on updates to Article 42 to improve the Joint Award Committee (JAC) process and such agreement is memorialized herein.

III. Terms or Provisions of Agreement:

1. This MOU reflects the parties' agreement on changes to **Article 42: Awards and Recognition** in the parties' CBA.
2. Specifically, the new changes (bolded in the enclosed Article 42) can be found at Section 4. Superior Achievement Awards, Section 4(A)(6), Section 4(A)(7), Section 4(B)(2), Section 4(B)(3), the table found at Section 4(C)(1), Section 4(D)(1)(a) and Section 4(D)(1)(a)1.
3. The changes in Sections 4(D)(1)(a) and Section 4(D)(1)(a)(1) will be applied immediately for purposes of paying out FY12 Special Achievement Awards.

4. All other changes to the sections specified in this MOU, **III. Terms or Provisions of Agreement 2.** will not be applied until the first quarter JAC deliberations in FY13.

IV. Effective Date and Termination

This MOU will be submitted for Agency head review immediately after the final signature of the chief negotiators. This MOU will become effective thirty-one (31) days after the date it is signed by the last chief negotiator or after Agency head review, whichever occurs first. Either party may request to reopen this MOU for revision or modification in accordance with Article 26 (Bargaining) of the CBP & NTEU National Collective Bargaining Agreement.

V. Signatures

For the Agency

Date

_____

For the Union

12/6/12

Date

For the Agency

Date

ARTICLE XX: AWARDS AND RECOGNITION

Section 1. Recognition of employee accomplishments is an important element in effective workforce management. In accordance with 5 C.F.R. § 451.102, an *award* is something bestowed or an action taken by the Employer to recognize and reward individual or team achievement that contributes to meeting organizational goals or improving the efficiency, effectiveness, and economy of the Government or is otherwise in the public interest. This Article contains the policy and procedures for distributing awards for the bargaining unit.

Section 2.A. The Agency retains the discretion to determine how much of its budget will be allocated for awards. Budget permitting, the Agency has determined that the amount of funds dedicated to a bargaining unit employee awards pool at a Port of Entry (or equivalent level) will normally be one (1) percent of the total annual bargaining unit salary (including base salary and locality pay). In the event the Agency (at the national level) determines its budget will not permit the dedication of this amount to the awards pool, it will notify and provide NTEU the opportunity to bargain (at the national level) in accordance with law and the procedures contained in Article __: Bargaining.

- B.** The Agency will ensure the percentage of funds dedicated to awards for the bargaining unit (calculated in terms of total annual bargaining unit salary) at a Port of Entry (or equivalent level) will be no less than the percentage of funds dedicated to the non-bargaining unit pool (calculated in terms of total annual non-bargaining unit salary).
- C.** The Agency will ensure that no less than eighty-five (85) percent of the annual bargaining unit award funding at a Port of Entry (or equivalent level) is made available for distribution as Superior Achievement Awards under Section 4 of this Article. The remainder shall be available for distribution as Other Awards under Section 5 of this Article.
- D.** Awards that provide monetary recognition will be in the form of a lump sum payment.

Section 3. No later than thirty (30) calendar days following the commencement of the first performance year in which this Article applies, the parties will publicize the procedures, appropriate forms, and time frames associated with this article to all employees. This includes the Agency conducting a formal discussion for unit employees to receive additional information and raise questions. Union representation will be allowed to attend and participate in these discussions in accordance with the official time procedures contained in Article __: Official Time.

Section 4. Superior Achievement Awards (SAA). The SAA is an annual award, given at the end of the performance year to recognize an individual, group, or team's significant achievements accomplished throughout that year. At the end of each fiscal quarter, following the procedures outlined in Section 4A., a Joint Awards Committees (JAC) will review the nominations for the awards.

A. Joint Awards Committees.

- (1) At the commencement of each performance year, the Port Director (or equivalent management official or designee) and the local NTEU Chapter President will establish a JAC. Such committees will be made up of three (3) representatives each from NTEU and CBP. Representatives are generally expected to serve on the JAC for the entire performance year.
- (2) Employees serving as union representatives on the JAC will do so while on official time in accordance with Article __: Official Time.
- (3) The JAC will be responsible for evaluating nominations for SAAs for bargaining unit employees and submitting recommendations for such awards to the designated management official for final approval.
- (4) The required quorum for any JAC meeting is two (2) representatives each from NTEU and CBP.
- (5) To ensure the JAC is prepared to execute its responsibilities under this Article, it will jointly review these procedures at the commencement of each meeting.
- (6) **JAC deliberations concerning awards nominations and recommendations will be considered confidential by both parties. This provision, however, is not intended to prohibit either party from presenting evidence or providing testimony regarding the conduct of a JAC in a third party proceeding (e.g., arbitration, EEO complaint or Unfair Labor Practice Complaint) where such evidence or testimony is relevant or necessary to the adjudication of the case.**
- (7) **For a given quarter's nomination and after the approving official has approved, modified, or rejected the JAC recommendations for the SAAs, the JAC Administrator or designated management JAC member will notify (in writing via email or letter) the supervisors of the employees who received an approved SAA recommendation for the quarter. Only**

the employee name will be shared with the supervisor. The reason for the award and the number of shares awarded will not be shared with anyone outside of the JAC or the approving official until official notification occurs after the end of the fiscal year.

- (8) JAC members may not participate in or be present during the deliberation of an award for which they are nominated or initiated the nomination.

B. Award Nomination Procedures.

- (1) The Employer will establish, in collaboration with NTEU (at the national level), a standardized form to submit award nominations.
- (2) **To be eligible for consideration for an award under this process, employees nominated for either individual or group/team awards must have been rated at the “Successful” level during their most recent annual proficiency rating, and the performance under consideration for recognition must have occurred during the current performance rating cycle. It is intended that nominations are relative to activities that occurred during the quarter for which solicitations are being requested. However, while the JAC is not required to do so, it has the discretion to consider all nominations submitted at any time during the current performance rating cycle. In order to do so, the JAC must in the first quarter meeting, by mutual agreement, devise in writing, the manner in which they will consider nominations outside of the solicitation period. The JAC must then consistently apply that standard throughout each nomination period for that year. The JAC may not situationally devise a procedure after the first quarter meeting. Additionally, procedures devised by a particular JAC are valid only for the JAC that developed them.**

Nominations for awards under this process will be submitted in the following ways:

- (a) Groups/Teams: may be nominated by agreement of the group/team’s members; sponsor or supervisor of the group/team; and/or nominated by a CBP employee who uses or benefits from the group’s/team’s services or products.

(b) Individuals: may be nominated by a peer/co-worker; the employee him/her-self; a manager or supervisor; or by the other members of a group/team of which the individual is a member.

To ensure employee initiated nominations have been processed and forwarded to the JAC, employees may also provide a copy of submitted nominations to his/her Chapter President (or designee). Nothing in this provision is intended to prevent JAC consideration of an award nomination for which the Union was not provided a copy.

- (3) **At the conclusion of each of the fiscal quarters, the Port Director (or equivalent management official or designee) will formally solicit nominations from employees and/or supervisors to identify award-worthy performance of a specific covered employee, group or team during that quarter, or period deemed appropriate by the JAC as established in Section 4B. (2).**
- (4) Employees will be provided a minimum of fourteen (14) calendar days from the date of the solicitation announcement to submit award nominations to the nominated employee's supervisor.
- (5) Supervisors will review each nomination form received during the solicitation period and validate (and document on the form) the nominated employee's eligibility for an award, as well as the employee's performance of the activity identified in the nomination. The supervisor may also provide any additional information (s)he wishes the JAC to consider in the evaluation of the nomination. Completed nomination forms, including any nominations supervisors wish the JAC to consider will be submitted to the designated Joint Awards Committee members within fourteen (14) calendar days from the date of the end of the solicitation period.
- (6) Within fourteen (14) calendar days from the date of receipt of the award nominations, the JAC will meet for the purpose of evaluating the nomination and, using consensus decision making methods, make a written recommendation as to which nominees will receive awards under the criteria established in Section 4.C. of this Article. For the purpose of this submission, all nominees for which a majority (i.e., more than fifty (50) percent) of the committee agrees should receive an award will be forwarded as an award recommendation.

- (7) When evaluating award nominations, the JAC will give deference to the supervisor's determination as to whether the employee is eligible for the award.
- (8) In accordance with applicable law, rule and regulation, employees may not receive awards under this process for the performance of union representational functions.
- (9) Within fourteen (14) calendar days of receiving the JAC recommendations, the official with award approval authority will consider the recommendations and accept, modify or reject them. If recommendations are rejected or modified, the approving official will provide the JAC with a reasonably detailed written explanation of the decision. The JAC may request reconsideration of rejected/modified recommendations by making a written request with a justification for reconsideration within seven (7) days of the receipt of the written explanation. A response on any request for reconsideration will be provided to the JAC no later than seven (7) days following receipt of the request. Final decisions rejecting or modifying JAC recommendations may be grieved at the final step of the negotiated grievance procedure as described in Section __ of Article __: Grievance Procedure. Accepted recommendations (including no award) may not be grieved.

C. Evaluation of Award Nominations.

- (1) Absent the establishment of alternative criteria in accordance with subsection C.(2) of this Section, when the JAC determines a submitted nomination warrants the granting of an award, it will use the following table to determine the appropriate number of "shares" that will be awarded:

		<u>Extent of Impact</u>	
		<u>Limited:</u>	<u>Extended:</u>
<u>Value of Benefit</u>	<u>Illustrations:</u>	Affects the functions, mission, or personnel of one facility or field location, or an organizational element of headquarters.	Affects the functions, mission, or personnel of an entire field area or major office; or substantially surpasses established performance standards, expectations, or goals.
<u>Moderate:</u>	An activity or achievement that surpasses established performance standards, expectations, or goals; a significant contribution to the accomplishment of the office or Agency goals; or behavior that exemplifies the Agency's core values.	1 Share	2 Shares
<u>Substantial:</u>	A reduction in unit costs or maintenance of highly efficient operations by such direct action as minimizing waste, engaging in efficient and sustained high performance of assigned tasks, improving utilization of manpower and facilities, or revised operating procedures, or unusual skill in the application of present procedures.	3 Shares	4 Shares

- (2) Port Directors (or equivalent management officials or designees) and Chapter Presidents are authorized to modify the award criteria identified in the above table by mutual agreement. "By mutual agreement" means that the parties do so voluntarily, and 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 in writing and signed by the parties prior to the commencement of the performance year. Such agreements are 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 performance year following receipt of the notice.
- (3) An employee or team may only receive one award under this process for a particular accomplishment.

D. Calculation and Distribution of Awards. At the end of the performance year, the Employer will use the following procedure to determine the amount of and distribute Superior Achievement Awards:

(1) The value of a share at a Port of Entry (or equivalent level) will be determined by dividing the bargaining unit awards pool for that Port of Entry (or equivalent level) by the total number of shares issued through the JAC process at that Port (or equivalent level).

(a) **Employee awards at a Port of Entry (or equivalent level) will be calculated by multiplying the share value calculated in Section 4.D.(1) by the number of shares awarded to the employee through the JAC process. All employees receiving an annual SAA award will be limited to the amount for which the Director of Field Operations (or equivalent management official) is authorized to grant (currently \$2500.00), regardless of the number of shares awarded to the employee. Award pool funds not expensed through this process will be available for distribution throughout the year to bargaining unit employees under Section 5 of this Article.**

1. **The minimum value of an SAA in this process may not be less than \$100.00. Should an employee's award value be less than \$100.00 that award should be converted to a Special Act award for the SAA value or may be substituted with a non-traditional award such as a gift card for an amount that does not exceed \$100.**

(b) Absent circumstances beyond the control of the Employer (e.g., the agency's annual budget has not been approved), all awards issued under this process will be distributed within ninety (90) days of end of the performance cycle. In the event such circumstances occur, the Employer will notify the Union as soon as practicable.

(c) Concurrent with their distribution, the Employer will locally post a list of all Superior Achievement Awards to include the name, position and description of performance prompting the award.

Section 5.A. Other Awards. Awards under this section are designed to permit managers to quickly recognize one-time and short-term efforts of employees or groups/teams that result in service of an exceptionally high quality or quantity. Examples of such efforts include situations where employees or groups/teams:

- (1) Produce exceptionally high quality work under tight deadlines;
- (2) Produce added or emergency assignments in addition to their regular duties;
- (3) Demonstrate exceptional courtesy or responsiveness in dealing with customers or colleagues; or
- (4) Exercise extraordinary initiative or creativity in addressing a critical need or difficult problem.

B. These awards may be recognized in one or a combination of the following:

- (1) Special Act Cash Award: Monetary award for satisfying the criteria in Section 6.A.
- (2) Time-Off Recognition: Time-Off recognition is time off work without charge to leave.
- (3) Non-Traditional Awards. Non-traditional awards include items with the CBP seal, logo or another specially designed inscription related to the CBP mission/work, ranging from those approved and conferred by the Commissioner to smaller recognition items such as paperweights. In addition, supervisors have the authority to give other non-traditional awards such as theater tickets or merchandise up to \$100.00 per award item, but no more than a total of \$400.00 per employee per calendar year.

C. Agency managers have the discretion to grant awards under this section without conducting a formal nomination process. However, when management grants an award under this section, the awardee(s) will be notified of the management official granting the award and a brief description of the basis for the award. Furthermore, when granting a Special Act Cash Award under subsection B.(1) above, employees may request and Agency managers will consider providing the award in the form of time off under subsection B.(2) in an amount with a cost equivalent to but not more than the dollar value of the award. Agency managers will exercise their discretion to approve such requests in a fair and equitable manner.

Section 6. Quality Step Increases (QSIs). QSIs increase an employee's basic rate of pay from one step in the grade to the next higher step. Management will grant these increases

responsibly, judiciously and in accordance with regulation and policy, with awareness of their long-term financial impact on budgets. In order to be eligible for a QSI all of the following criteria must be met:

- A. Employee receives a “successful” rating of record;
- B. Employee demonstrates performance significantly above that expected for the position as determined by the following criteria:
 - (1) Displays outstanding performance to meet organizational goals or improves the efficiency, effectiveness, and economy of the Government;
 - (2) Excels in all critical performance areas as documented by specific examples;
and
 - (3) Exhibits timeliness in performance;
- C. Employee must not have received a QSI in last fifty-two (52) weeks; and
- D. Employee level of exceptional performance is expected to continue in the future.

Section 7. Foreign Language Awards Program.

- A. The Memorandum of Understanding addressing the Employer’s Foreign Language Awards Program (FLAP), as ordered by the Federal Service Impasses Panel on April 11, 2008 is contained in Appendix XX. This program exists separate and apart from the award system(s) described in this Article.
- B. The Employer will incorporate the use of Voice Recognition System testing technology into its FLAP for additional languages (e.g., Dutch and Arabic) to the extent the testing technology becomes available, is validated as meeting the Employer’s needs, and is cost effective. The Union may request that the Employer evaluate such technology at any time.