

# NEWSLETTER

3RD QUARTER 2015, VOL 1, ISSUE 11

*We must, indeed, all hang together or, most assuredly, we shall all hang separately.*

*-Benjamin Franklin*



## Why do we need unions?

- Sean Albright

After a particularly tense grievance negotiation session, the previous Assistant Port Director for Trade (Jay Brandt) once asked my predecessor (Greg Johnson) why we need a union. Greg’s response was that people need an avenue to have their complaints heard, and that since the majority of the employees of CBP are armed, the need for an orderly and fair avenue for the redress of grievances is particularly important.

Greg was also fond of saying, “The history of unionism is the history of the average man trying to empower himself”; a sentiment that is often overlooked by today’s workforce. There was a time in this country (The United States of America) when children as young as 8 could be legally forced to work in coal mines and sweat shops, when it was legal for employers to chain shut the fire escape doors for fear of pilfering, when there was no such thing as extra compensation for working longer than 8 hours in a day, when there were no requirements for safe and healthful workplaces, when there was no unemployment insurance or old-age pensions, when you could legally be fired without cause or for simply mentioning that a union might be needed, etc. Fortunately, our forefathers in the union movement fought and sometimes died to secure certain beneficial changes for us, changes which we all enjoy today. Unfortunately, many people now think that these beneficial changes are their birthright, and do not know, or choose to forget, that these benefits were hard-earned, often by the blood of those fighting for the changes. You may have seen the bumper sticker, *weekends: brought to you by the union movement*. Well, it’s true. The lobbying and organizational efforts of the union movement were the driving force behind all the workplace changes that so many people just take for granted now.

There are powerful forces in our nation which are looking to crush the union movement, for either political reasons, or financial reasons, or typically both. One of the goals of the anti-union movement is to roll-back decades of workplace and worker protections, currently founded in law, but of course subject to change depending on the votes of the City Councils, State Legislatures, and Congress. These protections are not written in stone, they are subject to the political process. Unfortunately, these forces have had a lot of success in recent decades. These are complicated issues, to be sure, and one could spill a lot of ink trying to explain it all. But sitting on the sidelines and waiting for someone else to speak up for you will not succeed. I urge all of you to contact your members of Congress, or the Governor, or any other elected official selected to represent your interests, and tell them how you really feel about the issues affecting working men and women. Trust me, they listen to the mood of the people. But they also listen to the interests of those who exert an out-sized influence on the political process through their money or their power. Only by standing together and making our voices heard, especially at the ballot box, will the interests of the average person be addressed.

### In This Issue

Summer Wildfires.....	2
Article 37: Leave Draw.....	3
Back Pay Settlements.....	4
Milestones.....	5
Blaine AP Grievance Update .....	7
Sumas AP Grievance Update .....	8
Vancouver Pre-Clearance Update .....	9
Oroville AP Grievance Update .....	9

# Summer Wildfires

- Clint Faulkner

Wildfires in Eastern Washington this summer wreaked havoc on the landscape of the region and the lives of its inhabitants. Nearly 1 million acres were burned and hundreds of homes were destroyed. Among those who were adversely affected by this natural disaster were many of our co-workers: officers, agents and employees of CBP who call Eastern Washington their home. Many of those CBP employees were put on evacuation notice as a result of the wildfires. In some cases, employees had to leave work to safeguard their homes and livestock from the encroaching flames. In most of these instances, CBP management granted emergency annual leave to those employees. Unfortunately, though, this classification of leave is still charged to the employee and debited from their respective leave accounts.



***Smoke from the "9 mile" fire taken from an officer's home.***

After some research by chapter stewards, it was discovered that the Office of Personnel Management's (OPM) **"Handbook on Pay and Leave Benefits for Federal Employees Affected by Severe Weather Conditions or Other Emergency Situations"** gives the following guidance to federal agencies whose employees have been affected by emergency situations:

***"In addition, excused absence may be granted to employees who are prevented from reporting for work or faced with a personal emergency because of a severe weather condition or other emergency situation and its aftermath and who can be spared from their usual responsibilities. Agencies have discretionary authority to grant excused absence and do not need to obtain prior approval from the U.S. Office of Personnel Management (OPM).***

***Agencies have discretionary authority to grant excused absence to employees who are prevented from returning to work due to unique circumstances, such as travel delays, surrounding the events of a severe weather condition or other emergency situation."***

This information is located in the OPM handbook in *Section I: Pay and Leave Benefits for Employees Prevented from Working in an Area Affected by Severe Weather Conditions or Other Emergency Situations* under *Excused Absence (Administrative Leave)*.

This guidance by OPM makes it clear that it is within the authority of CBP to grant excused absences (administrative leave), which is not charged to the employee, in these instances. As such, NTEU Chapter 164 requested that management grant "administrative leave" to those employees who were previously granted "emergency annual leave" due to the effects of the forest fires. NTEU believes that this would go long way towards improving employee morale and lessening the already substantial burden on employees who have been grievously affected by this natural disaster. Management responded that they would consider all requests to grant administrative leave for absences due to the wildfires.

a



***Helicopter hauling fire retardant through smoky skies near the Danville Port of Entry.***

So remember, if you ever find yourself the victim of a natural disaster or other emergency situation, you are entitled to request administrative leave and the agency is empowered to grant that request. If you need assistance or have any questions, please seek out your local NTEU steward.

# Article 37: Leave Draw

- Jennifer Tietje, NTEU Steward Danville

As the 2016 calendar year annual leave draw nears, officers need to start thinking about the dates that they plan on requesting. Below are some portions of Section 2 of Article 37 that discuss the procedures for annual leave requests. Note that some portions of this section have been omitted as they do not necessarily apply to the leave draw *procedures*. This article can be found in its entirety at: <http://nteu.org/doc/DownloadLibrary/20131220160955279.pdf> or from your local NTEU Steward. While these procedures are in place, smaller ports may also opt to collectively meet and negotiate their requests beforehand in order for the majority of the employees to be awarded the leave they request without any conflicts amongst officers. A couple things to consider are that annual leave requests are awarded on a seniority basis and employees are not required to provide a reason or destination to their chain of command for any given annual leave request (as stated in Section 2 (B) of Article 37).

## Section 2. Annual Leave.

**A.** The entire leave year will be available for annual leave requests, and the Employer will allow each employee to schedule annual leave as (s)he desires, subject to approval by the appropriate official based on workload and staffing needs. This includes approving annual leave requests in a manner that permits each employee, if (s)he wishes, to request at least one (1) period of two (2) consecutive weeks of annual leave each leave year.

### **B. omitted**

### **C. Local Annual Leave Procedures.**

(1) Upon the effective date of this Agreement and at any time thereafter, the Employer and the Union may, by mutual agreement, adopt a local annual leave procedure.

(a) The scope of such mutual agreements may include:

1. The time periods in which employees within appropriate work units or groups will compete for available leave periods;
2. The dates for submission of leave requests;
3. The posting of leave schedules; and/or
4. The criteria, priorities and/or the methods for resolving conflicts between leave requests among employees competing for available leave periods within an organizational segment.

b) Mutual agreement refers to the ability of the local parties to establish procedures only if both parties agree to do so voluntarily. It 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 process.

(c) Local annual leave procedures adopted through mutual agreement may not conflict with law, rule, regulation or the terms of this Agreement.

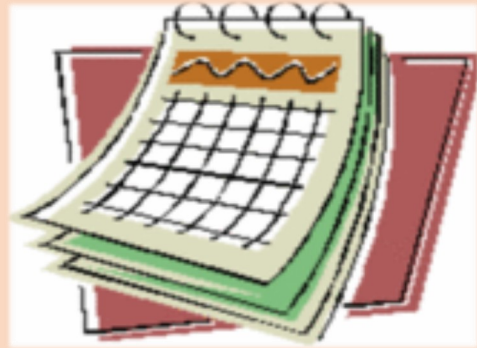
(d) Any local mutual agreement reached under this subsection must be placed in writing and signed by the parties, and will be binding until such time as either party provides written notice to the other of its intent to withdraw.

Withdrawals will be effective at the beginning of the annual leave request cycle following receipt of the notice.

2) Absent the establishment of a local procedure under Section 2.C.(1) of this Article, the following will serve as the default procedure:

(a) Request Solicitation Period. When the Employer determines scheduling requirements or complexities (e.g., at a Port of Entry) necessitate or make it efficient to use a yearly process by which employees within a particular work unit or organizational subcomponent request and compete for available annual leave periods (i.e., in one and two week blocks), the following procedure will be used:

1. No later than October 15<sup>th</sup> of each year, the Employer will solicit employee requests for annual leave for the upcoming leave (calendar) year. The solicitation period will be no less than fourteen (14) calendar days. By mutual agreement between the Employer and the union, the Employer may solicit requests and schedule leave on a fiscal year instead of a leave (calendar) year basis. In such cases, the solicitation will occur no later than August 15<sup>th</sup> of each year.



2. Following the close of the solicitation period, the Employer will review and approve the requests in accordance with Section 2.A. of this Article. In the event a greater number of requests are submitted for a given period than can be approved, the Employer will approve requests in seniority order. For purposes of this subsection, seniority will be determined by:

- a. The total time an employee has served in his or her occupation (e.g., CBP Officer, CBP Agriculture Specialist, Import Specialist, etc.), including time in an equivalent position (e.g., Customs and Immigration Inspectors for CBP Officers and PPQ Officers for CBP Agriculture Specialists) at the employee’s heritage agency. For seniority purposes, Customs Canine Enforcement Officer, Immigration Inspector (Canine) or PPQ Officer (Canine) is considered creditable equivalent heritage agency time to the CBP Officer and CBP Agriculture Specialist positions, respectively.
- b. In the event it is necessary to resolve ties after step a., the total time an employee has served in CBP and heritage agency, regardless of position, will be used.
- c. In the event it is necessary to resolve ties after step b., the total time in Federal government service (i.e., SCD) will be used.



**Northbound Rocky Mountaineer**  
*waiting at Swift Siding for permission*  
*from railroad dispatch to enter Canada*

- d. If a conflict still remains, the conflict will be resolved by coin flip. Less than full-time employment will be credited for seniority purposes in accordance with the above on a pro-rated basis.
3. The Employer will post or otherwise make available the resulting list of approved requests for the upcoming leave year to employees no later than December 15<sup>th</sup> (or October 1<sup>st</sup> if fiscal years are used).

(b) Ad/Hoc Leave Requests. The Employer will review and approve leave requests it receives throughout the leave year in accordance with Section 2.A. of this Article. If the Employer is presented with a greater number of unprocessed requests for a given day or period than can be approved, the Employer will approve requests in seniority order (using the seniority rules contained in Section 2.C.(2)(a)2. of this Article).

**Sections D-H omitted**

As always, if you have any questions or concerns regarding any NTEU matters, don’t hesitate to contact your local NTEU representative.

---

**Settlements Result in Back Pay**

- NTEU National

The union has successfully secured back pay plus interest for three CBP Officers who were skipped for an overtime assignment. NTEU filed grievances on behalf of the employees at Chapter 140 (CBP Dallas/Ft. Worth), Chapter 143 (CBP El Paso) and Chapter 160 (CBP Brownsville) and favorable settlements were reached in all three cases prior to the arbitration hearing.

In these cases, CBP initially refused to provide back pay for the missed overtime assignments. When an employee has been bypassed by the agency for an overtime assignment in violation of the contract, the employee should get back pay rather than be given the next overtime opportunity. The union aggressively fights to enforce this rule at CBP—and has won more than 25 arbitration cases to date.

Despite the collection of NTEU victories, however, CBP often does not comply with the overtime provisions of the contract. NTEU is currently pursuing similar cases in different chapters across the country—another example of the union’s steadfast commitment to getting deserving employees what they are owed.

## ***Milestones: Moments that Matter***

- Sean Albright

We are starting a new column in the newsletter highlighting significant life transitions for our members. Examples would be retirements, moves, births in the family, etc. For future volumes, if you would like to suggest some transitions for the chapter to honor, please let us know.

### **John Morley, Blaine:**

CBPO John Morley retired from Customs this August. For those of you who worked in Blaine Cargo, John needs no introduction. John was our most senior employee in the entire Area Port, with a SCD of 1967! He grew up in NYC, and served in the U.S Air Force during the Vietnam War as a Maintenance Crew Chief on large C-141 cargo aircraft. John aided in carrying supplies into Viet Nam and evacuating the many dead and wounded back home again.

After leaving the Air Force, John was hired by the Customs Service as one of the first (TASO) Sky Marshalls, serving in a capacity similar to that of today's Air Marshalls. This was during the era when airliners were being hijacked and flown to 3<sup>rd</sup> World countries for ransom. John flew missions all over the world, being assigned to fly for almost 3 years, as an Air Marshall, on most of Pan American's international flights.

When the program was cut in 1973, John transitioned to being an acting Customs Patrol Officer on the New York City waterfront. Later he was sent TDY to Washington D.C., as a TASO, at the federally operated airport there, for almost a year.

When that TDY ended, he became a Customs Inspector at JFK Airport. Not favoring that posting, he transferred to San Ysidro, CA, serving as an Inspector/K-9 handler. John spent about 10 years on Skid Row and then transferred to Blaine, in 1983, becoming a Senior Inspector there.

John chose to re-enter the military in 1989, as a reservist in the WA State Army National Guard, serving first as a M-60 tanker, and later as a LCM landing craft coxswain traveling all around the Puget Sound area, lower B.C. Canada and Alaska. Later his unit was transitioned to the Army Reserves and he was later transferred to help crew on an Army LSV ship and after 9/11 he and that vessel were activated & assigned to serve in the Persian Gulf in Operation Enduring & Iraqi Freedom.

All the while, John soldiered on as a Senior Customs Inspector and then as a CBPO after returning from the Gulf. When he finally retired, he had almost 49 years of total government service. John is maintaining his association with NTEU, now transitioning to retired member status.

As a boy, growing up in an apartment on Manhattan Island in NYC, one of John's fondest dreams was to own his own tree. So, when he transferred to Blaine, he bought 5 acres in Ferndale, that included dozens of ...



***John "Sarge" Morley on his last day of CBP work. He's seen here cutting the retirement cake given to him by the swing shift crew.***

Continued on pg 6

...beautiful trees.

So after retiring, John will continue to reside on his “tree hugger farm” in Ferndale, with his family, where he will enjoy his hobbies of classic cars, dogs, shopping Craigslist for incredible bargains and watching his trees grow.

### **CW Jackson, Blaine**

CBPO Charles W. “C-dub” Jackson retired in September. CW, as he preferred to be called, was well known as a friendly and knowledgeable officer, always ready to regale fellow employees with colorful stories and anecdotes, in addition to imparting common sense wisdom, and displaying an undying devotion to doing the right thing. CW grew up in Kelso, WA, the son of the town Fire Chief (who was also a WWII kamikaze survivor). As a young adult, he worked variously in the wood products industry, and the steel industry. He went to college at BYU, receiving both an undergraduate degree, and a degree in law, and served as city prosecutor for Provo, UT. Later, he worked for the Examinations Department of INS, serving as a Contact Representative assisting those seeking legalization status. CW transitioned to INS inspections in 1988, serving in Portland, OR. In 1990, he transferred to Blaine, and served here for 25 years as an INS Inspector, INS Special Ops Inspector, and later as a CBPO, working first at the Peace Arch, and later in Cargo, bringing much needed INS experience to the Cargo office. He also served as an NINSC (Immigration union) steward, and later as an NTEU Steward, where his experience in law provided valuable in-house counsel. CW continues to reside in Blaine, in has hacienda along Dakota Creek, while he readies his retirement home in Bandon, OR. CW is also continuing his relationship with NTEU, transitioning to retired member status, and remains as our in-house law counsel.



*Sign visible as you leave the U.S. border near Blaine.*



### **Richard Gattis**

Retired SCBPO Rick Gattis passed away unexpectedly this last July, at his retirement ranch in Arkansas, just two years after his retirement. Before being promoted to supervisor, Rick was an NTEU member for many years, serving in Calexico, Bellingham, Lynden, and Blaine. Prior to his time with Customs and then CBP, Rick had served in the Navy, Coast Guard, and the U.S. Postal Service. Rick will be long remembered for his personal courage and devotion to duty. Our thoughts and prayers go out to his widow Dawn, and his other family members.

# Blaine Area Port

## Grievances

- ◆ An arbitration was held to determine if CBP has the right to move people out of their normal bid-assigned work schedules for non-emergent reasons. As many people are aware, CBP Blaine has been in the habit of making wholesale schedule changes during the summer, regardless of employees winning their bids to a particular shift. We are waiting for the arbitrators decision. Case handed by Albright
- ◆ An arbitration was held to determine if CBP has the right to move people out of their normal bid-assigned RDO schedule. CBP has been in the habit of changing employees' RDOs when transitioning them to mids. We await the arbitrator's decision. Case handled by Albright
- ◆ Arbitration has been invoked on CBP's recent practice of offering TDY's without lodging expenses. This is contrary to law, and dramatically reduces the number of people able to complete for TDY assignments. The arbitration will likely be in February or March. Case handled by Albright
- ◆ A grievance was filed to protest CBP imposing local early deadlines for VLC class completions. The grievance could not be resolved. NTEU counsel has elected not to pursue arbitration. Case handled by Albright
- ◆ A grievance has been filed over changes in employee parking procedures in Blaine. CBP has reneged on a previous agreement to allow employees to park closer to the building on swing shift and mids shift. Grievance is at the Step 3 stage. Case handled by Marquez and Pettaway
- ◆ A grievance was filed, and resolved, concerning overtime assignment practices in ATU. Case handled by Lynch. Unfortunately, it appears that CBP is retaliating by not offering any overtime in ATU. A grievance might be forthcoming.
- ◆ Several grievances have been filed concerning overtime release procedures. Cases handled by Pettaway
- ◆ NTEU is handling a case involving a proposal to remove an employee. Case handled by Chapin
- ◆ Grievance contesting a letter of reprimand. (case handled by Pettaway)
- ◆ Arbitration is pending over a denied claim for reasonable accommodation related to a ADA medical issue. Arbitration will be in January. Case handled by Chapin
- ◆ Arbitration pending over reassignments to ATU, and Rail
- ◆ Testimony in the national Goldstein (Bid and Rotation) case will be offered by Blaine NTEU official on 10/13 and 10/14. NTEU believes that Blaine/Point Roberts/Lynden/Sumas employees are due over 3.5 million dollars in back pay claims as a result of relocations to other work units. CBP claims a much smaller number. The hearing will be before Arbitrator Goldstein, to attempt to work out the differences between NTEU's claimed figures, and CBP's claimed figures.
- ◆ A grievance addressing post housing claims (preclearance) for an employee formerly in Vancouver preclearance is at the Third Step of the grievance process. Case handled by Pettaway
- ◆ A grievance has been filed over changes to post-primary referral procedures at the Pacific Highway. Case handled by Hassebrock



*The Peace Arch at dusk*

A grievance was filed over alleged disparate treatment regarding the scheduling of a union official for training. No resolution could be reached. NTEU counsel has determined not to go to arbitration. Case handled by Albright

Continued from pg 7

- ◆ .A grievance was filed to challenge a denied request for an employee to be averaged-in to the overtime call-out list. The grievance was settled at the First Step, and the request was granted. Case handled by Casey.
- ◆ grievance was filed addressing CBP's failure to follow procedure on the temporary removal of an officer's authority to carry a CBP firearm. The grievance could not be resolved. Arbitration is pending early next year. Case handled by Albright.

## Negotiations

- Negotiations continue for the new Nexus enrollment facility located at the Birch Bay Mall. The parties appear to be close to impasse. Negotiations handled by Albright and Chapin.
- A comprehensive AWS was proposed for Sumas. CBP rejected the proposal, claiming that future unknown developments made it impossible to be able to implement 100% AWS. A slightly augmented AWS was agreed to. NTEU will continue to pursue a substantial expansion to AWS for Sumas. Negotiations handled by Chapin
- NTEU negotiated an expansion of AWS offerings in Blaine and Point Roberts, including the new addition of AWS to Cargo. NTEU believes there is room for much more AWS in Blaine, and will continue to pursue all reasonable options. Negotiations handled by Albright and Casey

*Labor disgraces no man; unfortunately, you occasionally find men who disgrace labor.*

-Ulysses S. Grant

## Issues and Grievances

# Sumas Area Port

- A Step one informal meeting will be scheduled shortly addressing Supervisors not following SOP's.
- Goldstein Arbitration is still on-going. There will be a meeting with NTEU National October 13th and/or the 14<sup>th</sup>.
- NTEU still has not received official notice regarding the new office for Friday Harbor and is currently in discussions with the Agency. Locally we cannot bargain until we receive word from NTEU National. Pre-decisional input phase has been productive.
- AWS for Sumas NTEU will be scheduling a meeting with Management to continue the bargaining process for AWS.
- Gootnick Arbitration, concerning violations of 5 USC 6101 by assigning different work hours in the same work week, is still on-going.



*End of Summer dinner at Chapter 164's former Vice President Dennis Gillespie's home. NTEU Chief Steward Chapin (center) with Jack Albright (right).*



## Issues and Grievances

# Vancouver Preclearance



*Vancouver International Airport sign with plane passing overhead*

- ◆ AWS schedule implemented that includes over 90% of the officers. It was negotiated as a 90 day pilot program and, if successful, will remain in effect.
- ◆ Successfully removed the long-standing half-hour unpaid lunch from daily schedule.
- Goldstein Arbitration, concerning assignments outside of designated bid work units, is still on-going.
- Gootnick Arbitration, concerning violations of 5 USC 6101 by assigning different work hours in the same work week, is still on-going.

***If I went to work in a factory, the first thing I'd do would be to join a Union.***

—Franklin D. Roosevelt

## Issues and Grievances

# Oroville Area Port

### Grievances:

- A settlement agreement was reached between CBP and NTEU regarding the assignment of overtime to officers in Eastern Washington. As per the agreement, and the CBA, all officers, both permanently and temporarily assigned to a work location, shall be considered part of the “overtime pool” for the purposes of assigning overtime and “force-outs”.

### New Grievances:

- ◆ A grievance has been filed concerning an apparent violation of the National Reassignment Opportunity Bulletin.
- ◆ A grievance has been filed over an overtime assignment which was assigned contrary to the call-out order in Article 35 of the Collective Bargaining Agreement.



***Spokane Falls on Spokane River in downtown Spokane, Washington***