

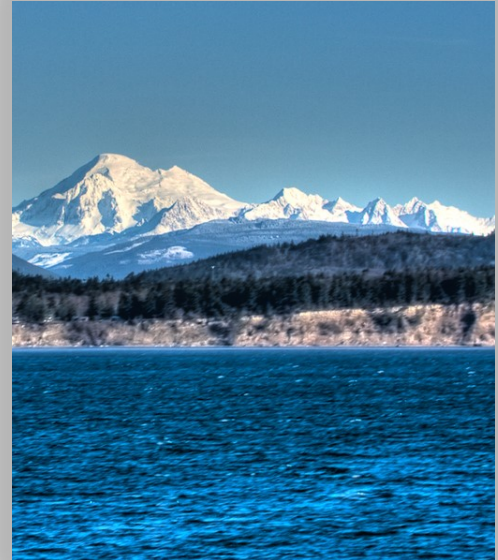
NTEU Chapter 164

Newsletter

4th Quarter 2015, Vol 1, Issue 12

NECESSITY UNITES.

- German Proverb



President's Corner:

New Year Review

A new year has begun, and with that it is only natural to look forward a bit and try to discern what will be coming our direction in the year ahead. While it is impossible to know such things with absolute certainty, I am reasonably confident that members will continue to approach me with questions about the big national grievances involving back pay. By way of a brief review, here are the big national cases, and where we stand:

- 1. Changes in inspectional assignment practices w/o negotiation, for legacy USCS employees, time period of 2004-2008:** NTEU has won the case on the merits, and is continuing through the legal process regarding the appropriate financial remedies. CBP has ignored several FLRA (Federal Labor Relations Authority) rulings. The FLRA is the Presidentially appointed body designated to hear labor disputes in the federal government, should the parties be unable to come to terms during negotiations, or be unwilling to accept an arbitrator's decision. As the FLRA is a bit of a kangaroo court with little enforcement ability on its own, the matter will likely have to go to actual federal court to seek an enforcement order of the "final" FLRA decisions upholding the arbitrator's original decision. NTEU counsel has begun this process. Trying to figure out who is owed what will be an interesting task.
- 2. Assignment to tours of duty that were contrary to Title 5 scheduling rules. Time periods are split between 2001-2008, and 2008-2011.** The time period of 2001-2008 applies to legacy USCS employees. The 2008-2011 portion of the case covers all employees. NTEU has won the case on the merits, and is pursuing the financial remedy portion of both cases through legal channels. CBP has ignored several FLRA decisions, so NTEU has begun the process to get the case to federal court, seeking an enforcement order of the arbitrator(s) original decisions. Same story for legacy INS employees, going back to 2007. Unfortunately, NAAE, the union which previously represented Agriculture employees, gave their approval for work schedules that were not Title 5 compliant, so there is no potential pay-out for legacy Agriculture employees on this case. For employee hired between 7/2004 and 5/2010, who were not represented by a union until 5/2010, the legal proceedings are further back in the process.
- 3. Reassignments away from Bid work units, otherwise referred to as the Goldstein decision, the name of the arbitrator who issued the national arbitration decision.** NTEU has won on the merits, including at the FLRA. CBP and NTEU are in disagreement regarding how much is owed. The employees in Vancouver preclearance had a hearing before Arbitrator Goldstein in October. Blaine/Lynden/Sumas/Point Roberts employees will have their cases heard in March. While a settlement remains a possibility, the likelihood of having to take this case to federal court as well looms large. The Chapter is attempting to reach a settlement for those employees willing to accept CBP's numbers. CBP recently reduced the amounts it claims are owed to employees, arbitrarily discounting individual awards over \$35,000, to allegedly comply with the statutory OT cap, but without reassigning "over cap" assignments to employees who were below the cap and who would have received such assignments. The situation does not adhere to the reality of overtime assignment practices, or case precedent on back pay grievances, but if individual employees are willing to accept CBP's new revised (lower) figures, the chapter will try to help expedite that election.

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President's Corner New Year Review

I understand that these cases are dragging on forever. Unfortunately, the Civil Service Reform Act of 1978 (the personnel laws that all federal employees work under) did not anticipate the level of obstruction that CBP management has perfected. 1978 was a different time, not afflicted with the hyper-partisanship that we see in the government these days. The NTEU attorneys are aware of only one other federal union case in recent memory that had to go all the way to federal court to get an enforcement order on an arbitrator's decision. That case was with the FAA, and involved far less money than the cases mentioned above. And other Agencies, such as the Bureau of Prisons, have similar back pay cases waiting in the wings, so there are many eyes on these matters. The stakes are high, which also explains why CBP is fighting NTEU so hard on these matters. NTEU has to go through a maddeningly duplicative process to seek enforcement orders on these matters, usually involving having to go back to the original arbitrator, or the FLRA, to get an order finding CBP in non-compliance with the original arbitration decisions. CBP can then appeal that finding, or ignore it, with both scenarios causing still more referrals to the FLRA, and then a hopefully final appeal to the federal court system. The process has the appearance of a dog chasing its tail, but there is eventually a sunset to it. Again, the CSRA of 1978 just never envisioned or accounted for these levels of obstinance. I will keep you apprised of developments as I become aware. The reality is that these cases could drag on for several more years, assuming settlements are not reached.

Should you have any questions, please feel free to contact me.

Happy New Year.

Sean Albright
Chapter President
NTEU 164

NTEU Chapter 164 Leaders

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Chapter Treasurer— **James Henderson**

Swings Monday - Friday 360-332-5707

Chapter Secretary— **Kana Carman**

Days 360-332-8511

Sumas Chief Steward— **Rayme Chapin**

Days Monday—Friday 360-988-2971 x240

Oroville Chief Steward— **Clint Faulkner**

Days Monday—Friday 509-919-7206

Vancouver Chief Steward— **Gregory Pappas**

604-278-7422

Blaine Area Port

Grievances

- NTEU is currently representing an employee in a personal disciplinary matter. (Case being handled by Albright)
- NTEU is currently representing an employee in a personal disciplinary matter. (Case being handled by Faulkner)
- NTEU is currently representing an employee in a request for a medical accommodation. Hearing arbitration set for January. Case handled by Chapin
- NTEU has filed a Step 3 grievance over the denial of FLAP awards (Foreign Language Award Proficiency) for employees tested to be proficient at speaking Spanish and other non-special interest languages. CBP has thus far provided no details in how they made their determination that employees were not using their non-English language skills for 10% of the time. We are waiting for the Step 3 decision from DFO Michele James. Grievance being handled by Albright
- A grievance settlement has been reached in NTEU's complaint that CBP changed the responsibilities of the Secondary Officer at the Pacific Highway without notice and bargaining. CBP had agreed to go through the formal bargaining process if a upcoming informal meeting does not resolve all issues. Case handled by Hassebrock.
- NTEU is handling a grievance protesting the imposition of a letter of reprimand to an employee for an action that in the past has only merited a letter of caution, to other employees. Case being handled by Lynch
- NTEU received an unfavorable arbitration decision regarding CBP changing the RDOs of employees. The arbitrator held that if CBP has a legitimate business interest, it may change the RDOs of employees as long as it is a temporary change necessitated by business requirements, and all other contractual requirements are met. Case handled by Albright
- NTEU is awaiting an arbitration decision on the practice of CBP forcing employees through unwanted midnight tours, and away from the normal Bid shifts awarded through the Bid and Rotation process. Decision expected any day.
- Arbitration is pending over CBP's decision to offer a TDY to POE Danville, without lodging reimbursement. We are hopeful of a settlement, but CBP will need to admit that what they did was wrong. Case handled by Albright
- Arbitration scheduled for February concerning employee relocations to ATU, and Rail. Case handled by Albright
- Active grievance alleging a violation of investigational procedures and CBP Standards of Conduct by CBP (scheduled for a meeting on 01/20/2016) currently at the step 3 level.



Historical image of the Blaine depot in 1917. The South (right) gable burned sometime in the 30's, with the building being repaired but about 10 feet shorter than before, as the gable was not rebuilt.

Issues and Grievances

Blaine Area Port

- Mass Overtime arbitration scheduled for 02/12/2016; alleging a violation of the overtime call out procedures by CBP
- Active grievance alleging a violation of the overtime assignment process by CBP; currently at the step 3 level of the grievance process.
- Active grievance alleging a violation of the Preclearance Allowances and Benefits by CBP; currently at the step 3 level of the grievance process.



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First train to arrive on the new "coast route" in Blaine, 1909. Before, trains followed a more inland and indirect route to Vancouver.

Negotiations

- Negotiations continue on the Birch Bay Nexus Enrollment Center. Agreement has been reached on many issues, but some issues are still outstanding, such as the request for an oven, a gym, and secure parking. Negotiations being handled by Albright and Chapin
- Negotiations continue over a proposed AWS for the Blaine Scheduling Office. A proposed AWS for the ATU office is about to be submitted to management, as well as expanded AWS offerings in other Blaine work units. Cases handled by Albright and Casey.

- CBP has proposed to expand the AWS in Point Roberts to Blaine Flex officers. Negotiations ongoing. Case handled by Albright

Issues

- NTEU is engaged with management on several significant proposals to changes in operations at the Peace Arch, including remote processing of certain applicants for admission, paid and scheduled lunch breaks, and processing of certain referrals entirely in the secondary parking lot. These issues were discussed at a recent union meeting.
- NTEU 164 is engaged with local CBP on a possible settlement to some of the Goldstein (national Bid and Rotation grievance) issues. Developments pending.
- NTEU has been engaged with local management on facilities issues at the Peace Arch, most notably, the dysfunctional nature of the HVAC system in the primary booths. The current situation of employees being unable to change the HVAC settings for personal preference is unacceptable. Also unacceptable is the current GSA decision to heat the booths to "military specs," which is about 55 degrees. CBP management admits to the problems, and claims to be in long-term resolution discussions with GSA. NTEU may have to reach out to Congressional offices to seek a resolution

Issues and Grievances

Sumas Area Port

- The Agency has informed NTEU that the Bellingham Port of Entry will be remodeled. Chapter 164 has held the briefing meeting and submitted a preliminary list of items to bargain over. The Port of Bellingham was to move the Bellingham operation to a new location but funding has become an issue and now they plan on remodeling the current location.
- Three officers from Sumas AOR retired as of December 31, 2015. NTEU would like to wish them a happy retirement and many years of relaxation and fun.
- Goldstein is still on going the Agency revised their numbers by subtracting any amount over the \$35,000.00 cap. In other words if you made \$28,000 in overtime and premium pay and the Agency's number that they originally offered was \$15,000.00 the total for that year was \$43,000.00 the Agency subtracted \$8,000.00 so the total you could make in the year is \$35,000.00. The extra money did not go to anyone else it just disappeared.
- NTEU filed a grievance for not giving notice at NTEU National for the new building in Friday Harbor. The Agency believes that the Pre-Decisional Input (PDI) was enough and that the need to bargain does not exist. There is a Step Two formal grievance meeting scheduled for December 31, 2015.



Sumas, 1950's.



The Sumas Border Inspection Station Under Construction in 1932.

- AWS is still being looked at, the Port Director wants to have a committee of Managers and Bargaining Unit members, and the committee is planning on having the first meeting in January 2016.
- NTEU has received the Agency's response to a Step Two formal grievance for an officer ordered to see his doctor and the agency not paying for the cost. NTEU will be filing a Step 3.
- The Agency has informed NTEU that there will be Operational changes coming to the Bellingham Port of Entry. Chapter 164 has asked for a briefing. Meeting will be held in January 2016.

Issues and Grievances

Vancouver Pre-Clearance

- Met with management at 45-day mark (halfway) of 90 day AWS trail and pleased to report no issues and management still remains in favor of over 95% of staff on AWS.
- Former Vancouver officers relocation grievance is on track for future arbitration.
- NTEU is preparing questions/concerns to present when Preclearance DFO visits in January 2016.

There are two kinds of people, those who do the work and those who take the credit. Try to be in the first group; there is less competition there.

—Indira Gandhi

Issues and Grievances

Oroville Area Port

- ◆ A grievance has been filed concerning a personal discipline case which NTEU believes is a Douglas Factors violation.
- ◆ A grievance is being filed over management's violation of Article 2 when approving administrative leave/excused absence requests in Eastern Washington due to the 2015 wildfires.
- ◆ A grievance was filed over management's violation of the overtime call-out order. As a result of this violation, the lowest-earning officer who volunteered for the overtime shift was not assigned the shift. After denying NTEU's requested remedies at both the Step-1 and Step-2, management ultimately agreed to grant the grievant 16 hours of admin time at the Step-3.
- ◆ NTEU has assisted several employees in the preparation of memorandums requested by management.
- ◆ NTEU has represented several employees in interviews conducted by both management fact-finders and internal affairs.
- ◆ NTEU negotiated a memorandum-of-understanding with internal affairs concerning employees' access to union representation during third-party witness interviews.



Danville, 1910.