

# NTEU

The National Treasury Employees Union



## The Need for Solidarity

Dear Fellow Bargaining Unit Members:

Webster's dictionary defines solidarity as, *"unity that produces or is based on community of interests, objectives, and standards. Synonym: unity."*

Solidarity is a concept that every union, and every union member, must grapple with. The very idea of a union is that people have shared interests, and band together to achieve success, or to protect those shared interests. NTEU's interest, in the abstract, is the fair treatment of the federal employee.

NTEU's Mission Statement is as follows:

*To organize federal employees to work together to ensure that every federal employee is treated with dignity and respect.*

These really are words to live by.

Similarly, I sometimes learn of bargaining unit members trying to cut private deals with management. Those who oppose our union look on such incidents as opportunities to divide and weaken us. We are strongest when we work together, in cooperation with one another. Also, if you have a problem with a coworker, try to peacefully address it with that coworker first. If this is unsuccessful, try to enlist a peer, or a union steward, or a chaplain, to facilitate a productive discussion.

In furtherance of this goal, CBP and NTEU have recently agreed to create the position of an ombudsman. While the full duties of this position are still to be worked out, the hope is that the ombudsman will be able to mediate in matters of dispute between employees, to hopefully eliminate the need to make allegations of misconduct to management, or IA. Everyone will benefit if disputes between employees can be resolved informally and amicably.

But looking at the bigger picture of the concept of solidarity, we all have to understand that not everyone gets his/her way, all the time. The union has to weigh sometimes competing goals, and sometimes competing interests, and determine which course is best for the union and the members as a whole. These decisions are not made

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## Issues and Grievances Blaine Area Port

**N**ational

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### Grievances Update:

- ◆ Arbitration pending on 2 cases where employees were forced to work outside of their normal bid schedule
- ◆ After a grievance was filed, CBP agreed to let a deserving employee exercise his right to move to a new port under a hardship transfer request
- ◆ Arbitration pending after CBP refused to honor an employee's request to move to a different port under the hardship transfer procedures.
- ◆ Arbitration pending for a case where CBP admitted to improperly skipping an employee for an OT job. Management refuses to pay the employee his lost wages
- ◆ A Step 3 grievance meeting will be held to address a personal discipline issue
- ◆ Recent settlement to a personal disciplinary case
- ◆ Two EEO cases currently in processing. Employees claiming disparate treatment based on protected classes
- ◆ Recent split decision from an arbitrator on the Beyond the Borders project in 2013. Arbitrator held that the one-time nature of the project allowed CBP to move employees out of their normal work schedules, but that employees should be allowed to remain in their normal work units. We will be challenging similar current and future instances of relocation, where there is no distractor such as the Beyond the Borders initiative. Two cases already pending arbitration.

### Negotiations Update:

- ◆ Negotiations continue on the new Nexus Enrollment Center being built at the Birch Bay Mall
- ◆ Negotiations continue regarding management's decision to relocate a Radio Technician from Marysville to Ferndale.
- ◆ Discussions with CBP continue regarding several personal disciplinary issues
- ◆ Negotiations with management over the implementation of new policy disallowing advanced annual leave resulted in that policy being rescinded.

### New Grievances:

- ◆ Grievance about to be filed over the FY2015 Bid and Rotation process. NTEU disagrees with the concept of a Flex unit, and CBP's decision to include Point Roberts in the regular rotation of officers assigned to the flex unit.



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lightly, and frequently involve the judgment of legal counsel. As an example, NTEU (and almost all unions) believe that there should be a seniority model attached to job assignments and scheduling decisions. There has to be a reward for sticking around. To this end, NTEU has decided that there should be a strong seniority component in the decision of who works where, and when. Seniority is not the only factor, but it is a big one, and should be. Does everyone win with this approach? In the short run, maybe not, but over the long haul, yes, everyone benefits from a system where seniority is an important determining factor in deciding who works where and when. The alternative is usually an opaque and unfair system where certain managers get to apply changing standards, as they see fit. I have lived through those systems too, and greatly prefer the seniority model of labor. Sometimes, as individual members, we have to take a step back and ask ourselves what is best for the group, or for the chapter, or for the union, and not just focus on what is best for ourselves at the immediate moment. This is a tough concept, and sometimes flies in the face of the image of the individual American making purely individual decisions about himself. This is also one of the reasons that detractors of unions have sometimes portrayed unions as un-American, since to be effective they sometimes must subordinate the interests of the one to the interests of the group as a whole. More on that in a future article.

So if you have a complaint about a particular practice of the union, I would encourage you to have a discussion with a union leader about why it is that NTEU espouses a particular position. We can usually provide a good explanation. If the reason is unknown to us, we will seek legal counsel to provide you the explanation you seek. If you still have a disagreement about a particular union policy, I encourage you to get active in the union, and work to change that policy, either at the local level or through our national NTEU representatives. Disengaging from the union or bad-mouthing certain union leaders or members will likely not resolve the perceived problem, and will very likely result in a loss of group solidarity, which will benefit no one except our opponents. Remember the words of Ben Franklin: we must all hang together, or we will all hang separately.

In Solidarity,

Sean Albright  
Chapter President  
NTEU 164





## Issues and Grievances Sumas Area Port

### Grievance Updates:

- ◆ There are no grievance issues from this area to update at this time.

### Negotiations Update:

- ◆ Negotiations have stalled on getting a fair AWS for Friday Harbor. A meeting with LER, with the help of a facilitator from the FMCS, will be held in October. If terms can't be reached, the issues will be referred to the FSIP for a decision. Management is

insistent on including language giving it scheduling flexibility not found in the contract.

- ◆ Negotiations with management about the creation of a "Lead Shift" for passenger processing will begin shortly.

### New Grievances:

- ◆ A grievance will be filed over the Agency creating new work units that are not in line with the provisions of the BR&P. This includes the Agency moving personnel from one port of entry to another and creating the Flex Work Unit which is not the definition of a work unit as per the CBA.

*It is one of the characteristics of a free and democratic nation that it have free and independent labor unions.*

- Franklin Delano Roosevelt



## Issues and Grievances Vancouver Pre-Clearance

### Grievance Updates:

- ◆ Arbitration was invoked to address CBP's failure to honor provisions in Article 40 which stipulate that a pre-clearance returnee will be allowed to return to one of their top 5 ports.
- ◆ A grievance was filed over a job opening that CBP filled with a re-hire instead of giving preference to a returning pre-clearance officer.

### Negotiations Update:

- ◆ National NTEU has re-opened bargaining over the implementation of automated kiosks.

### New Grievances:

- ◆ Nothing to update as of this issue.

## Issues and Grievances

### Oroville Area Port

#### Grievances Update:

- ◆ Management proposed a 30-day suspension to an officer for not including enough detail in TECS entry. In their response to the Oral Reply, management offered to reduce suspension to a Letter of Reprimand. As the officer had not violated any CBP policies, NTEU invoked arbitration. Before arbitration could be held, management agreed not to issue the LOR or any other discipline to the officer.
- ◆ Management proposed a 2-day suspension to an officer for failing to enter a traveler into VPC. NTEU presented their case at the Oral Reply and management ended up reducing the 2 day suspension to a Letter of Reprimand.
- ◆ EEO grievance filed over management's disparate treatment of officers requesting light duty in the Oroville AOR. NTEU represented the officer during EEO mediation and forty hours of the officer's sick leave was subsequently restored.
- ◆ A grievance has been filed over Oroville management's failure to assign OT in accordance with the call-out procedures in Article 35.
- ◆ A grievance has been filed over a change in working conditions due to management prohibiting the long-standing tradition of officers feeding animals at the Laurier, Frontier and Boundary POE's.
- ◆ Grievances regarding violations of 5 USC 6101 continue to be filed and forwarded for arbitration. To date, all are being held in abeyance awaiting the outcome of action being taken at the National level.

#### Negotiations Update:

- ◆ A train processing SOP for the Port of Laurier was negotiated with management at the 3rd Quarter Labor Management Relations Committee.
- ◆ Multiple officers have reported that supervisors assigned to primary and secondary inspections are not completing the duties associated with those assignments. Management was made aware of this fact at the 3rd Quarter LMRC and they, subsequently, reaffirmed through a written muster the expectation that supervisors assigned to primary and/or secondary will complete the full scope of duties required of them.

#### New Grievances:

- ◆ No new grievances at this time.





## Supreme Court Clarifies the Scope of Public Employees' Free Speech Rights

NTEU National—

On June 19, 2014, the U.S. Supreme Court issued its decision in *Lane v. Franks*, \_\_\_ U.S. \_\_\_ (2014), which concerned First Amendment free-speech protections for public employees. In an earlier decision, *Garcetti v. Ceballos*, 547 U.S. 410 (2006), the Supreme Court distinguished between employee speech and citizen speech. There, the Court held that citizen speech about a matter of public concern was entitled to protection, but that when public employees make statements pursuant to their official duties, they are not speaking as citizens for First Amendment purposes.

In the recent *Lane* decision, a public employee testified at a judicial proceeding regarding the events that led him to terminate a subordinate employee who was misusing public funds. *Lane* was subsequently terminated himself and he sued his employer alleging that the firing was retaliation for his testimony. The lower courts held that because *Lane* learned of the subject matter of his testimony in the course of his government employment, his testimony was unprotected employee speech – as opposed to citizen speech – and therefore not entitled to First Amendment protection.

The Supreme Court reversed and clarified that under *Garcetti* the critical question is whether the speech at issue is ordinarily within the scope of an employee's duties, not whether it merely concerns those duties. The Court explained that the mere fact that a citizen's speech concerns information learned through public employment does not transform that speech into unprotected employee speech. Because providing sworn testimony was not ordinarily within the scope of *Lane's* duties, the Court held that *Lane's* testimony was entitled to First Amendment protection. The Court left open the question of whether testimony provided by public employees who routinely testify as part of their employment duties should be similarly protected.





## Forced Overtime on Fridays

Fellow Bargaining Unit Members:

Most of you are aware of the seemingly unprecedented number of overtime force-outs this past Summer. It became so bad that management eventually began to routinely assign forced overtime to employees even on their Fridays, and even when the employees had valid excusals on file.

In an attempt to fix this problem, NTEU met with Blaine management in mid-August. We expressed our displeasure with management forcing-out employees on their Fridays, when there were valid excusals in place. We discussed the provisions of Article 35 stating that employees with a valid excusal should be the absolute last employees forced on to overtime, and that callback/commutes are to be paid before employees with an excusal are forced on to overtime.

Sadly, management in Blaine has a very different interpretation of the Article 35 callout list. They refuse to schedule callback/commutes in order to prevent employees from being forced-out on their Fridays. NTEU believes this to be in violation of the contract.

A local NTEU steward meeting was held on August 28, 2014 and this situation was discussed in detail. The unanimous opinion of the stewards present, the Chapter Executive Board, and our NTEU Counsel was that we cannot turn a blind eye to this transgression. To retreat in this situation, when the contractual language is so clearly on our side, would only embolden management to further diminish our hard-earned rights.

Unfortunately, taking action to enforce the proper interpretation of Article 35 may result in a number of unwanted consequences. Management suggested that they might 1. attempt to force officers to work OT on their Friday's, RDO's, or even on periods of A/L, regardless of the past practice of granting excusals during such times; 2. they may no longer allow "blanket excusals", as has been the practice since 2011, and instead require officers to submit

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*Where free unions and collective bargaining are forbidden, freedom is lost. .*

—Ronald Reagan

## **NTEU Chapter 164 Meeting**

**Place:** W.E.C.U. in Ferndale, Washington

**Date:** October 17, 2014

**Time:** 1700 hrs

### **Tentative Agenda:**

- To discuss overtime force-outs on Fridays & RDO's
- Possible changes to the Leave Draw
- All other items TBD



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their excusal requests each week; 3. they may just deny excusal requests altogether if the result of granting the excusal could be the payment of a callback/commute to another employee.

Our NTEU counsel has assured us that management is not only clearly violating the contractual language in Article 35, they are also violating the spirit of the language within that Article. Jonathan Levine, NTEU's lead negotiator and the chief architect of our contract, has explained that the unmistakable intent of the call-out order was, in part, to force out excusals only as a last resort. In fact, NTEU made a number of other contractual concessions to ensure that our RDO's and annual leave periods were expressly off-limits in all but the most exigent circumstances.

But because of the potential negative consequences threatened by management, we have decided that the best course of action is to put the matter to an advisory vote at the next Chapter Meeting. This will allow full disclosure of the issue, and provide clear direction to NTEU leadership, through an advisory vote on the matter. Therefore, a Chapter Meeting will be scheduled in the near future, likely mid-October. An Oroville Area meeting will also be held.

The possibility exists that this may become a protracted battle, so we need to remain vigilant, and continue to challenge management when they so flagrantly attempt to violate the provisions of our National Collective Bargaining Agreement. While this fight is not one that we have sought, rest assured that NTEU will be tenacious in the defense of every bargaining unit member's contractual rights.

In Solidarity,

Clint Faulkner  
NTEU Chief Steward  
Oroville Area Port

Sean Albright  
Chapter President  
NTEU 164



# Election Time

Chapter election season is underway! The first election materials (Notice of Election and Call for Nominations) were sent out 2 weeks ago, and ballots will be sent out next week.

If a member has not yet received a Notice of Election and Call for Nominations in the mail, then NTEU does not have a current and valid mailing address on file for that member. If such a member wishes to receive a ballot and vote in the upcoming election, that member needs to contact Elections Chairman Raymond Chapin (Sumas) to obtain a ballot. Mr. Chapin can be reached at 360-398-2217.

All ballots must be received by the Elections Committee ***no later than 10/30/14***. Members should go to [NTEU.org](http://NTEU.org) and verify their personal contact information to receive important future information. Unfortunately, CBP does not inform NTEU when a member moves to a new address.



## Parting Thanks to Jay Cooper

By Clint Faulkner—Chief Steward Oroville AOR

You are aware that Jay Cooper, the previous Chief Steward in Eastern Washington, has moved on to other responsibilities as a Course Developer and Instructor in Harper's Ferry, West Virginia. What you may not be aware of is all that Jay did while he was our representative. Here are some of the highlights:

- ◆ Fought against management's contention that a request by the agency for a memo does not entitle an officer to union representation. Ultimately, Jay prevailed, and now when an officer is asked to provide a memo he/she are also provided Weingarten rights and access to their union representative.
- ◆ Spearheaded the human resource survey which validated claims that there were a myriad of issues in our area having a detrimental effect on employee morale.
- ◆ Prepared multiple arbitration requests with a high success rate.
- ◆ Participated in many Oral Replies to proposed discipline which resulted in the officer having their discipline reduced in all but one instance.
- ◆ Represented Eastern Washington officers' concerns at the Labor Management Relations Committee for 3 years.
- ◆ Served on the Joint Awards Committee for 3 years.
- ◆ Built and maintained the new Chapter 164 Website.
- ◆ Published the first six issues of the Chapter 164 e-newsletter.

As you can see, Jay was an invaluable asset for NTEU and a dogged advocate for members in our area. He will be sorely missed. But, you know, if you ever find yourself in West Virginia, you can always look him up and say "Hello."



**THANK YOU!**