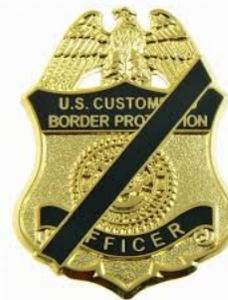




NTEU Chapter 164 Newsletter

2nd Quarter 2016, Vol 1, Issue 14



"We sleep soundly in our beds because rough men stand ready in the night to visit violence on those who would do us harm."

-Winston Churchill

President's Corner:

Hey CBP, where's my Goldstein Money?????

As many of you who work in the larger ports know, national NTEU won an arbitration a few years ago regarding CBP forcibly reassigning employees to different work groups. The arbitrator assigned to hear the case was Jay Goldstein, and the case has generally taken on that name, as is common when describing arbitrations. Anyway, CBP was ordered to pay lost overtime stemming from employees being reassigned to different work groups, work groups to which they were not assigned pursuant to the Bid and Rotation process. CBP appealed the case to the FLRA, where the FLRA affirmed NTEU's prior arbitration victory. Then came the remedy portion of the case, where NTEU and CBP tried to determine just how much money is owed to individual employees. It was a daunting task, and not surprisingly, CBP believed that employees were owed far less in lost wages than NTEU believed. So far, we have not been able to come to terms, in most locations, so CBP and NTEU are returning to Arbitrator Goldstein to have him decide the matter, port by port. Vancouver had their hearing many months ago, and Blaine's turn is in early August.

But in a few locations, including Sumas and Lynden, NTEU and CBP came to terms. Unfortunately, it appears that CBP is now welching on those terms. Regarding the amounts owed in Lynden and Sumas, NTEU and CBP arrived at a negotiated amount, for each employee. The agreed upon number is half-way between what CBP believed it owed employees, and what NTEU believed was owed to employees. The compromise was reached in February, with the final signature being affixed to the settlement agreement in early May. Employees were supposed to have been paid on 7/1/2016. Well, 7/1/2016 came and went, and employees were not paid. NTEU immediately began looking into the matter, and after a few days of digging, NTEU was told that CBP is now objecting to payments that would take an employee over the \$35,000 OT cap. This matter was previously discussed, and settled. For CBP to now try to bring this up again is very bad form. In general, CBP is apparently trying to claim that it is illegal to pay monies to employees that were not specifically appropriated by Congress. NTEU counsel disagrees with this conclusion, as the Back Pay Act, and the COPRA laws, address this topic, and specifically allow employees to recover monies that would have been earned absent an improper personnel action. And the COPRA laws specifically state that the annual OT limit can be exceeded if it involves a grievance award. Based on informal reports I have received, it is possible that CBP may pay the amounts that are below cap, i.e., the amount that would take an employee to the cap, but not over. This is a developing story, and we should know more in the near future.

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President’s Corner

Hey CBP, where’s my Goldstein Money?????

Rest assured that NTEU will strive to make CBP live up to its previous promises. We have a signed, completed settlement agreement for Lynden and Sumas. This agreement is enforceable, through court action if needs be. If CBP continues to refuse to pay what it previously promised it would pay, then NTEU will begin the legal process to make CBP pay, with interest.

In the meantime, if you are upset that CBP has apparently broken its promise made to the employees, I don’t blame you. Feel free to write to management, and complain about the situation. They need to hear your voice. It is just this kind of action on CBP’s part that destroys employee morale.

I will provide more details as they become available.

Sincerely,

Sean Albright
Chapter President,
NTEU 164

NTEU Chapter 164 Leaders

Chapter President — Sean Albright (New Hours)
Day Shift on Wednesday & Thursday and
1600-2000 on Fridays 360-332-2640
Swings on Weekends 360-332-5707

Chapter Vice-President— James Pettaway
0400-0800 Mon.—Fri. 360-332-6091
360-332-2640

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 x2220

Oroville Chief Steward— Clint Faulkner
Days Monday—Friday 509-919-7206

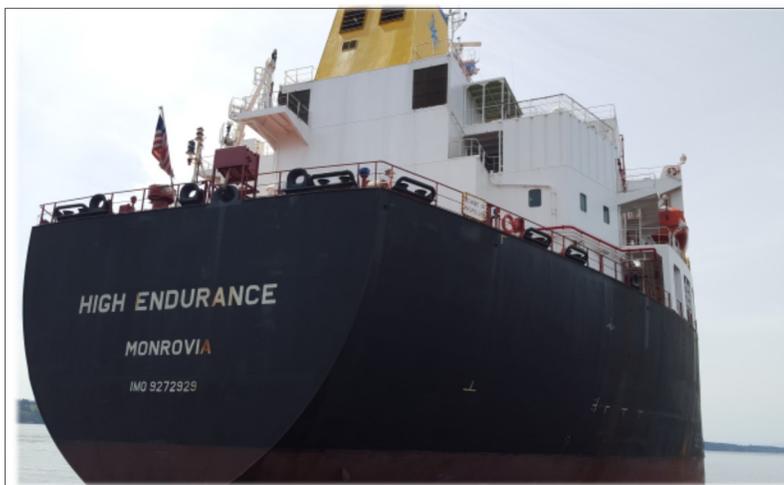
Vancouver Chief Steward— Gary Ferrell
604-278-7422

Front page photo— A view from an Amtrak passenger train over the southern part of Bellingham Bay.

Blaine Area Port

Grievances

- NTEU currently representing an employee accused of **sick leave abuse**. Case handled by Albright
- NTEU recently received an adverse arbitration decision regarding CBP **involuntarily extending the overtime assignments** of employees previously scheduled for less than full shifts. The arbitrator ruled that employees volunteer for 8 hours at a time, and as such, CBP is free to extend their OT assignments without having to go back through the call-out order when extending the length of the job. The arbitrator was troubled by an instance of CBP reassigning an employee to a different work unit to continue his overtime assignment, but based on a legal technicality, stopped short of declaring that to be a clear violation. A possible separate grievance to address future similar reassignments remains a possibility. Case handled by Pettaway.
- NTEU currently representing an employee accused of **sick leave abuse**. Case handled by Arguello.
- NTEU is in discussions with management to possibly change the **Leave Draw** format. Albright is leading the discussions, with input from Chapin and Faulkner.
- Arbitration pending over CBP's practice of using future (but unearned) overtime dollars toward the assignment of current overtime jobs. Case handled by Pettaway
- **Rail Vacancy**. A grievance was filed when a vacancy came open on the Rail work unit. CBP had not adhered to the contract in the way the vacancy was filled. CBP agreed that a violation had occurred, and gave the vacancy to the proper candidate. Case handled by Henderson.
- A grievance was filed in the summer of 2015, **challenging CBP's growing practice of declining to offer appropriate lodging reimbursement for TDY opportunities**. Such a practice had the effect of dramatically reducing the number of viable applicants for such TDYs, and thus was an affront to the seniority system, and the concept of fair opportunity. The grievance could not be settled in the grievance process, so the chapter advanced to arbitration. On 4/13/16, CBP and NTEU reached a settlement which confirmed that CBP will once again offer lodging reimbursement where required to do so by law, contract, and national policy, specifically 41 CFR 301-11. The employee who was the most senior but who was not able to compete for the posting because of CBP's refusal to pay for lodging will be given a priority consideration for the next available TDY to the same location, with lodging to be paid. Case handled by Albright.
- An informal meeting was requested with management to discuss the issuance of 7B counselling to an employee. Additionally, a grievance was filed concerning the denial of OT to an employee because the Agency had already forced the employee out later in the pay period and did not want the employee to go over the cap. Both cases are being handled by Tallarico.



High Endurance—a vessel boarded by CBP during vessel boarding training in Anacortes in May 2016.

Issues and Grievances

Blaine Area Port

- An oral reply was given in a disciplinary proposal against an officer in which the Agency had “stacked” charges against the officer for more than two years. Currently awaiting DFO’s decision. Case handled by Faulkner.

Negotiations

- **Nexus Office.** The parties have reached impasse, after 2.5 years of discussions, usually marked by long periods of silence from management after receiving the union’s bargaining proposals/counter. We are at impasse over CBP supplying rifle-resistant counters, providing for time or facilities for physical fitness, providing more secure parking, and a few other topics. The matter has been referred to NTEU counsel for a possible filing with the Federal Services Impasse Panel. (case handled by Albright and Chapin, with earlier help from Hassebrock)
- **Employee Parking at the Pacific Highway.** CBP and NTEU have reached a tentative agreement on the employee parking situation. A certain number of employees will continue to be allowed to park their POVs, close to the port building, on the swing shift and the midnight shift. (case handled by Albright)
- **Friday Harbor new office building.** Negotiations continue, mostly over cameras, a gym, and parking provisions. Other items remain in dispute as well. (Case handled by Albright and Chapin)
- **Goldstein (forced moves out of normal work units).** NTEU and CBP have reached terms on the payments due to employees in Lynden and Sumas regarding the national Goldstein grievance. The parties agreed that the payment would be half-way between what NTEU thought employees were owed, and what CBP thought employees were owed. In accordance with a fully signed settlement agreement, affected employees should be receiving their pay-outs on July 1. Efforts still continue toward a possible settlement for employees in Blaine and Point Roberts. If terms cannot be reached, it will go back to the arbitrator for an imposed settlement. (case handled by Chapin and Albright)
- CBP recently agreed to return to the practice of **allowing employees to wear business casual attire if they are on light duty and are not allowed to carry a firearm.** This will be at the election of the employees. Case handled by Albright.



Officers and Agriculture Specialists on stern of launch en route to the High Endurance for vessel boarding training.

Issues and Grievances

Sumas Area Port

Negotiations

- Goldstein Arbitration, Sumas and Lynden have a signed agreement that was agreed to be paid by July 1, 2016. The Agency didn't pay and NTEU is looking at what options we have.
- Friday Harbor post implementation bargaining is still on going.
- AWS for Sumas schedules are completed waiting to meet with management.

Grievances

- Re-promotion grievance is being held in abeyance until we receive the information that was requested.
- Before arbitration took place, the Agency agreed to settle an issue with ordering a Fitness for Duty exam and agreed to pay for the exam and the officer's time.
- Step 2 for FTO's to do IT's work is pending resolution.
- Step 2 meeting for a proposed 1 day suspension date to meet is pending.



Roche Harbor Customs Office

Issues and Grievances

Vancouver Pre-Clearance



CBP Agriculture Specialists taking part in Vessel Boarding Training in Anacortes.

Negotiations

No new negotiations this quarter

Grievances

No new grievances this quarter

Issues

No new issues this quarter

Oroville Area Port

Grievances

- Grievance filed over management assigning an overtime assignment to a supervisor instead of assigning the shift to a bargaining unit member who had volunteered through COSS. Currently awaiting the Step-2 substantive response from the Agency.
- Grievance filed over management's violation of past practice and a previous grievance settlement that ensured that supervisors would only be used as the second officer on non-premium pay shifts and that the rotating officers at the respective shifts would have first right of refusal to premium pay shifts. Management agreed at the Step-2 that they would abide by the past practice.
- Grievance filed over management's issuance of discipline to an officer for "failure to safeguard government property". NTEU maintained that other officers elsewhere in the OFO who had been charged with the same violation, received less severe discipline.
- NTEU has represented multiple employees who have been interviewed or asked to provide memos concerning personal discipline matters.

Milestones: *Moments that Matter*

- Kurt Cleman, long-serving CBP/USCS employee, honored military vet, and all-around good guy has retired. After a decorated career in the USAF, he served with USCS and then CBP, working in Blaine, Aberdeen, and Lynden. He retired as a supervisor, from Lynden, but upon his retirement he has rejoined NTEU as a retired member, understanding the true value of representation. He is relocating to Aberdeen to enjoy the liquid sunshine in his retirement. Good luck, Kurt!



Happy Retirement, Kurt!!