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Inside this issue:

Law Enforcement Liability Insurance 2

Why do we need a Union? 3

Notification of Investigation Results 4

Introduction of APC System at Vancouver Pre-Clearance 4

Blaine Issues and Grievances 5

Sumas Issues and Grievances 6

Oroville Issues and Grievances 7

Victoria/Vancouver Issues and Grievances 8



Chapter 164 Newsletter

National Treasury Employees Union

Big Wins for NTEU and CBP Employees!

From NTEU National

Once again, NTEU has prevailed in its efforts to ensure that employee rights are protected and that agency violations of federal law and their own regulations do not go unchallenged.

First, late last year an arbitrator sided with NTEU in a decision originating out of NTEU Chapter 152, Port Huron, MI, whereas management violated the overtime callout requirements of Article 35 of the contract. The agency acknowledged the error but relied on the old RNIAP to offer “the next like assignment” as a remedy to the grievance. The arbitrator ruled that the “next like overtime assignment” as a remedy is not an adequate “make-whole” remedy. He found that “[t]he Grievants were entitled to work the overtime hours they should have been assigned at the time they were available to do so – when they expected to do so.” CBP has one more ap-

peal available to this on this issue, but given that NTEU has won every other session, things are looking good.

What this means for you, is that if you are not offered an overtime assignment when you should have been, the agency owes you the overtime money you would have earned. A major change from the past practice and a ruling that should ensure managers are much more diligent when assigning OT.

Next, after an extension fight in arbitration, the FLRA, and even Federal Court, it appears that the issue of back pay due to scheduling violations for legacy Customs officers is almost complete. While the final payout process has not been fully reconciled, NTEU anticipates a significant payout to legacy customs officers; up to \$80K for some K9 officers on the southern border. Similar grievances for legacy Agriculture and INS officers are pending, but you can expect this victory to

clear the path.

NTEU is also challenging the validity of the 2008 memorandum from then Commissioner Basham providing exceptions to 5 USC 6101. If NTEU is successful here, non-legacy employees may also be seeing compensation for past scheduling violations by the agency.

While everyone knows that money is tight and staffing levels are short, these wins show NTEU’s dedication to ensuring that CBP employees are not made the default answer to fixing agency mismanagement.



From the President–Sequester and Furloughs

Dear Fellow Bargaining Unit Members:

As most of you know, the issue of sequestration and furloughs is at the forefront of most federal employees’ minds. In CBP, management has proposed to furlough employees for 14 non-consecutive days. Because of recent developments, most notably the passing of a Continuing Resolution granting CBP more money for salaries and expenses, furloughs are on hold for now.

The underlying need and ra-

tionale for furloughs aside, especially considering that some Agencies are not going to furlough, CBP and NTEU have negotiated a series of measures intended to mitigate the adverse impact of the furloughs on employees. Chief among these is the concession that furlough days could be served adjacent to RDOs and periods of A/L, and that Sundays would generally not be furlough days. While nobody wants to lose 10% of their base pay, these were important concessions negotiated by NTEU.

While NTEU continues to lobby hard against furloughs at the national level, in a politically charged and toxic federal climate, each employee still retained the right to deliver an oral or written reply to the proposal to furlough. To assist employees in this endeavor, NTEU helped employees prepare over 150 replies just within chapter 164. This was a daunting task, and NTEU was met with almost complete scheduling inflexibility by management. Our replies focused on the concept that furloughs were (con’t on page 2)

Sequestration and Furloughs (con't from pg 1)



not for such cause as to aid the efficiency of the Service, which, by the way, is the legal test the Agency must meet before furloughing employees.

As far as the replies themselves, for the most part a manager would unilaterally select a time and date for a named employee to present his oral reply, without any regard for the work schedule of the NTEU steward tasked to represent the employee. Many NTEU representatives ended up representing employees on our time rather than see the employees go it

alone. Once unilaterally scheduled by management, CBP just simply refused to reschedule the replies, insisting, as never before, that all replies be completed within 14 days of notice. The only significant exceptions to this, that I am aware of, were the flexibility shown by Frontier Port Director Barthule, and Blaine Chief Guyote. In my ten years of being a union rep., I have witnessed quite a few examples of management being less than flexible when working with the union or the employees, but I have never witnessed this level of resistance. In some situations,

I believe that employees' procedural rights, and the union's procedural rights, were violated. If CBP eventually goes through with the furloughs, the union will look to make CBP answer for these procedural violations, hopefully allowing us to overturn some of the furloughs.

For now, let's hope that furloughs don't become a reality, and that the leaders of both political parties can come to terms on a reasonable path forward.

Sean Albright,
Chapter President

Professional Law Enforcement Liability Insurance

Rayme Chapin
Chief Steward Sumas Area

Is liability insurance really necessary? I am not an expert on this subject but, after doing some research there is a big difference between Professional Liability Insurance and Criminal Coverage Insurance. If you are looking to purchase insurance do your homework and understand what you are purchasing. There are several places on the internet where you can get liability insurance. The Fraternal Order of Police (FOP) and NTEU offers plans for members to purchase; Chapter 164 does not endorse one insurance provider or type over another. The question is whether you should have insurance to protect yourself in case you are sued.

Citizens can sue government employees alleging violations of their constitutional rights. While it is not common for employees to be found personally liable, it is possible. If you are named as a defendant in a lawsuit the Justice Dept reviews whether you were acting within the scope of your job. If they believe you were, they take over and substitute the U.S. government as the defendant. In some cases, such as when an employee uses a racial slur while dealing with the public, the Justice Department has determined it is not in the government's interest to rep-

resent the employee. In that instance, the employee would be responsible for their own, often expensive, defense. Also, if the act was allegedly committed willfully you may have to provide your own defense.

To understand what the policy covers you need to review the available policies and their limitations of. Make sure the policy covers the areas that you deem important or a priority. Policies can cover administrative (including administrative off duty), civil, or criminal or all three. Some areas/situations you may want to consider:

Allegations that you violated the rights of another employee or a private citizen while carrying out your official duties

If the allegation results in a criminal or administrative investigation, will the insurance policy provide a private lawyer to represent you during the investigation?

If a disciplinary action, such as a suspension or a removal, is proposed or taken, will the policy provide representation for you until the Merit Systems Protection Board makes a final decision?

In cases where you are accused of a constitutional tort, will the policy cover attorney representation and the pay-

ment of any personal judgment against you?

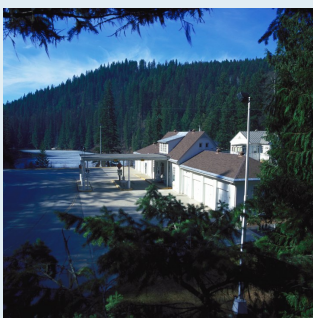
If you are investigated or prosecuted for an allegedly criminal act arising out of your official duties, will the policy provide legal representation during the investigation and the prosecution, until an initial finding of guilt?

Professional liability insurance can be confusing, and the decision to buy it is a personal one. CBP Directive No. 5340-014C; subject: Professional Liability Insurance 2.1.1 only allows for the reimbursement if you are included under 5 U.S.C. §§ 8331 (20) or 8401 (17) or under 22 U.S.C. §4823. CBPO's are not included in these sections.

The policy most likely will not cover representation during arbitration under a collective bargaining agreement. An allegation that concerns a matter outside the scope of your duties (e.g., you shoot a fellow employee in a domestic dispute) would not be covered by the insurance.

Ask around to see if any supervisors or coworkers have insurance and see what they have. I talked to one person that told me that they do have it and the person that recommended it to them has used it twice and both times it kept them from losing their job.

A man who has nothing for which he is willing to fight, nothing which is more important than his own personal safety, is a miserable creature and has no chance of being free unless made and kept so by the exertions of better men than himself.
- John Stuart Mill



Metaline Falls POE

Why a Union?

Jay Cooper,
Oroville AP Chief Steward

This article is intended to explain the question posed in the title; do CBP employees need a union to represent them? Part of the answer is because the federal service is a huge, lumbering, and impersonal bureaucracy that does not manage and support its human resources in a manner consistent with modern practices. Decision makers within the federal service are often shielded and not held personally accountable for poor or even illegal decisions. Hence, they are not systemically restrained from violating federal law or contractual agreements regarding the rights and protections of employees.

While this might sound like the typical Union position (or propaganda if you prefer) think about it and read on before you decide you already know the answer to the original question.

It's only fair that you know who's writing this and where I'm coming from. I'm an Air Force combat veteran with 23 years of service and I've been a CBPO since 2007. I'm a conservative Tea Party supporter with a Gadsden flag flying from the flagpole in my yard and an NRA life member sticker on my truck...and, prior to joining CBP, I didn't have much use for Unions. I think many private sector unions have done major damage to their industry with unreasonable demands; and public sector unions demanding benefit increases during a time of financial crisis is unconscionable to me. That being said, my "blanket position" on unions changed drastically after I joined CBP and got a look at how things were done. I put my money where my mouth is and became a steward the day after my probation ended in 2009.

It is important to note a couple of major distinctions between private and state public sector unions and those unions, like NTEU, represent-

ing Federal employees.

First, union dues for Federal employees are **prohibited** from being used for political purposes. While other unions may use their dues money to support political activities supported by their leadership, and not necessarily their members, that is not the case with Federal employees.

For those who pay dues, 28% of your money stays right here in the chapter to support our efforts on behalf of the Chapter 164 bargaining unit. The other 72% of dues money goes to NTEU National to support national level representative efforts.

Second, as federal employees we do not have any coercive power in negotiations or bargaining. We cannot participate in work slowdowns or threaten to go on strike if the other side of the table doesn't choose to work cooperatively. If mutual agreement cannot be reached then we must make our case in front of a disinterested third party. This means that when we make an argument it must be a logical and well thought out one. NTEU does not take frivolous positions; when we raise an issue it's a serious one.

So, to the crux of the question: why do we need a union to represent us? The other part of the answer is that most employee issues, and the processes in place to address them, are complex and require a significant amount of study and interpretation. Your representatives, from the steward in your work unit all the way to your Field Representative (lawyer) Dee Anderson educate themselves on the contract requirements, labor law, agency directives, and federal regulations and we monitor the agency's actions to make sure they are in compliance. If the agency and local managers follow the rules then we have nothing to do. That being said, I, the other leaders, and Ms. Anderson are always busy.

Locally, we've represented

dozens of employees, and groups of employees, in the grievance process on issues ranging from bid and rotation violations to improper assignment of overtime. We've also saved numerous employees their jobs which were threatened by excessive disciplinary action proposed by the agency; issues that should have been dealt with with a letter of reprimand or a short suspension are instead dealt with with a proposal for termination. I liken this agency to an abusive parent who beats their child with a stick for the most minor of infractions, while on the other hand letting the favored child get away with anything. This is not to say that consequences aren't called for when errors are made, but to terminate someone for a first time, honest mistake, is a waste of tax dollars and destructive to people's lives.

Nationally, in addition to the bid and rotation rights, our representatives have secured a number of arbitration victories that have resulted in back pay for employees, secured a meaningful resolution of missed overtime assignments and, most recently, negotiated an MOU for furloughs that was extremely beneficial for employees. Does anyone believe that they'd have been able to take their furlough days in conjunction with their RDOs or to take those days in lieu of leave if the decision had been solely management's? Or is it more likely that leave would have been cancelled and furlough days arbitrarily assigned? Who would have spoken for the employees if there was no union?

Look back at the issues in this article. Does anyone feel that they have the means or wherewithal to take on any of these issues by themselves; to essentially challenge the Federal government? Almost no one would. But the agency employs LER specialists and



attorneys for the sole purpose of dealing with these types of issues. So, again, who would speak for the individual employee or the group as a whole if not the Union?

For those who are paying union dues, you are essentially paying for an insurance policy for the entire bargaining unit. You are paying to ensure that people with the skills and expertise necessary to help you in a dispute with the agency are available and that the financial means are there to see the issue through to the end. An arbitration costs each side approximately \$5K just to walk in the door; and a majority of the time that cost is not recouped by the prevailing side. How many of us have \$5,000 available to spend to try and get compensation for being skipped for an overtime assignment? Or even more to pay a lawyer to try and save your job? Most people don't.

So, as I wrap this article up the answer to the initial question is yes, absolutely. CBP employees need to have a union available to voice their concerns and represent their needs to national leaders and as a check against the abuse of authority at the local level. Without this, the individual employee would have almost no meaningful recourse to address a dispute.

That is what the Union is for....to represent you, the bargaining unit member, and ensure you are treated fairly and equitably and that your interests and concerns are voiced in a way and in a forum that will get results.



Recently de-commissioned
Boundary POE

Know Your Rights!

Investigations; before and after

Clint Faulkner
Steward, Danville POE

From time to time, even the best officers find themselves under the anxious specter of an investigation. It can be a stressful time, so don't make it any more stressful by not knowing your rights. Article 22 of the Collective Bargaining Agreement addresses investigations. These are some of the things you need to know:

- The Agency is required to give you your Weingarten Rights if you are the "potential recipient of any form of discipline or adverse action"; so, basically, if you are the subject of the investigation.
- Weingarten rights inform the subject that they have a right to have a union representative present during questioning. Weingarten Rights must be furnished to you in writing and you must sign that you have received them. A copy of the
- Weingarten Rights form is located in Appendix A-2 of the contract. (Article 22, Section 6)
- If Management questions you and you have a reasonable belief that Management's line of questioning could lead to discipline, then you have the right to have your union representative present. This includes a situation where you were initially told you were just a witness. If you start to feel uncomfortable with what you're being asked, then get a representative in there!
- If Management denies you union representation – **GET IT IN WRITING**. If Management denies your request for a union representative they must do it in writing - **BUT YOU HAVE TO ASK!** (Article 22, Section 6, Subsection C)
- Once an investigation is over and it "does not result in the proposal of any criminal or administrative action, the Agency will notify the affected employee of that fact". You

have the right to know when an investigation is over. (Article 22, Section 14). Locally, the agency is not good about informing employees about closed investigations that do not result in something, so be sure to keep your steward apprised of the situation and press for an answer about what's going on.

Although investigations can be stressful, being familiar with your rights in these situations can make them more manageable.

And, if you are investigated, take heart....the majority of investigations do not end up in any action being taken at all. But, it's important to press for an answer on the status of any investigation. And, if discipline does result, your local steward and the rest of your representatives will be there to help you....and we've got a good track record!

Automatic Passport Control System Implementation

Johnny Cheng, Chief Steward
Vancouver Pre-Clearance

CBP is currently implementing Automation Passport Control system (APC), a new primary processing lane at Vancouver International Preclearance. Passengers will automatically admit themselves to the United States using a kiosk machine without interacting with a CBP Officer at a primary booth. These APC kiosks are linked to TECS and the passenger will have the option to choose which admission classification they are entering on, e.g. USC, B1, B2, WT. After selecting a classification, the kiosk will prompt the passenger to answer "Yes" or "No" to the same questions found on the Customs Declaration CBP Form 6059B. The kiosk will print a receipt confirming they were processed and the passenger will present the

receipt to the designated APC/CBP officer to exit the FIS area.

Initially, the system was created to bypass the immigration process for Canadian Border Service Agency (CBSA) to facilitate entry for returning Canadian citizen into Canada. CBP wishes to adopt this new system for "everyone", US citizens and aliens, to facilitate the ever growing passenger load here at Vancouver Preclearance. The agency determined that the traditional inspections process conducted by the primary officer and the time it takes to confirm and input passenger data into TECS was inefficient and time consuming, e.g. swiping passports, ten printing visa holders and visa waiver passengers, and viewing TPAC crossings history.

agency's goal may be to lower passenger wait times by sidestepping the primary inspection process; hence discouraging officer enforcement mind set. Currently this is just a pilot program and open to US citizens only, however, CBP has plans to implement this system at five different airport POE's in the US to be used by all passengers. Full implementation of the APC system will impact officer staffing levels, schedules, overtime, selection for national reassignment opportunities, lateral reassignments, and possible reduction of force. NTEU members should be aware of the agency's plans and openly oppose full scale operations of the APC system.

This is a clear sign that the



Example APC Terminal

Blaine Area Grievances and Issues

Issue Updates:

- The issue of management's failure to place all employees under the B&R article is going to arbitration; scheduled for May 29. The issue of the unilateral changes to the AWS schedule at Pt. Roberts will also be arbitrated in this timeframe.
- In the matter of management not posting solicitations for temporary supervisor positions, Management has agreed to openly solicit for temporary supervisors, with a clear announcement, so all can apply for consideration. The current contract language is vague enough to make proceeding to arbitration regarding actual the selection process difficult. But if a selection appears arbitrary or capricious, or based on prohibited considerations (EEO, whistleblower, etc.) then a new grievance remains a possibility.
- The hardship transfer issue noted in the last issue has been resolved, with the employee's request for transfer being granted.

New Issues

- CBP Technicians have been wrongfully denied their full overtime and premium pay, based on a wrong coding in COSS. CBP has conceded the error, but is disputing the amount of money owed. Chief Steward Pettaway is handling the case.
- Management has agreed that trainees should not count toward the designated staffing number for a work unit on any particular day, and that they will not be relocated while in training. Grievance handled by Steward Jessica Mosley, Blaine
- A grievance has been filed for an employee who suffered an inappropriate forfeiture of annual leave. Grievance being handled by Sean Albright.
- NTEU has reached out to management to expand the telework concept for the non-uniformed employees in Entry and Import Specialist Division, and to expand AWS to Friday Harbor. Waiting for response from management.

Negotiations & Discussions

- Since the last issue, NTEU has been involved in a number of pre-decisional input sessions with management:
 - ⇒ Implementation of the agency's fitness program was scheduled for the first of May; prior to the sequester. The Union is pushing to allow employees the option of starting/ending their shift to exercise without being physically present at their duty station. Also trying to get additional activities to the approved list.
 - ⇒ We will have input on the Nexus Enrollment office configuration. Two office locations are under consideration in the Blaine area. Once plans are more definite, NTEU will view the blueprints prior to any final commitments with a contractor. NTEU retains the right to bargain formally and exchange proposals with management
 - ⇒ We have also been given the opportunity to provide input on how the cargo pre-clearance process should unfold. As part of a 6-month pilot program, under the agreement signed by Obama and Harper, certain locations will be selected to have cargo pre-clearance stations. Cargo will be "cleared" before it reaches the border. Blaine has been selected as a pilot port for this, with the goal of getting the kinks out before it expands to Buffalo. The union has grave concerns regarding our legal status in Canada, and we are trying to get answers out of CBP. If we don't or can't get acceptable answers, then we will pursue that in formal bargaining.



Sumas POE

Sumas Area Grievances and Issues

- The Bid and Rotation grievance brought by the Union over the agency's decision to only award bids to 50% of employees has been settled, with the Agency agreeing to place 100% of employees who submit a bid.

Negotiations

- AWS in Lynden has been placed on hold because of changes in staffing, once things settle down we will pursue this again. Sumas AWS, management has told the union that they are proceeding with developing a plan, they are not releasing much information right now. NTEU has informed management that we would like the AWS to be implemented with the next Bid and Rotation.

Vancouver Pre-Clearance Grievances and Issues

- Once again, there are no grievances or issues to report from the Vancouver/Victoria pre-clearance areas.



Victoria, BC

Negotiations

- Once again, there are no ongoing negotiations or discussions to report on from the Vancouver/Victoria pre-clearance areas.

Oroville Area Grievances and Issues

Issue Updates:

- The arbitration on the grievance regarding the agency's failure to pay overtime for employees from Oroville tasked to work at Ferry will take place in either late June or mid-July. NTEU anticipates recovering approximately \$15K in overtime due to officers who worked these shifts.
- Use of Force Instructors from Blaine conducted OC and CSB recertification for all the officers in this area. The grievance on this issue is still being held in abeyance until final discussions between mgm't and NTEU are concluded on the "way ahead" to ensure the problem does not occur again.

New Issues

- A grievance has been filed on behalf of officers at Danville for the agency's refusal to pay mileage for the officer's use of their POV to attend training. Per Article 16, Section 5D, employees travels from home to a TDY station, including for local training (e.g. Firearms and Intermediate Force) and back they are entitled to actual mileage and expenses in excess of the normal round trip distance to where they normally report for duty.
Update: Just prior to press time, the Step 3 with APD Alvarez resulted in the agency conceding NTEU's position and agreeing to pay the mileage due to the two grieving employees.
- We continue to have issues with notification of training opportunities and "sharing the wealth", if you will, on those that come up. We tried once again to address this problem at the LMRC in March. Despite what we see as management's obstinate position in seeming to want to deny that an issue even exists, a new and, hopefully, more transparent process should be in place for next year.

Negotiations

- Negotiations over an AWS schedule for the Danville POE ended. After lengthy discussions and long delays by the management team, management pointed out that the schedule proposed by NTEU would result in a doubling of night differential pay for the port; going from approximately \$32K per year to over \$60K. While NTEU does not have an acceptable answer for why it took the agency almost 5-months to identify this problem, we must concede that it is a valid one. Given the current staffing level at Danville, no other acceptable AWS schedule has been devised at this point. NTEU will continue to monitor the situation and will take the issue up again when it becomes feasible.



**Wind Turbines at the
new Nighthawk POE**