




**Homeland
Security**

JUL 09 2012

MEMORANDUM FOR: Clifton Wilcox
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FROM: Jeanarta McEachron 
Acting Executive Director, Human Capital Policy and Programs

SUBJECT: Agency Head Review of Collective Bargaining Agreement

Pursuant to title 5 United States Code § 7114 (c)(1), the memorandum of agreement that was executed by the parties on June 11, 2012, to clarify provisions of the National Collective Bargaining Agreement, has been reviewed.

As documented in the approval of Phase 1 of the Collective Bargaining Agreement negotiated between CBP and NTEU, dated May 14, 2012, it is understood that Section 2 of Article 22 continues to be severed pending final adjudication.

Accordingly, subject to the foregoing and pursuant to title 5 United States Code § 7114 (c)(2), the collective bargaining agreement is approved.

Agreement between U.S. Customs and Border Protection (CBP) and the National Treasury Employees Union (NTEU)

I. Introduction

This Agreement is entered into by, and between the United States Customs and Border Protection, (hereinafter referred to as "CBP" or "Agency") and the National Treasury Employees Union (hereinafter referred to as "NTEU" or "Union").

II. Background

In an effort to improve the CBP-NTEU relationship, the parties exchanged a list of areas in the National Collective Bargaining Agreement (NCBA) that might present foreseeable contract interpretation issues that could lead to unnecessary disputes. The parties bargained in person during the week of February 19, 2012 and continued to exchange proposals on the following Articles: 16 (Travel), 28 (Arbitration) 35 (Overtime), 39 (Reassignments) and 40 (Preclearance). The parties also discussed the Foreign Language Award Program (FLAP) and a National Grievance filed by NTEU concerning the printing of the NCBA. The parties have come to an agreement on these Articles and issues that are memorialized herein.

III. Terms

Article 16: Travel

Section 2 of Article 16: Travel will be modified to reflect:

- A. *Official duty station* is defined as a location where the employee normally reports for the workday.
- B. *Temporary duty station* is defined as any job-site where the employee does not normally report for the workday or a location other than where the employee originally reported for the workday. The parties agree that the definition of temporary duty station is applicable for determinations of mileage and other related travel expenses subject to reimbursement in accordance with existing federal travel regulations.
- C. For applicable travel compensation purposes (e.g. comp time, per diem), official duty station is defined as a mileage radius of not greater than 50 miles. The 50 mile rule for determining travel compensation should not be applied to local travel procedures and mileage reimbursements contained in Section 5.

Section 5 of Article 16: Travel will be modified to reflect:

- A. After an employee places himself where he normally reports, the cost to the employee of any local travel required for official purposes during regular hours of work or on overtime shall be reimbursed by the Agency. In this regard, once an employee arrives

where he normally reports, he will receive full mileage reimbursement for any subsequent travel to any temporary duty station.

- B. When an employee travels from his home to a temporary duty station and/or from a temporary duty station to his home, the employee will be reimbursed for any mileage in excess of his normal round trip from his home to where he normally reports.
- C. No employee is entitled to reimbursements that are not permitted pursuant to the Federal Travel Regulations.
- D. Examples of the rules set forth in Subsections A and B above include:
 - (1) When an employee travels from his residence to a temporary duty station and then returns home, the employee shall be reimbursed for actual mileage and expenses in excess of the normal round trip distance between his residence and where s/he normally reports.
 - (2) When an employee travels from his residence to where he normally reports, then travels from where he normally reports to a temporary duty station, then travels from the temporary duty station back to his home, the employee shall be reimbursed for the distance between the two (2) duty stations. If the distance between the employee's final temporary duty station and his home exceeds the distance between where he normally reports and his home, the employee shall be reimbursed for the excess expense.
- E. Subsections A and B above do not apply to or cover established rotational assignments through different duty stations. This includes reporting to a work unit assigned through the Bid, Rotation and Placement process. The site of each rotational duty assignment shall be considered where he employee normally reports for the duration of the employee's rotational assignment at that specific job-site.
- F. The local travel reimbursement policies set forth in Subsections A and B above apply to travel to overtime assignments as well as assignments during regular hours of work.

Article 35: Overtime

Section 1.D (6) of Article 35: Overtime will be modified to reflect:

When employees are released from overtime assignments, involuntarily drafted employees will be released in high-earner order on a voluntary basis after which, if necessary, volunteers will be asked if they wish to be released in high earner order.

Section 1.1 (1) of Article 35: Overtime will be modified to reflect:

The statutory overtime and premium pay cap establishes the maximum allowable earnings for COPRA covered employees. It is necessary to apportion overtime and premium pay earnings in order to ensure the full range of numbers, types and grades of personnel required by the Agency throughout the fiscal year. After an employee's combined overtime and premium pay earnings are audited, their earnings will be prorated bi-weekly when:

- 1) An employee's actual overtime earnings reach 50% of the statutory limitation on earnings, or
- 2) An employee's actual combined overtime and premium pay earnings reach 75% of the statutory limitation on earnings.

Prorated amounts not earned during one pay period will be carried over to the next pay period during the balance of the fiscal year.

Article 39: Reassignments

Section 2.A of Article 39: Reassignments will be modified to reflect:

Coverage. In addition to the requirements of Section 1.B., this Section applies only to full-time permanent employees who are not assigned to Preclearance and overseas locations. Return procedures for Preclearance are found in Article 40 Section 6.

Section 2.B (7) of Article 39: Reassignments will be modified to reflect:

- (7) Management will consider reassignment requests under this Section in the following priority order:
 - (a) Placements made as a result of third-party decisions (or related settlements);
 - (b) Career Transition Assistance Program (CTAP) eligibles;
 - (c) Re-employment Priority List (RPL) eligibles
 - (d) Grade retention eligibles;
 - (e) Priority consideration eligibles;
 - (f) Special consideration for re-promotion eligibles;
 - (g) Medical and educational hardships (granted in the order in which they are received);
 - (h) Spousal hardships (granted in the order in which they are received);
 - (i) Preclearance returnees;

(j) Voluntary reassignments.

Section 2.C (1)(g) of Article 39: Reassignments will be modified to reflect:

Absent exigent circumstances, an employee selected for reassignment under these procedures will notify management of his/her acceptance or declination within five (5) calendar days of the offer.

Section 2.D of Article 39: Reassignments will be modified to reflect:

D. Position Exchanges.

- (1) The Employer will consider a request from no more than three (3) eligible employees in the same occupational classification and grade level who wish to voluntarily exchange their duty stations at any time.
- (2) To be considered, a copy of the request must be submitted to each employee's Port Director or Division Director (or designee) *[or equivalent management official]*, and include a copy of each employees' current resume (or Optional Form 612).
- (3) Management will normally respond to such requests within forty-five (45) calendar days.
- (4) If the employees meet the qualifications requirements of the position at their respective gaining duty stations, absent just cause, the requests will be granted. When evaluating exchange requests for an exchange between up to three (3) CBP Officers or up to three (3) Agriculture Specialists assigned to core functions of their respective Ports and the core functions are in different operating environments (e.g., land border port vs. airport vs. seaport), the Employer has elected to provide the employees the necessary training (as determined by management) for the employee to perform the core function prior to or following the exchange. As an exception, the Employer may deny the exchange request when an employee lacks skill and/or training and the granting of the exchange would hinder port operations.
- (5) Nothing in this subsection will prevent the Employer, at its discretion, to grant a position exchange where any of the requesting employees do not fully meet the qualifications and training requirements of the position(s) at the gaining duty station(s).
- (6) Effective dates for exchanges involving either two or three employees will be the same.
- (7) If one employee involved in a two person or three-way exchange withdraws from the arrangement, the entire request will be considered void.

- (8) Exchanges granted under this Subsection are not grievable, either by the employees involved or not involved in the exchange, or the Union.
- (9) The Union agrees not to arbitrate situations when one or more employee(s) withdraws from a request for a two-person or three-way exchange request, thereby nullifying the request of the other one or two employees.

CBP will consult with NTEU and create a standard template agreement to be signed by the requesting employees.

Article 40: Preclearance

Section 4 of Article 40: Preclearance will be modified to reflect:

- A. Selected employees will be informed of and normally expected to complete the requirements for foreign assignments within one hundred and twenty (120) calendar days following selection notification.
- B. Official reporting dates will be provided to selected employees as far in advance as practicable, but not less than sixty (60) calendar days in advance of the effective date. Employees will be reimbursed for any legally reimbursable expenses reasonably incurred as a result of their departure for the preclearance port with less than sixty (60) days notice.
- C. Selected employees will be provided at least forty (40) hours of administrative leave in order to make relocation arrangements. Neither the employee nor union may grieve a violation of this obligation if the employee is given at least 40 hours of time or leave.

Section 6 of Article 40: Preclearance will be modified to reflect:

- A. No more than one-hundred and eighty (180) calendar days before the end of tour, but not less than one-hundred and twenty (120) calendar days prior to the end of the initial tour, as well as the conclusion of any extensions, employees are expected to formally request an extension or express intent to return to the United States. At the time an employee expresses an intent to return to the United States, the employee will follow the procedures in Section 6.C below.
- B. Absent just cause, requests for extensions consistent with the assignment durations described in Section 3 will be approved.
- C. When preparing to return to the United States, the Employer has determined an employee has the ability to return to the location from which the employee was selected for the Preclearance assignment. If the employee does not wish to return to his or her originating location, the employee will identify five (5) locations in priority order to

which the employee prefers to be reassigned. This list may contain locations identified by Port, Field Office or a combination of both.

- D. The returning employee will be placed at one of the requested locations where there is a vacancy consistent with his or her prioritized list. If there are no vacancies at any of the locations provided by the employee in their prioritized list, the Employer will provide the employee a list of at least five (5) locations within the field office(s) of the employee's prioritized duty location(s) where they may choose to be reassigned due to a current vacancy (as identified by the field office). Absent placement via this process, the employee will be returned to her or her home port or to a mutually agreeable location.
- E. Returning employees will be informed of the date to which they are expected to report to the location to which they are placed as far in advance as practicable, but not less than sixty (60) calendar days in advance of the date they are expected to report. Reporting dates will be established no later than sixty (60) calendar days from the end of the scheduled tour. Employees will be reimbursed for any legally reimbursable expenses (in excess of their authorized allowances) reasonably incurred as a result of their delayed departure from Preclearance. Nothing in this provision prevents a mutual agreement between CBP and a returning employee to delay their departure from preclearance.
- F. When making placements under this Section for positions within a Port's core functions (e.g. passenger processing and cargo), the Employer has elected to provide the employee the necessary training (as determined by management) for the employee to perform the core function prior to or following the employee's placement.
- G. During the above process, the Employer will provide returning employees a point of contact that may be contacted regarding the status of their return request and assignment.

Article 28: Arbitration

Section 11.A. (1) will be modified to reflect:

- (1) The hearing will be conducted within ninety (90) days of the arbitrator or the other party being contacted pursuant to Section 3.D. above. The arbitrator will be selected in accordance with the procedures in Section 4 of this Article.

Appendix F: FLAP

CBP and NTEU will reconvene the FLAP work group to jointly analyze updated data and potentially establish a list of reform options to present to OFO management for consideration.


Implementation Procedures

- A. To assist with implementing these mid-term changes to the NCBA and in exchange for NTEU's agreement to withdraw the September 30, 2011 "National Grievance Regarding Bad Faith Bargaining" grievance, CBP will provide NTEU 506 copies of the revised NCBA.
 - 1) 50 NTEU National + 456 (8 per chapter that can be divided amongst stewards)
- B. While the agreed-upon modifications to the NCBA will become effective in accordance with Section IV, CBP will provide NTEU the copies after the parties have agreed to additional typographical corrections.
- C. NTEU will be responsible for distributing the revised NCBAs.
- D. NTEU promises not to use these procedures concerning the copying of the NCBA as persuasive evidence during any subsequent re-negotiation of the NCBA.

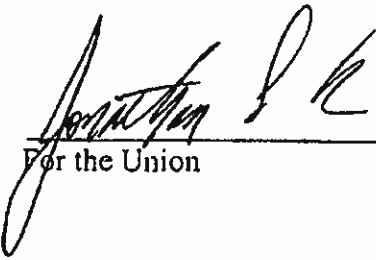
IV. Effective Date and Termination

This Agreement will be submitted for Agency head review immediately after the final signature of the chief negotiators. This Agreement will become effective thirty-one (31) days after the date it is signed by the last chief negotiator or after Agency head review, whichever occurs first. Unless agreed otherwise by the parties at the level of recognition, these modifications to the NCBA will remain in place until supplanted by a renegotiated NCBA.

VI. Signatures



For the Agency Date 06/08/2012



For the Union Date 5/15/12



For the Agency Date JUNE 2012