

BARGAINING INFORMATION

March 11, 2016

MEMORANDUM

RE: CBP — Revised National Inspection Assignment Policy

SUMMARY: NTEU and CBP have begun discussions on the implementation of the overtime back pay remedy that Officers would have earned but for CBP's improper reliance on RNIAP to avoid its bargaining obligations.

I am pleased to report that NTEU and CBP have recently begun discussions over the implementation of the arbitrator's Revised National Inspection Assignment Policy (RNIAP) remedy after CBP moved to voluntarily dismiss its petition for review in the D.C. Circuit; a request that was granted by the court.

Over the last ten years or so, you have been advised of NTEU's ongoing litigation with CBP over its belief that its since abandoned RNIAP permitted it to make changes in the working conditions of CBP Officers without first negotiating with NTEU. This litigation followed the usual script between NTEU and CBP: NTEU advised CBP of its bargaining obligation, CBP ignored NTEU's reading of the law, an arbitrator agreed with NTEU, the Federal Labor Relations Authority sustained the arbitrator on two separate occasions, followed by an unsuccessful CBP appeal to the federal circuit.

I have attached for your review the arbitrator's decision and remedial award that CBP must now implement. The remedial period in this litigation that runs from November 5, 2004 through May 11, 2011, included hundreds of unlawful changes implemented by CBP. As a result, NTEU grouped these changes into ten categories in order to facilitate our arguments to the arbitrator and to make any remedial award more manageable.

These ten categories, all of which will result in a back pay award for impacted employees, are as follows:

- The withdrawal of employees from overtime participating groups or pools;
- Unilateral changes in the beginning and ending times of a shift;
- Unilateral changes in the length of the block of time employees were assigned overtime;

- Holding employees before or after their shifts for a period in excess of one hour;
- The refusal to assign the eligible low earner when the assignment entitled the low earner to either “call back” or “commute” compensation;
- The unilateral reduction in overtime staffing previously used to perform a task;
- The unilateral reassignment of employees, whether temporarily or permanently, to perform work previously done on overtime;
- The unilateral use of non-unit and/or non-CBPOs to perform CBPO overtime work previously performed by NTEU legacy unit CBPOs;
- The unilateral change from fixed shifts to rotation shifts;
- The unilateral change in an employee’s tour of duty within the same workweek.

Unlike the remedial formulas that will be used to remedy CBP’s scheduling practices in the parties’ 6101 litigation, the RNIAP arbitrator has first ordered the parties to try to determine an appropriate back pay remedy at the local level. However, the arbitrator also held that where CBP has not provided full and accurate documentation to enable the parties to arrive at a back pay figure, then he also ordered the parties to use the ten formulas developed by NTEU, to arrive at a back pay remedy.

At this point, CBP is canvassing its field offices to determine what information it has, if any, to address the changes in the areas referenced above. Once this determination is made, then the parties will decide whether or not to use the formulas discussed in the arbitration decision that I have also attached to this memorandum.