

# **NTEU**

**The National Treasury Employees Union**

February 28, 2008

**VIA E-MAIL AND FACSIMILE**

Michael Wenzler  
Director, Labor Relations  
Customs and Border Protection  
1300 Pennsylvania Avenue, NW  
Washington, DC 20229

**RE: National Grievance Concerning CBP's Conduct Preventing NTEU from Negotiating a Term Agreement for its Newly Certified Bargaining Unit during its Initial Certification Year**

Dear Mr. Wenzler:

The National Treasury Employees Union (NTEU) hereby files this continuing national grievance pursuant to the provisions of Article 31, Section 13 of the NTEU-Customs National Agreement on behalf of NTEU's newly certified bargaining unit. Please inform me by March 4, 2008, in the event you believe this is not an example of the "institutional grievance" you had in mind as set forth in your letter to me dated May 25, 2007.

Since on or about May 18, 2007, when NTEU was certified to represent an expanded bargaining unit of Customs and Border Protection (CBP) employees, CBP has engaged in conduct preventing NTEU from negotiating the first term agreement for this newly certified bargaining unit during its initial certification year. For example, CBP has:

- denied NTEU information it needed to prepare for negotiations and to identify, as well as service, the members of the bargaining unit;
- suggested possible paths to an agreement in the ground rules negotiations and each time the union pursues them has backed away from them;
- taken the position in Foreign Language Awards Program (FLAP) negotiations that the FLAP agreement being negotiated would only apply to the legacy Customs bargaining unit and taken the position that NTEU is required to file grievances under the legacy agency contracts for issues involving legacy Customs, INS, and Agriculture employees only to turn around and argue that it need not comply with the Personal Appearance Standards (PAS) arbitration award because the NTEU legacy bargaining unit no longer exists;

- refused to implement the PAS arbitration award even though CBP's exceptions to the award were rejected by the Federal Labor Relations Authority (Authority);
- filed a frivolous *Request for Time Limit Waiver and for Leave to File Motion For Reconsideration in Decision Issued at 61 FLRA No. 51 (2007)* with the Authority and similarly petitioned the Department of Justice to file a *Motion to Intervene By United States Customs and Border Protection* in the United States Court of Appeals for the District of Columbia Circuit in Case No. 08-1015;
- terminated all the negotiated institutional rights contained in all legacy collective bargaining agreements immediately upon certification creating a climate whereby contractual provisions addressing official time, dues withholding and facilities, and services are not enforceable but only granted at CBP's sole discretion;
- denied union bargaining team representatives travel and per diem expenses to which they are entitled;
- pursued a single bargaining unit to replace three prior units largely due to a professed need, stated under oath, to put all CBP employees under one set of working conditions as soon as possible, then refused any and all reasonable offers to implement a unit-wide uniform interim agreement or similar arrangements to achieve that goal even on an interim basis;
- demanded throughout bargaining over the ground rules that NTEU waive certain statutory rights;
- petitioned the Federal Service Impasses Panel (FSIP) to resolve the dispute over the ground rules as if it was the initiating party when it has failed to serve notice on NTEU of the specific contract proposals it wishes to make, which has denied NTEU the opportunity to determine what might be a reasonable time for the negotiations as is the union's right under statute; and
- after refusing to bargain for five years over a firearms-related proposal submitted by NTEU, petitioned the FSIP in Case No. 08 FSIP 24 to decline jurisdiction on the proposal that had been found to be within CBP's duty to bargain by a federal court of appeals.

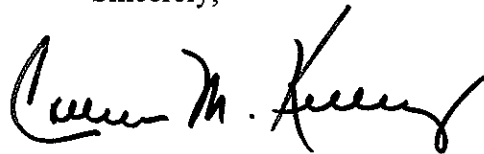
By these and similar actions, CBP has violated 5 U.S.C. 7116 (a)(1) and (5) and Article 37 of the parties' National Agreement. *See U.S. Geological Survey, Caribbean District Office, San Juan, Puerto Rico and AFGE, Local 1503, 53 FLRA 1006 (1997).*

To remedy CBP's illegal conduct, NTEU requests the following remedies:

- Extension of NTEU's certification bar until the agency has engaged in a full year of actual statutory compliant bargaining;
- Reimbursement of all bargaining costs NTEU has incurred to deal with the behavior cited in the grievances;
- Payment of future bargaining costs equivalent to what the union has lost to date see *Unbelievable Inc.*, 318 NLRB 857, 859 (1995);
- Implementation of an immediate agency-wide, interim agreement by the imposition of contract terms and implementation of an expedited bargaining scheduled based on the employer's submission of its opening proposal see *NLRB v. Johnson Mfg. Co. of Lubbock*, 511 F. 2d 163, 156 (5<sup>th</sup> Cir. 1975); *NLRB v. Metlox Mfg. Co.*, 1973 WL 3146 (9<sup>th</sup> Cir. Apr. 18. 1973); and
- Any and all other remedies permitted by law.

Our representative in this matter is Kevin Fagan, Deputy Director of Negotiations. He can be reached at 202-572-5500, ext. 7037.

Sincerely,

A handwritten signature in black ink, appearing to read "Colleen M. Kelley". The signature is fluid and cursive, with a large initial "C" and a long, sweeping tail.

Colleen M. Kelley  
National President

cc: Kevin Fagan