

# NTEU WORKING FOR YOU

U.S. CUSTOMS AND BORDER PROTECTION EMPLOYEES

January 2010

## *Litigation, Legislation, Mediation, Media Relations* **NTEU Uses Every Tool On Your Behalf**

Through grievances and arbitration, legislation and lobbying, tough negotiating at the bargaining table, and news releases and letters to the editor, NTEU uses every available tool to advocate on your behalf.

While you and your co-workers are serving on the frontlines protecting America's airports, seaports and land borders, NTEU is constantly seeking ways to improve your work lives, protect your interests and ensure that you have the tools, resources and support you need to do your jobs. This issue of *Working for You* outlines ongoing efforts to do just that, as well as some recent victories.

In this issue, you will learn about our efforts to obtain back pay for non-uniformed employees who were paid insufficient overtime pay. Our efforts in Congress led to the introduction

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President Kelley

of legislation to protect overseas employees stationed in Ireland. We are also fighting to restore and extend USDA premium pay for CBP technicians for plant and animal-related assignments. And, you will learn about NTEU's defense of CBP Officers on the border after a *New York Times* story detailed corruption by drug cartels. We wanted to be sure *Times* readers understood such circumstances are the exception not the rule.

I also wanted to take this opportunity to update you on our efforts to secure a CBP contract.

After two years of bargaining and months of mediation, management's delay tactics left NTEU with no choice but to declare an impasse in negotiations. NTEU has asked the Federal Service Impasses Panel (FSIP) to intervene. NTEU has asked the FSIP to appoint an arbitrator, experienced in federal sector issues, to settle the dispute in a binding mediation-arbitration procedure. This is the process that was followed the three previous times NTEU-Customs negotiations reached impasse.

NTEU declared impasse after a particularly fruitless week of bargaining in October. The parties had been using the services of the Federal Mediation and Conciliation Service (FMCS.)

NTEU's decision to declare impasse came after spending eight hours with a federal mediator on only one article dealing with employees' rights to swap shifts, a clause which should have been a minor issue.

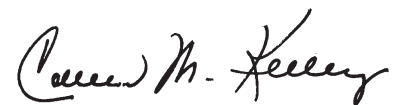
On Dec. 23, we had a meeting at the FSIP to discuss NTEU's request that the panel assign the case to a neutral party to apply mediation and arbitration techniques to settle the dispute. Management maintains that we are not at impasse and has asked that the panel order the parties back to the bargaining table for more negotiations. The panel is expected to make a decision soon on whether an arbitrator will be appointed to settle negotiations.

While our petition is pending before the FSIP, I have attempted to convince CBP senior leadership to finalize the contract. This has been particularly frustrating since CBP management testified five years ago that putting all CBP employees under one contract and one set of work rules—as opposed to the four different sets they operate under today—was a critically important management need. Meanwhile, I am also pressing officials at the Department of Homeland Security to intervene so that the bargaining disputes can be settled quickly.

While it is taking much longer than I had hoped to reach agreement on this contract, NTEU has long years of experience at the bargaining table. NTEU is fighting hard to deliver the solid contract you deserve as quickly as possible. I will continue to update you on developments.



National President  
Colleen M. Kelley



***Bargaining updates can also be found on the CBP Contract Negotiations page at [DHSunion.org](http://DHSunion.org).***

***"... to ensure that every federal employee is treated with dignity and respect."***

# NTEU Working for You @ CBP

## Win Could Mean Back Pay for Non-Uniformed Employees

Hundreds of CBP non-uniformed employees could be in line for back pay—plus an equal amount of damages—because the agency decided, without a reasonable basis to believe its actions were legal, to classify their positions as exempt from the overtime provisions of the Fair Labor Standards Act (FLSA).

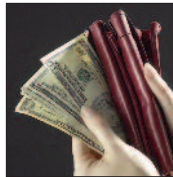
As a result of that decision, these CBP auditors, field analysis specialists and information technology specialists were paid for their overtime work at a lesser capped rate, rather than the time and-a-half pay they would have been entitled to under the FLSA.

“This is the latest step in our effort to right this egregious wrong,” said NTEU President Colleen M. Kelley, in the wake of an arbitrator’s decision concerning the appropriate remedy in this case. Earlier, in his initial decision, the arbitrator ruled that CBP had improperly exempted these positions from FLSA coverage.

His decision on the remedy phase of the case—to pay the employees the difference between the overtime pay they received and the pay to which they were entitled under the FLSA—isn’t the employees’ only potential benefit.

The arbitrator also ruled that CBP failed to act in good faith in making the FLRA-exemption determination; as a result, he ordered further payments in damages equal to the amount of the back pay.

The award is being implemented for field analysis specialists and information technology specialists; however, CBP has filed exceptions to the decision as it pertains to the auditor position.



## Kelley Defends Southwestern Border CBP Employees

NTEU President Colleen M. Kelley responded to a *New York Times* story about corruption among CBP employees working along the southwestern border, calling corrupt officers “the very rare exception.”

The Dec. 18 front-page story, “War Without Borders,” told the stories of a few select CBP employees who had become involved with Mexican cartels and criminal activity. In a letter to the editor, Kelley warned that the article creates “the mistake impression that corruption is rampant” among CBP employees along the border when in fact the workforce is dedicated to its critical homeland security mission.

## NTEU Fights For Premium Pay for CBP Technicians

NTEU is working to restore Department of Agriculture (USDA) premium pay for legacy Agriculture CBP Technicians after CBP terminated payments under the system.

The issue arose after NTEU filed a local grievance protesting CBP’s arbitrary refusal to uniformly pay all CBP Technicians under the USDA premium pay system for certain plant- and animal-related assignments. CBP responded by instructing ports to stop payments to legacy Agriculture CBP Technicians under the

system, claiming it lacks the authority to provide premium pay to any CBP technician.

NTEU fired back with a national grievance not only seeking to restore premium pay to legacy Agriculture Technicians, but also to extend coverage of the system to all CBP technicians who perform similar plant- and animal-related work. NTEU is also pursuing back pay for impacted employees.

## House Approves Bill Benefiting Overseas Employees

CBP employees serving on overseas limited appointments are one step closer to keeping their jobs, thanks to NTEU efforts. The House passed H.R. 1517, legislation introduced at NTEU’s request that would fix a hiring error for a group of CBP employees serving overseas. The bill would give CBP the authority to non-competitively convert certain limited appointments to permanent positions.

Rep. Eliot Engel (D-N.Y.) introduced the legislation after NTEU informed him of CBP employees serving at preclearance centers in Ireland who were incorrectly hired by the Immigration and Naturalization Service. The employees were hired on overseas temporary appointments, but the work became permanent. As a result of their temporary status, these employees and others working at various overseas locations do not have the same workplace



protections as permanent preclearance employees.

The overseas employees are also subject to mandatory five-year rotation to other work sites—including back to the United States. The majority of the

employees covered by the bill have been at their posts for many years and have put down roots in these overseas locations. In light of these employees’ unique circumstances, NTEU also insisted on language in the bill that provides guidance to the CBP commissioner encouraging him to recognize the unique circumstances and move the employees only if needed for operational purposes.

“These are dedicated, longtime CBP employees who have established roots where they live; forcing them to move would seriously disrupt their lives and families,” said NTEU President Colleen M. Kelley. “I am pleased to see that CBP and lawmakers agree that it is best to allow these employees to continue serving, with their years of experience, where they currently live.”

“[H.R. 1517] is supported by Customs and Border Protection and the National Treasury Employees Union, which represents the employees,” said Rep. Engel in his floor statement. “Each has had the opportunity for input into the final legislation.”

NTEU will press for Senate passage of the legislation.