

NTEU–CBP Contract

Your Guide to Your Workplace



2010

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NTEU

The National Treasury Employees Union

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How NTEU Gets the Job Done for You

NTEU fights for you in every forum. We...

- Lobby Congress for legislative changes
- Use the courts, at every level
- File grievances and pursue them through arbitration
- Negotiate improvements in your contract
- Push the media to tell your side of the homeland security story
- Work with officials in the White House
- Get other agencies involved in the battle—like OSHA, the EEOC and OPM
- Meet face-to-face with senior DHS and CBP leaders

There's more. But you get the idea.

To join NTEU contact your local NTEU representative or visit www.DHSunion.org.

Join the Leader. Join NTEU.

Message from the NTEU National President

Dear CBP Employee:

For the first time since CBP was created in 2003, approximately 24,000 CBP employees will be covered under one contract. CBP Officers, Import Specialists, Attorneys, Techs, Entry Specialists, Auditors, Chemists, and dozens of other occupations will finally work not only under the same work rules, but under union-negotiated rules. Moreover, these rules can be enforced in binding arbitration and even federal court, if necessary. When your NTEU contract was implemented on May 17, 2010, many CBP employees got dozens and dozens of enforceable rights that they never had before.

While the actual contract can be found online at NTEU.org, we thought it would help you enforce your rights if we highlighted the most important parts of that contract. That should save you the time of having to read through hundreds of contract sections to find what you need. So we have created this book for the members of the NTEU bargaining unit to give you a faster and easier way to know what is in the contract. Of course, the actual contract remains the final authority on these issues, and if you want to pursue something you should check with a local NTEU steward or officer in your chapter, who has been trained in the details of the new contract.

Phase I puts in place 28 of the 47 contract articles that have been the focus of bargaining for the past three years. Phase II will implement the remaining articles once the Federal Service Impasses Panel—which resolves labor disputes between federal agencies and unions—rules on the remaining articles.

When I visit our country's ports of entry, I am always inspired by the work that you do and your commitment to our country. This contract solidifies important rights and negotiated agreements that will allow you to focus on the protection of our nation.



Colleen M. Kelley

A handwritten signature in black ink that reads "Colleen M. Kelley". The signature is written in a cursive, flowing style.

The NTEU Bargaining Team

A special thanks is owed to the CBP chapter leaders from across the country who served on the NTEU bargaining team:

Andrew M. Langreich (Chapter 101, O.R.&R)
 Harold Washington (Chapter 105, San Diego)
 Barry Kleinman (Chapter 110, Philadelphia)
 Jose R. Bustamante (Chapter 123, Calexico)
 J. Kevin Noonan (Chapter 135, Pittsburgh)
 Donna H. Hart (Chapter 136, Virginia)
 Jose A. Lamboglia (Chapter 137, Miami)
 Thomas V. O’Keefe (Chapter 138, Northern New York)
 John F. Robertson (Chapter 139, Seattle)
 Glenn A. Dockham (Chapter 142, Vermont)
 Brad S. Gaetzke (Chapter 143, El Paso)
 Cesar De Los Santos (Chapter 145, Laredo)
 David Atkinson (Chapter 149, Hidalgo)
 Raymond J. Marsh Jr. (Chapter 152, Port Huron)
 Larry P. Tanacredi (Chapter 161, Newark)
 Jennifer M. Fagerman (Chapter 167, Minnesota Border)
 Quintin Clarke (Chapter 170, Minnesota)
 Laura M. Zayner (Chapter 172, Chicago)
 Gene Gambardella (Chapter 183, New York Seaport)

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Welcome to Phase I of Your Contract

Welcome to your new contract. This agreement covers everyone in the CBP bargaining unit, whether you come from legacy Customs, legacy INS, legacy Agriculture or were hired since mid-2004 and have not been previously represented.

For the first time since CBP was created, every member of the NTEU bargaining unit is covered under the same contract; and your new contract spells out many of your rights and responsibilities—as well as those of management.

Implementation of this agreement comes in two phases. Phase I became effective on May 17. It immediately provides for a stronger grievance procedure; for NTEU representation in investigatory interviews; contains a new child care subsidy program; continues the pass-fail performance appraisal system; creates local and national labor-management relations committees; formalizes the separate agreements previously negotiated by NTEU on bid-and-rotation and telework; and more.

This guide will give you an overview of the articles in Phase I of the implementation process. For a complete contract see your local NTEU chapter or visit NTEU.org.

KNOW YOUR RIGHTS

You have rights.

You have NTEU to protect your rights.

Is management...

- Proposing to discipline or remove you?
- Asking for a written incident report?
- Changing your working conditions?
- Asking for new forms related to your performance?
- Assigning you new duties?
- Unilaterally changing your work location?

Contact NTEU immediately!

If you're a **probationary employee**, NTEU can represent you on various issues and help you successfully complete your probationary period. So, you too should contact NTEU.

At NTEU, membership means protection.

WWW.DHSUNION.ORG

Article 1: Coverage

This agreement applies to all CBP employees except managers, supervisors, those in Border Patrol, the Office of Chief Counsel, and those excluded by law.

Article 2: Fairness and Equality

The terms of the agreement must be applied fairly and impartially. *(Sec. 1)*

Article 3: Effect of Law and Regulation

CBP must comply with all current and future laws, government-wide regulations (such as those issued by OPM and DHS) and CBP regulations not changed by this agreement. *(Sec. 1)*

This agreement supersedes all conflicting existing agreements and past practices that deal with issues identical to what this agreement addresses. *(Sec. 3)*

Article 4: Labor-Management Relations Committees

There shall be joint union-management committees at the national and Director of Field Operations levels that meet periodically to give the union and employees an opportunity to have input on matters not yet decided, to strengthen employee morale, and to discuss anything related to

employee working conditions. Almost any kind of workplace problem can be placed on the agenda of these meetings for resolution. (*Secs. 1–2*)

At the port or local level, management has agreed to pursue a productive relationship with the union and employees through either additional ongoing committees or through meeting with the local union leadership. (*Sec. 4*)

In the event CBP establishes work groups that include bargaining unit employees to analyze specific problems and present proposed solutions, selections will be made from employees nominated by NTEU. (*Sec. 2*)

Article 5: Union Rights

NTEU is the only representative employees may have, unless the law provides the employee an option. One option would be where the employee has been fired and wishes to appeal through management channels rather than outside neutral arbitration. Similarly, an employee can have a representative other than NTEU when filing an Equal Employment Opportunity charge through management channels. (*Sec. 1*)

NTEU representatives must be invited, approximately seven days in advance, to attend any formal meeting between management and employees. Generally, that would be any meeting to discuss personnel policies, practices or

working conditions not limited to a single employee's situation. For example, in a muster or group meeting the union representative can ask questions, comment on management's statement, describe the union's position on some matter management raises, or even advise employees if the union believes management's statements are wrong. (*Sec. 2*)

If a single employee is required to meet with a management representative who is investigating an incident that might result in that employee or others being disciplined, the employee is entitled to have a union representative present before the meeting proceeds. A failure to do this will often result in management being unable to use the information it gathered. (*Sec. 3*)

After any formal meeting, the union can meet with the employees without any manager present to discuss what was covered in the meeting. (*Sec. 2*)

The union will be invited to address newly-hired employees at any orientations, or, if they do not attend orientations, the union may meet with the employee on his or her first day of employment. New employees will also be given information about the union. (*Sec. 5*)

During one week a year that shall be known as Labor Recognition Week, the union is permitted to set up or post an exhibit that highlights its achievements, benefits, and goals. (*Sec. 6*)

Article 6: Agency Rights

Managers have whatever rights given them in law, as well as the right to decide what actions to take in very serious emergencies. *(Sec. 1)*

Article 7: Prohibited Personnel Practices

There is a list of actions management is prohibited from taking against an employee. For example, it may not:

- Discriminate in violation of law or regulation;
- Coerce the employee into taking political action;
- Deceive or willfully obstruct an employee's right to compete for employment or promotion;
- Encourage or influence an employee to withdraw from competition so as to improve someone else's chances;
- Grant an employee a preference not authorized by law or regulation;
- Have employees supervise relatives;
- Punish an employee for being a whistleblower;
- Retaliate against an employee for exercising any right he or she properly has;
- Make employment decision on grounds which are unrelated to performance; or
- Violate veterans' preference rights. *(Sec. 2)*

Article 8: Position Descriptions and Classification

Position descriptions must be accurate and complete. *(Sec. 4)*

Employees must be given copies of their position description. *(Sec. 5)*

Article 9: Personnel Records

Only limited information may be stored in the employee's official personnel or performance folders. Nothing derogatory may be placed in either folder without notice to the employee. Only authorized employees have access to either folder, and a log must be kept each time someone enters either file. *(Sec. 1)*

While supervisors may keep their own notes about an individual employee to jog their memory for future evaluations, no one else, other than the employee, may see those notes. *(Sec. 3)*

Employees will be given reasonable administrative time to respond to or rebut any negative information stored in the official personnel or performance folders or the supervisor's notes. *(Sec. 3)*

Employees can file grievances or sue management for money damages if the privacy of their records is violated. *(The Privacy Act) (Sec. 3)*

Article 10: Notices to Employees (Employee Injuries)

Management must provide an employee involved in a job-related injury or illness a form to promptly record the injury for workers' compensation purposes. *(Sec. 4)*

Article 11: Outside Employment

Employees have the right to hold other employment if it does not create an appearance of a conflict of interest, interfere with their efficient performance of CBP duties, or violate law. *(Sec. 3)*

Generally, outside employment does not require prior management approval if it involves participation in the activities of a nonprofit, charitable, religious, professional, social, fraternal, educational, recreational, service or civic organization. *(Sec. 2)*

Article 12: Probationary Periods

Anyone terminated during a probationary period will receive written notice that includes the reasons for the termination and effective date. *(Sec. 10)*

Probationary employees may appeal a termination to the U.S. Merit Systems Protection Board and under the right circumstances to the Equal Employment Opportunity Commission, the Federal Labor Relations Authority, the

Office of the Special Counsel, and other bodies. NTEU can advise the employee about each of these appeal routes, but it is not obligated to represent the employee in any of them. *(Secs. 12–15)*

Article 13: Bid and Rotation

CBP Officers and Agriculture Specialists on an annual basis can bid on specific work assignments or work units with selections made by seniority subject to limited exceptions. *(Secs. 2–3)*

Such Officers and Specialists can also bid on available shifts and schedules with selections made by seniority. *(Sec. 4)*

Employees can grieve and, with union approval, arbitrate management violations of the bid and rotation procedures. *(Sec. 7)*

Article 14: Alternative Work Schedules

Local NTEU chapters can negotiate to permit employees in their jurisdiction to work something other than eight hours a day for five days a week. For example, they can negotiate to give the employee an additional one or two days off a pay period so long as the employee otherwise works 80 hours. *(Sec. 5)*

Local NTEU chapters also can negotiate so that employees can choose their time of arrival and departure and work “credit-hours.” (*Sec. 4*)

While management may temporarily take an employee off one of these alternative schedules, this can only be done in accord with NTEU contract rules. (*Sec. 7–9*)

Article 15: Telework (Flexiplace)

Pursuant to discussions between the local NTEU chapter leaders and port management, some employees can work from home on a voluntary basis up to five (5) days per week as long as their work can be performed at this alternate work site. (*Secs. 4–5*)

Most positions that do not require the wearing of a CBP uniform are presumed to be appropriate for telework. (*Sec. 5*)

Employees working from home are permitted to work the same alternative work schedules and are covered by the same contract procedures such as those addressing leave, overtime and performance appraisals. (*Secs. 4, 7, 13*)

If a manager orders an employee to report to a CBP work site when he or she is otherwise authorized to work at home, it must be done in accord with NTEU contract rules. (*Sec. 16*)

Article 16: Travel

Employees are permitted to earn and use compensatory time off for time spent in a travel status when the employee is not otherwise paid for such time spent traveling. (*Sec. 3*)

Under most circumstances, an employee has the option of using a government vehicle or a personally-owned vehicle to perform agency work. (*Sec. 7*)

Article 17: Part-time Employment

Under certain conditions, employees can be approved to work between 16 and 32 hours a week rather than the full 40 hours. (*Sec. 1*) There are also conditions under which they will be allowed to job-share. (*Sec. 3*) These options permit employees to deal with child or dependent care situations, pursue extra education and generally deal with obligations outside of CBP.

Article 18: Child Care Subsidy

Employees making less than \$50,000 a year based on their adjusted gross income can receive a subsidy to provide for the care of children 18 or younger. CBP has one year from May 17, 2010, to implement this provision. (*Sec. 4*)

Article 19: Employee Proficiency Review

Employees are rated annually either Successful (Pass) or Unacceptable (Fail). (*Sec. 3*)

All employees are evaluated against the same four competency requirements. (*Sec. 4*)

Employees have the option to work with their supervisor in developing a self-improvement plan to improve their work skills. (*Sec. 6*)

Management has an ongoing obligation throughout the performance year to keep an employee aware of its opinion of his or her performance so that the employee can quickly correct deficiencies rather than be surprised at the final evaluation. (*Secs. 7 and 9*)

Article 20: Acceptable Level of Competence (Salary Step Increases)

If an employee is rated Successful on his or her Proficiency rating, he or she receives the next salary step increase for which he or she is eligible. (*Sec. 1*)

Step increase decisions must be made under a set of rules to ensure fairness; employees must be given advance notice and an opportunity to improve if management decides to withhold a step increase; and employees have the right to

request a manager's decision to withhold the increase be formally "reconsidered" by a higher level manager. (*Secs. 3–5*)

Employees can grieve and with union approval arbitrate a decision to deny a step increase. (*Sec. 7*)

Article 21: Unacceptable Performance

If the employer tries to rate an employee's performance as Unacceptable, it must follow the procedures of law, regulation and contract that give the employee the right to:

- An opportunity to improve his or her performance, e.g., 60 days;
- A written description of precisely when and how employee performed unacceptably;
- Copies of all the documentation management is relying upon;
- Reply to the charges with the assistance of an NTEU representative experienced in these procedures (*Secs. 1–5*); and
- With NTEU's approval, challenge the final decision through the arbitration process.

Article 22: Investigations

An employee being interviewed by management as part of an investigation has the right to an NTEU representative upon request. *(Sec. 6)*

An employee being interviewed by management must be told whether the investigation concerns a criminal or administrative matter. *(Sec. 5)*

An employee's NTEU representative has the right to help the employee during the interview to understand the questions being asked and in general to help the employee tell his or her side of the story. *(Sec. 12)*

Employees must be told when they are no longer being investigated by management. *(Sec. 14)*

Article 23: Reduction-in-Force (Layoffs) and Transfer to Other Agencies

Before management can lay off or transfer an employee to another agency, it must first bargain with NTEU, which will negotiate to see if there are alternatives to the layoff or transfer. *(Secs. 1–2)*

Article 24: Retirement (Resignation)

An employee has the right to withdraw a resignation or retirement application prior to its effective date. *(Sec. 3)*

Employees within 120 days of retirement are entitled to a statement of their retirement benefits. *(Sec. 5)*

Article 25: Dues Withholding

Employees may have union dues deducted from their salary and sent directly to NTEU in order to ensure they remain union members in good standing. *(Sec. 4)*

Article 26: Bargaining

Before any CBP manager can change any employee working conditions, he or she must notify NTEU in writing of the details of the change and complete bargaining with NTEU before that change is implemented. If the manager fails to give the union notice and bargain with it, the change can be undone and employees can be compensated for any harm they suffered, e.g., a loss of overtime. *(Sec. 3)*

The union can appoint employees impacted by a proposed change to represent the union on its bargaining team. *(Sec. 9)*

The union can open supplemental negotiations to propose changes in working conditions that employees want as long

as those proposals have not been previously bargained. (Sec. 4)

Article 27: Grievance Procedure

Employees can file a grievance if they believe management has violated virtually any employment right they have under the NTEU contract, regulation, past practice, or law. (Secs. 2–3)

Here are a few examples of issues that might lead to a grievance:

1. You are denied overtime that should have been yours.
2. You have been assigned to a different shift, tour or unit than you were entitled to get.
3. Your manager treats you in a way you see as harassment.
4. You are denied reasonable accommodation, provided you have the necessary documentation to support your request for it.

Employees can also file a grievance if management fails to follow its own policies. (Sec. 2)

Grievances must be filed within 45 calendar days of the incident being challenged. (Sec. 14)

Local and national NTEU representatives can represent the employee or attend the grievance meetings if the employee is representing himself or herself. (Secs. 6–7)

NTEU can file a grievance on behalf of an employee or employees if they do not want to be named or if the union feels that is the best approach. (Sec. 2)

Once a grievance is filed, management must meet with the employee and his or her NTEU representative to discuss the employee's complaint and then provide a written response to the grievance. (Sec. 12)

When NTEU serves as the employee's representative in a grievance, it has rights under the law and contract to force management to disclose information that the employee cannot get on his or her own. (Sec. 15)

There is a special faster grievance process for challenging proposed suspensions of between 1 and 14 days. (Sec. 17)

An employee does not have to serve a suspension of between 1 and 14 days while it is being grieved or arbitrated until the grievance or arbitration process is finished and the suspension is sustained. (Sec. 17)

Article 28: Arbitration

When NTEU believes a grievance has merit, it can appeal management's denial of the grievance to binding arbitration before an outside professional neutral arbitrator who can make a legally binding decision. (*Sec. 3*)

Employees cannot take their grievance to arbitration without NTEU approval.

NTEU can force management to disclose evidence to everyone in the hearing. It can place a management official on a witness stand to testify under oath about what he or she knows or did. (*Sec. 5*)

The arbitrator has a lot of authority to order that the agency do what is needed to correct its error. This includes:

- Making a promotion retroactive or giving the employee priority for the next promotion opportunity;
- Reassigning the employee to his or her location of choice;
- Reinstating any leave the employee had to take because of a management error;
- Paying the employee overtime, with interest, that he or she was entitled to;
- Correcting an employee's seniority date;
- Improving an evaluation or proficiency score;

- Giving the employee a cash award;
- Reinstating a fired employee;
- Reimbursing the employee for an improper suspension or demotion;
- Ordering that the employee be allowed to work an alternative work schedule or even on telework; or
- Changing an employee's work assignment. (*Secs. 8–9*)

Phase II: What's Still to Come

As to the implementation of Phase II of the contract, that most likely will occur later this year, as the parties work, with the help of a mediator, to reach agreement on these issues:

Scheduling, overtime, holidays and religious observances, leave and excusal, bid and rotation Part B, reassignments, temporary assignments, disciplinary actions, adverse actions, official time, use of force, safety and health, employee development, employee rights, awards, attire and appearance, equal employment opportunity, preclearance, merit promotions, employer-provided facilities and services, student loan repayment, parking subsidy and duration.

Your NTEU chapter leaders have all the information, and as always, your NTEU chapter office or steward are your best resources to keep up on developments concerning your rights as a valued CBP employee.

NTEU National Office
1750 H St., NW • Washington, DC 20006

NTEU Membership Saves You Money

It is well known that NTEU works hard for you in the courts, in the media, in Congress, at the bargaining table and in the workplace. But NTEU works just as hard in the marketplace.

In addition to first-class union representation, NTEU members receive discounts on a variety of services:

car rental • hotel discounts • oil changes
insurance—including professional liability
retirement planning • moving services
shopping • consumer guide
real estate services • banking • and more

But you can only get these discounts if you are a member of NTEU.

For more information, contact
your local NTEU representative
or visit www.DHSunion.org.



NTEU

We Get Results For You

NTEU legal work won more than \$16 million in back pay for more than 5,000 newly-hired CBPOs.

NTEU negotiating prowess won more than \$10 million in retroactive performance awards by convincing an arbitrator that management had violated the contract.

Our legislative efforts won an enhanced Law Enforcement Officer retirement benefit for CBP Officers and helped convince Congress to change the law to give CBPOs early retirement credit for the overtime pay they earn—and to get a higher rate of overtime pay than most other federal employees.

We've won flexible and alternative work schedules for non-uniformed employees; a telework agreement for all eligible employees; a bid-and-rotation program, and much more.

We like to think of our efforts as walking the walk in pursuit of your rights and benefits.

And that is what NTEU is all about.



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