

SWB 100/5.5-C



**U.S. Customs and  
Border Protection**

May 23, 2013

Mr. Sean P. Walsh, Steward  
AFGE, NBPC Local 2266  
2224 VT Rte 111  
Derby, VT 05829

Agent Walsh:

This letter is in response to the Step II grievance that you filed on behalf of Local 2266. The grievance is filed under the negotiated grievance procedures contained in the U.S. Immigration and Naturalization Service and National Border Patrol Council (NBPC) Collective Bargaining Agreement (CBA) dated February 6, 1995, which is in force between the NBPC and U.S. Customs and Border Protection (CBP). I thank you for granting management an extension of time for a written reply so that my team could meet with you prior to providing a written response.

The issues in this grievance are: whether management changed a policy with regard to kenneling canines and, if a change was made, whether management had an obligation to bargain. As a remedy, you request that management:

- 1) Abide by the CBA;
- 2) Cease and desist from implementing policies and/or procedures which concern mandatory subjects of bargaining without first negotiating such changes with the Union and providing the Union with the requisite notice under Section 3A of the CBA;
- 3) Abide by the negotiated National Canine Policy;
- 4) Cease and desist from applying or enforcing the "Sector Canine Overtime Guidance" and any other policies or procedures applicable to bargaining unit members assigned to the canine program which concern a mandatory subject of bargaining and were not negotiated by the Union;
- 5) Reinstate any Swanton Sector canine team member who suffered any type of action in regards to the "Swanton Sector Canine Overtime Guidance";
- 6) Remove any counseling, yellow sheets, or any other negative correspondence from any Swanton Sector Canine Team's file, as a result of the "Swanton Sector Canine Overtime Guidance";
- 7) Upon reinstatement to the Canine program, provide the affected team members with the option of completing any training required for initial, or continued certification, locally or at one of the two Canine facilities;

- 8) Post in a conspicuous place, for 90 days, at each station and at the sector canine office, a notice stating that the agency violated the negotiated National Canine Policy and the CBA and that it will cease and desist from committing future violations; and
- 9) Back pay for all affected Swanton Sector Canine Handlers for Suffer and Permit compensation, in which handlers were unable to claim due to the enactment of the "Swanton Sector Canine Overtime Guidance."

Your grievance alleges that management made a change by implementing a policy that was in conflict with the CBP National Canine Policy. First, the actions that management took were not in conflict with the CBP National Canine Policy. Second, management did not make any change in this case. Management continued with the policy of managing and monitoring overtime earnings throughout the year to ensure overtime cap compliance. This has been a well-established past practice. This is not a change in the CBP National Canine Policy. Management did not violate Article 3A since the Service did not make any changes to existing rules, regulations, or existing practices.

Also, you contend that the overtime guidance that Swanton Sector management provided to employees was a "supplemental agreement" and therefore should have been negotiated with the Union. As noted hereinabove, the guidance provided was not a change as it was consistent with the parties' past practice, the CBA, and the CBP National Canine Policy.

You further contend that management violated the CBA when it failed to give the Union the opportunity to participate in a formal discussion. The canine meeting in September 2012 was not a formal discussion. Management was simply reiterating procedures for ensuring overtime cap compliance that have been in place for many years.

In conclusion, I find that management's actions were appropriate. Consequently, your grievance is denied.

Although your grievance is denied, I note that several of your requested remedies are already in place. Namely, management does, and will continue to, abide by the CBA and National Canine Policy. Also, management has not implemented, and will not implement, policies and/or procedures which concern mandatory subjects of bargaining without first negotiating such changes with the Union and providing the Union with the requisite notice under Section 3A of the CBA.

Sincerely,



John C. Pfeifer  
Chief Patrol Agent  
Swanton Border Patrol Sector