



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

April 9, 2014

Mr. Christian Porras
President, Local 2266
National Border Patrol Council
158 Lower Flat Rock Rd.
Malone, NY 12953

Dear Mr. Porras:

This is in response to your Union initiated grievance dated February 24, 2014, and received on February 24, 2014, concerning an alleged failure of Swanton Sector management to adhere to the Collective Bargaining Agreement (CBA) procedures in violation of Articles 2, 6, 7, and 28 and the local agreement reached in the November 7, 2013 meeting (and subsequent teleconference) resulting a signed agreement dated December 18, 2013. 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, that is in force between the NBPC and U.S. Customs and Border Protection. The subject grievance concerns submission and denials of requests for Official Time (OT).

In the grievance, you requested the following:

1. Immediately return to the previous method for requesting OT, as employed by Local 2266 Union stewards from the November 7, 2013 meeting until middle January 2014 when the "Massey Award", FMCS No. 00-13188-A, was unilaterally adopted by the Agency as the new standard for completing box 6, "Activity Performed", on Form G-955. This would be consistent with the more recent ruling in the Eggert Award FMCS No. 091118-83923, and require the steward to cite the portion of the contract that they intend to exercise while on OT. It should be noted that the Eggert Award was issued a decade after the Massey Award, and took into account not only the Massey Award, but also a number of other Arbitration Awards interpreting Article 7 Official Time of the national CBA between the parties.
2. Cease and desist all violations of Article 6 Section A and Article 7 Section A of the national CBA
3. Provide reimbursement, via pay at a "regular time" rate with interest, for all Local 2266 stewards who have spent off-duty hours performing Union duties eligible for OT because of the Agency's denial of the employee's Form G-955 requests.
4. Chief Pfeifer will provide a notification to all management and bargaining unit employees in the Swanton Sector that they will be treated no differently if they exercise their employment rights, dispute proposed Agency actions, affiliate with the Union, or

engage in any other activity protected by law or contract. In addition to the aforementioned notification, Chief Pfeifer will provide an acknowledgement to the employees that the Agency wrongly restricted Union activity and put bargaining unit employees at risk by attempting to curb Union activity. This message will be disseminated to all employees through both physical memoranda and Government electronic mail.

To insure compliance, NBPC Local 2266 President Christian Porras and NBPC Local 2266 Vice President Sean Walsh will be provided an advanced copy for approval before the messages are disseminated. Upon issuance to employees via Government electronic mail, Local 2266 President Porras and Vice President Walsh will be included in all mailings.

5. Reimbursement for any legal fees incurred by the Union, to include all costs of hiring attorneys, arbitrators, court reporters, and any other expenses, in an effort to resolve this violation.
6. And any other remedy deemed necessary.

The Union claims that the Sector has suddenly changed the standards for approval of official time, which resulted in numerous denials of official time that would have and should have been granted pursuant to the CBA. In making this allegation, the Union claims the Agency made unilateral changes to the amount of information required, the manner which the G-955 must be delivered to the supervisor, and the sudden adoption of “manpower” as a pretext to deny official time was a violation of Article 7. The Union claims that Local 2266 Representatives have been forced to perform duties that are suitable for OT as per the CBA during their personal off-duty time, or the representatives have been forced to complete the work on annual leave. The Union claims that most, if not all of this off-duty and annual leave work was necessary due to Swanton Sector’s denial of union representatives’ Form G-955s. The Union claims that representatives have also been required to report to work with four hours or less between shifts, due to unwarranted denials of OT requests.

The Union claims that they informed Swanton Sector Management of the conflict between their new policies and the agreement reached on November 7, 2013 and subsequently signed in a Memorandum of Understanding on December 18, 2013. The Union claims they informed management on numerous occasions of how the Local believed management is in conflict with both the MOU and the national CBA, yet Swanton Sector Management did not attempt to correct the situation and revert to the terms of the CBA. The Union believes these violations of the CBA regarding OT are an inventive new way to inflict personal hardship and monetary damages onto Union Representatives for their performance of protected activity. The Union alleges that Swanton Sector Management’s actions towards the bargaining unit has the effect of placing “a chill on engaging in representational activities” and creates an environment that makes bargaining members “think twice” before engaging in union activities. The Union claims that this calls into question whether management is acting in good faith in accordance with the Federal Service Labor-Management Relations Statute.

The Union alleges the Agency is showing significant dishonesty in its rationale for denying official time. The Union claims the Agency asserted that their new specificity requirements for field 6 of Form G-955 are acceptable and Swanton Sector Management stated that the new

expectations and details for box 6 of the G-955 form were introduced and agreed to by the Union. The Union claims that the entirety of Operations Officer Dutton's summary in an email to Local 2266 President Porras on February 3, 2014 regarding the Massey Award is utterly false. The Union claims the Massey Award, FMCS No. 00-13188-A, was never introduced by the Union as an example for the proper filing of a Form G-955. The Union claims it was never agreed to by the Union and management as the appropriate model for completing field 6 of Form G-955. The Union claims they did not agree with management that more information than that provided by citing Article 7.A.4 and the corresponding subsection was required for acceptance of an official time request. The Union notes that Operations Officer Dutton was not in attendance at the aforementioned November 7, 2013 meeting that she is referencing, and therefore she has no firsthand knowledge of what was discussed.

The Union claims proof that the Massey Award was never introduced, supported, or condoned by the Union, and that this claim is instead a fabrication by Swanton Sector Management, is detectable in multiple pieces of evidence. The Union claims first, the language of the National Border Patrol Council Local 2266 and Swanton Sector Border Patrol Management Agreement dated December 18, 2013 (MOU) that one would assume that if a standard as strict as that imposed in Massey Award were actually adopted by both parties, as Swanton Sector Management claims, there would be mention of the policy in the MOU and that is not the case. The Union claims nowhere in the MOU is there any mention of FMCS No. 00-13188-A, the "Massey Award", or language indicating that the precepts of that case will be adopted by the parties for submission of a Form G-955. The Union speculates as to why mention of the arbitration award was left out of the MOU signed by both Swanton Sector CPA Pfeifer and Local 2266 President Porras if it was agreed to as reported two-and-a-half months later by management. The Union's position is that the reason the Massey Award FMCS No. 00-13188-A was not included in the language of the agreement is that it was never discussed or agreed to at the November 7, 2013 meeting.

Article I. subsection iii of the MOU reads:

OT should not be denied for any reasons other than needs of the service or the agency has evidence of abuse regarding the use of OT by the Union Representative. Union Representatives will be reasonable with the request of OT and provide sufficient justification for time requested as per the CBA. Management will make every reasonable effort to approve OT requested by the Union Representative.

The Union claims the second sentence of the above paragraph is of great value to discern the sentiment of the signers of the Agreement. The Union claims the relevant portion of the sentence states that stewards will, "provide sufficient justification for the time requested as per the CBA." The Union feels that this sentence supports the practice adopted by the Union, to request OT by providing the CBA article regulating the work that they intend to perform and would after be providing justification "as per the CBA." The Union claims this interpretation would allow the Union to play its cards close to its chest (as explicitly permitted in the arbitration award issued by Arbitrator Eggert) by not providing overly specific data to the Agency, and still affirm to Swanton Sector Management that the steward was using OT as per the contract. The Union claims that if the Agency and Union intended to have a more

comprehensive, explicit explanation of work to be performed, they would have said so in the Agreement. The Union claims this was not mentioned in the Agreement, and it was not the intention of either party to apply that standard to Form G-955 requests. The Union claims the intention was instead to employ the method of justification adopted by the Union shortly after the November 7, 2013 meeting, by citing the article of the contract used, "as per the CBA." The Union claims this was an agreeable interpretation to Swanton Sector Management and successfully used without objection for two-and-a-half months by Union stewards requesting OT.

The Union claims additional evidence which illustrates that, the "Massey Award" was not agreed to as the standard to request OT at the November 7, 2013 meeting, the Union was provided a copy of the meeting notes as recorded by Operations Officer Masada. The Union claims that while Operation Officer Masada's notes are difficult to understand, they do entail enough specificity for a reader familiar to the issues to follow the train of the conversation between the parties. The Union claims in the eight pages of notes written by Operations Officer Masada, there is absolutely no mention of the "Massey Award", FMCS No 00-13188-A, or any indication that the Union's citing the Article and subsection of the CBA would not be sufficient for management to make a decision.

The Union claims prior to the November 7, 2013, meeting CPA Pfeifer sought out President Porras for his input on the matter of OT. The Union claims in a November 1, 2013 email, President Porras provided a summary of arbitration cases and findings for the CPA to review before discussing OT. The Union claims some of the cases referenced were the "Jaffe Award", "Goodfriend Award", "Gentile Award", and the aforementioned "Eggert Award" (FMCS No. 091118-83923), wherefrom the Union's summary was derived. The Union claims at no time though did the Union introduce the "Massey Award" or FMCS No. 00-13188-A. The Union claims this is a complete contradiction with the story told by Operations Officer Dutton, and every Swanton Sector manager who has denied OT on the pretext that this was a standard introduced and agreed to by the Union.

The Union claims the final piece of evidence indicating that the Union's system of requesting OT is consistent with the agreement made on November 7, 2013 is the preponderance of G-955s submitted and approved over the two-and-a-half months following the November meeting. The Union claims prior to mid-January, when managers suddenly began citing the Massey Award FMCS No. 00-13188-A and demanding more information regarding Union activities on OT, Local 2266 stewards filed and were approved for well over 30 OT requests. All approved requests used the system of citing the pertinent Article and sub-section of the CBA in field 6 as justification for OT. The Union claims there was never any significant problem or concerns expressed by Swanton Sector Management with the report of what article of the CBA was being used. The Union claims there were no recorded concerns that one steward or another may be abusing OT. The Union claims in mid-January something changed and Management unilaterally adopted a new system of reporting which required far more specifics, all under the pretense that this had been agreed to as per the Massey Award at the November 7, 2013 meeting.

The Union claims that most of the changes adopted by Swanton Sector are not permitted by the Massey Award and nothing in the Massey Award permits a station to demand the union

representative hand a hard copy of the G-955. The Union claims it is not a “past practice” for a station to impose additional requirements on a union representative beyond those that apply to all union representatives in the Sector. The Union claims for a past practice to exist, it must be consistently followed for a substantial period of time with the full knowledge and consent of both parties. The Union claims requiring a paper copy of the G-955 be handed to the supervisor personally has not been consistently required throughout the Sector, has never been agreed to by the Local, and is contrary to the National MOU authorizing the use of electronic mail.

The Union claims the Massey Award also prohibits routinely denying requests for official time based upon “manpower”. The Union cites Arbitrator Massey: “Further, the Agency may question the use of official time on a very limited basis and that is whether the amount of time claimed for a particular activity is excessive...Generally speaking, if the amount of time is reasonable for the task and it is appropriate Union business then, with little exception, Management is obligated under the CBA to grant the use of official time.” (Massey Award, p. 21. Emphasis in original). The Union claims in the same paragraph, the Arbitrator points out that management has no right to question whether the Union is generating too much activity, and management cannot attempt to inhibit the use of official time in the event that a Union official chooses to become more active and/or adversarial. The Union goes on to claim the CBA contains language addressing this same point, citing Article 7 Section A.1, “Local Presidents or their designees will normally be released to perform appropriate labor relations duties, subject to workload requirements. In making this determination, local management will be sensitive to the obligation under Article 6 of this Agreement.” The Union then references Article 6 stating it prohibits any restraint, interference, coercion, or discrimination against a Union official because of the performance of union duties. The Union claims this contractual language acknowledges that the parties are aware the use of manpower as an excuse to deny official time is susceptible of abuse. The Union claims Arbitrator Williams’ sequel to the Massey Award (addressing the same grievant and the same time period as the Massey award) has found that unless the Sector can show an emergency or critical need, official time for representational purposes may not be routinely denied based upon manpower considerations, particularly where there is no showing of any effort to make any other adjustments to ensure minimal staffing needs.

The Union alleges the denial of official time is retaliatory. The Union claims the circumstances surrounding these copious denials of official time illustrate the wholly hostile nature of Swanton Sector Management against the Union. The Union claims the denial of OT due to a “lack of manpower” to union representative Emrich and others who requested OT well before the station work schedule was posted, now seems more like an Agency ploy than a legitimate “needs of the service” claim. The requests made by Representative Dolan prove that the Agency has no intention of allowing OT, regularly hiding behind the perpetual argument that there is never enough manpower to allow a steward OT. The Union claims such denial itself seems to conflict with the MOU between the Union and Swanton Sector CPA Pfeifer, which states, “Management will make every reasonable effort to approve OT requested by the Union Representative.” The Union claims Management has adopted unreasonable, unilateral restrictions, which stem from an arbitration award that was not even mentioned until the Agency began restricting leave. The Union claims there is no component of management acting in a reasonable fashion. The Union claims the Agency has adopted a fictitious standard based on an arbitration case that was never mentioned or agreed to by the Union, which differs from the past practice of the parties and

which is inconsistent with the more recent arbitration awards interpreting and applying Article 7 of the CBA rather than consider the OT arbitration rulings provide by the Union at CPA Pfeifer's request.

The Union claims that Swanton Sector Management's newest round of OT denials is the result of an article posted on the Union's webpage criticizing CPA Pfeifer for not taking the appropriate steps to provide safety equipment to agents assigned to operate snowmobiles. The Union claims it was only a day or two after the Union posted the article, and filed a related UIG, that the Agency began restricting and denying OT because requests were not specific enough, or the request was not timely and or citing the lack of manpower. The Union claims due to the proximity of the events, it appears that CPA Pfeifer was insulted by the Union's allegations and grievances and made the decision to begin hampering the Union and its membership by adopting a new standard regarding the amount of information necessary before official time would be granted. The Union claims in taking this action, Swanton Sector Management has failed to separate their personal feelings from their professional responsibilities. Lastly, the Union claims the sector is in violation of Article 6 Section A and C, as well as 5 U.S.C. §7116(a) (2).

The Union claims since January 21, 2014 (through Feb 24), Local 2266 representative Daniel Dolan, a Border Patrol Agent at the Beecher Falls Border Patrol Station, has requested OT from his management on at least eight occasions where Swanton Sector Management has granted none. Three of the eight listed by the Union were submissions by Agent Dolan for January 23, 2013, the first was denied for manpower, Agent Dolan submitted the same request for the same day, which was denied a second time due to lack of manpower, the same request for the same day was submitted a third time and denied a third time due to manpower. On the day in question, it would have left one agent in the field, the first G-955 was submitted three times for the same day when manpower would have been short. The G-955 submitted on January 21, 2013 for 8 hours was denied due to manpower as it would once again have left one agent in the field. The G-955 submitted on January 22, 2013 for 8 hours on January 24, 2013 was denied due to non-compliance with Local 2266 and CPA Pfeiffer's signed MOU.

The Union claims that BPA Dolan was approved for only two hours in the time period of January 21 through February 24, 2013 when in actuality BPA Dolan was approved for 6 hours of OT.

The Union cites denials of Richford Station's Lead Steward Matthew Emrich as additional justification for this particular grievance. It should be noted BPA Emrich was granted, per his request, to swap shifts to a unit that had low manpower. On January 9, 2014, Mr. Emrich submitted a G955 for 16 hours with the dates of 1/14-1/15/14. DPAIC Doty informed Mr. Emrich it was denied because one of the dates was not feasible due to lack of manpower. Mr. Emrich was informed to resubmit the G-955 for only January 14, 2014. Once Mr. Emrich submitted the G-955 for January 14, 2014 only, it was approved as he was informed that only one day was denied on his previous submission due to lack of manpower.

On January 30, 2014, Representative Emrich requested 32 hours of OT on a G-955. The request was initially denied due to lack of specificity. On February 1, 2014, Representative Emrich resubmitted the same G-955 request with no new information and the request is denied again. On February 5, 2014, Representative Emrich resubmitted the G-955 OT for the same time period

and provided more information as requested, this request was denied as it left only one agent on duty which would create an officer safety issue. Note here that there is a two prong test used by Richford Station management when approving or denying OT, the first is to determine if the request is reasonable as far as the activity performed and hours requested. The second prong is to determine if the OT can be approved without creating an officer safety issue. Manpower is not checked until the first question is satisfied. The reasonableness of the request was not determined until the third request hence the multiple submissions of the G-955 only to determine that the OT had to be denied due to lack of manpower.

On February 7, 2014, Representative Emrich submitted a G-955 for 16 hours on February 13-14, 2014. As previously stated, Representative Emrich knowingly had swapped to a shift at his request which was low on manpower. Representative Emrich was informed the day before that there was sufficient manpower to grant his OT on February 13, 2014, but manpower was an issue for that pay period. Although Representative Emrich was informed this low manpower situation ahead of time, he still submitted the G-955 requesting OT for both the 13th and the 14th of February. Eight hours was approved for February 13 and eight hours was denied due to lack of manpower for February 14, 2014. The same day, Representative Emrich requested 16 hours of OT for February 18 and 22, 2014. This request was denied due to lack of manpower which would have left one agent on shift creating an officer safety issue. Representative Emrich was informed prior to the submission of this G-955 that the pay period was low on manpower and he still submitted the request for 18th and 22nd, knowing that manpower was lacking during that time frame. For the same pay period, Representative Emrich then submitted a third G-955 on February 8 for 16 hours of OT on February 11-12, 2014. This was denied due to lack of manpower which he was informed prior to submission of this G-955. On February 12, Representative Emrich resubmitted for 8 hours of OT on February 18, 2014, this request had already been denied due to lack of manpower and it was denied a second time for the same reason. It is clear that Representative Emrich knew there was a lack of manpower that pay period, yet he submitted for 56 hours of OT that pay period.

On February 8, 2014, Representative Emrich submitted a G-955 requesting 32 OT hours for February 25-28, 2014. Representative Emrich was still on the swapped shift which was granted at his request, to a unit that was already low on manpower. Eight hours of OT was approved on this request and the other 24 hours denied due to lack of manpower as it would have left only one agent on shift creating an officer safety issue. On February 13, 2014, Representative Emrich submitted a G-955 request for 8 hours of OT on February 20, 2014. Representative Emrich was denied this request due to lack of manpower.

Representative Emrich received numerous denials due to the fact that he requested a shift swap onto a unit that he knew had low manpower. Management will deny a request for OT if the granting of the OT would create an officer safety issue leaving only one agent on shift in order to approve a G-955 request for OT. This happened to be the case after Representative Emrich swapped shifts to the unit which was low on manpower. It should be noted that Representative Emrich was granted 48 hours of OT in January 2014 and 32 hours of OT in February 2014.

On February 6, 2014, Local 2266 Vice President Sean Walsh submitted two G-955 requests for OT. One request for 8 hours on February 11, 2014 was approved and the second request for

February 7, 2014 was denied due to lack of manpower. Vice President Walsh was informed prior to the submission of the February 7, 2014 request that it would be denied if he submitted this G-955 because that day would have been lacking sufficient manpower. Vice President Walsh still submitted the February 7, 2014 request for OT knowing it would be denied.

On February 10, 2014 at 10:42pm, Vice President Walsh submitted a G-955 request via email for OT on February 12 and 14, 2014. Vice President Walsh was informed that the G-955 requests were to be submitted through hard copy as they have always been submitted at Newport station. There was no change nor was there a discussion of a change between Union and Management of the fixed and established practice on the submittals of G-955 at Newport station. On February 10, 2014, Vice President Walsh unilaterally made the decision to submit the request through email. Vice President Walsh cited a national settlement agreement regarding Article 33 of the CBA (negotiated grievance procedure). This agreement dated December 13, 2012, stated "in recognition of the advances in technology, the parties agree to include fax and electronic email transmissions as acceptable methods of service, provided that the documents are properly signed and any faxed or emailed correspondence contains sufficient information to ascertain the validity of the document(s)". The cited agreement has nothing to do with the submission of OT requests under Article 7, the settlement specifically states Article 33, grievances. Additionally on February 11, 2014, SBPA Bryan McDonald spoke with Vice President Walsh and made it clear that an emailed G-955 was not acceptable. On February 12, 2014, Vice President Walsh requested OT for February 14, 15, 17, 18 and 19 via email against direct orders to submit hard copies on February 11, 2014, hence the denials of these particular G-955s.

On February 13, 2014, per the G-259 and G-481 Vice President Walsh was scheduled to work the 0700-1500 shift. Vice President Walsh stopped by the station to drop off a vehicle after a negotiation meeting with management at Swanton Station. Rather than submit the G-955 request in person while at Newport station, Vice President Walsh left the station. The same day, Operations Officer Dutton confirmed via email that submission of the G-955 in hard copy format has been and continues to be the practice at the Newport station unless otherwise discussed and agreed upon by both union and station management. Operations Officer Dutton does not approve or deny requests for OT. The practice in Swanton Sector is each station approves or denies requests for OT, not Sector Management.

The same day, NBPC Vice President Jonathan Perkins contacted Operations Officer Dutton regarding the electronic submittals of the G-955 citing the same agreement regarding Article 33, grievances which does not relate to submittal of G-955. Vice President Walsh returned to the station on February 13 to request OT on February 14, 15, 18, and 19, 2014: February 14 and 15, 2014 were approved for OT, February 17 was a holiday therefore not eligible for OT, February 18 was denied due to lack of manpower, and February 19, 2014 was approved. Vice President Walsh was at the station after his meeting at Sector, knew the station was not accepting the e-mailed G-955 requests and elected to leave the station at approximately 2:40pm and come back later that evening to turn the G-955 request for which OT was granted.

On February 17, 2014, Vice President Walsh submitted OT for February 22, 24, and 25, 2014. All hours for these days were approved on 2/18/14 at 0130 hours. The same night Vice President Walsh submitted OT for March 6 and 10, 2014. These OT hours were approved for both days on

2/20/14 at 1300 hours. Another G-955 was submitted by Vice President Walsh on 2/24/14 for sixteen hours on February 25 and 26, 2014 which was approved the same day although OT was already approved for February 25, 2014.

On January 18, 2014, Chief Steward Elwell requested and was granted OT for January 20, 2014. On February 11, 2014, Chief Steward Elwell requested OT for January 12 and 13, 2014 and subsequently resubmitted with correct month of February on the request. This request for 8 hours on February 12 and 13, 2014 was denied due to non-compliance with Local 2266 and CPA Pfeifer's signed MOU.

On February 12, 2014, Chief Steward Elwell requested OT for February 13 and 17, 2014, these G-955s were initially denied due to non-compliance with Local 2266 and CPA Pfeifer's signed MOU. The same day, Chief Steward Elwell rescinded his eight hour OT request for February 17, 2014 upon being advised that the 17th is a holiday and would not qualify for OT. The same day, Chief Steward Elwell requested OT for February 13, 2014 using three separate G-955s, these requests were approved following phone conversation with Chief Steward Elwell and further explanation.

On February 17, 2014, Chief Steward Elwell requested OT for February 18 and 19, 2014. The OT request for February 18, 2014 was denied due to the needs of the service as he was one of three agents on shift that day. The OT request for February 19, 2014 was approved.

Management granted a total of 160 hours of OT for Vice President Walsh and 104 hours of OT for Agent Elwell in January and February 2014. It is apparent that OT is being approved for representatives of Local 2266. After a complete review of these listed G-955 denials, one can clearly see the Union is submitting the G-955s for the sole purpose of filing this grievance knowing they will be disapproved for manpower and in one instance, the same day was requested three times when it was denied the first time due to manpower. Other listed instances, the Union Representatives were informed the shift was short on manpower therefore no OT could be granted, yet the Union Representatives still submitted the G-955s for these specific days.

Contrary to the Union's claims of suddenly changing standards of approval of OT, there has been no change of standard since the agreement was signed. There has been an abundance of time provided to the Union since the November 7, 2013 meeting allowing the Union latitude to adhere to what was agreed upon with Chief Pfeifer.

The Union is correct in writing verbatim what was listed in the signed MOU. What the Union fails to mention is what was discussed in the meeting and what was actually agreed upon in the meeting. It is inherent that not every word or discussion will be written into the final signed document. The notes Operations Officer Masada took from the meeting, of which the Union has a copy the day the meeting was held, show what was actually discussed and agreed to in the meeting held on November 7, 2013.

The Union claims that the agreement was to provide the specific subsection of Article 7A4. In reality, the agreement was the Union will be more specific as to the reason for the request of OT on the G-955 without giving away the "heart and spirit" of the case. The "heart" of the case was

defined in the meeting notes as the location, name and case subject of the grievance. Both parties agreed to be more cooperative. The agreement was that the amount of time requested needs to be reasonable and generally should not be denied unless management determines operational needs of the service and/or suspects abuse. When a G-955 request is denied for manpower, this is denied for the operational needs of the service, being officer safety and sufficient number of agents on duty for the shift. The Union agreed to be more specific and Management agreed to be more understanding. It was agreed that if a G-955 is submitted and the agent is questioned, the agent will give more detail. The example given during the meeting was to include additional note in the box of Step I/Research, as long as not giving away the "heart or spirit" of the case.

The Union's claim of Swanton Sector Management denying OT as an inventive new way to inflict personal hardship and monetary damages onto Union Representatives is unsubstantiated. The Union has made claims to all the denials, but what the Union has failed to mention is all the approvals. It should be noted that Vice President Walsh was approved for 80 hours OT in January 2014 and 80 hours of OT in February 2014 in total. Additionally, Chief Steward Elwell was approved 72 hours of OT in January 2014 and 32 hours of OT in February 2014. The hours approved are mentioned as supporting evidence to counter the claim that management is denying OT for the Union.

The Union alleges the agency is showing significant dishonesty in its rationale for denying official time. It is correct that Operations Officer Dutton was not in attendance at the November 7, 2013 meeting. The Union presented the Massey award citation in a letter from Vice President Walsh dated October 24, 2013 and titled "Official Time". It was one of many cases brought before management by the Union prior to the meeting and ultimate agreement to include more information on the submission of G-955. President Porras sent information in an 8 paged attachment to an email titled, "Official Time." on November 1, 2013 prior to the meeting. President Porras states in his email "Attached is the information you requested in regards union official time." The Massey Award was referred to as OT guidance as were other cases, such as Goodfriend, Hernandez, Gentile, and Jaffe, all of these cases were presented to Management by the Union prior to the meeting on November 7, 2013.

On February 13, 2014, Operations Officer Dutton received a phone call from NBPC Vice President Jonathan Perkins and in this conversation, he acknowledged that the agreement between Local 2266 and CPA Pfeifer was to include more information on the G-955. Vice President Perkins also relayed to Operations Officer Dutton that he thought his stewards were already providing more information on the G-955s and would speak with his stewards.

The allegation that the denial of OT has been retaliatory is utterly false and is not supported by any evidence. The Union has agreed to provide more information at the November 7, 2013 meeting and both parties have agreed to be more reasonable. The Union has also agreed that the denial of OT due to manpower issues were adequate during the same meeting and is consistent with the MOU. The Agency will continue to hold the safety of the agents in the field to be of utmost importance when making any such determinations.

It is the Agency's position that OT being denied due to Local 2266 posting articles on their website is false and lacking of any evidence. The decision to deny OT has been consistent with

what has been agreed to by both parties at the November 7, 2013 meeting, and Article 7A.1 of the CBA. Denial of official time because of workload considerations is consistent with Article 7 of the CBA and not intended to unlawfully impose restraint against any of the named Union representatives or in violation of Article 6 of the CBA. Contrary to your claims, the named Union representatives were not arbitrarily or unjustly denied OT. Moreover, management was not aware nor did it approve any time in an off-duty status to any of the named Union representatives, if in fact representational activities were performed while in an off-duty status, as alleged.

Management is and has been sensitive to the Union's obligations under Article 6 of the CBA. Management has and will continue, upon request and approval in advance, grant Union representatives a reasonable period of time in an on-duty status to perform the duties of your office consistent with Statute and the CBA, subject to workload requirements.

Your grievance and remedies requested are denied, for the above cited reasons.

Sincerely,


John C. Pfeifer
Chief Patrol Agent
Swanton Sector

cc: Luis Cadavid, LER Specialist