



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

JUL 22 2013

Mr. Sean P. Walsh
Chief Steward
National Border Patrol Council, Local 2266
2224 Vermont Route 111
Derby, VT 05829

Dear Mr. Walsh:

This letter is in response to the Step III grievance you filed on behalf of the National Border Patrol Council (NBPC) Local 2266. The grievance, dated June 9, 2013, was received June 10, 2013, and is filed under the negotiated grievance procedures contained in the U.S. Immigration and Naturalization Service and NBPC Collective Bargaining Agreement (CBA), dated February 6, 1995, that is in force between the NBPC and U.S. Customs and Border Protection (CBP). Management was granted an extension to July 18, 2013 to provide a written reply.

The grievance concerns allegations that the U.S. Border Patrol's Swanton Sector management violated the CBP National Canine Policy and Article 4 of the CBA by changing canine policies within the sector.

As a remedy, you request that CBP:

- 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, which are more restrictive than the National Canine Policy and are applicable to bargaining unit members assigned to the canine program and that 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 Handler's for Suffer and Permit compensation, in which handlers were unable to claim due to the enactment the "Swanton Sector Canine Overtime Guidance."

Management did not violate the National Canine Policy. As you note in your grievance, the National Canine Policy states: "Whenever practicable, canines shall be kenneled with their handlers. However, BP canines may be kenneled away from their handlers where essential (e.g., health reasons, when the handler is traveling without the canine, or because the handler is close to the statutory overtime pay limit)."

Management's actions were consistent with the above-cited provision. In past years, including last year, agents were able to receive overtime cap waivers. Because waivers of the overtime cap are not likely this year, management had to take action to control overtime earnings. Management determined that it was not practicable for the canines to be kenneled with their handlers due to the need to manage the handlers' overtime earnings.

Also, 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.

In addition, this is a matter covered by the CBA. Management has the right to assign overtime and Article 27: Overtime describes all procedures and appropriate arrangements agreed upon by the parties for management's exercise of that right. Article 27 requires that: "Overtime assignments will be distributed and rotated equitably among eligible employees." In accordance with this provision, management provided the same instructions regarding overtime to all the canine handlers and expected them to comply with the instructions.

When two agents failed to comply with these supervisory instructions regarding working overtime, management was no longer confident in those agents' ability to participate in the canine handler team. In accordance with management's right to assign work, management then assigned those agents to other duties.

As to your requested remedy of back pay for overtime—although, as noted hereinabove, management has taken action to ensure agents do not exceed the overtime cap—all

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canine handlers are still expected to end this year at or near the cap. Therefore, the agents have not lost any overtime pay as a result of management's actions and accordingly would not be entitled to any back pay.

Management acknowledges your concerns and remains committed to fostering a positive labor-management relationship and negotiations when required by the CBA or statute. The allegations set forth above are without merit and the actions taken by management were proper. Consequently, I cannot grant your remedies as requested.

Sincerely,



For
Bianca A. Warner
Executive Director
Mission Support Division

cc: LER