



May 16, 2025

**VIA ELECTRONIC MAIL**

Mr. Adam Mervis  
Branch Chief, Labor Relations HQ  
Human Resources Policy & Programs Directorate  
U.S. Customs and Border Protection  
90 K Street, N.E.  
Washington, D.C. 20002

**RE: National Grievance — Failure to Bargain and Unilateral Implementation of EARN 2.0 in Violation of Articles 26 and 42 of the 2025 National Collective Bargaining Agreement, and 5 U.S.C. §§ 7114 (b) and 7116(a)(1), (5), and (8)**

Dear Mr. Mervis:

The National Treasury Employees Union (NTEU), pursuant to Article 27, Section 13 of the 2025 National Collective Bargaining Agreement (CBA) between NTEU and Customs and Border Protection (CBP or agency), hereby files this continuing national grievance on behalf of its institutional rights and all bargaining unit employees impacted by the allegations described below.

**Statement of the Grievance**

Article 26 of the CBA contains the procedures that the parties agreed to follow when the agency proposes a more than *de minimis* change to conditions of employment that impact bargaining unit employees. This includes notice to NTEU at the national level, with the option for NTEU to exercise its right to bargain pursuant to Article 26. In relevant part, Article 26, Section 3A states:

...The Employer shall provide the Union with reasonable advance notice of intended changes where the reasonably foreseeable adverse effect of the change on the bargaining unit's conditions of employment is more than *de minimis* in nature and not covered by this Agreement or an existing agreement as defined in Section 4 of this Article.

Article 42, Section 5B of the CBA contains the procedures that the agency must follow for Award Nomination Procedures. In relevant parts, Article 42, Section 5B states:

(1) The Employer will establish, in collaboration with NTEU (at the national level), a standardized form to submit award nominations. As an alternative, **the parties may establish (at the national level for national JACs and local**

**level for local JACs) an electronic process for employees to submit and track award nominations.** If an electronic process is implemented the following will apply. (emphasis added).

On February 14, 2025, NTEU learned that CBP was implementing a pilot program for EARN 2.0, a platform for facilitating Joint Award Consolidation (JAC) awards. The pilot program impacted bargaining unit employees. Under protest, NTEU requested a briefing from CBP and to bargain the changes to conditions of employment. A briefing was held on March 25, 2025. During the briefing, CBP stated that use of EARN 2.0 would be optional and not mandatory. CBP further stated that NTEU would be notified and provided an opportunity to bargain at the national and/or local level, as applicable, if and when use of EARN 2.0 becomes mandatory.

CBP's failure to bargain and unilateral implementation of EARN 2.0 is a failure to bargain in good faith in violation of Article 26 of the CBA and 5 U.S.C. §§ 7114 (b) and 7116(a)(1), (5), and (8). CBP's failure to bargain with NTEU at the national or local levels, as appropriate, violates Articles 26 and 42 of the CBA and 5 U.S.C. §§ 7114 and 7116(a)(1) and (5). In addition, these violations constitute a repudiation of Article 26 and Article 42, which is an unfair labor practice under 5 U.S.C. § 7116(a)(1) and (5). CBP's violations of the CBA and statute have harmed bargaining unit employees by not utilizing a negotiated process to distribute JAC awards, bargaining unit employees may not receive JAC awards when they would have received such award previously, and the process is no longer clear and understood because it has been unilaterally implemented by CBP.

### **Requested Remedy**

To remedy the foregoing violations, NTEU requests that CBP:

1. Immediately cease and desist from violating the parties' CBA and the statute, as outlined in greater detail above;
2. Immediately restore the *status quo ante* until such time as CBP has fulfilled its contractual and statutory obligations to bargain at the local level;
3. Rerun all JAC awards using existing practices;
4. Post an email to all employees a notice drafted by NTEU identifying that CBP engaged in violations of the statute and its remedial efforts;
5. Provide make whole relief to every adversely affected bargaining unit employees, including back pay; and
6. Grant NTEU all other appropriate remedies to which it is entitled under the law, including attorney's fees and costs under the Back Pay Act.

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### **Information Requested**

Pursuant to 5 U.S.C. § 7114(b)(4), NTEU requests: a list of all ports where EARN 2.0 has been implemented. NTEU will use this information to determine the scope and duration of CBP's violation and the appropriate make-whole remedy.

### **Bargaining History**

Pursuant to Article 28, Section 6.E, NTEU hereby gives CBP notice, that should this matter proceed to arbitration, NTEU intends to introduce bargaining history regarding Article 26 – Bargaining, and Article 42 – Awards and Recognition.

I have designated Aliza Chesler, National Negotiator, as NTEU's representative in this matter. Please contact Ms. Chesler via email at [Aliza.chesler@nteu.org](mailto:Aliza.chesler@nteu.org) to schedule the grievance meeting, to provide the requested information, and to discuss any issues concerning this grievance.

Sincerely,



Doreen P. Greenwald  
National President

cc: Aliza Chesler, NTEU  
Ken Moffett, NTEU  
Ryan Soon, NTEU