

**NTEU NATIONAL GRIEVANCE – FOREIGN LANGUAGE PROFICIENCY
AWARD PROGRAM**

SETTLEMENT AGREEMENT

The Department of Homeland Security, United States Customs and Border Protection, its officers, employees, agents, attorneys, representatives, predecessors and successors, including the Department of the Treasury, United States Customs Service ("Agency"), and The National Treasury Employees Union (NTEU), its officers, employees, agents, attorneys, representatives, predecessors and successors, (the parties) hereby agree that a Settlement Agreement (Agreement) has been reached and stipulated to as follows:

WHEREAS, NTEU filed a National Grievance on the Foreign Language Proficiency Award Program (also known as Foreign Language Award Program (FLAP)) on October 7, 2004; and

WHEREAS, the parties have subsequently engaged in negotiations intended to resolve the grievance short of further litigation; and

NOW THEREFORE, in consideration of the parties promises, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Agency Promises.** In exchange for the promise made by NTEU in Paragraph 2 of this Agreement, the Agency agrees that:

- a. The 444 CBPOs¹ who applied for foreign language testing in FY2004, and the 391 CBPOs who applied for such testing in FY2005 but were not tested, will be scheduled for priority testing in FY2006. It is acknowledged that some of these individuals may already have been tested since FLAP testing resumed in July 2005. These individuals who have been tested will not be required to be retested; the proficiency level score achieved from this most recent testing since July 2005 will be used as a basis for the FLAP award referenced in this Agreement.
- b. CBPOs hired between October 3, 2003 and July 24, 2004 who have no application on record will have the opportunity to submit an application. This application will be submitted, preferably via facsimile, to Cleatus Hunt, HQ FLAP Coordinator, at (202) 344-2791, or to U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW, Washington, DC 20229, Room 5.5C – Attention: Cleatus Hunt. This application for testing must be submitted to the FLAP Coordinator within 30 Calendar days of the CBP's issuance of the Notice of this

¹ CBPO or CBPOs refers to Customs and Border Protection Officers who were previously classified as Customs Inspectors (GS-1890), Customs Canine Enforcement Officers (GS-1801), and were hired before July 25, 2004.

Agreement. Eligibility for consideration for a FLAP award will be made in accordance with the FLAP MOU and this settlement agreement. On a case-by-case basis, OFO/CBP Headquarters will make determinations as to the employee's eligibility for consideration of an award under this agreement (such determination is limited to a confirmation of the employees' claim of no application and of the employees' hiring date). A written decision regarding the employee's eligibility for consideration of an award under this Agreement will be issued to the employee within 30 calendar days of receipt of the completed application submission. The decision will include the following statement, "One copy, at your option, may be furnished to your NTEU representative."

- c. Should an employee, hired no later than July 24, 2004, allege that he/she was advised not to apply for the FLAP, or was otherwise not able to apply to be tested (e.g. the employee was in an extended approved leave status) such employee may submit an application and/or evidence in support of the application to Cleatus Hunt, the FLAP Coordinator at HQ, preferably via facsimile at (202) 344-2791, or to U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW, Washington, DC 20229, Room 5.5C - Attention: Cleatus Hunt. This submission must be submitted to the FLAP Coordinator within 30 calendar days of the date of CBP's issuance of the Notice of this Agreement. Eligibility for consideration of a FLAP award in accordance with this Agreement and the FLAP MOU will be made on a case-by-case basis by OFO/CBP Headquarters. A written decision regarding the employee's eligibility for consideration of an award under this Agreement will be issued to the employee within 30 calendar days of receipt of the completed application submission. The decision will include the following statement, "One copy, at your option, may be furnished to your NTEU representative."
- d. All employees seeking to receive a FLAP award under this Agreement must not only satisfy the criteria in section 1(a) or 1(b) or 1(c), but must also meet the qualifications and eligibility requirements set out in the FLAP MOU. The "eligibility determination" referenced in this Agreement does not supersede, revise or amend the qualifications and eligibility criteria in the FLAP MOU.
- e. CBP will make a good faith effort to ensure that employees are notified of scheduled tests at least two weeks prior to the testing date. It is understood that CBP is not responsible for the testing scheduling. The employee waives his/her right to an award consideration under this Agreement if:
 - 1. the employee fails to report for the scheduled test at the designated location and cannot show that exigent circumstances were present that prevented him/her from reporting; or
 - 2. notification of the employee's inability to report is not made within five (5) working days prior to the scheduled test to allow for an appropriate

substitution from the eligible settlement pool.

- f. The employees who have submitted an application to be retested are defined as those who have previously attained a FLAP proficiency score and have applied for retesting, but were unable to be retested in FY2004 and FY2005. If, as a result of retesting, the employee receives a higher proficiency score than the one on record, the employee will receive the difference in award amounts between the proficiency levels for FY2005 only, paid at his/her current FY2005 pay rate as of September 30, 2005. No interest will be paid. If the employee receives the same score or lower, he/she will not receive any compensation above that which has already been paid. After the pool of eligible covered employees under this Agreement have been tested, these employees are eligible for retesting per the FLAP MOU.
- g. The employees referenced in section 1(a), (b) and (c) of this Agreement will be tested under the terms of the current FLAP MOU, dated August 28, 1996, and based on these test scores, the employees will receive a retroactive payment based on their grade and pay rate as of September 30, 2004, for FY2004, if appropriate, and/or September 30, 2005 for FY2005. The award payouts will be quarterly rather than yearly.

FY2004 Award Payouts. For FY2004 FLAP awards, employees will receive a retroactive award based on their grade as of September 30, 2004, in accordance with the FY2004 award payment rate. Awards will be made retroactive with interest at the rate of 5.5%. For employees receiving an award payment under sections 1(a) or 1(c), the award will be retroactive to the beginning of the six-month period in which the application was submitted or as established by other documented evidence, either October 2003 or March 2004. For employees receiving an award payment under section 1(b), the award will be made retroactive to the beginning of the six-month period in which the employee was eligible to apply during FY2004. For determining interest for payment of the FY2004 award, the date to be calculated will be from December 9, 2004.

FY2005 Award Payouts. For FY2005 FLAP awards, employees will receive a retroactive award based on their grade as of September 30, 2005, in accordance with the FY2005 award payment rate. No interest will be paid. For employees receiving an award payment under section 1(a) or 1(c), the award will be retroactive to the beginning of the six-month period in which the application was submitted or as established by other documented evidence, either October 2004 or March 2005. For employees receiving an award payment under section 1(b), the award will be made retroactive to the beginning of the six-month period in which the employee was eligible to apply during FY2005.

- h. CBP will issue a notice to NTEU bargaining unit employees of this settlement

agreement, and at least once a fiscal year provide notification of the FLAP MOU, their opportunity to be tested, and the application and testing procedures.

2. **NTEU Promise.** In exchange for promises made by the Agency in Paragraph 1 of the Agreement, NTEU agrees to the following:

- a. NTEU will withdraw the instant National Grievance on the Foreign Language Proficiency Award Program, and will not pursue further compensation or sanction against the Agency, with regard to the Agency's implementation of the FLAP MOU, to the date of this Agreement, unless further litigation is required to implement this Agreement.

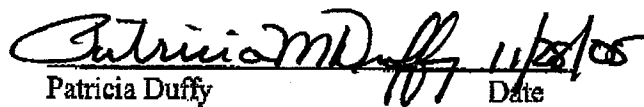
3. **Terms.** Both parties agree to the following provisions:

- a. **No Admission of Liability.** By signing this Agreement, neither party admits to any wrongdoing, fault or liability of any kind. The parties understand and agree that this Agreement is for their mutual benefit and will not establish any precedent nor will this Agreement be used as a basis for NTEU or any other person(s) or group(s) to seek or justify similar terms in any other case.
- b. **Knowing and Voluntary Agreement.** The parties fully understand all of the terms and conditions of this Agreement and have been given a reasonable amount of time to consider this Agreement and to thoroughly discuss all aspects of this Agreement with their attorneys. The parties have entered into this Agreement voluntarily and without coercion of any kind.
- c. **Entire Agreement.** The parties agree that this Agreement constitutes the full and complete settlement of any and all claims that were raised or could have been raised in the instant National Grievance on Foreign Language Proficiency Award Program. This Agreement contains all of the agreements and understandings between the parties regarding the subject matter hereof and supersedes any prior or contemporaneous negotiations or agreements, written or oral, regarding this matter. This Agreement can be modified only by a written Agreement signed by each party to the modification. In the event any portion of this Agreement shall be determined to be invalid under any applicable law, such provision shall be deemed void and the remainder of this Agreement shall continue in full force and effect.

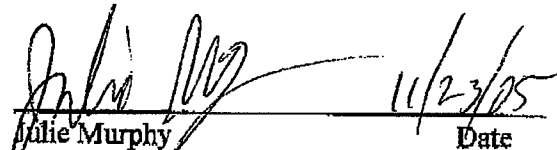
4. **Further Acts.** The parties hereto, without further consideration, shall execute and deliver such other documents and take such other action as may be necessary to achieve the objectives of this Agreement.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the dates indicated below.

AGENCY

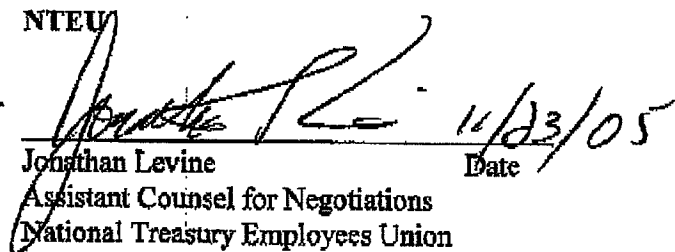
 11/23/05
Date

Patricia Duffy
Executive Director
Office of Field Operations
Customs and Border Protection

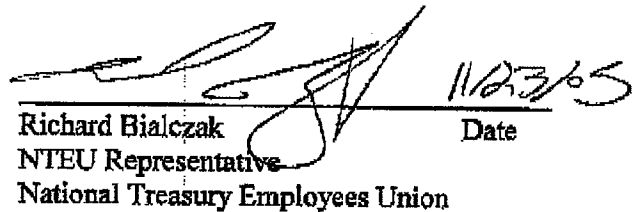
 11/23/05
Date

Julie Murphy
Agency Representative
Customs and Border Protection

NTEU

 11/23/05
Date

Jonathan Levine
Assistant Counsel for Negotiations
National Treasury Employees Union

 11/23/05
Date

Richard Bialczak
NTEU Representative
National Treasury Employees Union