

# CBP-NTEU NATIONAL LABOR-MANAGEMENT RELATIONS FORUM

## PRE-DECISIONAL INVOLVEMENT GUIDANCE

In September 2010, U.S Customs and Border Protection (CBP) and the National Treasury Employees Union (NTEU) executed a charter for the Agency's first National Labor-Management Relations Forum. In addition to establishing the framework and principles under which the National Forum operates, an important goal of the Forum is to enhance the performance of CBP by increasing employee participation, through NTEU, in the decisions that affect their work, work life, and working conditions.

During its first year, CBP has actively sought opportunities to improve the quality of new initiatives by obtaining input from employee representatives early in the decision making process. In addition to achieving these qualitative improvements, we have found pre-decisional involvement has engendered greater support of final decisions resulting from a better understanding by those engaged in implementing the initiatives/decisions, and a reduction in resistance to implementation of decisions involving changes to employee conditions of employment.

In an effort to encourage and enhance future pre-decisional involvement efforts at all levels of CBP, the National Forum has developed the attached guidance document. Consistent with our National Agreement and Charter, this document was designed to assist the parties at the national, field and port levels to have a common understanding of what pre-decisional involvement means, why it is in our collective best interest to engage in pre-decisional involvement, and the results we seek to obtain through these engagements.

With this in mind, the National Forum intends for the attached guidance to be used as a means for CBP and NTEU to encourage and enhance their pre-decisional engagements. To be most successful, we have found these engagements must begin early when ideas are forming, the participants must have a common understanding of the purpose and goal of the engagement; information must be freely shared throughout the process with a common understanding on the confidentiality of the information and process; the participants use an appropriate problem-solving and team approach to their actions; and the participants demonstrate a high degree of commitment to the process and to achieving their shared expectations.

We sincerely hope you find this guidance useful, and look forward to hearing about your pre-decisional involvement efforts.

  
David V. Aguilar  
Acting Commissioner  
U.S. Customs and Border Protection

  
Colleen M. Kelley  
National President  
National Treasury Employees Union

**U.S. Customs and Border Protection (CBP) - National Treasury Employees Union (NTEU)  
Labor-Management Forums: Pre-decisional Involvement (PDI) Process & Guidance**

<p align="center"><b>National Guidance</b></p> <p>The National Council for Federal Labor-Management Relations issued a memorandum dated January 19, 2011 to heads of executive department/agencies and labor-management forums, Subject: Executive Order 13522 – Establishing Labor-Management Forums and Pre-decisional Involvement. The memorandum advised agencies to develop a shared understanding with employee representatives on how the pre-decisional involvement (PDI) process can best be utilized for the workplace.</p>	<p align="center"><b>CBP Existing Structure</b></p> <p>Article 4, Labor-Management Relations Committees, provides the following ground rule and commitment - the parties will establish Labor-Management Relations Committees (LMRCs) in accordance with the provisions of this Article to give consideration to, among others, areas of PDI.</p> <p>All LMRCs are solely for the purpose of exchanging views and information and shall be deemed a supplement to negotiations as defined by the Civil Service Reform Act, not a substitute.</p>
<p align="center"><b>What Pre-Decisional Involvement (PDI) is:</b></p> <ul style="list-style-type: none"> <li>➤ A process built into the labor-management process that: <ul style="list-style-type: none"> <li>• Begins as soon as possible after the Agency has determined that some decision or action is needed to address a particular issue or problem;</li> <li>• Focuses on interests identified as important by the Agency and/or the Union;</li> <li>• Recognizes a constructive outcome can foster communication, problem solving and improved relationships.</li> </ul> </li> <li>➤ Involves an invitation to union representatives to discuss and exchange views and information about an issue impacting the workforce.</li> <li>➤ An exchange of views and ideas that take place through a collaborative process that the parties agree to, or are comfortable with, for a particular issue.</li> <li>➤ Collaboration with a goal of managing the issue so that the outcome is positive.</li> <li>➤ A supplement/enhancement to negotiations under the Federal Service Labor-Management Relations Statute (Statute).</li> </ul>	
<p align="center"><b>What PDI is not:</b></p> <ul style="list-style-type: none"> <li>➤ A replacement for negotiations under the Statute. While the PDI process can result in early resolution of potential problems, and ultimately a reduction in the time and resources necessary to conduct negotiations, nothing in the PDI process dilutes or diminishes either party's collective bargaining rights under the Statute.</li> </ul>	

**Potential Benefits of PDI Include:**

- Improved quality of initiatives/decisions resulting from early input from employees who perform the work.
- Greater support of the decision resulting from a better understanding by those engaged in implementing the initiatives/decisions.
- Timely implementation of decisions involving changes to employee conditions of employment resulting from a reduction in resistance to implementation.
- Better facilitated negotiations resulting from an improved understanding of each others' interests/preferred options and higher trust levels.

**Potential Implications of PDI Include:**

- If not begun as soon as possible may need to build more time into the process from beginning to final product.
- Build trust to realize full benefits.
- Pre-decisional involvement requires a good faith attempt in the spirit of the Executive Order to develop solutions that satisfies each party's interest(s).
- Despite the additional time and resources dedicated to PDI efforts, unresolved issues may still require the use of statutory negotiation processes.

**PDI Process**

Executive Order 13522 directs the establishment of non-adversarial labor-management forums for the purpose of helping identify problems and propose solutions to better serve the public and agency missions; to allow employees and their union representatives to have pre-decisional involvement in all workplace matters to the fullest extent practicable, without regard to whether those matters are negotiable subjects of bargaining under 5 U.S.C. § 7106; and to evaluate and document changes in employee satisfaction, manager satisfaction and organizational performance resulting from the labor-management forums.

As a complement to the statutory collective bargaining process, the CBP-NTEU labor-management forum is intended to allow managers and employees to collaborate in continuing to deliver the highest quality services to the American people by creating a mechanism by which CBP management can discuss workplace challenges and problems with NTEU and endeavor to develop solutions jointly, rather than advise NTEU of predetermined solutions to problems and then engage in bargaining over the impact and implementation of the predetermined solutions.

CBP and NTEU will engage in this process consistent with the Executive Order and our national collective bargaining agreement. With this in mind, the parties will proactively seek out and explore opportunities for joint engagement through the PDI process that have potential for improvements in the accomplishment of mission and/or workforce effectiveness. This collaborative approach will also apply to those limited topics or issues that cannot be presented to the Union for PDI because of operational exigencies or because of their direct relationship to national security. In those cases, the parties will remain open to engaging in collaborative mission improvement efforts during and after the exigency and/or security requirement is addressed.

In seeking areas for PDI, the parties will consider the following factors, at a minimum, in determining the nature and extent of such pre-decisional involvement on a particular topic or issue:

- Does the issue lend itself to joint labor-management engagement?
- Does the issue present an opportunity for CBP and NTEU to join together to develop and present a common strategy to deal with an external danger or risk?
- Does the issue concern an internal or national security issue requiring expedited implementation?
- Does the issue lend itself to a short term or a long term solution? Local or national solution?

Issues and/or topics for PDI and the desired approach may be identified jointly through the labor-management forum, or independently by either party. Once an issue for PDI is identified, CBP will inform NTEU of the issue and/or topic through written communication (and a briefing as appropriate) and invite NTEU to participate. In its invitation, CBP will advise NTEU of any timeframes associated with the decision-making and implementation process; the degree of confidentiality required concerning the issue and materials; as well as any particular Agency interests that it would like addressed through the PDI process to the extent they are known.

NTEU will inform CBP of whether it will accept or decline an invitation. For declinations, NTEU will advise CBP (orally or in writing) of its reasons for electing not to participate in pre-decisional involvement on a particular issue. In the event NTEU declines to participate, CBP will continue to communicate with NTEU regarding its progress in addressing the issue and/or topic, including any new developments as appropriate.

### **National Perspective**

At the National Labor-Management Forum, CBP agrees to brief NTEU on national topics or issues of significant change or concern for discussion and possible PDI. Specific problems requiring an analysis and recommendation may, by mutual agreement, be directed to a workgroup composed of equal numbers of CBP and NTEU representatives. The National Labor-Management Forum will establish the parameters for problem resolution/solutions by the workgroup and establish a reasonable timetable for completion of the tasks. Issues offered and accepted for PDI will be scheduled for a briefing to allow the union to make an informed decision on whether to accept the offer(s) of PDI.

### **Local Perspective**

Both CBP and NTEU recognize that employees are one of the best sources for obtaining information on how to get work accomplished more efficiently. Involving employees and their representatives in the decision-making process before decisions are made is the objective of PDI. This enhances management's ability to take additional views and ideas into consideration before making policy decisions, thereby improving the decision-making process and final outcome. At the local level, PDI would extend to issues within the jurisdiction of appropriate management levels. For Field Operations, this includes the Field Office and Port levels. For all other Offices, this typically includes the Division levels.

<p><b>Examples of PDI at the national level include:</b></p> <ul style="list-style-type: none"> <li>➤ New initiatives or programs (including legislative and Congressionally mandated initiatives);</li> <li>➤ Improvements or modifications to training curriculums; and</li> <li>➤ Budget briefings.</li> </ul>	<p><b>Examples of PDI at the local level include:</b></p> <ul style="list-style-type: none"> <li>➤ Identification and exploration of ways in which work processes may be improved;</li> <li>➤ Ideas concerning the efficient use of staff and other resources to accomplish mission;</li> <li>➤ Anticipated Port or Field Office wide changes in the type or amount of work performed;</li> <li>➤ Discussion of financial plans, including reductions in budgets (including overtime) likely to affect operations or employees;</li> <li>➤ Construction and renovation projects;</li> <li>➤ Office closures and relocations;</li> <li>➤ Local policy issues undergoing review or revision (e.g., the local union should be consulted and given the opportunity to provide views and ideas on what works best for a particular work environment); and</li> <li>➤ Safety initiatives.</li> </ul>
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### **Information Sharing (General)**

- Not subjected to the particularized need standard under the Statute and FLRA case law.
- Information that would be helpful in engaging the union should be provided up front and in advance of any discussion or meeting to the extent it is releasable under FOIA. For example:
  - Field Office or Port level workload and staffing information prior to a discussion concerning ideas on the efficient use of staff or changes in the type or amount of work performed;
  - Financial information (including current and anticipated overtime expenditures) prior to a discussion concerning the upcoming financial plans, adjustments or reduction in budgets.

### **Information Sharing (Specific)**

- Documents should be sanitized, if necessary, for release to facilitate discussions without requiring NTEU to make a traditional information requests and CBP making traditional particularized need assessments.
- If appropriate, PDI discussions should be conducted confidentially between the parties in an effort to build an environment of mutual trust and respect necessary to facilitate an honest exchange of views and collaboration.
- The degree of trust that exists between the parties will necessarily influence or dictate the depth of information shared and the outcome of the pre-decisional process.