



The Four Winds

National Weather Service Employees Organization

NWSEO Returns Personal Use Items to Offices:

Arbitrator Rules NWS Violated NWSEO Agreement and Federal Labor Law by Suspending Purchase of Disposable Plates, Cups and Utensils

(May 5, 2014) Federal Labor Arbitrator Mariann Schick has ruled that the NWS violated a September 2009 Memorandum of Understanding with NWSEO when it unilaterally terminated the purchase of disposable cups, plates, utensils, napkins and other kitchen items in March 2013. Ms. Schick also found that the agency committed an unfair labor practice, in violation of the Federal Service Labor Management Relations Statute, when it illegally repudiated the September 2009 agreement. She has ordered the NWS to restore these items to NWS offices.

The commitment to purchase disposable kitchen items was part of a union negotiated agreement made to protect employees and agency operations in anticipation of the 2009 H1N1 flu pandemic and future pandemics. Arbitrator Schick found that the commitment to provide these disposables was not limited to the H1N1 pandemic, but remains in place.

In March 2013, the NWS's Acting Chief Financial Officer, John Longenecker, issued an order to NWS managers directing them to cease purchasing the disposable kitchen items because he determined that it was illegal to use appropriated funds to purchase such items "for the personal convenience, comfort or protection" of employees. His order relied on a 1924 decision of the Comptroller General, *issued during the Coolidge Administration*.

NWSEO immediately filed a grievance that was denied by NWS management on advice of the Department of Commerce General Counsel's Office, which defended the agency's action at the arbitration hearing held in December 2013. In an effort to avoid arbitration and the waste of your tax dollars, NWSEO met with Dr. Louis Uccellini and agency counsel to provide them with a stack of decisions made since 1924 which proved the legality of purchasing these items for NWS offices (many of which Ms. Schick used for her decision). The NWS decided to spend your tax dollars on this unnecessary arbitration in spite of the overwhelming evidence presented to them.

In her decision issued on May 5, Ms. Schick rejected Mr. Longenecker's reliance on the outdated opinion of the Comptroller General, and concluded, based on more recent Comptroller General decisions that approved the purchase of paper napkins and other kitchen supplies, that the purchase of these disposable items did not violate appropriations law because the NWS benefits from the availability of these items:

"Mr. Longenecker abrogated the M.O.U. after a determination that paper plates, napkins, and plastic utensils were personal items, without anything more than a gut sense that such items inherently were 'personal' and provided no benefit to the Agency. He did not look at the isolated nature of many of the facilities, the lack of eating establishments near many of them, the fact that most employees remain at their work stations throughout their shift, the necessity to maintain the workforce on duty because of the critical nature of the Agency's work, and the effect, if any, that withdrawal of such items might have on employee morale. He never contacted Human Resources before taking action. It is clear from the above cited memoranda from the Comptroller General that a far more elaborate analysis was necessary than the one undertaken to determine whether a primary benefit inured to the Agency with the provision of such items or whether indeed, as Longenecker concluded, the items were purely personal.

"It appears from the record that the Agency runs its forecasting offices with the expectation that employees will remain at their desks monitoring the weather on the computers before them. No meal breaks are provided for. Thus, the Agency can't expect employees to leave and eat at a restaurant for no time is given for such activity. Moreover, such efforts by employees would prove fruitless in most circumstances, since many offices are not located near eating establishments. Employees can't even be expected to cook meals in the kitchenettes, since no mealtime break is allotted, and cooking takes time. At best, employees might be expected to use a minimal amount of time in the kitchenette using the microwave to heat up meals brought from home. If, the Agency here had provided cooking utensils instead of paper products to facilitate food consumption, employees would spend a greater amount of time in the kitchenette using the utensils to prepare their meals. That would have been contrary to the Agency's interests in having the employee return to the work station quickly. . . . The Agency appears to be the primary beneficiary of the results yielded by the quick return of employees to the work station: more weather is professionally observed.

"In sum, the Agency would have every reason to find that the provision of paper products was necessary to the efficient operation of its offices and was not in

contravention of appropriation laws. I have no problem, on the record as discussed above, in so concluding.

-NWSEO-

**No one cares more for National Weather Service employees than
National Weather Service employees.**

**No one works harder for National Weather Service employees than
National Weather Service employees.
We are NWSEO.**