



*National Weather Service  
Employees Organization*

February 7, 2019

Dr. Louis Uccellini  
Director, National Weather Service  
1325 East West Highway  
Room 18130  
Silver Spring, MD 20910

RE: *Grievance over Meteorologist GS-5/12 Career  
Progression Program*

Dear Dr. Uccellini:

This is a grievance filed pursuant to Article 10, section 9 as well as Article 10, Section 10 of the parties' collective bargaining agreement over your February 6 notification of the agency's intent to implement the Meteorologist GS-5/12 Career Progression Program dated July 2018. This action violates our collective bargaining agreement and multiple supplemental memoranda of understanding:

Article 14, section 7 of the parties' CBA guarantees employees automatic career ladder promotions when certain conditions are met:

Each bargaining unit employee below the journeyman level in a career ladder position shall be promoted to the next higher grade on the pay period closest to his/her anniversary date when:

- A. he/she meets the qualification requirements;
- B. she/he has been given grade building opportunities, and has successfully demonstrated the ability to complete them;
- C. there is enough grade-determining work;
- D. the time-in-grade requirement has been met;
- E. the employee's performance meets or exceeds expectations; and

F. no administrative restriction on promotions has been imposed by the NWS or an Authority above the NWS level.

***When these conditions have been met, the employee shall be promoted.***

However, management's proposal substitutes an entirely different criteria that must be met before a career ladder promotion is made. In lieu of "successfully demonstrat[ing] the ability to complete" grade building opportunities, the agency proposal will instead require that the employee demonstrate "the competency to perform them at the next higher level . . . based on job experience, training, and demonstration of competencies." The proposal describes fifteen competencies that must be demonstrated and explains that "the assessment process will be rigorous." (page 7). This is a significant change from having to simply demonstrate the ability to complete "grade building opportunities." And while an employee must demonstrate annually the competency to perform the work at his or her *current* grade through the normal Chapter 43 performance management process, it is a new and novel demand to require an employee to demonstrate in advance the ability to perform higher graded duties as a precondition to a career ladder promotion. This requirement simply does not appear in our current collective bargaining agreement.

Further, the agency's proposal eliminates the language mandating the promotion that appears in Article 14, section 7 – "when these conditions have been met, the employee ***shall be*** promoted." It also eliminates the language that Instead, the proposal says that the employee who has not met these requirements by his or her anniversary date will not be reconsidered for promotion for 240 days. (page 10). But this language of section 7 requires management to promote the employee as soon as he or she meets the requirements, provided the time in grade requirements are met. By the same token, the proposal does not provide any timeline or deadline for promotion of the initial class of GS-11 interns to the next step of the new career ladder, and requires that those career ladder promotions be delayed until all current GS-11 employees are assessed. To repeat, the CBA requires that the promotions take place as soon as the requirements spelled out in Section 7 have been met.

Management's plan also violates the parties' Memorandum of Understanding of June 1, 2016, titled "NWS Intern Hiring Policy and the Internal Reassignment Process" This June 2016 MOU states that "the intern position will retain the career ladder through GS-11" and will be bid simultaneously with HMT positions because they are currently interchangeable. In effectively eliminating the intern position, it is unclear whether the agency will continue to fill the HMT position or other positions in the HMT/intern unit. Rather it appears that one of the unstated goals of this plan is the elimination of the HMT position, as can be seen from the reassignment of upper air launches, and data collection, data acquisition and public service duties to the meteorologists. (pages 3, 6).

Further, while negotiating the June 2016 MOU, the parties' reaffirmed their WFO Staffing MOU of 2004, except as modified by the June 2016 MOU. The 2004 agreement provides that the size of the HMT/Intern units will remain the same; that all vacancies in the

units will be bid as both HMT and Intern positions; and with a promotional potential to GS-11. Management's proposal conflicts with this agreement on its face, and in particular the sentence on page 6 that says that the GS-5/12 meteorologists "will become a part of the same work unit."

This is not the first time in which management has proposed to "direct hire" lower graded recruits into general forecaster positions with a promotional potential to GS-12. On May, 2003 the parties executed another MOU that provides that before such recruitment action takes place, management will notify all GS-9 and GS-11 interns of every General Forecaster vacancy and, should three or more express an interest in the particular position, the vacancy will be advertised to status candidates only. Management's current plan to advertise and direct hire into all General Forecaster vacancies deprives current interns of the opportunity to have a "leg up" on applying for a vacancy in a preferred geographic position.

To the extent that these three MOUs impact the exercise by management of any of its rights listed in 5 U.S.C. section 7106(a), they were negotiated and are enforceable as permissive subjects under section 7106(b)(1) because they pertain to "the numbers, types, and grades of employees or positions assigned to any organizational subdivision, work project, or tour of duty." The management rights enumerated in § 7106(a) are "subject to subsection (b) of this section." *American Federation of Government Employees, Local 2782 v. FLRA*, 702 F.2d 1183 (D.C. Cir. 1983). Although an agency is not obligated to bargain over a (b)(1) matter, once it does so any agreement reached is enforceable in arbitration. *Department of Transportation, Federal Aviation Administration, Alaskan Region and National Air Traffic Controllers Association*, 62 FLRA 90, 92 (2007).

Further, it appears that the agency is using this career ladder proposal as a subterfuge to not only eliminate the HMT position, but to also abrogate our scheduling article 20 and practices. Page 6 states that "schedule rotations should allow for *flexibility in staffing* to meet the changing requirements of IDSS *and allow for surge staffing*." The agency's proposal is too clever by half.

We have previously and repeatedly advised the NWS that the career ladder progression plan at issue is a clear and patent breach of these three MOUs. Your decision to implement this plan despite that breach constitutes a repudiation of the 2003, 2004 and 2016 MOUs, which is an unfair labor practice in violation of 5 U.S.C. section 7116(a)(1) and (5). *Department of Transportation, Federal Aviation Administration, Fort Worth, TX and PASS*, 55 F.L.R.A. 951 (1999).

As relief, we demand that the NWS rescind its notice of implementation and abide by the agreements described above. If implemented, we demand back pay for any unit employee whose promotion is delayed due to a violation of Article 14, section 7. We demand that any position bid that does not provide HMTs an opportunity to be considered as required by the WFO Staffing MOU of 2004 be rebid and appropriate back pay be awarded if an HMT is ultimately selected.

We demand that any direct hire position that is filed in violation of the May 2003 MOU be vacated and that the interest of current GS 9 and GS 11 interns be solicited in accordance with that MOU before determining whether the vacancy should be bid as status applicants only. Further, we demand back pay that may result from any pay lost as a result of any violations of Article 20 or changes in scheduling practices that result from the implementation of the new scheduling practices described on page 6 of the plan.

In addition, we demand attorney fees in the event that any back pay is awarded as a result of this grievance.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Dan Sobien", is centered on a light-colored rectangular background.

Daniel A. Sobien  
National President