



The Four Winds

National Weather Service Employees Organization

Federal Arbitrator rules NWS violated agreement by failing to fill OPL vacancies

(October 21, 2019) On October 10, 2019, Arbitrator Laurence Evans held that the NWS has violated a 2004 staffing agreement with NWSEO by failing to fill over 30 vacant Observation Program Leader (OPL) positions. The 2004 agreement restructured the Hydrometeorological Technician (HMT) and Intern units at Weather Forecast Offices (WFOs), with the NWS agreeing to advertise any vacant position for *both* HMT and Intern applicants, rather than setting aside a specific number of slots for either category of employee. The NWS also agreed to create a GS-12 OPL position so that HMTs could have advancement opportunities. The agreement provided that when OPLs retire or leave, “the same recruitment process will be conducted.” However, since 2016, the NWS has only filled 14 of 40 OPL positions that have become vacant.

In ruling for the union, Arbitrator Evans rejected “the unpersuasive and unsupported” testimony that the Agency lacked sufficient funding to fill vacant OPL positions. Mr. Evans wrote:

“Record evidence establishes that the agency has not implemented the disputed agreement in good faith, particularly with respect to paragraph 2.b of the 2004 Agreement: “As DAPMs or OPLs retire or leave the WFO for other reasons, the same recruitment process will be conducted.” Record evidence shows that the Agency has been unjustifiably dilatory implementing the Agreement. Given the Agency’s managerial prerogatives under the Statute, the Agency has discretion as to when it fills vacant positions. But it must exercise that discretion in good faith. Having entered into lawful agreement with the Union under the Statute, the Agency cannot simply ignore or put-off its commitments and obligations thereunder, except for *bona fide* and legitimate operational considerations. Here, I cannot conclude that the Agency failed to fill vacant OPL positions based on *bona fide* and legitimate operational considerations.

Mr. Evans directed the NWS to honor the 2004 agreement in good faith and retained jurisdiction for 180 days in the event that any further disputes over the implementation of his award arise.

For more information, please see the full text of Arbitrator Evans’ ruling at: http://www.nwseo.org/Four%20Winds%202019/19_10_16_OPL_Decision.pdf.

-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.