



National Weather Service Employees Organization

A Message from NWSEO President Werner

May 27, 2020

Dear NWSEO brothers and sisters,



I hope this message finds you well and your spirits strong. You all are amazing as you've continued to deliver exceptional support and services despite enduring a multitude of challenges and stresses during these unprecedented times. Your efforts and their results have been lauded by Agency leadership and members of Congress. I felt it was important to take a moment to update you on what has occurred during the past month. As always, NWSEO has continued to work diligently to represent your best interests, address issues and concerns, and work as collaboratively with management as possible to mitigate any negative impacts on your well-being.

May has not only kept NWSEO leadership busy but has presented some unexpected twists and turns. With that in mind, I thought it was important to take some time to focus on providing you an update on the following pressing issues and activities:

- **Federal Service Impasses Panel (FSIP) and our Collective Bargaining Agreement (CBA)**
- **Addendum to the GS 5-12 Progression Program Memorandum of Understanding (MOU)**
- **No Notice Reduction in Grades, Staffing Analysis**
- **Observing Programming Leader (OPL) Arbitration**
- **Union Grievances**
- **COVID-19**

FSIP and our CBA

As explained in the March 24 and April 10 *Four Winds*, the FSIP asserted jurisdiction over the 42 unresolved articles for the successor CBA. This came at the request of the NWS, after they walked away from the bargaining table and claimed that an impasse existed in negotiations. NWSEO contended the parties were not at impasse and have continued to bargain. Although NWS and NWSEO submitted their "final best offers" and supporting arguments for each of the unresolved articles as requested by the FSIP in April, NWSEO has continued to insist on bargaining until the FSIP reaches a decision. Since the FSIP asserted jurisdiction, NWSEO and NWS have successfully agreed to eight additional CBA articles, including four last week! As a result, the FSIP has allowed the parties to continue to negotiate and has not yet issued an order deciding which of the proposed articles the parties must incorporate into a new contract. Last week, NWSEO notified NWS that we wished to begin working toward agreements on an additional seven articles (20, 21, 27, 37, 41, 42 and 43) this week.

Addendum to the GS 5-12 Progression Program MOU

An unexpected twist...NWS management met with NWSEO on May 7, 2020 and notified NWSEO that they believed the Addendum to the GS 5-12 Progression Program MOU agreed to by both parties in January 2020 which passed Agency Head Review (AHR) on February 5, 2020 was **illegal**. We were further notified that Code of Federal Regulations (CFR) 330.502 did apply per the November Addendum agreement which did not pass AHR. (AHR: The law essentially requires all agreements and MOUs to be approved for legal sufficiency by the head of the agency or their designee). NWSEO disagreed with management's interpretation because if you take into account the context provided by CFR 330.501, it's unclear that CFR 330.502 would apply. We requested management obtain an official interpretation of the CFR from the Office of Personnel Management (OPM) before any action was taken. The management team at the table said this was unnecessary and that they would send us a previous audit finding from OPM that would support their position. We also requested that they provide us a detailed listing of who would be impacted by this reversal of the January 2020 addendum and the extent of the adverse impacts to employees. To date, NWSEO has not received this information. NWSEO reached out to those we thought might be affected to provide them a heads up on the actions that management might take going forward.

Management informed us that those employees who had received back pay would receive an Indebtedness Notice from the National Finance Center. Management agreed what had occurred was due to no fault of the employees nor the union and would assist affected employees in applying for an Indebtedness Notice waiver which they thought would be approved. The management team at the table agreed to contact local managers to have them assist employees on how to complete their individual waivers.

Another twist and a turn...a little over a week following the meeting, NWSEO heard from several affected employees that without notice, their pay grade had been reduced. For example, they were expecting to receive their pay at the GS-11 rate but received GS-5 pay. I notified the NWS management representative of this surprise when I learned about it on Saturday, May 16, 2020. I received a response that day he'd get to the bottom of it. I wanted to know what had happened and wanted folks who had received this unexpected pay cut to receive back pay immediately.

On the afternoon of May 18, 2020, I sent the following information request to the NWS management representative, which states in part:

"...This is a request for information necessary to file a grievance and a request for an extension of time to file a grievance.

We are investigating the Agency's declaration in our March 7, 2020 meeting that the GS 5-12 Addendum executed by NWSEO and NWS on January 28, 2020 and approved by Agency Head Review on February 5, 2020 was illegal, and that the Agency was no longer going to abide by it. We are also investigating the subsequent actions taken by the Agency and their adverse impacts to bargaining unit employees.

Pursuant to Article 6, Section 2 of the Parties' CBA and 5 USC 7114(b)(4), NWSEO is requesting the following:

- 1. A copy of the 2015 Office of Personnel Management audit finding referenced during the May 7, 2020 meeting. In addition, we request any supporting documentation in sanitized form that explains the audit finding.*

2. *A list of all bargaining unit members impacted by this decision and the changes made to their eopf and pay from the time they entered the lower grade position to when the Agency determined from their perspective that the situation has been corrected to their satisfaction.*

This information will include any change in grade, pay, indebtedness notifications/resolutions and any corrections associated with these actions. This documentation should be provided in sanitized form that ensures SSNs or other PII is masked.

3. *Finally, we request the Agency provide written justification for its claim that 5 CFR 330.502 is applicable, when it is clearly not. The immediately preceding section of the regulations, 330.501, states:*

“The restrictions in this subpart are designed to prevent circumvention of the open competitive examination system defined in Civil Service Rule 1.3 (5 CFR 1.3). These restrictions limit an appointee's immediate movement to another position after appointment from a competitive certificate of eligibles.”

It is clear that this subpart of OPM regulations does not apply because (a) the repromotion to the previous highest grade after one pay period was a non-competitive action and did not “circumvent” the competitive examination system; and (b) it was a career ladder promotion in the same position rather than a “movement to another position” which is what subsection 330.501 says is restricted.

On May 22, 2020, NWSEO received a response from management stating employees will be returned to their correct grade level and will receive back pay for pay period 9. We have not yet received a response to our information request. Management has 30 days to reply.

No Notice Reduction in Grades

Yet another twist that adversely impacted additional employees. As we reached out and tried to find those who may be affected by the management’s reversal on the Addendum agreement, we found another surprise. **Some employees who had taken downgrades under the GS 5/7/9 hiring long before the Addendum agreement who served the full 90 days in the lower grade and never received back pay and hence, shouldn’t have been impacted by the recent turn of events, also received surprise, no notice down grades** and received far less in their paycheck than anticipated. On Thursday May 21, 2020 NWSEO sent another information request to the NWS management representative which stated in part:

“...In addition to the members previously identified who fell under the conditions set forth in the January 2020 Addendum to the GS 5-12 Progression MOU and were demoted to lower grades without notice or due process, there are others receiving these no notice downgrades resulting in their paychecks coming up 100s of dollars short.

In order to ascertain the scale, impacts and causes of these adverse actions, NWSEO requests a listing of all downgrade actions that have occurred to bargaining unit employees since 4/12/20 through 5/25/20, the Agency’s justification for these actions and the current grade status of those employees adversely impacted by these downgrades...”

NWS Staffing Analysis

Unfortunately, there's not much to update you on here. Chris Jacobson and I attended an informational top-level overview meeting with NWS leadership that are participating in this analysis. Chris and I offered our willingness to help and provide insight from the field level. We were thanked for the offer, but we have not been contacted. It's our understanding the analysis is now complete and was briefed to the NWS Executive Council a couple of weeks ago. NWSEO is scheduled to receive another briefing during the afternoon of June 10. We hope to have details to provide following the June meeting.

OPL Arbitration

On May 4, 2020, Arbitrator Evans gave the parties 30 days to settle the issue of backfilling OPL vacancies, and notified the parties that he will hold another hearing to determine whether the NWS is complying with his initial order if we do not resolve the matter.

NWSEO reached out to 1341-series employees and specifically to all 1341 GS-11 employees to find out if there was interest in applying for current OPL vacancies. We found there was interest in applying for some of the vacant OPL positions. NWSEO met with management and proposed that 10 OPL vacancies be advertised this year and a plan be developed to fill the additional vacancies over the next two years. Management is considering NWSEO's proposal. If a resolution cannot be found, this matter will be decided by Arbitrator Evans.

Union Grievances

Electronics Technician Merit Assignment Program Vacancy Grievance

On May 11, NWS denied the grievance NWSEO filed over the failure of the NWS to bid six GS-10/11 Electronics Technician (ET) vacancies in the Western Region via a "Merit Assignment Plan" or MAP vacancy announcement simultaneously with a Delegated Examining authority (or DE/CR) announcement. NWS stated in the denial, "NWS properly exercised its management rights to recruit externally for the ET vacancies and did not violate any past practice in choosing to advertise the vacancies as DE/CR only."

NWSEO's review of ET vacancy announcements over the past several years shows there has been a past practice established and that internal applicants have been selected and offered relocation expenses. By announcing these vacancies under DE/CR only with no PCS authorized, NWS has deprived internal applicants of the opportunity to transfer to other offices without relocation expenses paid.

NWSEO notified NWS today that this decision will be advanced to arbitration per Article 11 of the Parties' CBA.

Discrimination against Internal Applicants for GS 5/7/9 DE/CR Vacancies Grievance

On May 15, NWSEO and NWS came to a settlement that was satisfactory to the employee represented in the grievance. Therefore, NWSEO withdrew the grievance asserting NWS wrongfully disqualified the employee for a position based solely on the basis that he already held a position within NWS.

Management's unilateral implementation of the Alaska Regional Operations Center (ROC)

This grievance alleges that management unilaterally implemented a work schedule that had not been negotiated by the parties. NWSEO seeks an immediate remedy of working a schedule previously proposed by management and preferred to the current one followed by management's commitment to return to the bargaining table to make a timely and good faith effort to negotiate a new schedule. The deadline for management's response to this grievance was extended to June 4.

COVID-19

Although NWS and NWSEO seem to agree to disagree on a number of issues, the one thing we do agree on is that the safety of employees and their families is currently job number one. Our relationship regarding COVID-19 issues has evolved into one of collaboration with NWSEO attending one to two meetings a week with management on these issues. NWS Senior Leadership has solicited our feedback and have responded favorably to concerns we've brought to their attention.

Among some of us our anxiety levels are ramping up as there's constant chatter about the "new normal". What will it look like? Will it be safe or expose us to additional risks? We're bombarded with information regarding a mirage of phased approaches to opening up America at the federal, state and local levels along with many dissenting and consenting voices on the topic and methods employed.

These activities are essentially out of our control, but we do have some influence on the NOAA/NWS approach. I'm happy to report that I've been told repeatedly that NOAA and NWS are going to take a conservative and scientific approach moving forward. At every briefing, a slide is provided showing the latest data along with the Centers for Disease Control and Prevention (CDC) guidance and information put together by NOAA's Captain Rathke along with his interpretation of the data.

Per our recent meetings, we are still in the mitigation phase or phase zero where we have been for weeks. To move into phase one, we'll need ample sanitation and personal protective equipment (PPE) on hand, greater test availability, faster test turn around, and greater test accuracy. I've been told that phase one for offices supporting operational missions would just include some minor tweaks to provide some relief and may be based on the conditions at a given locality. Other NOAA units will gradually be allowed to bring back up to 25% of the staff to take care of some of the important work they do that they have not been able to do from home.

Moving forward there may be some disconnects between our more cautious approach and what's being done locally, but we have the final say in what we do in our federal facilities. We've discussed how our social distancing policies, minimum footprint for office staffing, sanitizing of offices and, of course, some luck has greatly mitigated the impacts to our folks and the mission and we want to be very cautious about changing what we're doing. Any changes to what we're doing now at our offices will be conditions-based and we must ensure we have to keep adequate materials in place such as sanitizers and PPE. Safety of employees comes first, and therefore maximum flexibility in telework must remain. The fact that many of our NOAA folks in places like the DC area commute work using public transportation has been a key topic of discussion and a major concern in considering any changes to how we're operating today going forward.

We're still working to determine what phase two and three will look like, but it seems apparent that changes to current policy will evolve slowly and only as conditions become safe enough to relax current policy. As I've heard numerous times, this is a marathon not a sprint. No one can tell us with certainty how far along we are, but we're far from the final mile.

Below are some helpful COVID-19 links gleaned from one of CAPT Rathke's slides:

<https://sites.google.com/a/noaa.gov/covid/supervisor-resources>

<https://www.cdc.gov/coronavirus/2019-ncov/community/mental-health-non-healthcare.html>

<https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/diy-cloth-face-coverings.html>

<https://www.cdc.gov/coronavirus/2019-ncov/travelers/travel-in-the-us.html>

<https://www.cdc.gov/coronavirus/2019-ncov/if-you-are-sick/end-home-isolation.html>

One more important note, the topic of face coverings was discussed at Tuesday's NWS Operations meeting. Per the NWS Deputy Assistant Administrator and NWS Chief Operating Officer (COO), we will continue to follow what has been successful thus far. That is, employees should wear face coverings whenever they are unable to maintain a social distance of 6 feet or more. Within NWS offices, you should generally wear a face covering when entering or leaving the office, in common areas and bathrooms, or at any other times you cannot maintain a social distance of 6 feet. We were briefed at yesterday's meeting that the NWS stance was shared with and supported by NOAA. In the future, any changes to the current NWS policy will likely come through the NWS COO.

Despite the numerous challenges presented, your NWSEO leadership team remains steadfast in fighting for the rights of employees and preserving jobs because you matter! The mission doesn't get accomplished without your talent and dedication.

We need more motivated and dedicated employees to stand in solidarity for workers. Invite your co-workers to join us today to become a NWSEO member.

Thank you all for your service! Be safe and look out for one another.

Warmest regards,

A handwritten signature in black ink, appearing to read "John Werner". The signature is fluid and cursive, with a large loop at the end.

John Werner
President, National Weather Employees Organization