

TRANSCRIPT OF PROCEEDINGS

IN THE MATTER OF:)
)
ARBITRATION BETWEEN NOAA)
) No. FMCS-13-02465-A
AND)
)
NATIONAL WEATHER SERVICE)
EMPLOYEES ORGANIZATION)

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<u>For the Union:</u>					
Ramon I. Sierra	59	127	136	--	--
Daniel A. Sobien	137	--	--	--	--

E X H I B I T S

<u>JOINT EXHIBITS:</u>	<u>IDENTIFIED</u>	<u>RECEIVED</u>
1 through 12	13	13
<u>UNION EXHIBITS:</u>		
1	122	124
2	78	79
3	81	83
4	87	90
5	90	91
6	91	92
7	94	96
8	102	107
9	108	109
10	109	110
11	110	111
12	111	112
13	112	113
14	113	114
15	114	114
16	115	116
17	115	116
18	116	117
19	117	118
20	119	--

E X H I B I T S

<u>UNION EXHIBITS:</u>	<u>IDENTIFIED</u>	<u>RECEIVED</u>
21	141	142
22	144	145
23	145	146
24	146	149
25	149	152
26	152	154
27	154	156
28	156	157
29	157	160
30	160	161
31	161	163
32	163	164
33	164	165
34	165	166
35	166	166
36	166	167
37	168	168
38	168	169
39	170	170
40	170	171
41	172	173
42	173	174
43	174	174

E X H I B I T S

<u>UNION EXHIBITS:</u>	<u>IDENTIFIED</u>	<u>RECEIVED</u>
44	175	177
45	178	179
46	179	181
47	181	184
48	187	187
49	188	188
50	189	190
51	195	195
52 through 55	196	196
56	197	201
57	202	206
58	206	211
59	205	206
60 and 61	211	212
62	211	214
63	216	235
64	219	220
65	222	227
66	229	230
67	231	232
68	232	236
69	232	234
70 and 71	233	234

E X H I B I T S

<u>UNION EXHIBITS:</u>	<u>IDENTIFIED</u>	<u>RECEIVED</u>
72	218	219
73 and 74	221	222
75	245	247
76	248	249
77	243	245

P R O C E E D I N G S

(9:59 a.m.)

1
2
3 ARBITRATOR SHARNOFF: On the record. Mr.
4 Hirn?

5 MR. HIRN: Thank you, Mr. Sharnoff. We just
6 exchanged moments ago the proposed issues, and as you
7 see, that there is a wide number of issues in this
8 case.

9 ARBITRATOR SHARNOFF: I would see if I --

10 MR. HIRN: Okay.

11 ARBITRATOR SHARNOFF: -- also had the
12 Agency's list, which I now have.

13 MR. HIRN: The Agency has proposed 16
14 issues. I've not had the opportunity to study them
15 thoroughly and compare it to what we have proposed
16 other than to note that they're very similar. The
17 difference in the numbers of issues could be explained
18 by I in drafting the Union's issues have compounded a
19 few of the issues together compared to how they've
20 drafted it.

21 I do note some important differences
22 initially, however, and part of it -- my understanding
23 of the difference -- is based on previous discussions
24 with the Agency as I understand their position. This
25 is four grievances. We filed three of them before the

1 hiring freeze, one covering lead forecaster positions,
2 one covering journeyman forecaster positions, one
3 covering positions that are called hydrometeorological
4 technician/meteorologist interns, which you'll hear
5 are two job classifications that work in the same unit
6 and positions are used for either job classification.

7 We grieved. When we filed the grievance, we
8 had learned of a number of unfilled vacancies, which
9 we identified in the grievance. We also said that we
10 believed that there may be other unfilled vacancies
11 and that the grievance covers all unfilled vacancies,
12 and as relief, we ask that all the vacancies in those
13 position classifications be filled.

14 The Agency's draft of the issues seems to
15 limit it only to the positions that we were able to
16 identify as being vacant at the time, and based on my
17 discussions with the Agency counsel prior to the
18 hearing, I understand they're taking the position that
19 the positions that we were not specifically aware of,
20 but we had referred to as any and other all vacant
21 positions, are not covered by the grievance. We say
22 they are covered by the grievance. I think that's a
23 distinction that we have between the two.

24 I would note that the issue is sort of moot
25 because -- or maybe I wouldn't say moot, but subsumed

1 within the fourth grievance we filed, which was about
2 the hiring freeze, which encompassed all bargaining
3 unit positions nationwide.

4 Another difference that I note in their
5 description, on No. 9, they're referring only to an
6 alleged violation of a 1993 MOU, but the grievance
7 referred to several other staffing agreements as well
8 that were violated, which they have referred to in
9 their issues covering the lead forecaster and
10 journeyman forecaster grievances.

11 And I also note that in the journeyman
12 forecaster grievance that we filed we also alleged a
13 violation of a portion of the agreement that provides
14 for relocation costs, which I have listed as one, two,
15 three, four, the fifth issue in the Union's grievance.
16 Of course, we don't see that issue referred to in the
17 Agency's proposed issues.

18 So that's just a first reading. There may
19 be some other problems that I find with accepting
20 their issues once I have the opportunity for a more
21 careful study, but at this point, we can't agree to
22 the Agency's proposed issues because they're
23 underinclusive.

24 MS. CIOFFALO: So just to respond to a few
25 of the differences that Mr. Hirn has pointed out, with

1 respect to the HMT intern grievance, and this is
2 Agency's proposed Issue No. 9, that grievance does not
3 actually mention any other agreement other than the
4 1993, and that would be Joint Exhibit 2-C if you want
5 to take a look at that. It only alleges the -- I'm
6 sorry. Yes. 2-B. It only alleges violation of
7 the --

8 MR. HIRN: No. The second paragraph does
9 refer to the --

10 MS. CIOFFALO: Oh, I see it.

11 MR. HIRN: -- 2000 agreement and the 2004
12 agreement. The second paragraph.

13 MS. CIOFFALO: It refers to the initial
14 agreement being modified by those agreements.

15 MR. HIRN: Yes.

16 MS. CIOFFALO: Okay. And I believe the
17 Agency put as modified. As amended. Yes. The
18 December 10, 1993, MOU as amended.

19 ARBITRATOR SHARNOFF: Okay.

20 MS. CIOFFALO: But anyway, that's one thing.

21 With respect to the fifth, the Union's
22 proposed fifth issue, Mr. Hirn is correct. I did not
23 include that in the Agency's proposed issues and would
24 not be opposed to including it. However, the Agency
25 believes that it is not accurate with respect to what

1 was grieved. The Union grieved violation of Article
2 8, Section 3, in that particular grievance on I
3 believe it was Joint Exhibit 2-C.

4 ARBITRATOR SHARNOFF: Are you talking about
5 4 or 5?

6 MS. CIOFFALO: It's Union's proposed Issue
7 5, the second from the last.

8 ARBITRATOR SHARNOFF: Oh.

9 MR. HIRN: No. This grievance, what you
10 have submitted as 2-C is not the correct grievance.

11 MS. CIOFFALO: Okay.

12 MR. HIRN: Within a few days after it there
13 was an amended grievance filed, which you have not
14 included.

15 MS. CIOFFALO: You filed an amended
16 grievance that included these articles?

17 MR. HIRN: Yes. And that was the one that
18 when you answered the grievance it did refer to the
19 allegations in the amended grievance.

20 MS. CIOFFALO: Okay. This is the journeyman
21 forecaster. So, Richard, I know that you had gone
22 through these joint exhibits with the prior attorney
23 on the case because these are joint exhibits that were
24 compiled. So is there anything else that you're aware
25 in the joint exhibits that are not accurate?

1 MR. HIRN: Not at the moment. This is
2 the --

3 MS. CIOFFALO: And we'll need to make copies
4 of the correct one.

5 MR. HIRN: Yes. Here's the amended
6 grievance. And the allegations about those provisions
7 were referred to in the Agency's denial.

8 ARBITRATOR SHARNOFF: What is the date on
9 the amended grievance?

10 MR. HIRN: March 25.

11 ARBITRATOR SHARNOFF: Okay. I don't have
12 that.

13 MS. CIOFFALO: Right.

14 ARBITRATOR SHARNOFF: I should state for the
15 record that prior to the arbitration hearing the
16 Arbitrator was sent a copy or copies of Joint Exhibits
17 1 through 12, which I reviewed prior to the hearing
18 today.

19 (The documents referred to
20 were marked for
21 identification as Joint
22 Exhibit Nos. 1 through 12 and
23 were received in evidence.)

24 ARBITRATOR SHARNOFF: In any event, I don't
25 have that one.

1 MR. HIRN: Yes. What I would suggest is
2 substituting that one for 2-C.

3 MS. CIOFFALO: Right. Yes. We can have
4 some copies made.

5 So, to get back to the proposed issues, the
6 Agency does not have a problem with working from the
7 Union's proposed issues, but there are a number of
8 things that we feel would need to be modified. For
9 example, the Union specifically in their first
10 proposed issue refers to a breach of the parties'
11 1993, 2000, and 2004 staffing agreements.

12 As the joint exhibits show, there is one
13 1993 MOU that was agreed to between the parties and
14 then a 1993, 2000, and 2004 staffing plan. None of
15 those plans have signatures or anything like that on
16 it, so to the extent that it assumes that those are
17 agreements, I would request that that be revised to
18 read that did the employer breach the parties' 1993
19 MOU or 1993, 2000, or 2004 staffing plans by failing
20 to fill vacant bargaining unit positions.

21 Also at the end of that proposed issue Mr.
22 Hirn includes vacant bargaining unit positions at
23 weather forecast offices and river forecast centers.
24 As Mr. Hirn was explaining, the first three grievances
25 in this case do not allege violation of any agreements

1 with respect to the river forecast centers or
2 hydrologists. It's only alleging vacancies in the
3 weather forecast offices in the forecaster staff. So
4 I'd request that that reference to river forecast
5 centers be removed.

6 MR. HIRN: The first issue that we propose
7 covers all four grievances, and with regard to the
8 fourth grievance about failing to fill the positions,
9 it covered all bargaining unit positions.

10 MS. CIOFFALO: So I would request that we
11 make that two separate issues because the Union is
12 alleging prior to any official NOAA hiring freeze that
13 occurred they were already alleging that management
14 breached these agreements with failure to fill
15 specific positions and then they have this broader
16 hiring freeze argument. Their reasons for the hiring
17 freeze and any arguments with respect to that I
18 understand would cover all the bargaining unit
19 positions, but I think that's an important distinction
20 to make.

21 MR. HIRN: Also I want to note that I'm a
22 little bit confused about the Agency's position today
23 that the 2000 and 2004 agreements are not agreements
24 when, if I recall correctly from our discussions, that
25 Agency counsel had previously told me there was no

1 dispute that those were agreements. So I'm a little
2 bit surprised to hear that today, but I think the
3 evidence are going to show that those were in fact
4 collectively bargained agreements between the parties
5 even if they were not in the form of an MOU.

6 Mr. Sharnoff, as you may have from your
7 experience in the federal sector known, during the
8 Clinton Administration and shortly following it there
9 was this partnership going on where people bargained
10 in partnership and it was warm and fuzzy.

11 ARBITRATOR SHARNOFF: Al Gore the name was.

12 MR. HIRN: Yes. Yes. And then there were
13 agreements that parties reached that through exchange
14 of emails or notes or memos or whatever or even
15 verbally, though they were not in the form of an MOU,
16 are binding agreements.

17 Just because they were conducted during the
18 more informal partnership method does not mean that
19 they weren't agreements, but you will see documents
20 today which we'll refer to them as the parties agree
21 to do this, the Weather Service Union agree to this,
22 that and the other thing in the context of 2004 and
23 2000. There is language that says an exchange of
24 documents and said parties agree to them, so I'm just
25 surprised that they're taking the position today that

1 they're not agreements.

2 MS. CIOFFALO: I can't speak to
3 conversations that he may have had with somebody other
4 than me, but if --

5 MR. HIRN: I was referring to a conversation
6 we had if I had recalled it correctly.

7 MS. CIOFFALO: With me?

8 MR. HIRN: Yes.

9 MS. CIOFFALO: I don't recall a conversation
10 like that. That being said, I mean, if as part of
11 your case you're going to argue that these are
12 substantive agreements --

13 MR. HIRN: Yes.

14 MS. CIOFFALO: -- that are binding, which is
15 what you're arguing in the grievance, then I believe
16 that it should not be assumed within the issues and
17 then one of the issues would be are these agreements.

18 ARBITRATOR SHARNOFF: Well, it sounds like
19 there is no agreement on that and it can be litigated
20 as part of the issue whether or not or what those 2000
21 and 2004 documents are.

22 MR. HIRN: And I'm also curious because in
23 the Agency's grievance denials they refer to it as
24 agreements. While the agreements you refer to. I'm
25 reading from the April 29, Joint Exhibit 3-A. While

1 the agreements you refer to establish the number and
2 types of full-time equivalents, they are filled at
3 management's discretion, et cetera, et cetera.

4 MS. CIOFFALO: Understanding that the
5 Weather Service employees are not attorneys but also
6 that they're using the language that they were
7 presented with in the grievance, and I don't think
8 that should be construed against the Agency.

9 MR. HIRN: I think an Agency has to be held
10 to their grievance denial.

11 ARBITRATOR SHARNOFF: Well, if there is a
12 dispute as to what the operative language is in those
13 agreements or documents, just refer to them as
14 staffing documents for now and you can litigate
15 whether or not they're binding in some way. Obviously
16 the parties don't agree or we wouldn't be here.

17 MS. CIOFFALO: And the titles of these
18 documents that they're referring to is HR Position
19 Management Plans, Management Plan Regarding Staffing
20 at WFOs, so I think we should just refer to them by
21 their name rather than the Union assumption as we
22 have.

23 MR. HIRN: No. I'm going to refer to them
24 as an agreement.

25 ARBITRATOR SHARNOFF: Well, that's fine.

1 Obviously the Agency doesn't agree, so at least on
2 that one there's no agreement on the statement of the
3 issue on that first issue.

4 MS. CIOFFALO: With respect to the Union's
5 proposed second issue, not really any problem with
6 that other than the Union grieved an unfair labor
7 practice in violation of a particular part of the
8 statute, which is 7116(a)(1) and (a)(5), so if we can
9 make that specific.

10 ARBITRATOR SHARNOFF: I'm sorry.
11 7116(a)(1)?

12 MS. CIOFFALO: And (a)(5).

13 With respect to proposed Issue 4, so again
14 this is very similar to proposed Issue 1 in that it
15 includes hydrologists regarding the freeze on hiring
16 positions, so just to make the distinction that the
17 first three grievances do not cover hydrologists and
18 the fourth grievance with respect to the NOAA hiring
19 freeze covers hydrologists.

20 And then probably most important, the Agency
21 completely objects to Issue No. 6. That issue was
22 never grieved during ULP, never filed about any
23 failure to respond to information requests so that it
24 would not properly be before the Arbitrator and we
25 should not be litigating that today.

1 MR. HIRN: Well, I'm sorry, Monique. Once
2 again I think you've not fully read carefully the
3 Union grievance. On the May 1 grievance, paragraph 4
4 specifically talks about the violation of 7114(b)(4)
5 and failing to respond to that information.

6 MS. CIOFFALO: At the time of the grievance,
7 the Agency was still in communication with the Union
8 about responding to those documents. There was no
9 violation at the time.

10 MR. HIRN: Well, that's your defense, but
11 we've alleged that on March 28 we sent an information
12 request which as of today still has not yet been
13 answered, and we alleged May 1 in that grievance.
14 That was May 1. We alleged that on May 1, by having
15 failed to respond to the March 28 information request,
16 you violated the statute, and the violation continues
17 to this day.

18 ARBITRATOR SHARNOFF: Well, there's a
19 question as to whether the Arbitrator has authority to
20 resolve that "unfair labor practice" and/or --

21 MR. HIRN: But it was in the grievance.

22 ARBITRATOR SHARNOFF: Well, as a violation
23 of the collective bargaining agreement, you can argue
24 that, but it's my understanding that those questions
25 are up to the Federal Labor Relations Authority to

1 determine.

2 MR. HIRN: Well, I think you do have
3 jurisdiction to rule on unfair labor practices to the
4 extent that they're alleged as specifically as a
5 violation in a grievance, and the grievance itself
6 said that they violated the contract and the specific
7 provision of the statute by failing to provide the
8 information.

9 ARBITRATOR SHARNOFF: You can argue that.

10 MS. CIOFFALO: That's all the response that
11 we have to the proposed issues.

12 MS. YOUNG: I have an updated copy of Joint
13 Exhibit 2-C.

14 ARBITRATOR SHARNOFF: Thank you.

15 MR. HIRN: Well, I don't see the opportunity
16 here to resolve the difference of opinions about the
17 issues, so perhaps that's something that maybe the
18 Arbitrator will reserve for his own judgment.

19 ARBITRATOR SHARNOFF: Yes, indeed. And the
20 parties after all the evidence is in may want to
21 reconsider what the issues are, some or all of the
22 issues, but we'll leave that until later.

23 But in any event, if there is no agreement,
24 then I'll just determine in writing the decision and
25 deciding things what the issues I understand to be

1 before me are. I mean, there's sort of general
2 agreement on some of it and some disputes on some
3 pieces of it.

4 All right. I guess one other thing that we
5 didn't do is I mentioned that the parties had sent in
6 12 joint exhibits. At the start of the hearing today
7 the Union handed in a packet. I don't know off the
8 top of my head what the number of Union exhibits were.
9 Are those Union exhibits agreed to by the Agency, or
10 are you going to put them in one at a time and get
11 them entered into the record as you go through each
12 one? Is that the plan?

13 MR. HIRN: Yes, except for the last few,
14 which are responses to Agency information requests.
15 They self-identify as to that, and when I'm done with
16 my two witnesses, I will review them on the record --

17 ARBITRATOR SHARNOFF: Okay.

18 MR. HIRN: -- and suggest that they be
19 admitted as Union exhibits as self-authenticating.

20 MS. CIOFFALO: And the Agency has not seen
21 the exhibits beforehand or discussed them.

22 ARBITRATOR SHARNOFF: Okay. All right. So,
23 at this point, I'll just note for the record I've been
24 handed a stack of Union exhibits, and they are not
25 admitted into evidence at this point. We'll go

1 through them document by document. Any that you
2 choose for whatever reason not to admit through a
3 witness or propose admission through a witness, they
4 just won't be part of the record. Unless it's
5 officially on the record admitted, it just won't be
6 there.

7 All right. Anything else? Anybody need to
8 go off the record to take care of any emergency phone
9 calls, a restroom break before we get going?

10 (No response.)

11 ARBITRATOR SHARNOFF: I'm reminding myself
12 and anybody else if you have a cell phone to put it on
13 stun. I get two phone calls a year, both during an
14 arbitration hearing.

15 MS. CIOFFALO: It's always that way.

16 ARBITRATOR SHARNOFF: All right. With that
17 then, if the Union is ready with an opening statement?

18 MR. HIRN: Thank you, Mr. Sharnoff. The
19 core of this case involves a violation that we will
20 show of three staffing agreements that NWSEO has
21 negotiated with management. They build upon each
22 other.

23 The first one is a December 10, 1993, MOU
24 that resulted from bargaining over a major
25 restructuring of the National Weather Service that

1 occurred during the 1990s. In that, certain staffing
2 agreements were made, and the staffing profiles in
3 that agreement were subsequently amended by two
4 successive agreements, a 2000 agreement the parties
5 call a floater plan and a September 2004 agreement to
6 revise staffing at Weather Service offices in Alaska
7 and at forecast offices in one of the units. So we'll
8 be talking primarily about three staffing plans and/or
9 staffing agreements.

10 But first, before we take a look at what the
11 evidence will show there with regard to that, I want
12 to take a moment to explain or the evidence is going
13 to show that as a result of the 1993 modernization of
14 the National Weather Service the Agency basically
15 falls into a number of different offices split
16 generally between operational units and administrative
17 units.

18 Is that IT fellow around? Is that
19 flickering bothering anybody?

20 FEMALE VOICE: Yes.

21 FEMALE VOICE: I can give him a call and see
22 if he can try to fix it.

23 MR. HIRN: Okay. Basically the Weather
24 Service today operational units, as a result of the
25 modernization, is 122 weather forecast offices

1 everywhere from Guam to Fairbanks, Alaska, to Caribou,
2 Maine, to San Juan, Puerto Rico, 13 river forecast
3 centers, which are co-located with 13 of the weather
4 forecast offices. There are some smaller Weather
5 Service offices in Alaska, Pacific.

6 There are some operational units at the
7 what's called NCEP, National Center for Environmental
8 Prediction. These operational units include the
9 National Hurricane Center in Miami, include the Severe
10 Storm Center in Norman, Oklahoma, which issues
11 advisories and watches for tornadoes and severe
12 weather around the country, and a major forecasting
13 center in College Park.

14 There's also an operational unit here at
15 Weather Service headquarters that is the node for the
16 Weather Service telecommunications system. There are
17 also operational units. The Weather Service runs the
18 two Tsunami Warning Centers for the country, and the
19 Weather Service also has operational units at each of
20 the 21 FAA air route traffic control centers. You
21 will also hear about administrative units such as
22 those here at the Weather Service headquarters, six
23 regional headquarters (sic), and the National Weather
24 Service Training Center.

25 Our story will begin with the Executive

1 Order signed by President Clinton in 1993 which
2 directed agencies to bargain over the numbers, types,
3 and grades of employees of positions assigned to any
4 organizational subdivision. You will hear that the
5 Weather Service and NWSEO entered into a partnership
6 agreement and amended their CBA to mandate bargaining
7 over permissive topics for the life of the Executive
8 Order. You will hear from the testimony that during
9 this period of time the phrase partnering became
10 synonymous with negotiating with the parties.

11 Our first witness will be NWSEO vice --
12 former NWSEO president, not vice president. Well,
13 while he was vice president Ramon Sierra negotiated a
14 staffing MOU involving the modernization and
15 associated restructuring. He later became president
16 of NWSEO. He will describe how during those
17 negotiations the parties bargained over the staffing
18 of 115 new weather forecast offices around the
19 country. He will explain that in the parties'
20 agreement there is a specific agreement as to
21 precisely the number of employees that will be
22 staffing at every forecast office.

23 It appears in Appendix 7.4 of the 1993 human
24 resources plan, which was agreed to through a formal
25 memorandum of understanding. This included five

1 senior forecasters or lead forecasters at every
2 forecast office, a varying number of journeyman or
3 general forecasters, typically five, but it varied
4 somewhat, and the precise number per forecast office
5 is laid out in the agreement. The agreement also
6 provided for five hydrometeorological technicians,
7 HMTs, or meteorologist interns, plus one supervisor
8 called a Data Acquisition Program manager, or DAPM,
9 that staffed what was called the HMT unit.

10 The agreement also provided for one to four
11 electronics technicians, one service hydrologist at 78
12 of the forecast offices, and one secretary,
13 administrative worker, support assistant. There were
14 of course other managers, but these are the bargaining
15 unit employees. The agreement also provided for a
16 varying number of hydrologists at each of the 13 river
17 forecast centers.

18 Mr. Sierra will testify that due to workload
19 changes and a need for increased IT services, in 2000,
20 the parties agreed to amend the 1993 HR plan by
21 restructuring the six-person HMT unit. Remember we
22 had five bargaining unit people plus a DAPM, a
23 manager. And this agreement for restructuring Weather
24 Service forecast offices became known as a floater
25 plan.

1 Mr. Sierra will explain how the Weather
2 Service corporate board, which he was a full member,
3 agreed to restructure that six-person HMT unit by
4 reallocating one position as an information technology
5 officer and that those offices with 10 or more
6 forecasters, one of the positions in the HMT unit was
7 subject to reassignment as a forecaster, as a
8 hydrologist, as an additional electronics technician
9 at the same or another WFO according to agreed upon
10 criteria and that one remaining slot in the HMT unit
11 was set aside for a meteorological intern.

12 A meteorological intern is a career entry
13 position for recently degreed meteorologists who work
14 through an internship program at the Weather Service
15 encumbering one of these slots until they are capable
16 and selected for a full journeyman forecaster
17 position. Mr. Sierra was a member of the team that
18 developed the implementation plan, and he will testify
19 about that.

20 Then one of Mr. Sierra's successors, current
21 Union president Dan Sobien, will testify about a
22 September 2004 agreement to revise the HMT unit. He
23 will explain how in 2004 management proposed to phase
24 out all the HMTs and replace them all with MET
25 interns, but that the parties bargained over it and

1 ultimately agreed that all of the positions in the HMT
2 unit would be advertised as both an HMT or intern and
3 that a GS-12 bargaining unit Observation Program
4 leader would be created in each of the forecast
5 offices to preserve the promotional and relocation
6 opportunities for the HMTs.

7 The evidence today will also talk about how
8 these positions are filled. We will show that there
9 has been and is a standard NOAA 80-day hiring model
10 that establishes the process for Weather Service
11 management to requisition the Workforce Management
12 Office to advertise and fill positions, advertise
13 positions, evaluate applicants, issue certifications,
14 send them back to the selecting officer. It is all
15 done on a preset time scale that runs 80 days.

16 Now, despite these staffing agreements, the
17 evidence will show that since 2010, by the spring of
18 last year the Weather Service had reduced nearly 300
19 positions or approximately 6 percent of its workforce
20 and left many forecaster positions vacant across the
21 country.

22 ARBITRATOR SHARNOFF: Spring of 2013 or
23 2012?

24 MR. HIRN: 2013.

25 ARBITRATOR SHARNOFF: 2013.

1 MR. HIRN: Consequently, on March 13, 15,
2 and 21, NWSEO filed three grievances alleging that the
3 Weather Service was violating the three staffing
4 agreements by failing to fill the lead forecaster
5 positions, the HMT intern and Observation Program
6 leader positions, and by the journeyman forecaster
7 positions respectively. The grievances also alleged
8 in the alternative that management was unilaterally
9 changing conditions of employment if the staffing
10 positions were not violated.

11 The grievance concerning the failure to fill
12 journeyman forecaster grievance was amended on
13 March 25, as we discussed earlier today, to allege
14 that management violated two provisions of the CBA,
15 which guaranteed travel and relocation expenses by
16 canceling recruitment efforts for five forecaster
17 vacancies in the Southern Region because management
18 decided against paying relocation costs.

19 While these grievances were pending,
20 management unilaterally implemented a hiring freeze on
21 all bargaining unit positions. On the following day,
22 even though there was a unilateral implementation, the
23 Union submitted a bargaining demand and a request for
24 information about the impacts and implementation of
25 the freeze needed to formulate bargaining proposals.

1 President Sobien will testify that this bargaining
2 demand and the information request were ignored and
3 have been to this day ignored.

4 On May 1, the Union filed a new grievance
5 over the hiring freeze raising four claims. The
6 grievance reiterated a violation of the staffing
7 agreements covering all the positions at the forecast
8 offices and in fact the river forecast centers
9 included in the HR plan, the 2000 floater plan and the
10 2004 agreement to revise WFO staffing, not just the
11 job categories addressed in the three earlier
12 grievances.

13 In the alternative, and with regard to the
14 bargaining unit positions that were not covered by one
15 or more of the staffing agreements, the Union alleged
16 that management violated Article 8 of the CBA and
17 committed an unfair labor practice when it
18 unilaterally implemented the freeze without providing
19 notice and an opportunity to bargain first. Article 8
20 is our provision of our contract which governs midterm
21 bargaining and bargaining over changes of management
22 proposed conditions of employment.

23 The grievance also alleged that management
24 violated Article 6, Section 2, of the agreement and
25 committed a statutory unfair labor practice because it

1 did not respond to the Union's March 28 information
2 request needed to formulate bargaining proposals to
3 bargain over the impact of the freeze. Mr. Sobien
4 will testify how the failure to even answer our
5 bargaining demand or to answer the information we
6 requested on March 28 made it unable for the Union to
7 even propose postimplementation bargaining proposals.

8 And finally the grievance also alleged that
9 management violated Article 8, Section 1, of the
10 agreement, which requires the Agency to provide NWSEO
11 with predecisional involvement in decisions that are
12 traditional management prerogatives, in this case, the
13 budgetary impacts of the sequestration.

14 You will hear today that most of the
15 positions involved in this case in the bargaining unit
16 are emergency essential. The evidence will show that
17 the failure to fill these positions jeopardizes public
18 safety. In fact, the National Academy of Sciences
19 reported in 2012 that recent service assessments
20 conducted by the Weather Service illustrate the
21 crucial role that the adequately staffed forecast
22 office plays in the success or weaknesses of the
23 Weather Service warning for severe weather and that
24 staffing levels beyond that needed for normal, fair
25 weather staffing are crucial for the protection of

1 life.

2 Evidence will also show, for example, that
3 the Agency's own service assessment for its response
4 in Hurricane/Posttropical Cyclone Sandy last year,
5 that the failure to fill critical positions at
6 operational facilities undermined the Weather
7 Service's ability to fully serve the public in a way
8 that it would otherwise have been able to. And most
9 tellingly, it warned that unless the positions are
10 filled there was a potential failure during the next
11 significant weather events.

12 The Agency has provided some documents in
13 response to our information request, which we will
14 offer as evidence later on, but as far as we've been
15 able to identify from a December 3 report that they
16 provided us, these are the positions covered by the
17 staffing agreement that we believe they're obligated
18 to fill which they have left vacant: 22 lead
19 forecasters, 35 general forecasters, and a host of
20 other positions. Almost 200 positions specifically
21 covered by the staffing agreements are unfilled.

22 The documents they provided also reveal that
23 other bargaining unit positions which are not covered
24 by the staffing agreements but which were affected by
25 management's hiring freeze that are now vacant include

1 some hydrologists at river forecast centers,
2 meteorologists at center Weather Service units --
3 those are the ones at the FAA air route traffic
4 control centers -- some maintenance people, regional
5 facilities technicians, positions at the Tsunami
6 Warning Centers, and 21 meteorologists at the National
7 Centers for Environmental Prediction, including the
8 National Hurricane Center.

9 Now management in their grievance responses
10 raised a number of defenses, and the evidence will
11 show that they don't hold a whole lot of water. First
12 of all, management alleged that the 1993 human
13 resources agreement is no longer in effect, that it
14 was only valid through Stage 2 of the modernization
15 and restructuring.

16 The evidence will show that the agreement
17 reads the MOU will remain in effect until its
18 applicability is no longer considered necessary by
19 both parties as a result of Stage 2 operations. There
20 is no record that the parties ever agreed that there
21 came a time when they considered the MOU no longer
22 necessary. The Agency has admitted that in their
23 July 19 response to an information request, and Mr.
24 Sierra and Mr. Sobien will so testify.

25 Management claims that the agreements only

1 establish the number and types of FTEs but may be
2 filled at management's discretion in light of mission,
3 budget, and logistical requirements. Our rebuttal to
4 that is a staffing agreement is illusory if it isn't
5 construed to include an agreement to actually fill the
6 positions. We will present evidence that in the past
7 management has put in writing that they have been and
8 will fill positions as soon as possible.

9 And with regard to their claim that it's a
10 management right to hire, the FLRA has held that
11 agreements that mandate minimum staffing levels
12 negotiated pursuant to 7106(b)(1) supersede
13 management's right to hire under 7106(a).

14 With regard to the 2000 floater plan
15 agreement, management claims that it wasn't violated
16 because they claim the plan itself contemplates that
17 not every position will be filled; rather that
18 management only must maintain minimum staffing levels
19 necessary to maintain 24/7 operations. Our response
20 to that is that management is taking one sentence out
21 of the floater plan agreement out of context.

22 As Mr. Sierra will testify and as documents
23 that we have left over from the bargaining history
24 will confirm, the statement in the 2000 floater plan
25 that reads, "No office shall have its staffing reduced

1 below a level that would prevent two persons to be on
2 shift around the clock," was intended only to refer to
3 the allocation of the extra position reassigned from
4 the HMT unit, i.e. the floater, to another job
5 classification, because the very next sentence on
6 which management so heavily relies reads that Weather
7 Service forecast offices with nine or less core
8 forecasters will retain their floater plan as an HMT.

9 The sentence was never intended to authorize
10 management to skip filling positions required by the
11 plan, and it has never been previously construed that
12 way.

13 Another defense that the Agency has raised
14 is they claim the Weather Service has little control
15 of the vacancy process. It's in the hands of the
16 Workforce Management Office. Our rebuttal to that is
17 the Workforce Management Office is the Weather
18 Service's alter ego, an agent. The article of the
19 collective bargaining agreement covers the merit
20 promotion process.

21 The fact that the Weather Service has
22 bargained over staffing belies its claim that it has
23 no control over or responsibility to fill positions
24 and that even if the Weather Service was not
25 responsible for the WFMO's delay in filling positions,

1 many of the positions were unfilled because the
2 Weather Service never submitted recruitment requests
3 to the Workforce Management Office or did not make a
4 selection from certificates of eligibles supplied by
5 the Workforce Management Office or simply canceled
6 recruitment actions.

7 With regard to the hiring freeze, the
8 Weather Service says that they don't have any
9 responsibility for that because it was directed by
10 NOAA. The evidence, however, will show that NOAA and
11 the Weather Service are inseparable. The person who's
12 referred to as the Director of the Weather Service is
13 actually the Assistant Administrator of NOAA. We have
14 our collective bargaining agreements signed by the
15 Assistant Administrator of NOAA.

16 The authority is held that when a union
17 holds exclusive recognition at a component of the
18 Agency that component is obligated to bargain over the
19 conditions of employment despite the fact that control
20 over a particular condition rests with a different
21 organizational component in the same agency.

22 The evidence will show that the hiring, the
23 right to hire, was officially delegated to Weather
24 Service officials by NOAA. And notwithstanding that,
25 the evidence will also show that the NOAA hiring

1 freeze was not the hiring freeze that the Weather
2 Service actually implemented.

3 On March 27, the hiring freeze memorandum
4 that came from the Administrator of NOAA instructed
5 line offices to continue to fill vacancies for which
6 vacancy announcements had closed by the date of the
7 freeze. There were at least 32 such positions that
8 the evidence will show were closed by that date or
9 which the Weather Service failed to fill that are
10 still vacant.

11 In addition, NOAA sought and received
12 authority from the Department of Commerce to continue
13 to fill internal promotions during the hiring freeze,
14 which the Weather Service has not done. Had it done
15 so, it would be able to fill all the forecaster and
16 the ITO vacancies by promotion of the meteorologist
17 interns. They would have been able to promote the
18 meteorologist interns to journeyman forecasters. The
19 lead forecaster positions would have been filled by
20 journeyman forecaster positions. So although NOAA
21 said do internal promotions, the Weather Service has
22 not done so.

23 NOAA also instructed line offices to submit
24 priority hiring placement waiver requests to the
25 hiring freeze to ensure that mission critical

1 positions are filled. And as noted earlier, almost
2 all bargaining unit positions are mission critical or
3 designated emergency essential. In fact, the evidence
4 will show that all the positions in the forecast
5 offices and river forecast centers and all the
6 operational units are mission critical or emergency
7 essential. The Weather Service has not done so and
8 has only continued to fill a handful of positions,
9 mostly management.

10 Management also says that there was no
11 obligation to bargain over the hiring freeze prior to
12 its implementation because it was ostensibly an
13 emergency within the meaning of Section 7106(a)(2)(D),
14 which provides that nothing in the chapter shall
15 affect the authority of any management official to
16 take whatever actions may be necessary to carry out
17 Agency mission during emergencies.

18 We will show why that does not apply. First
19 of all, back to basic principles. The management
20 rights clause, of which the emergency provision is a
21 part of, is subordinate to agreements negotiated over
22 permissive subjects such as staffing negotiated
23 pursuant to 7106(b)(1) of the statute. The emergency
24 exception has only been applied to excuse
25 preimplementation bargaining very rarely and has never

1 been used by the FLRA to excuse noncompliance with a
2 collective bargaining agreement.

3 Even in the most rare cases when the FLRA
4 has accepted the emergency clause as an excuse for
5 preimplementation bargaining, the FLRA has held that
6 the agencies are required to engage in
7 postimplementation bargaining, which the Weather
8 Service has not done. And in fact I do want to note
9 based on our research we have been only able to
10 identify a single case, a single case in its history
11 where the FLRA has excused preimplementation
12 bargaining under that emergency exception.

13 There was an ALJ decision, and that one case
14 involved an emergency drug sting. It was raised in an
15 ALJ decision in another case, but in that case, the
16 parties didn't contest whether there was an emergency
17 or not, so the issue was really never fully addressed.
18 But nonetheless, the Agency in rejecting the emergency
19 exception in any number of cases has stated that the
20 Agency has the burden to demonstrate that an emergency
21 exists that excuses the bargaining and that there are
22 no other alternatives.

23 The evidence will show an emergency did not
24 exist in this case. First of all, the Agency knew in
25 advance that sequestration was going to happen, so it

1 was an emergency of its own making. The sequestration
2 does not meet the dictionary definition of an
3 emergency which would cause an unforeseen or
4 unexpected events.

5 There is no caselaw that supports the
6 proposition that financial issues or shortfalls
7 constitute an emergency. In fact, the FLRA held in
8 another case involving the NLRB and its employees
9 union that a recision of 6.5 percent of the agency's
10 appropriations was not an emergency within the meaning
11 of 7106(a)(2)(D).

12 It's also interesting that we are aware of
13 no other federal agency that during the course as a
14 result of the sequestration last March did not engage
15 in preimplementation bargaining with their unions.
16 The *Professional Labor Relations Press*, *The Washington*
17 *Post* are replete with article about the bargaining
18 that went on between federal agencies and their unions
19 over the impact of the sequestration. We know of no
20 situation -- we have heard of none -- where any other
21 agency has alleged that they were excused from
22 bargaining because the sequestration was an emergency.

23 We believe that the evidence is going to
24 show that there was not even a financial emergency
25 last March at the Weather Service as a result of the

1 sequestration because the Weather Service had already
2 reduced its workforce by 6 percent since October 1,
3 2010, while the Agency's appropriations were
4 increasing.

5 And in the fact the evidence will show that
6 in the FY '13 Commerce Appropriations Act enacted in
7 March before the sequestration, before the hiring
8 freeze, the House and Senate Appropriations Committee
9 increased the line for local warnings and forecasts,
10 out of which most Weather Service employees' salaries
11 are paid, by \$17 million above the President's request
12 in order to buffer the impact of the sequestration on
13 the Weather Service.

14 So while there was this 5 percent cut to the
15 Weather Service like every other federal agency, the
16 Appropriations Committee, of the line item from which
17 salaries are paid, added \$17 million to mitigate the
18 impact of that cut just before or just at the time of
19 the sequestration, plus the Weather Service also
20 received an additional \$25 million to improve
21 forecasting capabilities in the Sandy Supplemental
22 Appropriations Act in January of 2013.

23 The Agency hasn't even identified or did not
24 identify and still hasn't how much it would save
25 during the remainder of the FY '13 fiscal year as a

1 result of the hiring freeze. And here's the
2 interesting thing. If you look at the NOAA hiring
3 freeze, it said to continue to fill the positions that
4 have already been advertised, which means that in the
5 remaining six months they were still supposed to,
6 which the Weather Service didn't follow this
7 direction, but were still supposed to continue to
8 fill.

9 But the freeze wasn't really even geared, if
10 you look at the timing of the time it takes to fill
11 the positions, by freezing initial recruitment
12 actions, that's not even going to benefit the Agency
13 before the end of FY '13, during which sequestration
14 took place. The timing doesn't even match up. There
15 was no need to have the freeze to save money in FY '13
16 the way it was structured because the freeze on
17 recruitment, the positions would not have been filled
18 until the very end of that fiscal year or later than
19 that.

20 And as I noted a moment ago, the FLRA says
21 the Agency has to prove there's no alternative, but we
22 will show through evidence that the Weather Service
23 had numerous alternatives to the hiring freeze in
24 order to save money if it had a real need to do so.
25 The evidence will show that the Weather Service spends

1 over \$100 million annually on 800 contractors whose
2 salaries are nearly twice that of an FTE. The Weather
3 Service distributes over \$20 million annually in
4 grants.

5 And perhaps more importantly, the OMB
6 guidance on sequestration instructed agencies to seek
7 a reprogramming of funds in order to reduce risk and
8 minimize impacts on the Agency's core mission.
9 Section 103 of the FY '13 Commerce Appropriations Act
10 contained explicit reprogramming authority. The
11 Agency can reprogram funds simply by sending a written
12 request to the Appropriations Committee. It did not
13 need legislation.

14 If you may recall, Mr. Sharnoff, when there
15 was first sequestration, the Congress had to do some
16 emergency appropriations, emergency action to
17 reprogram funds in the Transportation bill to allow
18 the FAA to reprogram money. That had to be done by
19 legislation. But the Commerce Appropriations Act was
20 different. The Agency did not need legislation to
21 reprogram funds. They only need to submit a letter to
22 the Appropriations Committee.

23 And interestingly, the evidence we're going
24 to present is going to show that on March 5 Commerce
25 Appropriations Chair Frank Wolf wrote the DOC asking

1 for them to submit a reprogramming request in order to
2 avoid the negative impact of the Weather Service's
3 ability to run the Weather Service.

4 So that sort of sums up the big issues as we
5 see them here. And as I said, we're going to have two
6 witnesses, in order Ramon Sierra and Dan Sobien.

7 ARBITRATOR SHARNOFF: Okay. Thank you. And
8 if you have a copy of that, that would help.

9 MR. HIRN: As a matter of fact, I do.

10 ARBITRATOR SHARNOFF: I had a feeling you
11 would. Thank you. Okay.

12 MS. CIOFFALO: Mr. Arbitrator, the Union is
13 asking you today to construe various staffing plans in
14 a manner that would flagrantly violate management's
15 statutory right to hire, a right which cannot be
16 waived by law and a right that has never been waived
17 by the Weather Service.

18 As the Union took pains to show, there were
19 several staffing plans that may have been whatever you
20 want to call those plans or agreements. These dealt
21 with permissive topics of numbers and types and grades
22 of employees. Nothing in those agreements, as you
23 will see and through our witness testimony, nothing in
24 those agreements touch whether or not the Agency needs
25 to actually fill vacancies and when, most importantly

1 when an agency needs to fill a vacancy.

2 There were no such agreements that governed
3 that. Indeed, there could not have been such an
4 agreement because that would have egregiously violated
5 management's nonwaivable rights with respect to
6 hiring.

7 You'll see that management has not made any
8 changes to the way that it's operating. Manager after
9 manager will testify over the course of this week that
10 as positions became vacant management filled the
11 position as long as funding was available. Something
12 that the Union has not touched on at all in their
13 opening statement is the fact that federal government
14 agencies cannot spend a dime more than the money that
15 they are appropriated by Congress. That would be a
16 violation with criminal penalties associated with it,
17 a violation of the Anti-Deficiency Act.

18 So management will testify here that they
19 did fill vacancies when they were able to and they did
20 it based on the needs of the mission, which are very
21 important, but also balancing their need to stay
22 within the budget that had been given to them by
23 Congress. Nothing can or does require the Agency to
24 fill a vacancy as soon as it becomes vacant, and it's
25 ludicrous to suggest, as the Union apparently does,

1 that the Agency can never have vacant positions.

2 Contrary to the Union's arguments, the
3 Agency will show that it made no negotiable change, be
4 it substantively or INI negotiable, when it
5 established internal procedures to ensure that it did
6 not spend money that it didn't have. The Union cannot
7 demonstrate that the internal controls changed the way
8 that the Agency filled vacancies, which again is that
9 vacancies are filled as the funds become available
10 based on mission needs.

11 The Union also cannot demonstrate that these
12 internal controls have any discernable negotiable
13 impact on the bargaining unit. In fact, the Agency
14 will show that the longstanding agreements that it
15 does have with the Union are already specifically
16 designed to deal with any impact to employees in the
17 event that vacancies are not filled.

18 You'll hear a lot of facts being presented
19 over the course of the next four days or longer. The
20 most important facts you will hear from the Agency
21 will cover three things. First, the staffing plans
22 cited by the Union, whether they're a grievance or
23 not, again may establish those numbers, types and
24 grades, but they very plainly reserve to management
25 the right to exercise its right to hire and determine

1 its budget.

2 And you'll hear from the management
3 officials who actually implemented these agreements.
4 They'll testify that those staffing plans do not
5 require management to fill any vacancies today in any
6 particular amount of time.

7 Second, you'll hear facts showing that
8 management lived up to all the agreements that it does
9 have with the Union that are applicable today and that
10 they did this during the most constrained budget
11 environment that the Weather Service has seen in
12 decades.

13 Laura Furgione, the Deputy Director of the
14 Weather Service, will testify that the Weather Service
15 faced unprecedented budget cuts that nearly strangled
16 the Agency, to the point where every Weather Service
17 employee was on the brink of being furloughed for at
18 least four days, and that is including several
19 reprogramming requests that the Agency did send to
20 Congress.

21 Even with that reprogramming, the Agency was
22 about to furlough every single Weather Service
23 employee, including the forecasters and the
24 hydrologists and the IT specialists, for four days
25 because what Mr. Hirn did not point out in his opening

1 statement is that a reprogramming does not mean that
2 funds magically appear. A reprogramming means that
3 funds are reallocated within an Agency's budget. They
4 still have to live with the money that Congress
5 appropriated to them, so there was only so much that
6 the Agency could do.

7 You'll also hear that in the time that
8 sequestration eventually became a fact rather than a
9 sound bite that the Agency knew that it was going to
10 be required to implement these 5 percent cuts across
11 the board to every single line of their budget. But
12 here's what's interesting.

13 What's more is that you'll hear on top of
14 these already unbelievable reductions that in late
15 March of 2013 an unexpected additional 2 percent
16 recision was taken off of the Weather Service's budget
17 by Congress in that final appropriations bill. So Ms.
18 Furgione and the Acting CFO at the time, Mr. John
19 Longenecker, will explain that Weather Service's
20 parent bureau, NOAA, had to prepare a request to
21 Congress for a massive, bureau-wide reprogramming.

22 So we're not just talking about Weather
23 Service funds. We're talking about a NOAA-wide
24 reprogramming that would reallocate, and it was a
25 request to reallocate funds between all of NOAA's line

1 and staff offices specifically to give the Weather
2 Service and other much troubled offices money that
3 Congress had originally given to other offices for
4 operations. And you'll hear them testify that that is
5 no small undertaking. That was a massive effort.

6 You'll hear from Maureen Wylie. She's the
7 Chief of Resources, Operations and Management for
8 NOAA. She played an integral role in that
9 reprogramming request. She'll explain the emergency
10 budget situation that did in fact confront NOAA in
11 March of 2013 due to the combination of sequestration
12 and that unexpected additional 2 percent reduction in
13 the NOAA budget. That reduction occurred six months
14 into the fiscal year.

15 Weather Service management will also testify
16 that there was in fact an emergency budget situation
17 that confronted them, again due to the accumulation of
18 these cuts, and Ms. Furgione will explain that she had
19 to take the reins over hiring decisions immediately to
20 ensure that Weather Service could fill its most
21 critical vacancies without violating the Anti-
22 Deficiency Act, which again carries criminal penalties
23 in some cases for the people who violate them. She
24 could not overspend her budgetary resources before the
25 end of the fiscal year.

1 So, in doing so, Ms. Furgione had a very
2 difficult task of balancing this very important
3 mission that the Weather Service has to protect life
4 and property, its paramount mission, but also the need
5 to live within the very constrained budget that she
6 was given in order to complete that mission.

7 So, as the Weather Service struggled to
8 manage the budget crisis that they were in, the
9 Weather Service's every financial move was also under
10 intense scrutiny at that time. And this is also
11 something that was not touched on by the Union. In
12 late 2012, you'll hear that the Weather Service was
13 under a cloud of embarrassing public findings of
14 widespread misappropriation of taxpayer dollars in
15 Fiscal Year 2012, so Weather Service management will
16 describe to you the microscope that they were under
17 with respect to all of their financial decisions and
18 the need to make sure that nothing like that ever
19 happened again.

20 Nevertheless, you will hear that the Weather
21 Service kept their labor obligations sacrosanct. In
22 determining which vacancies to fill, Ms. Furgione will
23 explain that she maintained compliance with a
24 longstanding Union-negotiated criteria that no office
25 will have its staffing reduced to a level below that

1 which would allow it to put two people on shifts at
2 any given time.

3 This has been the practice for a very long
4 time. It was solidified in that 2000 floater
5 agreement that you heard the Union talk about, and it
6 was the first step in Ms. Furgione's decision as to
7 where she was going to fill vacancies with what little
8 money she did have. So that is the most important
9 testimony that you're going to hear.

10 This staffing level that was agreed to did
11 establish that no WFO would have less than two people
12 on duty at all times, and you will hear through much
13 testimony over the course of this week that the
14 Weather Service has always maintained that baseline
15 and that the Union has acknowledged that the Weather
16 Service has maintained that baseline throughout.

17 But it is important to note that even this
18 minimum shift staffing level did not require the
19 Weather Service to actually fill any vacancies. Ms.
20 Furgione exercised her management right to do that in
21 looking at the shift staffing obligation as again that
22 first step in deciding how she was going to manage her
23 budget and how she was going to fill vacancies.

24 So she'll describe to you a formula that she
25 created for assessing the critical nature of each

1 vacancy that was presented to her for exception and
2 she'll explain actually that her formula went even
3 further than her labor obligations required. The
4 formula was actually based on her decision to fill
5 vacancies in offices such that local management could
6 schedule two forecasters per any shift 24/7, 365 days
7 a year, and that's opposed to any two people that may
8 be on staff in a WFO at any time.

9 And she'll explain why she felt that this
10 would best enable the Weather Service to complete its
11 mission given the limited resources that she had and
12 also the severe weather season that she was facing.
13 And Ms. Furgione will also explain that she filled
14 additional vacancies beyond even what that formula
15 would have required based on a case-by-case assessment
16 of the criticality of each position that was presented
17 to her and the status of her budget at that time.

18 And she'll testify that she was able to fill
19 over 50 vacancies since the hiring freeze was
20 instituted and that the Weather Service was able to
21 meet its mission during the very difficult time of
22 sequestration cuts. She'll also testify that the
23 Weather Service managed to live with the resources
24 that Congress gave them, including reprogrammings that
25 were in fact requested and approved.

1 The third topic that you're going to hear
2 about in dealing with this budget crisis was that
3 there are no negotiable changes to the working
4 conditions of bargaining unit employees during this
5 time. The hiring process always continued and
6 vacancies were continually filled as funding became
7 available as they have always been. There was no
8 change there.

9 So the Union is actually alleging in
10 addition to the hiring freeze that occurred, the NOAA
11 hiring freeze that was imposed on the Weather Service
12 in late March, the Union is actually alleging that
13 even before that guidance came out that the Weather
14 Service had implemented a de facto hiring freeze with
15 respect to some of its operational staff simply
16 because of the time it was taking to get positions
17 filled.

18 And you'll hear from management
19 representatives from each of the six Weather Service
20 regions. They'll tell you that there was no de facto
21 hiring freeze. The facts will show the absurdity of
22 this. Regional managers will explain that they had to
23 balance again hiring actions that were needed with the
24 serious budget challenges that were facing the Weather
25 Service even prior to sequestration. They'll explain

1 that in many cases they could not fill vacancies right
2 away because they simply didn't have the funds to do
3 so, so the vacancy would be lapsed is the term that
4 has been used.

5 The vacancy would be lapsed for a period of
6 time to try to recoup some of the labor dollars that
7 they were not spending on salary at that time and that
8 this was necessary in order for them to spend only
9 again that which was given to them for hiring
10 purposes.

11 But make no mistake. They will testify,
12 every single one of them, that while they did have to
13 prioritize filling vacancies based on their mission
14 needs, the vacancies had always been filled when funds
15 were available and would continue to be filled as
16 funds became available again.

17 You're also going to hear that these
18 vacancies and the time that it took to fill vacancies
19 was not within the control of the Weather Service, not
20 entirely within the control of the Weather Service.
21 Regional management will explain at length that
22 logistically the HR arm of NOAA, which is the
23 Workforce Management Office -- that's a NOAA line
24 office -- were facing some serious resource management
25 challenges during that time.

1 They just didn't have the people. They did
2 not have enough people working for them to keep these
3 actions moving, so the time that it was taking to get
4 vacancies through the system even when the budget
5 would allow was increasing and that there was no rhyme
6 or reason to how quickly or slowly a vacancy would go
7 through the system. They'll explain that no matter
8 how much they pleaded, no matter what they did, there
9 was not much that they could do about this.

10 Mr. Hirn put up on his slide the 80-day
11 hiring model that NOAA has to try to fill vacancies.
12 And you'll see in that document that most of the time
13 that it takes to fill a vacancy is directly within the
14 control of the Workforce Management Office. Their
15 staff has to review every single application that
16 comes through the door. They've got to rate and rank
17 all of the applicants. This is where the time suck
18 is, so the Weather Service management had to live with
19 that. There was nothing else that they could do to
20 move that process along.

21 And in fact they tried. You'll hear Ms.
22 Furgione and also the Acting Chief Negotiator, David
23 Murray, testify that they had many conversations with
24 Workforce Management and tried to develop ways to make
25 Workforce Management's job easier so that these things

1 would move forward when they did have the budget to
2 put them through because these were critical
3 vacancies. The bottom line is that management will
4 all affirm that these positions were being filled as
5 fast as both their budgets and HR would allow. There
6 simply was no de facto hiring freeze.

7 The most important thing that you're going
8 to hear, though, with respect to that issue is that
9 management at every level -- local management,
10 regional management, national management -- complied
11 with all of its labor obligations with respect to
12 creating and changing an employee's work schedule in
13 light of the vacancies in their office.

14 And obviously you're going to hear
15 management testify there are always vacancies -- it
16 has to happen that way -- but that there are
17 longstanding negotiated procedures and arrangements
18 with the Union that address the impact of management's
19 right to decide when to fill vacancies.

20 They're going to explain that their local
21 offices applied the CBA, collective bargaining
22 agreement, between the parties in managing vacancies
23 in their ranks, to include provisions like temporary
24 promotions of junior graded employees and also
25 overtime, which was mostly on a voluntary basis.

1 They'll describe that management's practice of filling
2 in on operational shifts, which is actually required
3 by the managers' position description, really took the
4 brunt of covering operational vacancies. Management
5 really did that.

6 And you'll actually see that over time the
7 collective bargaining agreement stayed fairly steady.
8 I'm sorry. Overtime. The overtime provided for in
9 the collective bargaining agreement for bargaining
10 unit employees stayed fairly steady during this time,
11 if not dipped a little. We certainly were not seeing
12 a huge spike in overtime as a result of the difficulty
13 management was having with Workforce Management and
14 with its budget.

15 Management is going to describe that they
16 worked within the procedures that already exist in
17 order to effect this. There are longstanding
18 procedures found in the CBA for negotiating the
19 employees' shift rotation at the local level, and
20 these schedules again were based on the longstanding
21 agreement that two people, at least two people, need
22 to be present and on duty in the weather forecast
23 office at all times. And again, this the Agency
24 always maintained.

25 Every single Weather Service management

1 employee this week will testify that there has never
2 been any agreement with the Union requiring that
3 management fill vacancies within any particular period
4 of time, whether under a hiring freeze or not.
5 Ultimately the Agency has not violated any agreements
6 or staffing plans with a new DCO or violated the
7 statute in any way, and the Agency's denial of the
8 grievances should be upheld.

9 ARBITRATOR SHARNOFF: Thank you. Did you
10 want to respond or proceed?

11 MR. HIRN: No. I think I'll let it go.

12 ARBITRATOR SHARNOFF: Okay. All right. Off
13 the record for a second.

14 (Whereupon, a short recess was taken.)

15 ARBITRATOR SHARNOFF: Okay. On the record.

16 Whereupon,

17 RAMON I. SIERRA

18 having been duly sworn, was called as a
19 witness and was examined and testified as follows:

20 DIRECT EXAMINATION

21 BY MR. HIRN:

22 Q Would you give us your name and spell it for
23 the record, please?

24 A Ramon first name, R-A-M-O-N, middle initial
25 I, last name is Sierra, S-I-E-R-R-A.

1 Q And would you give us your home address?

2 A I live at 1924 Tanglewood Drive,
3 Brownsville, Texas, zip code 78521.

4 Q Are you now or have you ever been employed
5 by the federal government?

6 A I retired from the federal government nine
7 and a half years ago.

8 Q Okay. And for what agency did you work?

9 A I worked for the National Weather Service
10 for 31 years.

11 Q When did you start working with the National
12 Weather Service and in what position?

13 A I started working for the Weather Service in
14 1973 as a weather observer in Houston, Texas.

15 Q And what was your career progression after
16 that?

17 A I was at Houston Intercontinental Airport
18 for two and a half years, and then I was selected for
19 a Weather Service specialist, a Weather Service
20 specialist position in Tampa Bay. I worked there for
21 just under two years, and when I departed, it was to a
22 lateral position, GS-10, also Weather Service
23 specialist, in Brownsville, Texas, and I worked the
24 rest of my career there.

25 Q And what was your career progression at

1 Brownsville?

2 A At Brownsville, for most of the time I
3 remained a Weather Service specialist. Eventually I
4 attained enough education and experience to convert to
5 a journeyman forecaster at the GS-12 level.

6 Q Okay. Did you ever serve as a
7 hydrometeorological technician?

8 A Yes, I did briefly.

9 Q Did you ever hold any position with the
10 National Weather Service Employees Organization?

11 A I held several positions, beginning as the
12 steward in the Brownsville office and over the next 15
13 years moved up the ladder and became the national
14 president in 1995.

15 Q What office did you hold before becoming
16 national president?

17 A Immediately before I was the executive vice
18 president.

19 Q Did you ever serve as the Union's chief
20 negotiator?

21 A Yes, I did.

22 Q And do you recall what period of time that
23 you served as the Union's chief negotiator?

24 A In the early '90s.

25 Q And when did you become president of the

1 Union?

2 A I became president of the Union in 1995.
3 I'm not sure exactly when, but our terms generally
4 began in October, and I served a few months as the
5 president when my predecessor took a buyout.

6 Q And were you president when you retired from
7 the Weather Service?

8 A Yes. No, no. I was not Union president.

9 Q And how long did you serve as Union
10 president?

11 A For a little over six years.

12 Q Did there come a time during your employment
13 and service as a Union officer where the National
14 Weather Service went through a modernization and
15 restructuring?

16 A Yes.

17 Q And can you tell us what period of time that
18 occurred?

19 A I think the initial discussion over a plan
20 to restructure and modernize the Weather Service began
21 in the late '80s, and eventually management proposed a
22 plan to the Union which triggered the beginning of our
23 negotiations.

24 Q What, if any, role did you have in the
25 modernization and restructuring of the National

1 Weather Service in your capacity as a Union official?

2 A I was responsible for negotiating an
3 agreement over the impact and implementation of the
4 plan.

5 Q Did you have any other responsibilities in a
6 public capacity under the Weather Service
7 Modernization Act?

8 A Yes. As a result of a public law that
9 called for the Department of Commerce Secretary to
10 certify that there would be no degradation of services
11 based on the actions that were proposed in the
12 modernization and restructuring, I was appointed to
13 the Modernization Transition Committee as the labor
14 representative.

15 Q And what was the Modernization Transition
16 Committee?

17 A It was a group of individuals that were to
18 hold public hearings and make recommendations to the
19 Secretary of Commerce based on their findings about
20 whether there was a degradation of services
21 anticipated. The committee included user groups. For
22 example, there was a representative there for general
23 aviation. There was a representative from the FAA and
24 also from private weather services also.

25 Q And who appointed you to this committee?

1 A The Department of Commerce Secretary
2 appointed me to the transition committee.

3 Q Would you explain to us the structure of the
4 Weather Service field organization prior to the
5 modernization and restructuring?

6 A Prior to the restructuring there were two
7 main types of field offices. The larger offices were
8 called Weather Service forecast offices, and there
9 were 52 of those offices, and then over 200 Weather
10 Service offices, plus more smaller offices called data
11 acquisition offices.

12 Q And what was the staffing difference between
13 these offices?

14 A The main difference between the WSFO, the
15 Weather Service forecast offices, and the WSO, the
16 smaller offices, was that the larger offices were
17 staffed by meteorologists and the WSOs were staffed by
18 Weather Service specialists.

19 Q What was a Weather Service specialist? Were
20 they paraprofessionals? Technicians? How did they
21 compare as far as their education and training to the
22 forecasters at the forecast office?

23 A The Weather Service specialists were mainly
24 nondegreed personnel. The forecasters at the WSFOs
25 qualified or met the qualifications set by OPM with

1 regard to the meteorologist rating.

2 Q And was there a difference in responsibility
3 between the weather forecast offices and the Weather
4 Service offices prior to the modernization?

5 A The Weather Service forecast offices were
6 responsible for generating forecasts for an area that
7 would encompass one or more WSOs, and the Weather
8 Service specialists at the WSOs had the authority to
9 revise a forecast, but only in the first period, for
10 example, the first 12 hours of a forecast.

11 And both offices were responsible for
12 issuing warnings for severe weather and other
13 problems. But the main difference was the forecasts
14 were prepared at the WSFOs, and the WSOs had some
15 leeway to revise those forecasts.

16 Q How did this field structure change as a
17 result of the modernization and restructuring?

18 MR. HIRN: Which if I use the term MAR, that
19 was the acronym for it, Mr. Sharnoff. M-A-R.

20 ARBITRATOR SHARNOFF: Okay.

21 THE WITNESS: The MAR called for elimination
22 of a great number of WSOs. All the WSFOs, the 52
23 offices, would continue, but they would be downsized.
24 So the Agency was going to have to recruit forecasters
25 to staff -- 115 I think was the initial proposal --

1 115 WFOs as the offices would become known, weather
2 forecast offices.

3 BY MR. HIRN:

4 Q Did this result in the displacement of any
5 employees?

6 A Yes. The Agency had to recruit
7 meteorologists to staff the WSOs that were to spin up
8 to a WFO status, plus it was going to call for a
9 displacement of all the meteorological technicians or
10 the Weather Service specialists that had staffed the
11 WSOs that were slated for closure.

12 Q Now did you negotiate over the staffing of
13 the new forecast offices and what would happen to the
14 displaced employees?

15 A Yes, we did.

16 (Pause.)

17 Q I'm going to show you, Mr. Sierra, what's
18 been accepted as Joint Exhibit 5 and ask if you can
19 identify that document.

20 A This is the memorandum of understanding --

21 ARBITRATOR SHARNOFF: Just give us an
22 opportunity to catch up here.

23 MR. HIRN: Okay. I'm sorry.

24 MS. CIOFFALO: Sir, we have an extra binder
25 if you find that easier to go through the joint

1 exhibits. Either way is fine.

2 ARBITRATOR SHARNOFF: Yes. It's all right.

3 MS. CIOFFALO: Okay.

4 ARBITRATOR SHARNOFF: Okay.

5 THE WITNESS: This document is the
6 memorandum of understanding that resulted from our
7 negotiations over the proposed MAR plan.

8 BY MR. HIRN:

9 Q Did the memorandum of understanding require
10 changes to the proposed MAR plan?

11 A Yes.

12 MS. CIOFFALO: Objection. Is he going to
13 continue to lead the witness this egregiously
14 throughout the --

15 MR. HIRN: Huh?

16 MS. CIOFFALO: I mean, you're pretty much
17 pointing him to --

18 MR. HIRN: I'm sorry. I don't understand.

19 ARBITRATOR SHARNOFF: Okay. As long as it's
20 not on critical matters and he's just attempting to
21 get through he can continue.

22 BY MR. HIRN:

23 Q I'm going to ask you. I'm directing your
24 attention to Joint Exhibit 6. Can you tell us what
25 this document is?

1 A This is the plan for the MAR after
2 negotiations. It incorporates some of the changes
3 that we agreed to in the MOU.

4 Q Did this negotiated final plan identify how
5 the individual weather forecast offices would be
6 staffed?

7 A Yes, it does. In the title, it includes
8 human resources and position management actions that
9 were required.

10 Q Directing your attention to Appendix 7.4 --
11 ARBITRATOR SHARNOFF: Do you want to hold on
12 here and let everybody find it?

13 BY MR. HIRN:

14 Q This is it. It goes this way.

15 A Oh, okay.

16 Q Can you identify what the --

17 ARBITRATOR SHARNOFF: Okay. Wait. I
18 haven't found it.

19 MR. HIRN: It's near the end.

20 ARBITRATOR SHARNOFF: How close to near the
21 end?

22 MR. HIRN: Excuse me. It's very near the
23 end.

24 ARBITRATOR SHARNOFF: Very near.

25 MR. HIRN: It's unnumbered pages.

1 ARBITRATOR SHARNOFF: Okay. I saw Appendix
2 7.5, so I'm getting there.

3 MR. HIRN: Okay. Table of Authorized
4 Staffing Position Levels, and then there's several
5 pages.

6 MS. CIOFFALO: It's probably about 15 or 20
7 pages from the end of the document.

8 MR. HIRN: If you go five actual pages from
9 the end of the document, remembering it's front and
10 back. You've got it right there on the left. There
11 we go. That's it.

12 ARBITRATOR SHARNOFF: At least part it was
13 printed upside down, which didn't help. Okay.

14 MR. HIRN: Okay.

15 BY MR. HIRN:

16 Q Looking at the four tables that comprise
17 Appendix 7.4, can you tell us what these four tables
18 indicate?

19 A The four tables are for the four Weather
20 Service regions in the continental United States, and
21 they indicate the numbers and types of positions that
22 would be in effect after the MAR.

23 Q Okay. Let's go to the Eastern Region
24 staffing. What is the MIC?

25 A Meteorologist in charge.

1 Q Is that a bargaining unit position?

2 A No.

3 Q The secretary?

4 A Administrative assistant, secretary to the
5 MIC.

6 Q And is that a bargaining unit position?

7 A Yes.

8 Q The SOO? What is a SOO?

9 A The scientific operations officer, also a
10 management position.

11 Q What is a WCM?

12 A Warning and coordination meteorologist.

13 Q Is that a bargaining unit position?

14 A I don't think it was or is.

15 Q What is a SH?

16 A Service hydrologist.

17 Q Is that a bargaining unit position?

18 A Yes.

19 Q What is a MET FCRS?

20 A A forecaster. Meteorologist forecaster.

21 Q Were there one or more than one grades of
22 meteorologist forecasters?

23 A There were two grades: the journeyman
24 position, which was a GS-12, and the higher GS-13
25 senior forecaster or lead forecaster.

1 Q Does the plan provide for a specific number
2 of lead forecasters or senior forecasters at each
3 office?

4 A Yes.

5 Q And how many is that?

6 A Five.

7 Q And is that a bargaining unit position?

8 A Yes.

9 Q What is an HMT?

10 A Hydrometeorological technician. That's what
11 the Weather Service specialist or the MET techs
12 became. That was the new job, and it was at the GS-11
13 level.

14 Q What is an ET?

15 A Electronics technician.

16 Q Is that a bargaining unit position?

17 A Yes.

18 Q Back to the HMT. Is that a bargaining unit
19 position as well?

20 A Yes, it is.

21 Q What is an ESA?

22 A Electronic systems analyst.

23 Q Is that a manager or a bargaining unit
24 position?

25 A I believe that was a management position.

1 Q And what is a DAPM?

2 A Data Acquisition Program Manager.

3 Q Is that a management position? Is that a
4 supervisor or a bargaining unit employee?

5 A Supervisory.

6 Q And who did he or she supervise?

7 A The DAPM supervised the HMTs.

8 Q What is an FW METS?

9 A Fire weather. Those are specialist
10 assignments, fire weather meteorologists.

11 Q Are they bargaining unit positions?

12 A Yes.

13 Q What is a PMO?

14 A I don't recall what the PMO is.

15 Q How about an RMS?

16 A That was regional, a regional position, but
17 I don't recall what the M is for.

18 Q Okay.

19 A It might have been regional maintenance
20 specialist.

21 Q How many --

22 ARBITRATOR SHARNOFF: I don't know if you
23 wanted to, but you didn't ask on the last two whether
24 they're bargaining unit or not bargaining unit.

25 MR. HIRN: Well, with regard to the PMO, he

1 says he doesn't recall what it was.

2 ARBITRATOR SHARNOFF: Well, he may or may
3 not know --

4 THE WITNESS: It's come to me. It's come to
5 me anyway.

6 MR. HIRN: Oh, okay.

7 THE WITNESS: It's a port meteorological
8 officer.

9 BY MR. HIRN:

10 Q And what was that? What did that person do?

11 A They interacted with the marine community.

12 Q Okay. Was that a bargaining unit position?

13 A I believe so. I think it was a lower graded
14 position. I think it was.

15 Q And the regional, the RMS? Do you have any
16 better recall of what that is or the bargaining unit
17 status?

18 A Those were positions at the regional office
19 I think.

20 Q Okay.

21 A But I'm not sure whether they were
22 management or not.

23 Q You testified that there were five lead
24 forecasters?

25 A Correct.

1 Q How many journeyman forecasters were there
2 at each of the forecast offices?

3 A It varied. Anywhere from three to five.
4 And I think that, if I may add, the reason for the
5 different numbers is because eventually they
6 classified the WFOs into two types, Type A, which had
7 more service programs than the Type B I believe was
8 the main difference, the reason for the difference.

9 Q What were the primary duties of the
10 hydrometeorological technicians?

11 A They were in the Data Acquisition Program,
12 so they, for example, operated the upper air system,
13 which most people think of that as the weather balloon
14 and are fascinated more by the weather balloon than
15 the instrument that it carries aloft to sense the
16 atmosphere.

17 And then we had also automated surface
18 observing systems that were implemented to take over
19 some of the functions of the weather observing part of
20 the job, so in some cases, those observations needed
21 to be augmented by a human observer. In other cases,
22 the system worked automatically.

23 And so the HMTs did some form of quality
24 control and reported outages of the systems when they
25 appeared to be malfunctioning and maintenance had to

1 repair the systems. They also were responsible for
2 aiding the forecaster, the senior forecaster, and so
3 they could issue severe weather statements, special
4 weather statements and even warnings if necessary, but
5 they mainly were an aid to the senior forecaster.

6 Q And going back to this upper air
7 responsibility with the balloons, could you tell us a
8 little bit more about the work involved in that?

9 A The network requires that there be two
10 launches, two launches per day, and they're
11 simultaneous across the network. I know Brownsville
12 was one of the offices that participated in the Upper
13 Air Program, and we had the launch in the morning at a
14 specific time and in the evening. So that was done
15 throughout the network.

16 Q And what would be involved in launching
17 those balloons?

18 A You had to inflate the balloon using
19 hydrogen gas and then attach a radiosonde, which was
20 the device that sensed changes in the atmosphere, and
21 then the electronic equipment tracked the movement of
22 the instrument. The instrument emitted a signal that
23 was tracked by an electronic device and obtained all
24 the information.

25 Initially, when I first started, all the

1 information was actually traced on graph paper and we
2 had to analyze it manually. Eventually that was taken
3 over by a small computer and then the data was encoded
4 into what we called upper air messages. There were
5 four parts, four messages for each flight, and that
6 information then went to the computer center that runs
7 the models and generates all the weather charts.

8 Q And did all the offices have upper air
9 responsibility?

10 A No. No.

11 Q Do you recall about what the mix was?

12 A No, I don't recall.

13 Q Okay. Was there any significance to the
14 agreement to have five senior forecasters and five
15 HMTs at each forecast office?

16 A Well, weather Service operations are around-
17 the-clock, 24/7, and shifts are eight hours long, so
18 you need five people in order to cover all of the
19 shifts for a week. And if you have only four
20 individuals, then you're going to be short. You're
21 going to have some shifts that are uncovered, so you
22 need five. And that would allow for coverage of
23 annual leave and other absences. The requirement was
24 based on the number of shifts that needed to be
25 covered per week.

1 Q And how many shifts per week would there be?

2 A Well, the 21 shifts that needed to be
3 covered were operational shifts, and then the rest
4 were designated supernumerary, and those shifts were
5 allowed or allowed forecasters to train and do various
6 other things.

7 Q Did you take any training about federal
8 sector labor relations for the purpose of negotiation
9 and carrying out your official duties as a Union
10 officer?

11 A Yes, I did.

12 Q And would you tell us about that training?

13 A I attended training sessions that were
14 sponsored by the FMCS, the FLRA, and I recall a
15 training session that was sponsored by the Industrial
16 Labor Relations School of Cornell University.

17 Q What is your understanding of the federal
18 agency's obligation to negotiate over staffing
19 matters?

20 A That's covered by 5 U.S.C. § 7601 and in
21 part it states that bargaining over those issues are
22 permissive at the election of the agency.

23 Q Did there come a time when the Weather
24 Service was ordered to negotiate over these permissive
25 matters, including the numbers, types, and grades of

1 employees or positions assigned to an organizational
2 subdivision or tour of duty?

3 A Yes. That occurred as a result of Executive
4 Order 1287-1 issued by President Clinton.

5 Q Did the manner in which federal unions and
6 federal agencies negotiate changes and conditions of
7 employment change as a result of this Executive Order?

8 A Yes, it did change the way we negotiated.
9 The Executive Order called for predecisional
10 involvement of the Union in those matters, so we
11 negotiated a quality through partnership memorandum of
12 understanding at one point.

13 (The document referred to was
14 marked for identification as
15 Union Exhibit No. 2.)

16 BY MR. HIRN:

17 Q I'm going to show you what's been marked for
18 identification as Union Exhibit 2. I think you have a
19 copy in the pile here. Is this the quality through
20 partnership MOU that you were just referring to?

21 A Yes.

22 Q And was there any commitment in here to
23 negotiate over permissive subjects?

24 A Yes. I believe that's in Section 3.

25 MR. HIRN: I'll move the admission of Union

1 Exhibit 2.

2 MS. CIOFFALO: I'm going to object. I don't
3 think he laid a foundation. Had you ever seen this
4 agreement before? Were you part of negotiating it?

5 MR. HIRN: He just said he negotiated it.

6 MS. CIOFFALO: Oh, okay. I'm sorry.

7 ARBITRATOR SHARNOFF: Okay.

8 MR. HIRN: It's got his signature on the
9 bottom.

10 MS. CIOFFALO: Oh, I'm sorry. I apologize.

11 ARBITRATOR SHARNOFF: Okay. Admitted.

12 (The document referred to,
13 previously identified as
14 Union Exhibit No. 2, was
15 received in evidence.)

16 MS. CIOFFALO: And we'll keep the numbering
17 system that you have here, just so I'm clear?

18 MR. HIRN: Well, I've got 80 exhibits and
19 they're all prenumbered. So to the extent whether
20 they're admitted or not --

21 MS. CIOFFALO: Just a clarification question
22 since you didn't offer 1 first.

23 MR. HIRN: Yes. Well, I'm going to come
24 back.

25 MS. CIOFFALO: I was just asking.

1 MR. HIRN: I know. I'm going to come back
2 to 1. I'm sorry.

3 MS. CIOFFALO: Okay.

4 MR. HIRN: You're right. Thank you.

5 (Pause.)

6 MR. HIRN: I'm sorry, Mr. Sharnoff. Are we
7 waiting for me?

8 ARBITRATOR SHARNOFF: Yes.

9 MR. HIRN: Oh, I'm sorry. I didn't hear
10 that --

11 ARBITRATOR SHARNOFF: This is admitted.

12 MR. HIRN: Oh, okay. I'm sorry.

13 ARBITRATOR SHARNOFF: That's all right.

14 BY MR. HIRN:

15 Q Who executed this agreement for the Agency?

16 A Are we still talking about --

17 Q Union Exhibit 2. It's right here.

18 A It was executed by David Powell, the
19 president at the time for the Union, and by myself as
20 executive vice president at the time.

21 Q And then --

22 A For the Agency? Albert Friday, the
23 Assistant Administrator for Weather Services.

24 Q What was he the assistant administrator of?

25 A Of NOAA for Weather Services.

1 In the second paragraph, it specifically mentions the
2 Executive Order, 1287-1, and the fact that in Section
3 2(d) the federal agency are required to negotiate over
4 permissive matters.

5 MR. HIRN: I'll move the admission of Union
6 Exhibit 3.

7 MS. CIOFFALO: I'm sorry?

8 MR. HIRN: I move the admission of Union
9 Exhibit 3.

10 MS. CIOFFALO: I'm going to object. This is
11 only a partial contract. Do you have the whole
12 contract to admit into evidence?

13 MR. HIRN: I don't know. I'm not offering
14 the whole thing. It's not relevant to any part of my
15 case.

16 ARBITRATOR SHARNOFF: Well, to the extent
17 that it should be made available because you're taking
18 part of it at least for her to check to see what's
19 left out or if she wants to add or --

20 MR. HIRN: I don't have it with me, but I
21 would presume the Agency has a copy of the contract
22 since it's a joint document.

23 ARBITRATOR SHARNOFF: It probably does, but
24 at this point it's your document.

25 MS. CIOFFALO: The Agency does not plan on

1 offering the document. Sorry. I didn't mean to
2 interrupt.

3 ARBITRATOR SHARNOFF: Well, to the extent
4 that the Agency has an opportunity to review the full
5 document and see if there's anything that should be
6 added that isn't added, we'll deal with that, but the
7 document will be admitted subject to that.

8 (The document referred to,
9 previously identified as
10 Union Exhibit No. 3, was
11 received in evidence.)

12 MR. HIRN: I mean, if you'd like to later on
13 substitute the whole document, unnecessary
14 photocopying, I'd be happy to do that, but as we are
15 working out of the Agency's offices, I suggest that
16 they have more ready access to it than I do at my
17 offices.

18 ARBITRATOR SHARNOFF: All I'm saying is that
19 you submitted a partial document. They should have
20 the opportunity to review the full document and see if
21 there's anything that's left out and should be added
22 to it, but it's admitted at this point.

23 MR. HIRN: Okay. Thank you.

24 MS. CIOFFALO: The Agency also has no
25 ability to cross-examine the witness without the full

1 document in the event that we needed to.

2 ARBITRATOR SHARNOFF: Okay. Well, before --

3 MR. HIRN: Well, then we can --

4 ARBITRATOR SHARNOFF: You should have the
5 opportunity to review the full document before cross-
6 examination.

7 MR. HIRN: Mr. Sharnoff, then we're going to
8 have to take an adjournment for a half a day for me to
9 go back to my office to get it. And my witness is
10 leaving tomorrow. This was the problem why I didn't
11 want to have my first day of hearing at this office
12 that they insisted upon because of the access to the
13 documents that I would need. Now they are -- can we
14 go off the record for a second, please?

15 ARBITRATOR SHARNOFF: Sure.

16 (Discussion held off the record.)

17 BY MR. HIRN:

18 Q Did the Weather Service take any other
19 actions to include NWSEO in its decision-making as a
20 result of the partnerships created by the Executive
21 Order?

22 A Yes.

23 Q And could you tell us what that was?

24 A As the NWSEO president, I was made a member
25 of the Weather Service corporate board.

1 Q And what was the corporate board?

2 A A group of senior management for the Weather
3 Service, including regional directors, four directors
4 in the CONUS plus the Pacific Region and the Alaska
5 Region.

6 Q And what was the purpose of the corporate
7 board?

8 A They made the policy decisions.

9 Q And were you an observer on the corporate
10 board or a full member of the board?

11 A I was a full member.

12 Q And what role did you play on the board?

13 A I represented the employees, the bargaining
14 unit employees.

15 Q What was the purpose of including you on the
16 corporate board?

17 A To meet the requirement of predecisional
18 involvement under Executive Order 1287-1.

19 Q How did the corporate board go about making
20 its decision during the period of time that you served
21 on it?

22 A The Agency would make a proposal. We would
23 discuss it and through consensus come to an agreement.

24 Q Did it require your agreement as well?

25 A Yes.

1 Q After the corporate board decided on a
2 course of action to which you agreed, would the
3 Weather Service then bargain with the Union over the
4 same decision?

5 A No.

6 Q And why not?

7 A Because the requirement to involve us in a
8 predecisional role was met.

9 Q And approximately when did you become a
10 member of the corporate board?

11 A That was I believe shortly after becoming
12 president, so it was in 1995 at some point.

13 Q Did the Weather Service and the Union have a
14 particular nomenclature for negotiations during this
15 period?

16 A We referred to negotiations as partnering.

17 Q When did the Weather Service complete
18 filling the forecaster positions called for in the
19 1993 human resources plan?

20 A In the mid to late '90s.

21 Q Did there come a time when you negotiated
22 through partnership a process to fill the forecaster
23 positions?

24 A Yes. Because of the displacement of a lot
25 of the affected employees, we negotiated a placement

1 plan.

2 Q I'm going to show you what's been received
3 as Joint Exhibit 7 and ask if you can identify this
4 document?

5 A Yes. This is a memo to all meteorologists
6 in the Weather Service. It identifies the result of
7 our partnering over placement of forecasters.

8 Q Does this document bear your signature?

9 A Yes, it does as the national president of
10 NWSEO.

11 Q Did there come a time when the parties
12 agreed to change the staffing profile that you had
13 originally agreed to back in 1993?

14 A Yes.

15 Q And do you recall what year that was?

16 A That was in late 1999 or 2000.

17 (The document referred to was
18 marked for identification as
19 Union Exhibit No. 4.)

20 BY MR. HIRN:

21 Q Okay. I'm going to show you what's been
22 marked for identification as Union Exhibit 4 and ask
23 if you can identify this document? I think you've got
24 your own copy.

25 ARBITRATOR SHARNOFF: I'm sorry. Which?

1 MR. HIRN: Union Exhibit 4.

2 THE WITNESS: This is a document prepared by
3 senior management or delegated to somebody here at
4 headquarters summarizing the action items and
5 decisions of the corporate board. This one
6 specifically refers to the February corporate board
7 meeting, and that was in the year 2000.

8 BY MR. HIRN:

9 Q Directing your attention to page 5, Item
10 6 --

11 A Okay.

12 Q -- first of all, were you routinely sent
13 these minutes after the corporate board meetings?

14 A I seem to recall that initially I didn't,
15 and at some point I requested that I be provided
16 copies.

17 Q Were you provided copies?

18 A Yes, I was.

19 Q Looking on page 5, is that your handwriting?

20 A Yes. The middle of the page?

21 Q Yes.

22 A Yes.

23 Q Did you make that contemporaneous with
24 receiving a copy of this?

25 A After reviewing it, yes.

1 Q Okay. Directing your attention to Item 6 --

2 A Okay.

3 Q -- could you explain? Could you explain
4 what you understand Item 6 to be referring to?

5 A Item 6 refers to the proposed change or
6 restructuring of the Data Acquisition Program unit,
7 which consisted of five HMTs and the supervisor, which
8 was the DAPM. The corporate board agreed that some
9 positions would be taken out of that unit to create
10 positions that were found to be necessary, mainly the
11 information technology officer position, plus it also
12 allowed for the hiring of interns so that there would
13 be individuals prepared to take over and backfill
14 vacancies in the core forecaster unit.

15 Q Were acceptable criteria for the use of
16 floaters eventually developed?

17 A Yes. That was a requirement by the
18 Assistant Administrator.

19 Q Directing your attention to page 3, Action
20 Item 11 --

21 A Yes.

22 Q -- could you explain this entry to us?

23 A The Assistant Administrator directed that a
24 team be created to develop the requirements for
25 floater determination and assignment.

1 Assistant Administrator, John Jones, to the field
2 explaining the decision that was reached by the
3 corporate board regarding the restructuring of the
4 Data Acquisition unit.

5 MR. HIRN: I'll move the admission of Union
6 Exhibit 5.

7 MS. CIOFFALO: No objection.

8 ARBITRATOR SHARNOFF: Okay. Union Exhibit 5
9 is admitted.

10 (The document referred to,
11 previously identified as
12 Union Exhibit No. 5, was
13 received in evidence.)

14 (The document referred to was
15 marked for identification as
16 Union Exhibit No. 6.)

17 BY MR. HIRN:

18 Q Directing your attention to your copy of
19 Union Exhibit 6, can you identify this document?

20 A This document is an email from Mark Brown,
21 whom I think at the time was chief of Management
22 Organization Branch here in headquarters, and it's
23 addressed to me asking for the NWSEO participation on
24 this team that was created or that was chartered and
25 was in the process of being set up.

1 then, as indicated in this last exhibit, Mark Brown
2 was involved and headed a subsequent team, and
3 eventually later in the year Vickie Nadolski, Regional
4 Director of the Western Region, headed a team.

5 Q I'm sorry. The last name?

6 A Nadolski.

7 Q Nadolski.

8 A Nadolski, yes. And I believe it was the
9 team headed by Vickie Nadolski that made the final
10 proposal to the board regarding the implementation
11 plan of the floaters.

12 Q Were you a member of all these teams?

13 A Yes.

14 Q Directing your attention to Joint Exhibit 8,
15 is this the ultimate floater plan that was developed
16 and implemented?

17 A Yes, it is. It was issued November 22,
18 2000.

19 Q Is there anything on this document that
20 reflects the Union's agreement to this plan?

21 A The second paragraph refers to the NWSEO
22 president having agreed to restructuring the six
23 positions in that acquisition program.

24 Q Was there ever a document where you --

25 ARBITRATOR SHARNOFF: I'm sorry. I'm not

1 sure. Are you looking at Joint Exhibit 8?

2 MR. HIRN: Joint Exhibit 8. I'm sorry.

3 ARBITRATOR SHARNOFF: Okay. I'm sorry. I
4 thought you meant Union Exhibit 8.

5 MR. HIRN: I apologize.

6 ARBITRATOR SHARNOFF: You may have said it,
7 but it didn't penetrate. Okay. I'm with you. Now
8 you were saying something about paragraph 2.

9 THE WITNESS: Yes. In the second paragraph
10 of the all hands memo from the Assistant
11 Administrator, it specifically mentions NWSEO
12 participation in the decision to restructure the six
13 positions in the Data Acquisition Program.

14 BY MR. HIRN:

15 Q Did there ever come a time when you
16 physically signed off on this?

17 A Yes.

18 (The document referred to was
19 marked for identification as
20 Union Exhibit No. 7.)

21 BY MR. HIRN:

22 Q I'm going to show you. Would you look at
23 Union Exhibit 7, and can you identify this document?

24 A Yes. This is a document --

25 ARBITRATOR SHARNOFF: I'm sorry. What

1 number?

2 MR. HIRN: Union Exhibit 7.

3 ARBITRATOR SHARNOFF: Union 7. Okay.

4 THE WITNESS: The cover sheet, the fax cover
5 sheet, is from Vickie Nadolski, the team leader,
6 addressed to team members, and it includes me, and it
7 contains a draft memo again from the Assistant
8 Administrator to all hands regarding the development
9 of the floater implementation plan. The third page is
10 the concurrence page, and it contains my signature and
11 the date it was signed.

12 MR. HIRN: I'll move the admission of Union
13 Exhibit 7.

14 MS. CIOFFALO: Is this meant only to be the
15 draft, understanding that this is not signed by
16 anybody else and is stamped with Draft? So I'm not
17 sure this is the best evidence of whatever it is
18 you're trying to use the document for.

19 MR. HIRN: I think he testified that this
20 was the draft plan to which he concurred.

21 BY MR. HIRN:

22 Q What was this?

23 MS. CIOFFALO: The draft what?

24 THE WITNESS: The second page of this
25 exhibit is a draft announcement to all hands from the

1 Assistant Administrator informing the field that the
2 board had accepted the implementation plan for the
3 floater that was developed during the year 2000, and
4 they were asking me if I concurred with what was in
5 the draft memo prior to release.

6 MR. HIRN: I think if Ms. Cioffalo were to
7 compare what says Draft to what was the cover page of
8 Joint Exhibit 8 she will see that it's identical
9 except for the addition, after Ramon's concurrence, of
10 the language indicating that the Union, Ramon Sierra,
11 had agreed to it.

12 MS. CIOFFALO: Okay. No objection.

13 ARBITRATOR SHARNOFF: Okay. Union Exhibit 7
14 is admitted.

15 (The document referred to,
16 previously identified as
17 Union Exhibit No. 7, was
18 received in evidence.)

19 BY MR. HIRN:

20 Q Now how specifically did the final agreement
21 change the staffing at a forecast office?

22 A The sixth person -- that acquisition unit,
23 which consisted of the DAPM and five HMTs, was
24 changed, and it called for three HMTs, one of the HMT
25 positions to be converted to an ITO position, which

1 was the issue that started the whole restructuring,
2 plus an intern, which is five positions, and the sixth
3 position was the position that was called a floater.

4 Q Could you tell us what a floater is?

5 A A floater position was one that could be
6 assigned on station as any one of four positions or
7 transferred to another office within the region and
8 also could be reassigned or converted to a different
9 position or remain as an HMT, just a lateral transfer.

10 Q And with regard to these floaters, was there
11 any agreement or provision in this agreement that
12 specified where they would be allocated?

13 A Yes, very specifically as requested by the
14 Assistant Administrator.

15 Q Could you explain that to us? If you want
16 to make reference to Joint Exhibit 8, please do so.

17 A Let's look at Exhibit G.

18 Q This is Exhibit G to Joint Exhibit 8,
19 correct?

20 A Yes. Joint Exhibit 8, yes.

21 MR. HIRN: For the sake of clarity for Mr.
22 Sharnoff and for the record, this Joint Exhibit 8
23 within itself had a number of separate exhibits, so
24 that there is no confusion when we're referring to
25 a -- so the record is not confused when we're

1 referring to an exhibit by letter, we're talking about
2 an exhibit within Joint Exhibit 8.

3 ARBITRATOR SHARNOFF: Okay. I'm with you.

4 THE WITNESS: Okay. Exhibit G consists of
5 four tables representing the four mainland regions of
6 the Weather Service, and they list the WFOs and their
7 ranking determined by the need for either an
8 additional meteorologist journeyman level or an HMT,
9 service hydrologist or another electronic technician,
10 and it also included the number of METs assigned to
11 the core unit at the time.

12 These rankings, ratings and rankings, were
13 determined using the data in Exhibit C, and basically
14 there are several tables. Basically what one of the
15 teams did was to assess the service programs for a
16 particular office and also other factors they
17 considered. For the meteorologist position, they
18 looked at even terrain variability within the area of
19 responsibility as it affects the difficulty of
20 preparing the forecast for the area.

21 As an example, for the HMTs, they looked at
22 the number of radio consoles because the Weather
23 Service operates its own radio to release its products
24 to the public, and there were some offices that had
25 several consoles because the radio stations don't have

1 a very powerful transmitter, so they had several --
2 more than one -- radio consoles that needed to be
3 operated. That was one of the functions of the HMT.

4 For the electronic technician position, they
5 looked at the variety of equipment assigned to a
6 particular WFO and the frequency of breakdowns and
7 repairs required to keep all the equipment functional.
8 So it was a very detailed study, and that's what you
9 find in Exhibit C. And all that information was then
10 used to rate and rank the WFOs by region.

11 BY MR. HIRN:

12 Q Was there in this agreement any latitude to
13 at later times and later years reassign floaters to
14 other positions? In other words, did this agreement
15 specify where each and every floater would be
16 permanently?

17 Let me withdraw that question and ask the
18 question differently. Directing your attention to
19 Exhibit E, Implementation Guidelines, this one is just
20 there's sort of a PowerPoint presentation in this
21 document and it follows that. Directing your
22 attention to Item 11 of Exhibit E, could you explain
23 that to us?

24 A The sixth position was called the floater
25 position, and it could be kept at the home WFO or

1 assigned to another WFO within the region. And in
2 some cases, in Guidelines 6 through 10, some of those
3 assignments were mandatory.

4 For example, there were offices if they were
5 in the upper quartile of the rankings, that meant that
6 they had a higher priority or greater need for either
7 a meteorologist, an HMT, service hydrologist or
8 electronic technician. So after all those mandatory
9 assignments were done or met, then the regional
10 directors were given leeway to assign any remaining
11 floaters, but it had to be in partnership with the
12 Union's regional representative.

13 Q Okay. Was there any restriction on the
14 allocation of the floater at offices with less than 10
15 meteorologists?

16 A Yes. The floater needed to be retained on
17 station in order to meet the double coverage 24/7
18 requirement of operational shifts.

19 Q Okay. Directing your attention to Exhibit A
20 of Joint Exhibit 8, could you explain to us your
21 understanding of the entry April 2000, paragraph
22 numbered 1?

23 A Could you restate the question, please?

24 Q Could you explain your understanding of
25 paragraph numbered 1 that appears after April 2000 on

1 that Exhibit A?

2 A If you recall, in Exhibit G, I mentioned
3 that the tables included the number of forecasters in
4 the core unit. So because the staffing was different
5 from office to office, but they all had the double
6 coverage 24/7 requirement, that at any office that had
7 nine or less forecasters the floater would be retained
8 as an HMT to allow for the double coverage 24/7.

9 Q Okay. Let me ask you this question. Was
10 the first sentence that appears there after the number
11 one intended to permit management to at some time in
12 the future forego filling the various positions
13 described in the floater plan so long as there was
14 sufficient remaining staff to cover three shifts a
15 day?

16 A No, it was not. It was in relation to the
17 assignment of the floater.

18 Q Okay. Are there any documents left over
19 from the development of the floater plan that
20 demonstrate that this sentence was intended to speak
21 to the assignment, the initial assignment of the
22 floater?

23 A I believe so, because we had as I recall at
24 least three different teams look at the issue, and
25 there were emails flying back and forth throughout

1 2000 on the subject.

2 (The document referred to was
3 marked for identification as
4 Union Exhibit No. 8.)

5 BY MR. HIRN:

6 Q Okay. I'm going to show you what's been --
7 would you look at what's been marked for
8 identification as Union Exhibit 8? Can you identify
9 this document?

10 A Okay. The document is from Richard
11 Hagemeyer, who was at the time the Director of Pacific
12 Region.

13 MS. CIOFFALO: Could we have a minute to
14 review this document?

15 MR. HIRN: Sure.

16 MS. CIOFFALO: It's several pages long.

17 MR. HIRN: Sure. And I was going to direct
18 his attention to Slide 6.

19 (Pause.)

20 MS. CIOFFALO: Okay.

21 MR. HIRN: Mr. Sharnoff, Ms. Cioffalo, to
22 speed things up, might I give everybody a hint of
23 where I'm going with the next number of exhibits and
24 see if there's an expeditious way to handle it.

25 Mr. Sierra testified that there were a

1 number of documents left over from the development of
2 the plan which indicate the use of the context of the
3 phrase no office will have its staffing reduced below
4 two to allow 24/7 operations. He said that this was
5 intended in the context of only the initial allocation
6 of the floater, and he said that there were a bunch of
7 emails that used it in that context.

8 I have about a dozen or so of those emails
9 and documents that went back and forth. Rather than
10 having him try to explain exactly the context, would
11 it speed things up if I just have him identify the
12 document, who they were from, that he received it,
13 et cetera, and move its admission, or would you want
14 me to ask him to point out --

15 MS. CIOFFALO: So what you want to do is
16 just basically have him identify the documents, put
17 them into evidence and not discuss them at all?

18 MR. HIRN: Yes. And it's for the point that
19 we're trying to show the context of the phrase no
20 office will have its staff reduced below a number
21 sufficient to have two people on duty as only in the
22 context of the allocation of the floater, not some
23 future time that they can have the discretion to
24 forego filling positions at any time in the future,
25 any positions at any time in the future. It was

1 always used in the context of the allocation of the
2 floater. The documents, the exhibits that I have
3 here, show that all in context.

4 ARBITRATOR SHARNOFF: Okay. Well, perhaps
5 if you can do one, maybe two --

6 MR. HIRN: Okay.

7 ARBITRATOR SHARNOFF: -- just to show the
8 logic that you're trying to express, and then if all
9 the rest would fit into that pattern, then we can just
10 move on.

11 MS. CIOFFALO: So to the extent that the
12 Agency is given some leeway to cross-examine him --

13 ARBITRATOR SHARNOFF: Sure.

14 MS. CIOFFALO: -- though about the
15 documents, and if we could have some time to then
16 review them since he's not going to testify to
17 anything really in them before cross-examination,
18 that's fine.

19 MR. HIRN: Sure. I mean, we'll finish this
20 up and then I think I'm done pretty much. We'd be
21 shortly done with Mr. Sierra, and then it might be
22 appropriate for a lunch break. I'm happy to give
23 counsel whatever time she feels necessary to --

24 ARBITRATOR SHARNOFF: All right. Let's do
25 it.

1 BY MR. HIRN:

2 Q Okay. So let's go back to Union Exhibit 8.
3 And I forgot whether I asked you to identify it, but
4 once again just for the sake of continuity could you
5 identify it again, please?

6 ARBITRATOR SHARNOFF: Was this already
7 admitted?

8 MR. HIRN: No.

9 ARBITRATOR SHARNOFF: It wasn't?

10 MR. HIRN: No. This is Union Exhibit 8.

11 ARBITRATOR SHARNOFF: Yes. All right. Just
12 go right ahead.

13 THE WITNESS: Okay. The cover sheet is from
14 Richard Hagemeyer, and I believe I stated that he was
15 the regional director of the Pacific Region at the
16 time and also headed the first team that worked on the
17 implementation of the floater decision.

18 BY MR. HIRN:

19 Q Okay. And who was Jack May and Joe Smith?

20 A Jack May was the director of the Central
21 Region, and he was on the team. Joe Smith was in the
22 Management Organization Branch here at headquarters.
23 And I believe it was addressed to the three of us.

24 Q Okay. Directing your attention to the page
25 that has Slides 5 through 8 of what appears to be a

1 PowerPoint presentation of some sort, is that your
2 handwriting?

3 A 5 through 8?

4 Q Yes.

5 A Some of it is. Some of it is not. For
6 example, in Slide 6, the word New in the right-hand
7 margin, that is not my handwriting. In Slide 7,
8 there's a bracket encompassing a service hydrologist
9 and an electronic technician. That's not my writing.

10 Q Well, is the other writing yours?

11 A Yes.

12 Q Okay. Directing your attention to Slide
13 6 --

14 A Okay.

15 Q -- could you explain what your understanding
16 of Slide 6 is?

17 A Once the can of worms was opened so to
18 speak, the regional directors started coming up with
19 all sorts of other positions that they wanted and so
20 this slide adds the service hydrologist and the
21 electronic technician, two positions that were needed
22 and therefore could be candidates for the floater
23 reassignment.

24 Q Okay. Does that slide address the
25 terminology no WFO would have its staffing reduced

1 below the level?

2 A Yes, it does.

3 Q And in the same sentence, does it refer to
4 the application of the algorithms?

5 A Yes.

6 Q And again, what is the algorithms?

7 A The algorithms were formulas that were
8 developed to convert the information in the tables
9 that I pointed out were Exhibit C I believe, an
10 earlier exhibit, where the WFOs were ranked in order
11 of need. So the formulas incorporated the data and
12 then they generated some quantity and then those
13 numbers were used to rank the WFOs within the region
14 as to the need for one of those positions, which now
15 included the service hydrologist and the electronic
16 technician.

17 MR. HIRN: I'll move the admission of Union
18 Exhibit 8.

19 MS. CIOFFALO: No objection.

20 ARBITRATOR SHARNOFF: Okay. Union 8 is
21 admitted.

22 (The document referred to,
23 previously identified as
24 Union Exhibit No. 8, was
25 received in evidence.)

1 (The document referred to was
2 marked for identification as
3 Union Exhibit No. 9.)

4 BY MR. HIRN:

5 Q Would you look at Union Exhibit 9, a two-
6 page string of emails? Can you identify this for us?

7 A Yes. The first page is an email from Jack
8 May, again a team member, to the team leader, Richard
9 Hagemeyer, and Joseph Smith and I were copied. The
10 subject is Recommendation for Slide 7 -- sorry, Slide
11 27 -- which is part of the slide presentation made to
12 the board or proposed to be made to the board at one
13 of the conferences or meetings of the board.

14 The second page is again an email prepared
15 by Jack May, and he proposes some language. The top
16 email is from Mr. Hagemeyer, the team leader,
17 expressing his position on Jack May's proposal
18 regarding the assignment of the floater.

19 MR. HIRN: I move the admission of Union
20 Exhibit 9, and the relevance is for the top email on
21 the second page once again talks about the allocation
22 of a floater in the context of the two person on shift
23 issue.

24 MS. CIOFFALO: No objection.

25 ARBITRATOR SHARNOFF: Okay. Union 9 is

1 admitted.

2 (The document referred to,
3 previously identified as
4 Union Exhibit No. 9, was
5 received in evidence.)

6 (The document referred to was
7 marked for identification as
8 Union Exhibit No. 10.)

9 BY MR. HIRN:

10 Q Can you identify Union Exhibit 10 for us?

11 A That is communications from the team leader,
12 Richard Hagemeyer, to Mark Brown, a senior management
13 representative here at headquarters, regarding some of
14 the deliberations of the floater implementation plan.

15 Q Directing your attention to the last two
16 sentences of that first page, can you explain to us
17 what you understand that to mean?

18 Well, let me ask this. Do you agree with
19 the statement in the last two sentences that this had
20 been partnered with NWSEO and that there was a need to
21 partner the implementation of the plan?

22 A Yes.

23 Q And directing your attention to the third
24 page, Slide 6, once again, does this discuss the
25 phrase of no office to have its staffing reduced below

1 that which is necessary to have two people on duty in
2 the context of the application of the algorithms to
3 the assignment of the floaters?

4 A Yes, it does.

5 MR. HIRN: Okay. I move the admission of
6 Union Exhibit 10.

7 MS. CIOFFALO: No objection.

8 ARBITRATOR SHARNOFF: Okay. Union 10 is
9 admitted.

10 (The document referred to,
11 previously identified as
12 Union Exhibit No. 10, was
13 received in evidence.)

14 (The document referred to was
15 marked for identification as
16 Union Exhibit No. 11.)

17 BY MR. HIRN:

18 Q Directing your attention to Union Exhibit
19 11, can you identify this document?

20 A This is an email from Vickie Nadolski, the
21 Western Region chair of the Weather Service, to either
22 the other regional directors or acting directors and
23 myself, and it discusses an issue that came up
24 regarding the development of the implementation plan
25 for floater reassignment.

1 Q Ms. Nadolski refers to the phrase those
2 offices with less than 10 forecasters retain their
3 floater as an HMT. Did there ever come a time where
4 that became a debate among members of the
5 implementation teams?

6 A Yes. Some of the directors wanted to
7 reassign the floater as a meteorologist because they
8 felt that it was important for meeting the mission
9 requirements that two meteorologists be on duty rather
10 than a senior forecaster and an HMT.

11 MR. HIRN: Okay. I move the admission of
12 Union Exhibit 11.

13 MS. CIOFFALO: No objection.

14 ARBITRATOR SHARNOFF: Okay. It's admitted.

15 (The document referred to,
16 previously identified as
17 Union Exhibit No. 11, was
18 received in evidence.)

19 (The document referred to was
20 marked for identification as
21 Union Exhibit No. 12.)

22 BY MR. HIRN:

23 Q Directing your attention to Union Exhibit
24 12, once again, who is Jack May?

25 A The Director of the Central Region.

1 Q His email on 6-7 at 11:50 describes a
2 conversation with you. Is that an accurate reflection
3 of, as best you recall, what you told him?

4 A Yes.

5 Q Does this refer to the debate that arose
6 over whether at offices with less than 10 core
7 forecasters whether one should be retained as an HMT
8 or a forecaster meteorologist?

9 A Correct. Correct.

10 MR. HIRN: Okay. I move the admission of
11 Union Exhibit 12.

12 MS. CIOFFALO: No objection.

13 ARBITRATOR SHARNOFF: Okay. It's admitted.

14 (The document referred to,
15 previously identified as
16 Union Exhibit No. 12, was
17 received in evidence.)

18 (The document referred to was
19 marked for identification as
20 Union Exhibit No. 13.)

21 BY MR. HIRN:

22 Q Directing your attention to Union Exhibit
23 13, who is Bill Proenza?

24 A Bill Proenza was the Regional Director for
25 Southern Region.

1 Q Can you point out to us where, if anywhere,
2 in this document it refers to the use in context of
3 the requirement for two person coverage?

4 A In the second paragraph.

5 MR. HIRN: I'll move the admission of Union
6 Exhibit 13.

7 MS. CIOFFALO: No objection.

8 ARBITRATOR SHARNOFF: It's admitted.

9 (The document referred to,
10 previously identified as
11 Union Exhibit No. 13, was
12 received in evidence.)

13 (The document referred to was
14 marked for identification as
15 Union Exhibit No. 14.)

16 BY MR. HIRN:

17 Q I direct your attention to Union Exhibit 14.
18 Did Vickie Nadolski reply to Bill Proenza's email?

19 A Yes, she did. Union Exhibit 14 at the top
20 is her response to Bill Proenza.

21 MR. HIRN: I'll move the admission of Union
22 Exhibit 14.

23 MS. CIOFFALO: No objection.

24 ARBITRATOR SHARNOFF: It's admitted.

25 //

1 (The document referred to,
2 previously identified as
3 Union Exhibit No. 14, was
4 received in evidence.)

5 (The document referred to was
6 marked for identification as
7 Union Exhibit No. 15.)

8 BY MR. HIRN:

9 Q Directing your attention to Union Exhibit
10 15, were there any further exchanges between Vickie
11 and Bill about the issue of the allocation of the
12 floater at offices with less than 10 core
13 meteorologists?

14 A Yes. This is an example of the continuing
15 debate.

16 MR. HIRN: I'll move the admission of Union
17 Exhibit 15.

18 MS. CIOFFALO: No objection.

19 ARBITRATOR SHARNOFF: Union 15 is admitted.

20 (The document referred to,
21 previously identified as
22 Union Exhibit No. 15, was
23 received in evidence.)

24 //

25 //

1 (The document referred to was
2 marked for identification as
3 Union Exhibit No. 16.)

4 BY MR. HIRN:

5 Q Directing your attention to Union Exhibit
6 16, can you identify this document?

7 A The cover sheet is an email from Vickie
8 Nadolski, the team leader, to all the members of the
9 corporate board, and it was in advance of an upcoming
10 board meeting.

11 Q Directing your attention to page 5 --

12 A Page 5? Okay. Exhibit D?

13 Q Yes. There's a line that's crossed out with
14 a date. Is that your doing?

15 A That's my writing, yes, and that was prior
16 to the scheduled board meeting.

17 Q And why did you cross that out?

18 A It appeared to me that the statement was
19 redundant.

20 MR. HIRN: I'll move the admission of Union
21 Exhibit 16 and direct your attention to Union Exhibit
22 17.

23 (The document referred to was
24 marked for identification as
25 Union Exhibit No. 17.)

1 ARBITRATOR SHARNOFF: Okay. No objection to
2 16?

3 MS. CIOFFALO: No.

4 ARBITRATOR SHARNOFF: Okay. It's admitted.

5 (The document referred to,
6 previously identified as
7 Union Exhibit No. 16, was
8 received in evidence.)

9 BY MR. HIRN:

10 Q Did the debate over how to meet the two
11 person requirement on shift continue?

12 A Yes. This is yet another email from Vickie
13 Nadolski to Bill Proenza, and the subject line says
14 Clarification on Floater Implementation.

15 MR. HIRN: I'll move the admission of Union
16 Exhibit 17.

17 MS. CIOFFALO: No objection.

18 ARBITRATOR SHARNOFF: It's admitted.

19 (The document referred to,
20 previously identified as
21 Union Exhibit No. 17, was
22 received in evidence.)

23 (The document referred to was
24 marked for identification as
25 Union Exhibit No. 18.)

1 BY MR. HIRN:

2 Q Directing your attention to Union Exhibit
3 18, can you identify this?

4 A This is a response from Bill Proenza to
5 Vickie Nadolski, and the subject line says
6 Clarification on Floater Implementation Plan, and it's
7 dated October 10, 2000, so it was still on the same
8 day.

9 Q I notice that the original email exchange
10 was not addressed to you, the original email exchange
11 from Bill to Vickie.

12 A Correct.

13 Q Did someone forward this to you?

14 A Yes. It was forwarded to me by Vickie.

15 MR. HIRN: I'll move the admission of Union
16 Exhibit 18.

17 MS. CIOFFALO: No objection.

18 ARBITRATOR SHARNOFF: Okay. It's admitted.

19 (The document referred to,
20 previously identified as
21 Union Exhibit No. 18, was
22 received in evidence.)

23 (The document referred to was
24 marked for identification as
25 Union Exhibit No. 19.)

1 BY MR. HIRN:

2 Q Directing your attention to Union Exhibit
3 19, can you identify this document?

4 A This is an email from Jack May, Director of
5 the Central Region, to Vickie Nadolski and other
6 members of the team.

7 Q Can you explain the second page of this, how
8 you understood it at the time?

9 A Okay. It explains the history of the issue
10 and it says that or states that the corporate board at
11 its April 2000 meeting agreed that the floater would
12 be reassigned or be kept as an HMT, and then there are
13 two alternatives to the debate that was going on about
14 whether the floater should be retained as an HMT or
15 could be converted to a meteorologist.

16 MR. HIRN: I'll move the admission of Union
17 Exhibit 19.

18 MS. CIOFFALO: No objection.

19 ARBITRATOR SHARNOFF: Okay. It's admitted.

20 (The document referred to,
21 previously identified as
22 Union Exhibit No. 19, was
23 received in evidence.)

24 //

25 //

1 (The document referred to was
2 marked for identification as
3 Union Exhibit No. 20.)

4 BY MR. HIRN:

5 Q Directing your attention to Union Exhibit
6 20, did you receive this slide from management during
7 the course of the team's deliberations?

8 A Yes.

9 MR. HIRN: I'll move the admission of Union
10 Exhibit 20.

11 MS. CIOFFALO: I'm sorry. Can he identify
12 the document a little bit better than that? I mean,
13 when in the course of all of this did he get this?
14 What was it part of? I mean, this appears to be at
15 the very least Attachment 2 to some larger document.

16 BY MR. HIRN:

17 Q Ramon, do you remember how and when you got
18 this?

19 A No, I do not.

20 MS. CIOFFALO: I mean, I would object then.

21 THE WITNESS: It's obviously related to the
22 work we were doing in developing the implementation of
23 the floater plan because it specifically states the
24 charge of the corporate board to the team. And it was
25 not the first team because it says consider the

1 inclusion of service hydrologists, and that issue came
2 up later in 2000, as did the creation or addition of
3 the electronic technician position.

4 It also states that the application of the
5 algorithms was to be modified. The team was supposed
6 to consider that, and then the team was to report back
7 to the corporate board in 45 days. So this document
8 was not prepared by the Union. It was prepared by
9 senior management here at headquarters.

10 BY MR. HIRN:

11 Q And do you recall precisely who prepared it?

12 A No, I do not.

13 MR. HIRN: Okay.

14 MS. CIOFFALO: I mean, the Union is talking
15 all about context here, and this document has
16 absolutely no context. I don't know what the other
17 attachments are. I don't know if the conversation
18 about two persons per shift extends onto the next page
19 because it looks like the page ended with that
20 discussion. So, I mean, I would suggest that it's
21 either not relevant or can't be put into any context
22 at all given the lack of foundation for it.

23 MR. HIRN: This was found in Ramon's files
24 as a separate document. That's all we have. It came
25 from management and it's simply management's

1 understanding -- it says understanding -- of what the
2 term in dispute means to the extent. So it's highly
3 relevant and probative, but he's being honest and
4 can't pin down where we got it.

5 ARBITRATOR SHARNOFF: Yes. He's not the
6 author of it.

7 MR. HIRN: Right.

8 ARBITRATOR SHARNOFF: It doesn't say who the
9 author is, so we don't know.

10 MR. HIRN: Management. Well, management.

11 ARBITRATOR SHARNOFF: We don't know.

12 BY MR. HIRN:

13 Q Was there anybody else involved besides the
14 Union and senior managers?

15 A No.

16 Q Besides you and the senior managers. Would
17 there be any other person you could have gotten this
18 from other than senior managers?

19 A No.

20 Q Do you recall seeing this before?

21 A No. I can't say specifically.

22 MR. HIRN: Okay. Withdrawn.

23 ARBITRATOR SHARNOFF: Yes.

24 MR. HIRN: Withdrawn. If he doesn't recall
25 seeing it --

1 ARBITRATOR SHARNOFF: I understand. All I
2 was going to add is that we're here for several more
3 days. If you can figure out where it comes from --

4 MR. HIRN: No. We can't. We tried. I
5 tried.

6 ARBITRATOR SHARNOFF: I mean, maybe there's
7 another document out there and we'll say oh, this is
8 page 12 of that document.

9 MR. HIRN: It's similar to something that
10 was attached to another document.

11 ARBITRATOR SHARNOFF: It may be that it's
12 already in the record somewhere.

13 MR. HIRN: I don't know.

14 ARBITRATOR SHARNOFF: Anyway, if it is
15 determined that you can find out its origin, we will
16 revisit it.

17 MR. HIRN: Okay.

18 ARBITRATOR SHARNOFF: At this point, it's
19 not admitted.

20 (The document referred to was
21 marked for identification as
22 Union Exhibit No. 1.)

23 BY MR. HIRN:

24 Q Okay. Directing your attention to Union
25 Exhibit 1, does this accurately reflect the staffing

1 of and duties of particular staff members at weather
2 forecast offices as a result or after the floater plan
3 was implemented?

4 A Yes, it does except for the position of
5 observation program leader. That was not part of the
6 implementation plan for floater reassignment or the
7 decision to restructure the Data Acquisition Program
8 unit.

9 Q Was that position created while you were
10 present?

11 A I do not recall bargaining over that
12 position.

13 Q Okay. With that caveat, is the rest of this
14 an accurate reflection of the staffing and generic
15 duties of the people on the staff's postmodernization,
16 postfloater plan?

17 A Yes.

18 Q And the picture in the upper right-hand
19 corner, does that identify the forecast offices as you
20 know them when you retired?

21 A Yes, and I can vouch for the area of
22 responsibility designated for the Brownsville office.

23 MR. HIRN: This is being offered solely as
24 just a guide, a review guide for your use, Mr.
25 Sharnoff, and I'll move the admission of Union Exhibit

1 1.

2 MS. CIOFFALO: No objection.

3 ARBITRATOR SHARNOFF: Okay. It's admitted.

4 (The document referred to,
5 previously identified as
6 Union Exhibit No. 1, was
7 received in evidence.)

8 MR. HIRN: And I'd just note it comes off
9 the Southern Region Weather Service website in the
10 upper right-hand corner.

11 BY MR. HIRN:

12 Q And, Ramon, I have one other train of
13 questioning to ask you. If you have Joint Exhibit 5
14 left? If not, I will --

15 A Yes.

16 Q Okay. Directing your attention to the very
17 last page --

18 ARBITRATOR SHARNOFF: I'm sorry. Which
19 exhibit?

20 MR. HIRN: Joint Exhibit 5, the memorandum
21 of understanding of the 1993 human resources plan.

22 ARBITRATOR SHARNOFF: And the last page.
23 Okay.

24 MR. HIRN: Roman numeral III, Subsection C.

25 THE WITNESS: Yes.

1 BY MR. HIRN:

2 Q Between the date you signed this plan, this
3 agreement, and the date you retired as Union president
4 in 2001, did the Union ever agree that the MOU was no
5 longer considered necessary due to the certified
6 Stage 2 operations?

7 A No.

8 Q Do you remember management ever proposing or
9 suggesting to you that it no longer considered the
10 agreement necessary?

11 A No.

12 MR. HIRN: No further questions. Yes. And,
13 Mr. Sharnoff, while Mr. Sierra was testifying one of
14 the Union officials went to the OPM website and found
15 the complete version of the 1995 collective bargaining
16 agreement that Ms. Cioffalo was seeking.

17 ARBITRATOR SHARNOFF: Okay.

18 MR. HIRN: And this is as printed off of the
19 OPM website.

20 ARBITRATOR SHARNOFF: All right. At this
21 point, we don't have to put it in. If there's
22 anything you want to add to the record, we can deal
23 with that later.

24 MS. CIOFFALO: I'd request putting the
25 entire document in the record just so that we have a

1 complete document.

2 MR. HIRN: Should we substitute that?

3 ARBITRATOR SHARNOFF: And that was which
4 Union exhibit?

5 MR. HIRN: Union Exhibit --

6 MS. CIOFFALO: I think it was 2.

7 MR. HIRN: -- 2.

8 MS. CIOFFALO: No. I'm sorry.

9 MR. HIRN: 3.

10 ARBITRATOR SHARNOFF: Okay. All right. The
11 substitution has been accomplished.

12 MR. HIRN: Okay.

13 ARBITRATOR SHARNOFF: Now do you have any
14 additional questions of this witness at this point?

15 MR. HIRN: No.

16 ARBITRATOR SHARNOFF: Okay. Why don't we go
17 off the record.

18 (Whereupon, at 1:10 p.m., the hearing in the
19 above-entitled matter was recessed, to reconvene at
20 2:15 p.m. this same day, Monday, January 13, 2014.)

21 //

22 //

23 //

24 //

25 //

1 BY MS. CIOFFALO:

2 Q All right. So if you can take a look at
3 Joint Exhibit 6?

4 A I only have 5.

5 MS. CIOFFALO: Okay.

6 MR. HIRN: It's coming.

7 MS. LUCIANI: It's right here.

8 MR. HIRN: No, no. This is mine. You need
9 to give him that.

10 MS. LUCIANI: Oh.

11 MS. CIOFFALO: Okay. You can just give him
12 the whole binder. That's the binder of joint
13 exhibits. That way he can just flip to the one we
14 need to look at.

15 MR. HIRN: He can flip through them.

16 MS. LUCIANI: 5 is not in here. That's the
17 one that I couldn't find it in yours.

18 THE WITNESS: I have 5 here.

19 MS. LUCIANI: Okay.

20 MS. CIOFFALO: And all of them should be in
21 that binder.

22 THE WITNESS: Okay.

23 MS. CIOFFALO: So you can just refer to that
24 binder while I'm questioning you.

25 THE WITNESS: 6?

1 MS. CIOFFALO: Yes. Joint Exhibit 6.

2 THE WITNESS: Okay.

3 BY MS. CIOFFALO:

4 Q And this is the human resources and position
5 management plan --

6 A Yes.

7 Q -- for the MAR.

8 A Yes.

9 Q You testified earlier that you were familiar
10 with this document. Okay. So isn't it true that
11 nothing in this position management plan requires the
12 Agency to fill vacancies beyond the initial transition
13 that was the modernization?

14 MR. HIRN: That calls for a legal
15 conclusion.

16 MS. CIOFFALO: No. I'm asking him about the
17 facts, whether or not he understands this document to
18 have required the Agency to fill vacancies after this
19 initial transition.

20 ARBITRATOR SHARNOFF: Well, he's an
21 experienced Union official. Just for the record, the
22 official Union position in this case, should it differ
23 in any way from any answer of any of your witnesses,
24 will be up to you. You can have the final word --

25 MR. HIRN: Okay.

1 ARBITRATOR SHARNOFF: -- on what the Union's
2 position is, but an experienced Union official I think
3 can be asked a question on this.

4 BY MS. CIOFFALO:

5 Q I mean, in fact you said that you had
6 discussions with management about the plan and
7 certainly the INI MOU, correct?

8 A Yes.

9 Q Okay. So, in your discussions, isn't it
10 true that there were no discussions about filling
11 vacancies after this initial transition with respect
12 to this plan?

13 A My interpretation was that until we both
14 agreed on a site-by-site basis that the plan and the
15 MOU were no longer needed because we were done with
16 Stage 2 that it required that the positions be filled.

17 Q Okay. Where in this document does it say
18 anything about management filling vacancies beyond the
19 initial positions that were established through the
20 MAR?

21 (Pause.)

22 Q If we could have the record reflect --

23 A I don't --

24 Q -- that he's taking some time to peruse the
25 document? I'm sorry. You said you don't?

1 A I don't think so. I don't think this
2 document refers specifically to that.

3 Q Okay. In fact, all of the entry on duty
4 dates for the positions that were covered by this plan
5 are tied to the initial arrival of the new technology
6 at that particular office, right?

7 A The deployment of the technology to a great
8 extent drove the filling of positions.

9 Q Okay. And that was so the staff could all
10 be adequately trained on the new technology, right,
11 before it came on?

12 A Yes.

13 Q If you can also turn your attention to Joint
14 Exhibit 7?

15 ARBITRATOR SHARNOFF: I'm sorry. Union or
16 Joint?

17 MS. CIOFFALO: Joint Exhibit 7.

18 ARBITRATOR SHARNOFF: Joint 7.

19 MS. CIOFFALO: There should be the next tab
20 for Joint Exhibit 7.

21 THE WITNESS: Oh, okay. Sorry.

22 MS. CIOFFALO: Yes. Joint Exhibit 6 is
23 quite large, so yes.

24 THE WITNESS: Okay. I've got it.

25 //

1 BY MS. CIOFFALO:

2 Q All right. And so you testified earlier
3 that you were in partnership with the Agency about
4 this document?

5 A Yes.

6 Q So this document also only covered this one-
7 time filling of GS-13 and GS-12 forecaster positions,
8 correct?

9 A Well, the assumption was that --

10 Q No, no. I'm asking you does it cover -- yes
11 or no. Does it just cover this one-time selection of
12 all of the new GS-13 positions and the resultant
13 vacancies in the GS-12 forecaster positions?

14 A Yes.

15 Q And it's true that everybody would be hired
16 at once from the one vacancy announcement, correct?

17 A For which position?

18 Q For the GS-13 positions. There would be one
19 vacancy announcement that they would all be selected
20 from, correct?

21 A Yes.

22 Q The floater plan that we discussed, which is
23 Joint Exhibit 8 in the binder, this is the
24 restructuring weather forecast office staffing
25 document.

1 ARBITRATOR SHARNOFF: And I'm sorry. Which
2 number is that?

3 MS. CIOFFALO: I'm sorry. Joint Exhibit 8.

4 ARBITRATOR SHARNOFF: Okay.

5 BY MS. CIOFFALO:

6 Q That plan also only addresses the initial
7 transition to create the ITO position and place the
8 floater, correct?

9 A Correct.

10 Q So now even the 1993 memorandum of
11 understanding, which you did actually negotiate and
12 sign, right? Joint Exhibit 5 in the binder over
13 there.

14 MS. LUCIANI: I'm not sure if that's in
15 there. That might be the one that you had.

16 THE WITNESS: It's this one over here.

17 MS. CIOFFALO: Oh, I'm sorry. It's not in
18 our binder?

19 MS. LUCIANI: I pulled it because he had it.

20 MS. CIOFFALO: Oh, okay.

21 ARBITRATOR SHARNOFF: I'm sorry. We're at?

22 MS. CIOFFALO: Joint Exhibit 5.

23 BY MS. CIOFFALO:

24 Q So, in this document, you did -- this is the
25 INI, the memorandum of understanding that you did sign

1 with the Agency, right?

2 A Yes.

3 Q So even this document specifically states
4 that budget appropriations and allocations will
5 ultimately govern the number and timing of filling of
6 positions, isn't that true?

7 A Could you give me the specific section where
8 you're --

9 Q Sure. It's on page 9 I believe. The
10 numbers are at the top of the page, although there's
11 no number on that particular page. It's the page
12 after page 8, and it's Section 4B I believe.

13 A 4B?

14 Q I'm sorry. Am I in the right place? Right.
15 Section 4B. It's Bullet Point N as in Nancy.

16 ARBITRATOR SHARNOFF: Okay. Page 9?

17 MS. CIOFFALO: Yes. Page 9, and it's toward
18 the end of the page, that indented paragraph that
19 starts with Bullet Point N, Section 4B.

20 THE WITNESS: You say page 9, and the page
21 number is at the top? No?

22 MS. CIOFFALO: Yes, but there is no number
23 at the top of that page, so it's the page after page
24 8. It's labeled page 8 on top.

25 THE WITNESS: Okay.

1 MS. CIOFFALO: And then the next page. So
2 you go down toward the bottom of that page to Bullet
3 Point N as in Nancy, Section 4B.

4 THE WITNESS: Oh, okay. Yes.

5 BY MS. CIOFFALO:

6 Q That says right there that budget
7 appropriations and allocations will govern the number
8 and timing of filling of these positions, correct?

9 A Yes.

10 Q Did you have any role in negotiating the
11 current CBA between the parties, the October 5, 2001,
12 collective bargaining agreement?

13 A No.

14 Q Now you said that you've been retired since
15 when? 2003? 2004?

16 A 2004.

17 Q 2004.

18 A July 3.

19 Q But before then you were not involved in
20 labor management issues after 2000, 2001?

21 A Correct.

22 Q So you don't actually know how the parties
23 have been applying any of these agreements, any of
24 these staffing plans or agreements since then,
25 correct?

1 A That's correct. After I retired. Well,
2 actually I didn't retire. I retired in July 2004 from
3 federal service, but I left the Union position in
4 October of 2001.

5 MS. CIOFFALO: Okay. One moment. I don't
6 have any other questions.

7 REDIRECT EXAMINATION

8 BY MR. HIRN:

9 Q Ramon, back to the human resources plan. Is
10 there anything in the human resources plan that says
11 the staffing levels to which you agreed were only
12 going to last for a limited period of time?

13 A No.

14 MR. HIRN: Okay. That's all.

15 ARBITRATOR SHARNOFF: Anything additional?

16 MS. CIOFFALO: No.

17 ARBITRATOR SHARNOFF: Okay. You're excused
18 as a witness. Thank you very much for your
19 cooperation.

20 THE WITNESS: Thank you.

21 (Witness excused.)

22 (Whereupon, a short recess was taken.)

23 ARBITRATOR SHARNOFF: Back on the record.

24 Did you want to wait for any of your assistants?

25 MR. HIRN: No. That's fine.

1 ARBITRATOR SHARNOFF: Okay.

2 Whereupon,

3 DANIEL SOBIEN

4 having been duly sworn, was called as a
5 witness and was examined and testified as follows:

6 DIRECT EXAMINATION

7 BY MR. HIRN:

8 Q Dan, would you give us your name and the
9 spelling of your name for the record and your home
10 address?

11 A It's Daniel, D-A-N-I-E-L, Sobien,
12 S-O-B-I-E-N. My address is 3707 5th Avenue, N.E. in
13 Bradenton, Florida 34208.

14 Q Mr. Sobien, what's your education?

15 A I have a Bachelor of Science in Meteorology
16 and an MBA.

17 Q And by whom are you employed?

18 A The National Weather Service.

19 Q And what is your job title and location?

20 A I'm the senior emergency response specialist
21 in Tampa, in the Tampa, Florida, forecast office.

22 Q And when did you begin your employment with
23 the National Weather Service?

24 A It was in 1991.

25 Q And where was that? In what position?

1 A I was an intern in Del Rio, Texas, and then
2 after about nine months there transferred to San
3 Antonio, Texas, and I was an intern there until -- do
4 you want me to just keep going on or do you --

5 Q Yes, please.

6 A Okay. Until around 1994, and that's when I
7 got the job in Tampa, Florida. I started out as a
8 journeyman forecaster there, which is a GS-12
9 position, became a lead forecaster there after a few
10 years, and then a couple years, roughly two years, ago
11 became a lead emergency response meteorologist.

12 Q And have you held any positions with the
13 Union?

14 A Well, I'm currently the president. I've
15 been the president since 2005. Prior to that I was
16 the vice president -- I was elected in 2003 -- and
17 then I was the Southern Region chairman prior to that
18 and then the steward in the Tampa office prior to
19 that.

20 Q Were you a member of the negotiating team
21 for the current collective bargaining agreement?

22 A Yes.

23 Q And do you hold any department-wide labor
24 positions?

25 A Department of Commerce-wide?

1 Q Yes.

2 A I'm the co-chair of the Labor Management
3 Forum, which is the equivalent of back in the Clinton
4 Administration when they had the partnership councils.
5 This is the Labor Management Forum. Myself and the
6 CFO for POC, Ellen Herbst, are the co-chairs of that
7 committee.

8 Q Dan, I'm going to start by asking you to
9 look at the last page of Joint Exhibit 5, Roman
10 numeral III C.

11 ARBITRATOR SHARNOFF: I'm sorry. Which one?

12 MR. HIRN: Joint Exhibit 5.

13 ARBITRATOR SHARNOFF: Joint. Roman numeral?

14 MR. HIRN: III C.

15 ARBITRATOR SHARNOFF: III C.

16 BY MR. HIRN:

17 Q Did there ever come a time when you were on
18 the Union's national negotiating team, vice president
19 or president, when NWSEO no longer considered the 1993
20 agreement no longer necessary due to certified Stage 2
21 operations?

22 A Well, I can only go back to 1999. That's
23 when I started with the negotiating team. But since
24 then, no.

25 Q Has management ever communicated to the

1 Union since that time that they no longer consider
2 this MOU necessary?

3 A It's never come up ever in any discussions.

4 Q And why does NWSEO consider the MOU still
5 necessary?

6 A Well, I mean, that's a good question.
7 Staffing, to be honest with you, I think the offices
8 are understaffed based on this plan. I think staffing
9 needs have increased since this occurred, but at least
10 this does provide a baseline staffing for each office
11 that helps us maintain operations, gives us a floor to
12 work with. It's still valid. It's still valid. The
13 structure of the Weather Service hasn't really changed
14 since the plan was developed. We still have weather
15 forecast offices as the primary forecasting office
16 and --

17 Q Did there ever come a time since you became
18 president when the Weather Service proposed to alter
19 the staffing of the HMT unit that had been established
20 by the 2000 floater plan?

21 A Since I became president?

22 Q Or since you became a national officer.

23 A Yes.

24 Q And when was that?

25 A It was in 2004. Well, that's when we agreed

1 to it. Yes, it was in 2004.

2 (The document referred to was
3 marked for identification as
4 Union Exhibit No. 21.)

5 BY MR. HIRN:

6 Q Well, I'm going to show you what's been
7 marked for identification as Union Exhibit 21 and ask
8 if you have seen this document before?

9 A Okay. This was late 2003 when they --

10 Q And what is this?

11 A This is a proposal in a nutshell to stop
12 hiring HMTs and hire interns in their place, relieve
13 one HMT in each office out of the unit, which was four
14 at that time. So, yes. It was a proposal to reduce
15 the number of HMTs down to one in each office and
16 replace them with interns, which are degreed
17 meteorologists.

18 Q What did the Union do when it received that?

19 A We notified that we wanted to bargain, and
20 we started bargaining.

21 MR. HIRN: I'll move the admission of Union
22 Exhibit 21.

23 MS. CIOFFALO: No objection.

24 ARBITRATOR SHARNOFF: Okay. It's admitted.

25 //

1 (The document referred to,
2 previously identified as
3 Union Exhibit No. 21, was
4 received in evidence.)

5 MS. CIOFFALO: I'm sorry. Actually can I
6 ask? This is not addressed to Mr. Sobien at all. Is
7 there something that -- has he laid a foundation for
8 this? Have you seen it before and all that?

9 THE WITNESS: Yeah, I've seen that before.
10 I've certainly seen the proposal before.

11 MS. CIOFFALO: The proposal that's attached
12 to the --

13 THE WITNESS: Yes.

14 BY MR. HIRN:

15 Q What, if anything, did the Union find
16 objectionable to the proposal?

17 A Well, there's really two things. The big
18 thing is a reduced mobility of people across the
19 country. For instance, if there was an HMT in
20 Caribou, Maine, whose wife got a job or husband got a
21 job in Los Angeles, it would mean they could never
22 live in the same city again. He could never bid on a
23 job in Los Angeles.

24 But there's another subset of they're not
25 really called HMTs. They're not hydrometeorological

1 technicians -- they're just called meteorological
2 technicians -- that are in Alaska, and they were lower
3 graded positions. And generally these were guys out
4 of the military who were just trying to get their foot
5 in the door in the National Weather Service and they
6 would go to just really out of the wilderness kind of
7 places just to get their foot in the door, and if we
8 signed that agreement, they would no longer be able to
9 ever get out of those locations out on the Aleutian
10 Islands or wherever they were.

11 So we objected to it for those two reasons.
12 In the case of the Alaska folks, that was also some
13 promotion potential that they would no longer be able
14 to bid on those jobs that opened up across the
15 continental U.S.

16 Q Did the Weather Service ever publicly
17 acknowledge their obligation to bargain, to
18 collectively bargain with the Union over the proposed
19 change?

20 A We actually met. We met in this building in
21 fact to bargain.

22 Q Okay. But listen to my question.

23 A Okay.

24 //

25 //

1 (The document referred to was
2 marked for identification as
3 Union Exhibit No. 22.)

4 BY MR. HIRN:

5 Q Did the Weather Service -- okay. I'll ask
6 you to look at Union Exhibit 22. Can you identify
7 this document?

8 A Yes.

9 Q And could you tell us what it is?

10 A Well, this was an email from at the time the
11 Deputy Assistant Administrator of NOAA for Weather
12 Services, John Jones, to -- an all hands email,
13 everybody in the National Weather Service, that stated
14 that they've notified us to bargain over that specific
15 plan. I think it was in response to us writing a
16 newsletter if I recall correctly about this. But,
17 yes. It was an email to everybody saying that they've
18 notified us for bargaining.

19 MR. HIRN: Okay. I'll move the admission of
20 Union Exhibit 22.

21 MS. CIOFFALO: No objection.

22 ARBITRATOR SHARNOFF: Okay. 22 is admitted.

23 //

24 //

25 //

1 (The document referred to,
2 previously identified as
3 Union Exhibit No. 22, was
4 received in evidence.)

5 (The document referred to was
6 marked for identification as
7 Union Exhibit No. 23.)

8 BY MR. HIRN:

9 Q I'll ask you to look at Union Exhibit 23.
10 Can you tell me who -- where is the second set of
11 these? Hold on a second. Who is Dean Gulezian?

12 A Well, at the time, he was the Regional
13 Director of the Eastern Region.

14 Q Okay. And who is Charles Skeen?

15 A I don't know Charles Skeen. I've seen this
16 email before, but I don't know who Charles Skeen is.

17 Q And where did you see this email?

18 A This made the rounds around the time of the
19 negotiations. It was a little more detailed than what
20 John Jones had said in his all hands meeting about
21 their plan, and I was part of the bargaining team that
22 was negotiating this change.

23 Q And who is David Solano?

24 A David Solano is our current Eastern Region
25 Chairman, but back then I believe he was our steward

1 for the Mid-Atlantic River Forecast Center.

2 MR. HIRN: I'll move the admission of Union
3 Exhibit 23.

4 MS. CIOFFALO: No objection.

5 ARBITRATOR SHARNOFF: Okay. It's admitted.

6 (The document referred to,
7 previously identified as
8 Union Exhibit No. 23, was
9 received in evidence.)

10 BY MR. HIRN:

11 Q Now you said the Union entered bargaining
12 here at Weather Service headquarters over management's
13 proposal. Were you a member of that bargaining unit?

14 A Yes.

15 (The document referred to was
16 marked for identification as
17 Union Exhibit No. 24.)

18 BY MR. HIRN:

19 Q And directing your attention to Union
20 Exhibit 24, can you identify this document?

21 A The document in your hand or --

22 Q No. Right there.

23 A Oh.

24 Q All Union exhibits are right there.

25 A Oh, okay. Sure. This is the notes from

1 those negotiations.

2 Q And what did the Union propose to do about
3 the HMT unit in response to management's proposal to
4 replace the HMTs with interns?

5 A Actually, if I recall, that was in the notes
6 somewhere here. Looking at the math. Most interns
7 were hired at GS-7s.

8 MS. CIOFFALO: Excuse me. Can you just
9 identify where you're reading from?

10 THE WITNESS: Let me make sure this is --

11 MR. HIRN: I think he's subvocalizing at
12 this point.

13 THE WITNESS: Yes. Thanks. I didn't know
14 there was a name for that.

15 MS. CIOFFALO: Neither did I.

16 ARBITRATOR SHARNOFF: I think he's just
17 vocalizing. I think subvocalizing would be more
18 helpful.

19 THE WITNESS: Okay. The pages are not
20 numbered, but if you go to the -- well, they're not
21 numbered, so there's no real way to --

22 ARBITRATOR SHARNOFF: Well, what does it say
23 at the top line on the page you want?

24 THE WITNESS: It says DS: I want to know
25 what's going to happen to Jack Hayes.

1 ARBITRATOR SHARNOFF: All right. Then give
2 us a chance to find that. Okay. I'm there. Did you
3 find that?

4 MS. CIOFFALO: I did. Yes. Thank you.

5 ARBITRATOR SHARNOFF: Okay.

6 THE WITNESS: Did everybody find it?

7 ARBITRATOR SHARNOFF: Yes.

8 THE WITNESS: Okay. At the bottom of that
9 page, RH. It says just some brainstorming and food
10 for thought about our possible proposal. We were
11 concerned about the pipeline issue. We looked at the
12 math. Most interns are hired at GS-7 because GS-7 can
13 advance to 11 in three years. The math shows the need
14 for 125 less positions required in the pipeline. This
15 is coincidentally one HMT per WFO.

16 You don't need as many interns in the
17 pipeline as you think. You have far more interns than
18 you need. When we get serious about the subject, we
19 can work through the math together. The average
20 intern spends three to four years before he can bid on
21 a journeyman forecaster slot. The HMTs are concerned
22 about their career ladder and upset about no career
23 growth.

24 We would like if management had talked to us
25 to see along the lines of let's draw down to three

1 1341s, which is Weather Service code for HMTs, per
2 office, two GS-11s, one GS-12, and every WFO with none
3 of the 1341s being supervisors. And then we also
4 state they should be FLSA nonexempt.

5 BY MR. HIRN:

6 Q Did the parties ultimately reach an
7 agreement as to an alternative to management's
8 proposal?

9 A Yes.

10 MR. HIRN: I move the admission of Union
11 Exhibit 24.

12 MS. CIOFFALO: No objection.

13 MR. HIRN: And then direct your attention to
14 Union Exhibit 25.

15 (The document referred to was
16 marked for identification as
17 Union Exhibit No. 25.)

18 ARBITRATOR SHARNOFF: Okay. Union 24 is
19 admitted.

20 (The document referred to,
21 previously identified as
22 Union Exhibit No. 24, was
23 received in evidence.)

24 BY MR. HIRN:

25 Q Did the parties ultimately reach an

1 agreement over what to do with the HMT unit?

2 A Yes.

3 Q And what was the eventual compromise?

4 A The compromise was they took our proposals.
5 I mean, we've discussed them. They took them. But we
6 eventually came up with some proposals. They went
7 back and rewrote the plan and sent it to us in a way
8 that we could accept it as is and we accepted that.

9 And I don't think I answered your question,
10 but the compromise was that instead of not hiring HMTs
11 we left it up to each local office as to whether or
12 not they needed an HMT or an intern in that office so
13 that each position would be bid both as an HMT and an
14 intern, and also in addition to that, those MET techs
15 in Alaska were given a promotion a grade higher so
16 that they would be eligible to bid on those positions
17 in the continental United States.

18 Q Okay. Was there any agreement about the --
19 what happened to the Union's proposal to make all the
20 HMTs FLSA exempt?

21 A Yes. They became FLSA exempt with this too.
22 Thanks.

23 Q And what about the Union's proposal to
24 convert the DAPM supervisory position to a bargaining
25 unit position?

1 A Absolutely correct. It took the management
2 position out of that and made it a bargaining unit
3 position, changed the name and everything. The grade
4 was still the same.

5 Q And the latest counterproposal that
6 management sent us on September 23, Union Exhibit 25,
7 did the Union agree to that, to management's last
8 counterproposal? Did management's last -- let me
9 stop. Did management's last counterproposal of
10 September 23, 2004, encapsulate all those things that
11 we wanted?

12 A Yes. Well, that we were willing to accept.

13 Q Okay. Did the Union agree to accept
14 management's last counterproposal?

15 A Yes. The last page of this is a letter from
16 management's chief negotiator, Mickey Brown, to you,
17 who was our chief negotiator in this process, and you
18 responded. This is a response from you to Mickey
19 Brown saying that you accept it.

20 MR. HIRN: Okay. We'll move in the
21 admission of Union Exhibit 25.

22 MS. CIOFFALO: No objection. And I'll note
23 this is actually the same as Joint Exhibit 9. It's
24 already entered.

25 ARBITRATOR SHARNOFF: Okay. Okay. Well,

1 Union 25 is admitted.

2 (The document referred to,
3 previously identified as
4 Union Exhibit No. 25, was
5 received in evidence.)

6 ARBITRATOR SHARNOFF: And it's the same as
7 what, Joint 9?

8 MS. CIOFFALO: Joint Exhibit 9.

9 BY MR. HIRN:

10 Q Through the last decade, the 2000s, did the
11 parties continue to partner the allocation of the
12 floater positions that were the subject of the 2000
13 floater plan?

14 A Yeah. I can't tell you when the last time
15 was, but it was fairly recently that it comes up
16 that -- I think even on one occasion the Union
17 proposed to move a floater position, but from time to
18 time management wants to move a floater position and
19 they negotiate that with us.

20 (The document referred to was
21 marked for identification as
22 Union Exhibit No. 26.)

23 BY MR. HIRN:

24 Q Directing your attention to Union Exhibit
25 26, can you identify who Rich Douglas and Robert

1 Baruffaldi are?

2 A Rich Douglas was at the time the
3 Meteorological Services Division chief in Western
4 Region headquarters. He was the chief negotiator for
5 the Western Region of the National Weather Service.

6 And I don't know if the arbitrator has
7 noticed the map behind me, but it really clearly
8 points out where the regions are. It's a nice little
9 reference.

10 Robert Baruffaldi at the time was our
11 regional chairman for the Western Region.

12 Q Let me ask you this. Does the Union retain
13 in its files copies of email exchanges and agreements
14 between regional chair and their management
15 counterparts?

16 A I wouldn't say that it's a complete file,
17 but we do have a file of this.

18 MR. HIRN: Okay. I'll move the admission of
19 Union Exhibit 26.

20 MS. CIOFFALO: I mean, again, foundation or
21 anything. I understand you established that he
22 maintained files. Can you --

23 MR. HIRN: Right.

24 MS. CIOFFALO: -- finish that, lay a
25 foundation, has he seen the document before and all of

1 that stuff?

2 BY MR. HIRN:

3 Q Is this from the Union's files?

4 A Yes.

5 MR. HIRN: Okay. I don't know what more I
6 have to do. He's identified it's from the Union's
7 files, and he identified the management person and the
8 Union person who exchanged it.

9 MS. CIOFFALO: I have no objection.

10 ARBITRATOR SHARNOFF: Okay. It's admitted.
11 Union 26 is admitted.

12 (The document referred to,
13 previously identified as
14 Union Exhibit No. 26, was
15 received in evidence.)

16 (The document referred to was
17 marked for identification as
18 Union Exhibit No. 27.)

19 BY MR. HIRN:

20 Q Would you look at Union Exhibit 27? Let me
21 ask you this. Mr. Douglas' comment in the top
22 paragraph, would you agree with this?

23 A Sure.

24 MR. HIRN: Okay. And I'll move the
25 admission of Union Exhibit 27.

1 MS. CIOFFALO: Same objection. You've not
2 even established that these files are maintained by
3 him, that he has looked at these before. He's just
4 conceding documents that he maintained honestly.

5 BY MR. HIRN:

6 Q Have you seen these before?

7 A Yes.

8 MR. HIRN: And what difference does it make,
9 Monique? Do you think we just like manufactured
10 these?

11 MS. CIOFFALO: No.

12 MR. HIRN: Do you dispute that they are
13 actually --

14 MS. CIOFFALO: I don't think that you've
15 manufactured them.

16 MR. HIRN: Do you dispute that they're
17 actually exchanges of emails as Mr. Sobien has
18 identified them between a management representative
19 and the Union chair?

20 MS. CIOFFALO: I think it's a fair point to
21 make that a foundation should be established for
22 documents and that he's actually seen them before,
23 that they're maintained, where he found them, that
24 sort of thing. I don't think that's an unreasonable
25 point to make.

1 MR. HIRN: I think I did that.

2 ARBITRATOR SHARNOFF: Okay. Well, this one
3 is admitted.

4 (The document referred to,
5 previously identified as
6 Union Exhibit No. 27, was
7 received in evidence.)

8 ARBITRATOR SHARNOFF: So let's move on to
9 the next one.

10 MR. HIRN: Which one are we on now, sir?

11 ARBITRATOR SHARNOFF: 27.

12 MS. CIOFFALO: That was 27.

13 (The document referred to was
14 marked for identification as
15 Union Exhibit No. 28.)

16 BY MR. HIRN:

17 Q Okay. Looking at Union Exhibit 28, is this
18 from the Union's files?

19 A Yes.

20 MR. HIRN: I'll move the admission of Union
21 Exhibit 28.

22 MS. CIOFFALO: No objection.

23 MR. HIRN: Union Exhibit 29.

24 //

25 //

1 (The document referred to was
2 marked for identification as
3 Union Exhibit No. 29.)

4 ARBITRATOR SHARNOFF: Is there any
5 objection?

6 MS. CIOFFALO: No. No. I mean --

7 ARBITRATOR SHARNOFF: Okay.

8 MS. CIOFFALO: -- it's just basically going
9 to be a data dump.

10 ARBITRATOR SHARNOFF: Well, to the extent
11 that you have voir dire on any --

12 MS. CIOFFALO: I can ask him.

13 ARBITRATOR SHARNOFF: -- particular ones you
14 can ask him about them. To the extent that you want
15 to cross-examine, then you can reserve those kind of
16 foundational questions about foundation and can
17 certainly do it then. But absent that, these will be
18 admitted.

19 (The document referred to,
20 previously identified as
21 Union Exhibit No. 28, was
22 received in evidence.)

23 MS. CIOFFALO: That's fine.

24 ARBITRATOR SHARNOFF: I am assuming that
25 there's a standing basis for submission of each of

1 these that these came from the Union files and all the
2 witness did was take them out of the files, give them
3 to somebody to copy, and here it is.

4 MR. HIRN: Yes.

5 ARBITRATOR SHARNOFF: Okay. To the extent
6 that any of these don't fall under that particular
7 protocol, let us know.

8 BY MR. HIRN:

9 Q Did you want to add something?

10 A Well, no. You know, yes, these came out of
11 the Union files. And, no, prior to seeing these again
12 before this I couldn't tell you about the details of
13 all of these. But in 2004, I was the vice president
14 of the Union and I recall Robert Baruffaldi coming to
15 me about moving these floater positions around from
16 various offices from place to place. So it's not just
17 in a dusty box that were pulled out of and I'm seeing
18 them for the first time.

19 MS. CIOFFALO: Okay. And that --

20 ARBITRATOR SHARNOFF: Okay. Well, the
21 question -- I mean, if we're going to get into a
22 debate on the authenticity of each document, we would
23 have to have something that shows that this is in fact
24 what it purports to be. It's nothing criminal on your
25 part. We're just trying to find out --

1 THE WITNESS: Right.

2 ARBITRATOR SHARNOFF: -- how these came to
3 be here today. I mean, you had nothing to do with
4 writing them. You didn't receive them.

5 THE WITNESS: I may have.

6 ARBITRATOR SHARNOFF: They were in the file
7 and you found them.

8 THE WITNESS: I may have received them, but
9 these came out of our warehouse of documents.

10 ARBITRATOR SHARNOFF: If they didn't, let us
11 know.

12 MR. HIRN: If we're up to Union Exhibit 29?

13 MS. CIOFFALO: I think you're up to 28.

14 MR. HIRN: 28? Did I move 28?

15 MS. CIOFFALO: That's right. It was just
16 admitted.

17 BY MR. HIRN:

18 Q Union Exhibit 29. Is this from the Union's
19 files?

20 A Yes. And this one I specifically remember
21 talking about.

22 Q 29. 29.

23 A Oh, this one? From the Union files, yes.

24 MR. HIRN: Move the admission of 29.

25 ARBITRATOR SHARNOFF: Any objection beyond

1 the --

2 MS. CIOFFALO: Beyond -- yes, that's fine.
3 Thank you.

4 ARBITRATOR SHARNOFF: Okay. 29 is admitted.

5 (The document referred to,
6 previously identified as
7 Union Exhibit No. 29, was
8 received in evidence.)

9 (The document referred to was
10 marked for identification as
11 Union Exhibit No. 30.)

12 BY MR. HIRN:

13 Q Directing your attention to Union Exhibit
14 30, do you have any familiarity with this document?

15 A Yes. I specifically remember the
16 discussions with Mr. Baruffaldi with this case because
17 there was a concern about moving these positions,
18 these -- let me say this differently. There was a
19 concern that Los Angeles was taking a position from
20 Reno, and I remember Robert talking to me specifically
21 about this one. And while I'm not copied on this
22 email, this is also from the Union's files and I do
23 specifically remember this issue.

24 MR. HIRN: I'll move the admission of Union
25 Exhibit 30.

1 MS. CIOFFALO: No objection.

2 ARBITRATOR SHARNOFF: Okay. It's admitted.

3 (The document referred to,
4 previously identified as
5 Union Exhibit No. 30, was
6 received in evidence.)

7 MR. HIRN: And, Mr. Sharnoff, so you're not
8 totally lost with the point we're trying to make here,
9 if I may add that --

10 ARBITRATOR SHARNOFF: Well, let's just --

11 MR. HIRN: Okay.

12 ARBITRATOR SHARNOFF: -- save that for
13 argument.

14 MR. HIRN: Okay. You don't need to worry
15 about where these positions are going. We're not
16 going to --

17 ARBITRATOR SHARNOFF: If there's an
18 objection to relevancy, I'm sure it will be
19 forthcoming.

20 MR. HIRN: Okay. Okay.

21 (The document referred to was
22 marked for identification as
23 Union Exhibit No. 31.)

24 BY MR. HIRN:

25 Q Directing your attention to Union Exhibit

1 31, is this from the Union's files?

2 A Yes.

3 Q I notice that Rich Douglas refers to an RLC
4 date. Could you tell us what the RLC is?

5 A When we wrote our contract, it was right at
6 the end of the Clinton era with partnership, but it
7 was when Bush came in and we weren't allowed to use
8 the word partnership anymore. However, we took a lot
9 of the concepts from the partnership era and folded it
10 into our current contract. And so we have a local
11 office team that takes care of problems at the local
12 level. It's multi-functional, acts as a predecisional
13 group, actually negotiates things. It's multi-
14 functional.

15 The regional RLC, each region of the
16 National Weather Service has the same type of group
17 with a regional management and it's referred to as a
18 regional labor council, and then there's a national
19 NLC and it does the same thing. It functions as a
20 predecisional group, a problem solving group, but also
21 as a negotiating body.

22 Q And do they meet face-to-face?

23 A Yes.

24 MR. HIRN: I'll move the admission of Union
25 Exhibit 31.

1 MS. CIOFFALO: No objection.

2 ARBITRATOR SHARNOFF: It's admitted.

3 (The document referred to,
4 previously identified as
5 Union Exhibit No. 31, was
6 received in evidence.)

7 (The document referred to was
8 marked for identification as
9 Union Exhibit No. 32.)

10 BY MR. HIRN:

11 Q Union Exhibit 30 (sic). Is this from the
12 Union's files?

13 A Yes.

14 MR. HIRN: Move the admission of Union
15 Exhibit 32.

16 MS. CIOFFALO: No objection.

17 ARBITRATOR SHARNOFF: Wait. I think you
18 just said 30, and then you went to 32.

19 MS. LUCIANI: 31.

20 MR. HIRN: Oh, I'm sorry. What happened to
21 31? Did I move the admission? I moved the admission
22 of 31?

23 ARBITRATOR SHARNOFF: Yes. I thought when
24 you said the next one was 30 --

25 MR. HIRN: I'm sorry. Did I say --

1 Exhibit 33.

2 MS. CIOFFALO: No objection.

3 ARBITRATOR SHARNOFF: Okay. It's admitted.

4 (The document referred to,
5 previously identified as
6 Union Exhibit No. 33, was
7 received in evidence.)

8 (The document referred to was
9 marked for identification as
10 Union Exhibit No. 34.)

11 BY MR. HIRN:

12 Q Directing your attention to Union Exhibit
13 34, who is Stephen Brueske? Do you know?

14 A Well, I don't know him as well as Rich
15 Douglas -- I never met him -- but he was the labor
16 management relations person for Western Region around
17 this same date, the 2008 timeframe.

18 Q Okay. Is this document from the Union's
19 files?

20 A Yes.

21 MR. HIRN: I'll move the admission of Union
22 Exhibit 34.

23 MS. CIOFFALO: No objection.

24 ARBITRATOR SHARNOFF: Okay. It's admitted.

25 //

1 (The document referred to,
2 previously identified as
3 Union Exhibit No. 34, was
4 received in evidence.)

5 (The document referred to was
6 marked for identification as
7 Union Exhibit No. 35.)

8 BY MR. HIRN:

9 Q Directing your attention to Union Exhibit
10 35, an email dated August 2008.

11 A Uh-huh.

12 Q Is this from the Union's files?

13 A Yes.

14 MR. HIRN: I'll move the admission of Union
15 Exhibit 35.

16 MS. CIOFFALO: No objection.

17 ARBITRATOR SHARNOFF: Okay. It's admitted.

18 (The document referred to,
19 previously identified as
20 Union Exhibit No. 35, was
21 received in evidence.)

22 (The document referred to was
23 marked for identification as
24 Union Exhibit No. 36.)

25 //

1 BY MR. HIRN:

2 Q Directing your attention to Union Exhibit
3 36, who is Thomas Schwein?

4 A That one's a little more difficult. Thomas
5 Schwein is now Teri Schwein, and she, when she was
6 Thomas, was I believe the Deputy Regional Director,
7 but I know she was the labor management representative
8 for Central Region.

9 Q And who is Martin Lee?

10 A Martin Lee is our Central Region chairman in
11 charge of negotiating issues for Central Region,
12 Robert Baruffaldi's counterpart on those other
13 documents.

14 Q Is this document from the Union's files?

15 A Yes.

16 MR. HIRN: I'll move the admission of Union
17 Exhibit 36.

18 MS. CIOFFALO: No objection.

19 ARBITRATOR SHARNOFF: It is admitted.

20 (The document referred to,
21 previously identified as
22 Union Exhibit No. 36, was
23 received in evidence.)

24 //

25 //

1 (The document referred to was
2 marked for identification as
3 Union Exhibit No. 37.)

4 BY MR. HIRN:

5 Q Directing your attention to Union Exhibit
6 37, is it customary to keep minutes of the regional
7 labor council meetings?

8 A Yes.

9 Q And is Union Exhibit 37 from the Union's
10 files?

11 A Yes.

12 MR. HIRN: I'll move the admission of Union
13 Exhibit 37.

14 MS. CIOFFALO: No objection.

15 ARBITRATOR SHARNOFF: It's admitted.

16 (The document referred to,
17 previously identified as
18 Union Exhibit No. 37, was
19 received in evidence.)

20 (The document referred to was
21 marked for identification as
22 Union Exhibit No. 38.)

23 BY MR. HIRN:

24 Q Directing your attention to Union Exhibit
25 38, is this from the Union's files?

1 A Yes, and I recall talking to Martin about
2 this issue as well on this one.

3 Q If you would read the email from -- no,
4 never mind.

5 MR. HIRN: I'll move the admission of Union
6 Exhibit 38.

7 MS. CIOFFALO: No objection.

8 ARBITRATOR SHARNOFF: Admitted.

9 (The document referred to,
10 previously identified as
11 Union Exhibit No. 38, was
12 received in evidence.)

13 BY MR. HIRN:

14 Q Oh, wait a minute. Let me go back to Union
15 Exhibit 38. Are Mr. or Ms. Schwein's responses to
16 Martin's questions of October 14 embedded in the
17 original text of Martin's email following his
18 questions?

19 A Yes.

20 Q Directing your attention to Mr. or Ms.
21 Schwein's response to Martin's Question No. 1, does
22 Mr. or Ms. Schwein acknowledge the floater plan as an
23 NWS/NWSEO agreement?

24 A The very first line of that paragraph says
25 that.

1 MR. HIRN: And this has been admitted,
2 correct?

3 ARBITRATOR SHARNOFF: Yes.

4 (The document referred to was
5 marked for identification as
6 Union Exhibit No. 39.)

7 BY MR. HIRN:

8 Q Directing your attention to Union Exhibit
9 39, are these RLC meeting notes from the Union's
10 files?

11 A Yes.

12 MR. HIRN: I'll move the admission of Union
13 Exhibit 39.

14 MS. CIOFFALO: No objection.

15 ARBITRATOR SHARNOFF: Okay. It's admitted.

16 (The document referred to,
17 previously identified as
18 Union Exhibit No. 39, was
19 received in evidence.)

20 (The document referred to was
21 marked for identification as
22 Union Exhibit No. 40.)

23 BY MR. HIRN:

24 Q Directing your attention to Union Exhibit
25 40, what is this document and is it from the Union's

1 files?

2 A Well, similar to the last couple, which were
3 the notes from RLCs from the Central Region, this is
4 an RLC from the Western Region from May 7 and 8, 2008.
5 This is the meeting notes.

6 Q And was the subject of how long vacancies
7 were open discussed at this meeting according to these
8 notes?

9 A Yeah. It states that they'll normally last
10 no longer than 70 days.

11 Q Did management according to these notes make
12 any representations about how promptly they fill
13 positions, fill vacancies?

14 A Well, I mean, it says they fill them as soon
15 as possible.

16 MR. HIRN: Okay. I'll move the admission of
17 Union Exhibit 40.

18 MS. CIOFFALO: No objection.

19 ARBITRATOR SHARNOFF: Okay. It's admitted.

20 (The document referred to,
21 previously identified as
22 Union Exhibit No. 40, was
23 received in evidence.)

24 //

25 //

1 (The document referred to was
2 marked for identification as
3 Union Exhibit No. 41.)

4 BY MR. HIRN:

5 Q Directing your attention to Union Exhibit
6 41, do you recognize this document?

7 A Sure.

8 Q And could you tell us what it is?

9 A A couple years ago the President sent a
10 letter to all departments instructing them to come up
11 with a hiring model that speeds hiring practices in
12 the federal government. It also directed them to
13 accept résumés and take essay questions out of the
14 application process, et cetera.

15 This is NOAA's response to the President.
16 This is the hiring model responding to the President
17 saying yes, we're going to hire people in 80 days and
18 here's how we're going to do it.

19 Q Is this the process by which Weather Service
20 positions have been filled?

21 A Well, the answer to that question is no
22 because they're not filling Weather Service positions.
23 However, this is the way they're supposed to be
24 filled.

25 MR. HIRN: Okay. I'll move the admission of

1 Union Exhibit 41.

2 MS. CIOFFALO: No objection.

3 ARBITRATOR SHARNOFF: Okay. It's admitted.

4 (The document referred to,
5 previously identified as
6 Union Exhibit No. 41, was
7 received in evidence.)

8 (The document referred to was
9 marked for identification as
10 Union Exhibit No. 42.)

11 BY MR. HIRN:

12 Q Can you identify Union Exhibit 42?

13 A Yeah. This is a document off the Workforce
14 Management website.

15 MS. CIOFFALO: I'm going to object to the
16 relevancy of this document. It's dated September 2007
17 regarding the hiring process, so this would be out of
18 date as of today and as of that earlier exhibit that
19 you just put in.

20 BY MR. HIRN:

21 Q Is this stuff still on the NOAA website?

22 A Yes.

23 MS. CIOFFALO: Okay.

24 MR. HIRN: All right. That about handles
25 that objection.

1 MS. CIOFFALO: Yes.

2 MR. HIRN: I'll move the admission of Union
3 Exhibit 42 then.

4 ARBITRATOR SHARNOFF: Okay. Admitted.

5 (The document referred to,
6 previously identified as
7 Union Exhibit No. 42, was
8 received in evidence.)

9 (The document referred to was
10 marked for identification as
11 Union Exhibit No. 43.)

12 BY MR. HIRN:

13 Q And how about Union Exhibit 43?

14 A The same thing. These are FAQs from the --
15 they're answering frequently asked questions I guess
16 about the 80-day hiring model that NOAA has in place.

17 MR. HIRN: Okay. Move the admission of
18 Union Exhibit 43.

19 MS. CIOFFALO: No objection.

20 ARBITRATOR SHARNOFF: Okay. It's admitted.

21 (The document referred to,
22 previously identified as
23 Union Exhibit No. 43, was
24 received in evidence.)

25 //

1 BY MR. HIRN:

2 Q Who has ultimate hiring authority? Who has
3 hiring authority for the Weather Service?

4 A That would be the Assistant Administrator of
5 NOAA for Weather Services.

6 (The document referred to was
7 marked for identification as
8 Union Exhibit No. 44.)

9 BY MR. HIRN:

10 Q And directing your attention to Union
11 Exhibit 44, are you aware, are you familiar with what
12 a Weather Service instruction is?

13 A Yes.

14 Q Do you in the course of being Union
15 president, a Union officer, have the occasion to
16 review Weather Service instructions?

17 A Yes.

18 Q And how does that come about?

19 A Prior to a Weather Service instruction being
20 implemented the Union is given a copy of it, is
21 notified of it. We're usually given a change sheet
22 also wherever changes were made, and it gives us an
23 opportunity to either negotiate it or informally
24 suggest changes sometimes that might have been missed.
25 But each and every change to these instructions are

1 sent through us, and there are a lot of them.

2 Q Directing your attention to page 2, Section
3 3 --

4 A Okay.

5 Q -- it refers to the NOAA Undersecretary and
6 a letter at the end -- excuse me. The NOAA
7 Undersecretary and a letter at the end written by a
8 Conrad Lautenbacher. Do you know, is the
9 Undersecretary for Oceans and Atmospheres also known
10 by another title?

11 A Informally they're called the Director of
12 NOAA.

13 Q Okay. Is it the same person as the
14 Administrator? Who is the Administrator of NOAA?

15 A That's the same, yes, but I believe having
16 said that, I think the technically correct term is the
17 Undersecretary. But, yes. The Administrator of NOAA,
18 the Director of NOAA. This is the guy that was in
19 charge of NOAA during the last part of the Bush
20 Administration if that's the question you're asking.

21 Q Okay. Directing your attention to paragraph
22 3-1, to whom has the hiring authority in the Weather
23 Service been redelegated?

24 A Well, I'll just read it. The National
25 Weather Service AA delegates hiring authority -- and

1 the NWS AA is incorrect technically. It was the NOAA
2 AA. He's the Director just of Weather Service, but
3 he's the Assistant Administrator of NOAA. Delegates
4 hiring authority to the deputy assistant
5 administrator, chief financial officer, chief
6 information officer or staff office directors, office
7 directors, regional directors and the National Center
8 for Environmental Prediction, with some restrictions.

9 MR. HIRN: Okay. I move the admission of
10 Union Exhibit 44.

11 MS. CIOFFALO: No objection.

12 ARBITRATOR SHARNOFF: Okay. Union 44 is
13 admitted.

14 (The document referred to,
15 previously identified as
16 Union Exhibit No. 44, was
17 received in evidence.)

18 BY MR. HIRN:

19 Q What is the NOAA administrative orders? Do
20 you know what that is?

21 A It's the NOAA equivalent of the Weather
22 Service instructions. This is part of the government,
23 so we have rules for everything. And it's a list of
24 administrative -- it's a list of rules and regs and
25 directives and everything you wanted to know about

1 NOAA, and it's online and you can go grab it yourself.

2 (The document referred to was
3 marked for identification as
4 Union Exhibit No. 45.)

5 BY MR. HIRN:

6 Q Directing your attention to Union Exhibit
7 45 --

8 A Uh-huh.

9 Q -- can you identify this document?

10 A This is NOAA Administrative Order 202-711.

11 Q And according to this administrative order,
12 with whom does the authority to make decisions
13 regarding labor management relations rest with with
14 regard to the National Weather Service?

15 A With the National Weather Service. It says
16 line and staff Office of Management is responsible for
17 the fulfillment of labor management relations and
18 obligations, and in fact that's our level of
19 recognition is with the National Weather Service.

20 MR. HIRN: Okay. I'll move the admission of
21 Union Exhibit 45.

22 MS. CIOFFALO: No objection.

23 ARBITRATOR SHARNOFF: Okay. 45 is admitted.

24 //

25 //

1 (The document referred to,
2 previously identified as
3 Union Exhibit No. 45, was
4 received in evidence.)

5 (The document referred to was
6 marked for identification as
7 Union Exhibit No. 46.)

8 BY MR. HIRN:

9 Q Directing your attention to Union Exhibit
10 46, do you recognize this document?

11 A This is a labor management relations
12 procedures handbook. It's an attachment to the NAO.

13 Q And does this document address who has
14 responsibility for negotiation and enforcement of
15 collective bargaining agreements? I might direct your
16 attention to Section 4.

17 A That's what I'm looking at. Oh, Section 4?
18 I was looking at 2.

19 Q 4.02.

20 A All right.

21 (Pause.)

22 A Okay. So will you repeat your question?

23 Q Does this document identify at what level
24 the Agency has responsibility for negotiation of
25 collective bargaining agreements?

1 A Of collective bargaining agreements? I'm
2 sure it does somewhere, but where you pointed your
3 attention to me before dealt with national
4 consultation rights.

5 Q Okay. Section 4.02, Subsection B.
6 (Pause.)

7 A Okay. It just says management and unions
8 holding exclusive recognition, which in this case
9 would be the Weather Service with us. We're the level
10 of recognition here. Have a mutual obligation through
11 appropriate representatives to meet at reasonable
12 times and bargain in good faith on negotiable matters.

13 It also says in Subsection 2 when union
14 recognition is at the national level, heads of the
15 line office or their designees shall appoint the
16 members of management's negotiating team for
17 negotiating local -- we don't need the local units.

18 Q Is the Weather Service considered a line
19 office within NOAA?

20 A Yes.

21 Q And who has been delegated the authority to
22 appoint management negotiators for the level of the
23 National Weather Service?

24 A To the best of my knowledge, it's the
25 Assistant Administrator.

1 Q Okay. And you have a collective bargaining
2 agreement signed by the Assistant Administrator, is
3 that correct?

4 A Signed by a former Assistant Administrator.

5 Q Does that collective bargaining agreement
6 have an article that addresses merit promotion?

7 A Sure.

8 MR. HIRN: I'll move the admission of Union
9 Exhibit 46.

10 MS. CIOFFALO: No objection.

11 ARBITRATOR SHARNOFF: Okay. 46 is admitted.

12 (The document referred to,
13 previously identified as
14 Union Exhibit No. 46, was
15 received in evidence.)

16 MR. HIRN: Might I suggest if we could have
17 a five-minute break at this point before I go on to
18 another subject?

19 ARBITRATOR SHARNOFF: Okay.

20 (Whereupon, a short recess was taken.)

21 ARBITRATOR SHARNOFF: Back on the record.

22 (The document referred to was
23 marked for identification as
24 Union Exhibit No. 47.)

25 //

1 BY MR. HIRN:

2 Q Directing your attention to Union Exhibit
3 47, can you explain your understanding of why the
4 Union requested this information, this spreadsheet,
5 and why it was supplied to us?

6 A Well, it's a result of a settlement
7 agreement we have on a grievance we had with the
8 Agency not hiring ITO positions, information
9 technology officer positions, within the Weather
10 Service. As part of that settlement agreement, they
11 agreed to send us this spreadsheet, which is known as
12 a RADS reports -- it's also mentioned in I believe the
13 NOAA hiring model there where the RADS report is -- of
14 vacancies and their status, where they are in the
15 process.

16 Q And did you examine this RADS report when we
17 received it?

18 A Yes. I looked it over, but to be fair, I
19 think you did the full analysis of it. But I did look
20 it over.

21 Q And what did you discover with regard to how
22 promptly the Agency was filling other positions in the
23 bargaining unit?

24 A Well, discover isn't exactly the right word
25 I would use. In late 2012, I was getting a lot of

1 emails and a lot of grumbling and mumbling from
2 members that they weren't filling vacant positions, so
3 when I got this, I of course was looking it over to
4 try and find the answers to that.

5 Q Were you aware of vacant positions in the
6 bargaining unit for which no recruitment effort was
7 apparently being taken according to this RADS report?

8 A Yeah. I mean, there were several of them,
9 but the one that I always remembered and the one I
10 actually went looking for was an HMT intern position
11 in Jackson, Kentucky, which has been vacant now for
12 over three years. And it wasn't there.

13 But, yeah. There was a number of -- and I
14 know where you're going. There was a number of
15 vacancies that we identified that were the basis of
16 the grievances that we filed later. But this was in
17 March of 2013. This was before the hiring freeze. So
18 there was no hiring freeze in effect yet, but clearly
19 the Weather Service wasn't filling several vacant
20 positions and some of them for quite some time.

21 MR. HIRN: I'll move the admission of Union
22 Exhibit 47.

23 MS. CIOFFALO: No objection.

24 ARBITRATOR SHARNOFF: Admitted.

25 //

1 (The document referred to,
2 previously identified as
3 Union Exhibit No. 47, was
4 received in evidence.)

5 MR. HIRN: Oh, can you help us, or perhaps
6 the Agency since you've supplied a bunch of them to
7 us. Do you want to explain for Mr. Sharnoff and the
8 record what a RADS report is?

9 MS. CIOFFALO: Sure. A RADS report, sir, is
10 a record of NOAA's Workforce Management Office for the
11 status of actions that have been submitted to
12 Workforce Management for recruitments or other
13 processing. So you can see the columns that go across
14 the top are columns associated with the various
15 statuses, the dates that certain actions have been
16 taken starting with the start date, which I believe is
17 whereabouts when Workforce Management started working
18 on the action and going through to when the official
19 offer was made and the entry on duty date, if any.

20 And then there's other columns describing
21 any other issues that were going on with the
22 vacancies, columns also to describe which Workforce
23 Management specialist was assigned to process the
24 matter, the branch chief over that person, the
25 person's supervisor, and then the various details

1 about the vacancy itself, where it is and which
2 accounting code is associated with that vacancy, so
3 where the person is getting paid from. Is that pretty
4 comprehensive?

5 MR. HIRN: Yes. And correct if I'm wrong,
6 Monique, but my understanding also is that this does
7 not reflect all vacancies within the Agency but only
8 those for which recruitment actions have been
9 initiated. Is that correct?

10 MS. CIOFFALO: Correct. Yes, I think that's
11 right. Right. Right.

12 So what my co-counsel here is saying is that
13 the actions are submitted into RADS by Weather Service
14 employees sometimes so that these case description
15 notes will be entered by in some cases Weather Service
16 employees as well. So they can input the information
17 to get the process started.

18 And then you may hear reference to what the
19 RADS number is. That's the second column. That's the
20 number associated with a particular recruitment action
21 or selection.

22 ARBITRATOR SHARNOFF: And what does R-A-D
23 stand for, if you know?

24 MS. CIOFFALO: Actually I'm not sure.

25 ARBITRATOR SHARNOFF: Okay. I asked the

1 wrong question.

2 MS. CIOFFALO: Recruitment action database?

3 ARBITRATOR SHARNOFF: That's all right.

4 MS. CIOFFALO: Yes. I'm sorry.

5 MR. HIRN: I have it.

6 MS. CIOFFALO: I'm sure I've seen it once
7 before.

8 MR. HIRN: I have it.

9 MS. CIOFFALO: You know the government and
10 their acronyms.

11 MR. HIRN: It means Recruitment Analysis
12 Data System.

13 MS. CIOFFALO: To sum up, it's how Workforce
14 Management keeps track of the actions that they're
15 working on.

16 BY MR. HIRN:

17 Q Did there come a point in time that you
18 learned that management had canceled the recruitment
19 actions for several vacancies for which employees had
20 already applied?

21 A Yes. And one specific example of that was
22 with the Southern Region. They canceled some
23 vacancies because they said they didn't have the money
24 to move the employees from one location to another.

25 //

1 (The document referred to was
2 marked for identification as
3 Union Exhibit No. 48.)

4 BY MR. HIRN:

5 Q Directing your attention to Union Exhibit
6 48, can you identify --

7 MS. CIOFFALO: I'm sorry. 48?

8 MR. HIRN: 48. Yes.

9 BY MR. HIRN:

10 Q Can you identify this email?

11 A Yes. This is an email that was sent by the
12 meteorologist in charge of the Huntsville, Alabama,
13 office, which was one of the offices that had the
14 vacancy canceled because of the PCS or moving money,
15 lack of moving money.

16 MR. HIRN: I'll move the admission of Union
17 Exhibit 48.

18 MS. CIOFFALO: No objection.

19 ARBITRATOR SHARNOFF: Admitted.

20 (The document referred to,
21 previously identified as
22 Exhibit No. Union 48, was
23 received in evidence.)

24 //

25 //

1 (The document referred to was
2 marked for identification as
3 Union Exhibit No. 49.)

4 BY MR. HIRN:

5 Q Directing your attention to Union Exhibit
6 49 --

7 A Uh-huh.

8 Q -- can you tell us who Lindsay Tardiff is?

9 A A member.

10 MS. CIOFFALO: Sorry. Can you say that
11 again?

12 THE WITNESS: One of our members.

13 MS. CIOFFALO: All right.

14 BY MR. HIRN:

15 Q Was this email forwarded to the Union by
16 your member?

17 A Forwarded to the Union? Yes.

18 MR. HIRN: And I'll move the admission of
19 Union Exhibit 49.

20 MS. CIOFFALO: No objection.

21 ARBITRATOR SHARNOFF: It's admitted.

22 (The document referred to,
23 previously identified as
24 Union Exhibit No. 49, was
25 received in evidence.)

1 BY MR. HIRN:

2 Q Is there anything in your collective
3 bargaining agreement that obligates management to pay
4 employees travel expenses so long as they're allowable
5 by law?

6 A Yes. We have two sections, but I don't have
7 the contract in front of me. I don't have it
8 memorized.

9 Q Okay.

10 A There's one dealing specifically with
11 travel, and there's also one that mentions temporary
12 housing.

13 Q Directing your attention to Article 23,
14 Section 2, of Joint Exhibit 1 --

15 A 23 what? Section what?

16 Q 2.

17 A 2. Okay.

18 Q Is this the provision that provides for the
19 payment of travel expenses?

20 A Yes.

21 (The document referred to was
22 marked for identification as
23 Union Exhibit No. 50.)

24 BY MR. HIRN:

25 Q Directing your attention to Union Exhibit

1 50, can you identify this document?

2 A This is NOAA travel regulations.

3 Q Directing your attention to the second page
4 with the title Contents, Chapter 302 --

5 A Chapter 302.

6 Q Yes. Are the relocation expenses that
7 employees receive when they are selected for
8 bargaining unit positions in other offices covered by
9 the NOAA travel regulations?

10 A Yes, and specifically Section 302.

11 MR. HIRN: I'll move the admission of Union
12 Exhibit 50.

13 MS. CIOFFALO: No objection.

14 ARBITRATOR SHARNOFF: Okay. Admitted.

15 (The document referred to,
16 previously identified as
17 Union Exhibit No. 50, was
18 received in evidence.)

19 BY MR. HIRN:

20 Q Directing your attention back to the CBA,
21 Article 30, Section 3, can you tell us what management
22 has committed itself to do under this provision of the
23 agreement?

24 A Oh, yeah. I forgot about this. This is
25 third-party relocation benefits. So, in a nutshell,

1 if you're having trouble selling your house, they will
2 bring a third party in to purchase the house for you.
3 And this is for change of station plans. But they
4 will bring somebody in to purchase your house for you
5 so you're not sitting there stuck with it sitting on
6 the market all through the time.

7 Q Is this part of the permanent change of
8 station --

9 A Yes. Yes.

10 Q -- costs?

11 A Yes.

12 MR. HIRN: I moved Union Exhibit 50, did I
13 not?

14 MS. CIOFFALO: Yes.

15 THE WITNESS: Am I going to need the CBA
16 tomorrow?

17 MR. HIRN: No.

18 ARBITRATOR SHARNOFF: I don't think you
19 moved 50. That's the one we're just doing, right?

20 MR. HIRN: Yes.

21 MS. CIOFFALO: I was going to say no
22 objection to 50. So I don't know if --

23 ARBITRATOR SHARNOFF: Okay.

24 MS. CIOFFALO: I think that's the last one I
25 did not object to.

1 ARBITRATOR SHARNOFF: All right. Well, I
2 think maybe I didn't say it before. Union Exhibit 50
3 is admitted at this point.

4 MS. CIOFFALO: Okay.

5 BY MR. HIRN:

6 Q After you received this RADS report we
7 looked at a moment ago and after the Union was
8 forwarded the emails about management canceling the
9 recruitment of Southern Region forecaster vacancies
10 because they didn't want to pay PCS expenses, what, if
11 anything, did the Union do?

12 A Well, I wouldn't use the term afterwards,
13 but it was kind of convoluted. There was a lot of
14 spinning wheels going on in March of 2013. But we
15 filed three different grievances over the Weather
16 Service failing to hire various positions, whether it
17 be lead forecasters or HMT interns or journeyman
18 forecasters. I don't believe -- I think we found out
19 about the PCS moves kind of somewhere in between
20 filing a few of those grievances.

21 Q And did you review management's responses to
22 those grievances?

23 A Yes.

24 Q And in management's responses, did they
25 acknowledge that the 2000 floater plan and the 2004

1 staffing agreement were in fact agreements?

2 A They refer to them as agreements. They
3 referenced the agreements.

4 Q Directing your attention in particular to --

5 A They copied and pasted them, so they're all
6 kind of the same.

7 Q All right.

8 A I think it's that paragraph right there.

9 Q Directing your attention to Joint Exhibit
10 3-B, the last paragraph of the first page, could you
11 point out to us whether management has acknowledged in
12 their response that the 2000 floater plan and the 2004
13 amendment to it was indeed an agreement between the
14 parties?

15 A Well, I mean, it says while the agreements
16 you refer to establish the numbers and types of
17 full-time --

18 Q Well, hold on. Mr. Sharnoff is looking for
19 his copy.

20 A Okay. I'm sorry.

21 MR. HIRN: We're looking at 3-B, Joint
22 Exhibit 3-B.

23 ARBITRATOR SHARNOFF: I'm zeroing in on it.
24 It can't elude me forever. All right. I'm with you.

25 //

1 BY MR. HIRN:

2 Q Okay. Back to you were discussing the last
3 paragraph of the first page.

4 A Okay. The last paragraph about midway
5 through. It states while the agreements you refer to
6 establish the numbers, types and so forth, and then
7 also further down it looks like the second to the last
8 sentence in there says ergo, the agreement itself
9 contemplates that not every position would be filled.

10 Q And what agreement were they referring to in
11 that sentence?

12 A In that particular case, it's the 2000 --
13 it's what we call the floater plan. It's the
14 amendment to the 1993 human resource plan.

15 Q Let's go back to the collective bargaining
16 agreement. In our collective bargaining agreement,
17 has management made any promises or guarantees to
18 engage in predecisional discussions with NWSEO prior
19 to making a final decision about things that even were
20 considered traditional management core items?

21 A Article 8, Section 1, is all about that.

22 Q Now you testified that you are co-chair of
23 the Department of Commerce Labor Management Forum.
24 Has the President issued any directive to federal
25 agencies as part of the Executive Order creating the

1 forums to engage in predecisional discussions with
2 their unions?

3 A Yes. That would be your Exhibit 51. That's
4 the Executive Order that created the Labor Management
5 Forums and it also developed a process for negotiating
6 some B1 issues, which we've done very successfully at
7 the Department of Commerce Labor Management Forum.

8 (The document referred to was
9 marked for identification as
10 Union Exhibit No. 51.)

11 MR. HIRN: I'll move the admission of Union
12 Exhibit 51 to the extent that an Executive Order needs
13 to be. I mean, it's not really evidence since it's a
14 legal document, but I just did it here for the sake of
15 convenience.

16 MS. CIOFFALO: No objection.

17 ARBITRATOR SHARNOFF: Okay. It's admitted.

18 (The document referred to,
19 previously identified as
20 Union Exhibit No. 51, was
21 received in evidence.)

22 BY MR. HIRN:

23 Q Did the Office of Management and Budget
24 issue any directives to federal agencies in early 2013
25 about how to deal with their unions over the impact of

1 sequestration?

2 A Yes.

3 (The documents referred to
4 were marked for
5 identification as Union
6 Exhibit Nos. 52 through 55.)

7 BY MR. HIRN:

8 Q Directing your attention to Union Exhibits
9 52, 53, 54, and 55, in your capacity as national
10 president and co-chair of the Department of Commerce
11 Labor Forum, did you become aware of these directives
12 and --

13 A Yes.

14 Q Did you become aware of these directives?

15 A Yes.

16 MR. HIRN: And I'll move the admission of
17 Union Exhibit 52 through 55.

18 MS. CIOFFALO: No objection.

19 ARBITRATOR SHARNOFF: Okay. 52, 53, 54, and
20 55 are admitted.

21 (The documents referred to,
22 previously identified as
23 Union Exhibit Nos. 52 through
24 55, were received in
25 evidence.)

1 BY MR. HIRN:

2 Q Did there come a point in time when you
3 received communication from your management
4 counterpart at the Agency about engaging in
5 predecisional discussions over the potential impacts
6 of sequestration?

7 A Yes.

8 (The document referred to was
9 marked for identification as
10 Union Exhibit No. 56.)

11 BY MR. HIRN:

12 Q I'll direct your attention to Union Exhibit
13 56. Can you identify this document?

14 A This is an email the chief negotiator for
15 the National Weather Service sent me with some ideas
16 that management had for saving money, and it was part
17 of a process where we then later met with them to
18 discuss these issues and others.

19 Q And did there come a time when the parties
20 met to discuss these?

21 A Yes, a few weeks later. Actually it was
22 several weeks later.

23 Q And who participated in those discussions?

24 A Well, for the Agency, it was David Murray
25 and the Acting CFO at the time, John Longenecker. For

1 us, it was you, myself, and Bill Hopkins.

2 Q And once again, who is David Murray?

3 A He is the chief negotiator for the National
4 Weather Service. He has the authority to bind the
5 Agency contractually.

6 Q Okay. Looking at Union Exhibit 56, what did
7 you understand mission critical positions to be or
8 nonmission critical positions to be?

9 A Well, that needs a little explanation. The
10 National Weather Service, like the FBI, like air
11 traffic controllers, like Homeland Security FEMA
12 people, we're considered emergency essential
13 employees. So the hurricane is hitting. The bomb is
14 going off. The planes are flying into buildings. We
15 still have to go to work no matter what. Not all of
16 us, but about 80 percent of the Agency is in that
17 area, that frame, that determination.

18 Q What are they called?

19 A Emergency essential employees is the term I
20 most often hear, although in the last furlough they
21 were referred to as excepted employees. But again,
22 the government was out of money. They still had to go
23 to work whether they got paid or not.

24 So, when somebody tells me about mission
25 critical operations, that's what I think of. I think

1 of the WFOs issuing tornado warnings, the RFCs issuing
2 flood warnings or flood guidance, Tsunami Warning
3 Centers issuing tsunami warnings, those things that we
4 need to save lives, to save property or that have such
5 a huge impact on the economy like a weather forecast
6 would that they just can't go without no matter what's
7 going on.

8 Q Do you recall what date you met with John
9 Longenecker and David Murray?

10 A Again, it was in March of 2013, and there
11 were just several things going on all at the same
12 time. Yeah, actually I do remember. It was the first
13 week of March. I think it was March 5, but I know it
14 was the first week of March.

15 Q And at these predecisional discussions over
16 the potential impact of sequestration, did they say
17 anything about the possibility to propose a hiring
18 freeze, ask for your input on that?

19 A Well, just a few days before that we were
20 actually given notice by NOAA of a hiring freeze for
21 our consultation rights as per that document you had
22 there.

23 Q This is consultation rights with NOAA?

24 A With NOAA, not the National Weather Service.
25 So of course our interest was a little piqued when we

1 went in there and met a few days later with John
2 Longenecker, the Acting CFO of the National Weather
3 Service. Two things that just stand out in my head
4 specifically is he said that a hiring freeze would not
5 impact the forecasters or hydrologists at the National
6 Weather Service. The other thing that stood out from
7 that meeting is he said that there was no need for
8 furloughs in the National Weather Service.

9 Q So, when John told you there would be no
10 hiring freeze for forecasters and the hydrologists,
11 was there any occasion for you to provide your input
12 predecisionally on how such a hiring freeze would be
13 carried out or whether it should be carried out with
14 the Weather Service?

15 A Well, understand that those emergency
16 essential forecasters and hydrologists and the people
17 that meet that critical operations definition is by
18 far a huge part of our bargaining unit. When he said
19 that they weren't impacted by this, it certainly
20 calmed my interest quite a bit, so, you know, we never
21 really discussed with the National Weather Service
22 specifically how a hiring freeze would work because
23 they pretty much told us don't worry about it.

24 I mean, it might have affected this building
25 or most of this building. There are actually some

1 mission critical people in this building. But, you
2 know, if a position in this building -- most of the
3 positions, if they don't get filled, that means that
4 stack of paper sits on that desk for weeks longer than
5 it does.

6 In a weather forecast office, you can't stop
7 the weather from happening. You can't stop a tornado
8 from coming down. So operations need to be changed
9 because positions aren't being filled, and it impacts
10 our employees. So there was no real need to discuss
11 it when they took the operational people out of the
12 mix. So, no. That's a long way of saying no, we
13 didn't really discuss --

14 Q Okay.

15 A We did at the NOAA level though, however. I
16 want to make sure that's clear. I was talking
17 specifically about the Weather Service.

18 MR. HIRN: Can I move the admission of Union
19 Exhibit 56?

20 MS. CIOFFALO: No objection.

21 ARBITRATOR SHARNOFF: Okay. It's admitted.

22 (The document referred to,
23 previously identified as
24 Union Exhibit No. 56, was
25 received in evidence.)

1 (The document referred to was
2 marked for identification as
3 Union Exhibit No. 57.)

4 BY MR. HIRN:

5 Q I'm going to show you what's been marked for
6 identification as Union Exhibit 57 and ask if you can
7 identify this?

8 A Well, it's not dated, but it -- wait a
9 minute. Okay. Actually it doesn't have to be dated.
10 This is our official notice of the hiring freeze that
11 would take place, and it came from NOAA Workforce
12 Management.

13 Q Now who is Peggy Morris?

14 A She is one of the -- or was. I don't think
15 she's there anymore. One of the labor specialists at
16 NOAA Workforce Management.

17 Q And did it cover any positions that Mr.
18 Longenecker or Mr. Murray assured you would not be
19 affected by a hiring freeze?

20 A It's NOAA-wide. I mean, it covered every
21 position.

22 Q Did Ms. Morris' email and the attached
23 directive from the NOAA Administrator make any
24 assurances about actions that would be taken to fill
25 job vacancies that were advertised and closed by the

1 date of the memo?

2 A Yes. Let me find it in here. With regard
3 to recruitment cases that have already been submitted
4 to WFMO, all advertised but not yet closed JOAs will
5 be worked to the point of selection based on a
6 priority selected by the Atlanta office. Once the
7 hiring freeze has been lifted and the board has
8 approved the position for fill -- that wasn't the one
9 I was hoping it would be. There's somewhere in here
10 where it said that they were -- can you give me just a
11 second?

12 Q If you read, why don't you start with Ms.
13 Morris' email first, directing your attention to the
14 last sentence of the second paragraph.

15 A Job opportunity announcements that have been
16 advertised by the close date of this memo will
17 continue to be processed to completion of hiring. I
18 know I saw it somewhere. It's also in the memo from
19 Dr. Sullivan, the last paragraph of the first -- last
20 sentence of the first paragraph.

21 Q Has the Weather Service actually completed
22 hiring actions --

23 A No, they have not.

24 Q -- on all the positions that were closed by
25 the date of the --

1 A No. In fact, with a few exceptions, I think
2 all of them were canceled.

3 Q Okay.

4 A With just a very few exceptions.

5 Q What does the Sullivan memorandum say? What
6 does the Sullivan memorandum direct line offices to do
7 with regard to mission critical positions?

8 A It tells them to create a priority list and
9 submit -- it creates a board that overrides the hiring
10 freeze, and each line office is supposed to submit a
11 priority list to that board. I know this because as
12 part of our consultation rights we were promised to
13 get a copy of that priority list from the National
14 Weather Service. We never got one, so I actually
15 asked if a copy existed or if a priority list existed,
16 and the response I got was no, that there was no
17 priority list for the National Weather Service.

18 Q And who gave you that response?

19 A That was David Murray, I'm pretty sure.

20 Q Okay. And has the Weather Service filled
21 all the various mission critical bargaining unit
22 positions?

23 A No. No. Its offices are being held
24 together right now with bandaids and bubble gum. You
25 know, the camel's back is almost completely broke.

1 (The documents referred to,
2 previously identified as
3 Union Exhibit Nos. 57 and 59,
4 were received in evidence.)

5 (The document referred to was
6 marked for identification as
7 Union Exhibit No. 58.)

8 BY MR. HIRN:

9 Q Would you look at what's been marked for
10 identification as Union Exhibit 58? Can you identify
11 this document?

12 A This is an all hands email sent from Louis
13 Uccellini, the NOAA Assistant Administrator for
14 Weather Services.

15 Q Is that the official legal title for the
16 Director of the Weather Service?

17 A Yeah, I believe it is.

18 Q Okay. In this email, does he make any
19 assurances that he will follow the NOAA hiring freeze
20 policy, directing your attention to page 2?

21 A Can you direct my attention a little more?
22 Because I --

23 Q As an initial step.

24 A Oh, the as is over there. Okay. Yeah.
25 Second paragraph. As an initial step in addressing

1 the budgetary constraints, we will suspend spending on
2 all personnel actions and will follow NOAA's new
3 hiring freeze policy.

4 Q To your knowledge, has the Weather Service
5 followed NOAA's hiring freeze policy?

6 A No, they have not.

7 Q In what ways have they not followed it?

8 A Well, you pointed out before that they
9 canceled the JOAs that were already in the system
10 instead of following through like was stated in the
11 email, the email from Peggy Morris and the policy that
12 Dr. Sullivan sent everybody. They did not create a
13 priority list, and they did not do the laterals and
14 promotions NOAA only. They could have filled some of
15 the vacant positions or at least could have spread the
16 hurt more fairly across the Agency.

17 Q And had they continued internal promotions,
18 would they need to have gone -- well, let me ask this.
19 Mostly forecasters. To your knowledge, has that
20 generally been filled by outside applicants or inside
21 applicants historically?

22 A I think the lead forecasters at weather
23 forecast offices. I can't really speak for the NCEP
24 centers too well, but I can't tell you even one time
25 that was not filled internally. There might have been

1 a time or two, but I can't tell it to you. I can't.

2 Q And whom would they normally be filled by?

3 A The journeyman forecasters.

4 Q And those positions, could management have
5 been able to fill the vacant journeyman forecaster
6 positions with internal applicants?

7 A I believe they have to fill those internally
8 based on other agreements that we have with them.

9 Q And how about the ITO positions?

10 A Sometimes they're filled from outside the
11 Agency, but most of the time -- I don't know the exact
12 number, but more than half the time really they're
13 forecasters that happen to be pretty computer-savvy.

14 I mean, it's really a hybrid kind of job.
15 It's not really like IBM ITO specialists. These are
16 guys that have to know the weather and how the Weather
17 Service functions because they're the guys who -- you
18 know, I like to say, you know, when a forecaster is
19 looking at a thunderstorm and decides this is one he
20 issues the warning for, he types that into a computer
21 or selects some things in a computer and then there's
22 a whole bunch of other stuff that happens to get that
23 thought from the forecaster's head to the thing that's
24 crawling underneath the screen on your television, and
25 all of that stuff is what the ITO does.

1 So they have to completely understand all of
2 those different functions as well as what the
3 forecaster is doing and going through. So frequently,
4 more often than not the Weather Service hires
5 internally for those positions, but I do know a few
6 that have come from the outside.

7 Q And what grade are the ITOs?

8 A They're 13s, and they're not shift work.

9 Q Okay. So how is that significant?

10 A Because to rezone the Union president --
11 because there's no shift work. The Weather Service
12 works rotating shift work, which means one week you're
13 working day shifts, the next week you're working
14 evening shifts, the next week you're working midnight
15 shifts. And it's extremely hard on your body,
16 extremely hard. Most people who have been doing it
17 for 10 or 15 years have all kind of health problems.
18 So those positions that are higher graded without
19 shift work are highly coveted.

20 Q By whom?

21 A By the lower graded shift workers and even
22 the same graded shift workers.

23 Q All right. But what grade would that be?

24 A GS-12 journeyman forecasters generally, but
25 some lead forecasters too.

1 Q Are there any internal sources to fill the
2 HMT positions?

3 A Yes. We even touched on that before. A lot
4 of the people out of the military go into Alaska and
5 use that as kind of a stepping stone to get HMT
6 positions in the CONUS, but again some HMT positions
7 do come straight up the street to us. I've seen that
8 happen too.

9 Q What grade are the people in Alaska at the
10 Weather Service office?

11 A GS-10s.

12 Q And what is the Weather Service trying to --
13 no.

14 MR. HIRN: All right. I'll move the
15 admission of Union Exhibit --

16 BY MR. HIRN:

17 Q Oh. Were there other ways in which the --
18 no, never mind. You did answer that.

19 MR. HIRN: I'll move the admission of Union
20 Exhibit 58.

21 MS. CIOFFALO: No objection.

22 ARBITRATOR SHARNOFF: Okay. It's admitted.

23 //

24 //

25 //

1 (The document referred to,
2 previously identified as
3 Union Exhibit No. 58, was
4 received in evidence.)

5 (The documents referred to
6 were marked for
7 identification as Union
8 Exhibit Nos. 60 through 62.)

9 BY MR. HIRN:

10 Q If you would look at Union Exhibits 60, 61,
11 and 62? You testified earlier about people being
12 designated as emergency essential and excepted for
13 furlough. Can you tell us, do you recognize these
14 documents and can you tell us what these are?

15 A Sure. 60 and 61 are a little bit different
16 than 62. Let's see. Every year each region, each and
17 every region, designates which employees are emergency
18 employees and sends that out, and these are the
19 examples for Eastern and Alaska Regions.

20 60 is Alaska Region. Aimee Devaris is the
21 Acting Director of Alaska Region. 61 is a little bit
22 older. It was issued in 2010 from Chris Strager, who
23 was at that time the Director of the Eastern Region,
24 and essentially pretty much says everybody in a WFO,
25 RFC, CWSU, every operational unit across their regions

1 are emergency essential employees.

2 Q I don't see where it says that exactly
3 there. Why did you conclude that this applies to all
4 those positions?

5 A And this is, by the way, very similar
6 language. They all kind of use boilerplate stuff, all
7 the regions. But it says designated -- and I'm
8 reading off of 61 here. Designated emergency
9 employees include employees currently on or scheduled
10 for operational shift work positions at field units
11 engaged in the direct providing of forecasts and
12 warnings or the real time collection, processing, and
13 distribution of data products and services or help
14 desk support of these services, which includes pretty
15 much everybody in their regions.

16 MR. HIRN: Okay. I'll move the admission of
17 60 and 61.

18 MS. CIOFFALO: No objection.

19 ARBITRATOR SHARNOFF: And they're admitted.

20 (The documents referred to,
21 previously identified as
22 Union Exhibit Nos. 60 and 61,
23 were received in evidence.)

24 BY MR. HIRN:

25 Q And 62, can you explain to us what this is?

1 A Well, this is from the Director of Workforce
2 Management to Senator Manning, and it came about when
3 there was a break in funding the beginning of this
4 fiscal year, and it was notifying -- it was a
5 notification to somebody that they were excepted from
6 the furlough, that they had to report to work.

7 Q And how many employees in the bargaining
8 unit got this?

9 A You know, pretty much everybody that was
10 considered excepted. I mean, 80 percent of the
11 National Weather Service got this letter is my
12 understanding. It was pretty much everybody that was
13 considered emergency essential. You know, all of the
14 forecasters, HMTs, interns, ASAs, everybody at WFOs,
15 RFCs, CWSUs. I mean, the people in the trenches doing
16 the job.

17 MR. HIRN: I'll move the admission of Union
18 Exhibit 62.

19 MS. CIOFFALO: No objection.

20 BY MR. HIRN:

21 Q What, if anything --

22 ARBITRATOR SHARNOFF: Okay.

23 MR. HIRN: I'm sorry.

24 ARBITRATOR SHARNOFF: 62 is admitted.

25 //

1 (The document referred to,
2 previously identified as
3 Union Exhibit No. 62, was
4 received in evidence.)

5 MR. HIRN: I'm sorry. I'm jumping the gun
6 when I hear Monique say no objection. I apologize.

7 ARBITRATOR SHARNOFF: That's all right.

8 BY MR. HIRN:

9 Q What, if anything, did you do after you
10 received the March 27 email from Peggy Morris
11 informing you of the hiring freeze?

12 A Well, I sent a letter to Louis Uccellini,
13 the NOAA AA for Weather Services, demanding
14 bargaining, and I asked clarifying questions. Our
15 contract gives us -- we have 15 days to come up with
16 proposals or we have seven days I believe it is to ask
17 clarifying questions and then we have another seven
18 days after getting -- we might have 15 days.

19 After getting the response to those
20 questions, we have a certain amount of time then to
21 come up with proposals for bargaining. We asked a
22 series of clarifying questions in this particular
23 case. It looks like 17 of them.

24 Q Did you also request information pursuant to
25 7114(b)(4) and Article 6, Section 2, of the CBA?

1 A Yes.

2 Q Now has management ever responded to this
3 letter?

4 A No.

5 Q Directing your attention to Joint Exhibit
6 3-D, the June 7, 2013, management response to the
7 grievance you filed, the grievance you subsequently
8 filed, directing your attention to page 2, the fourth
9 paragraph.

10 A Yeah. Actually they did respond to it now
11 that -- okay. The fourth paragraph was subsequently
12 you submitted --

13 MR. HIRN: Wait for Mr. Sharnoff to find it.

14 THE WITNESS: I am so sorry.

15 ARBITRATOR SHARNOFF: Okay.

16 THE WITNESS: Subsequently you submitted --

17 MR. HIRN: Wait. Wait. Hold on. 3-D.

18 This is 3-D, page 2, paragraph 4.

19 THE WITNESS: Okay. Subsequently you
20 submitted a March 28, 2013, letter addressed to Dr.
21 Uccellini which included, among other things, a
22 request for 17 enumerated items of information. We
23 are in the process of researching and gathering such
24 information. Upon completion, the requested
25 information will be provided to the NWSEO.

1 BY MR. HIRN:

2 Q Okay. And when did you get that? I mean,
3 when did you get the information he promised you?

4 A Apparently they're still gathering and
5 researching because I've never gotten it.

6 Q Okay. Does your contract address the
7 anticipated timeframe for when you should expect to
8 receive a response for an information request?

9 A I don't recall that.

10 Q Okay. In your March 28 letter to Dr.
11 Uccellini, did you make a bargaining demand?

12 A Yes.

13 Q Okay. Did you also express an opinion as to
14 whether you thought the hiring freeze was necessary?

15 A Yes. In fact, the bullets on page 1 and 2
16 specifically refer to that.

17 Q Okay. Can you explain the bullets one by
18 one?

19 A Sure.

20 MR. HIRN: This is Union Exhibit 63, Mr.
21 Sharnoff.

22 (The document referred to was
23 marked for identification as
24 Union Exhibit No. 63.)

25 ARBITRATOR SHARNOFF: Yes. I'm with you.

1 MR. HIRN: Okay.

2 THE WITNESS: Well, like I stated before, in
3 2012, extremely late in 2012, we came to realize that
4 or started hearing a lot of grumbling about positions
5 not being filled, people not being able to train
6 because they didn't have people on staff, et cetera,
7 and so we looked into it.

8 We get quarterly reports of bargaining and
9 nonbargaining unit members that work for the National
10 Weather Service, so we were able to take a look at
11 those over the quarters and see that the workforce had
12 already reduced by 5 percent from our baseline, the
13 first one of those quarterly reports that we got, so
14 they were already achieving a 5 percent savings in
15 salaries and benefits.

16 BY MR. HIRN:

17 Q Well, had Congress been cutting the Weather
18 Service budget?

19 A No. Congress has actually been giving the
20 Weather Service more money.

21 Q More money than what?

22 A More money than the President has been
23 asking for. More money than they had the years
24 before. Congress has been very good to the National
25 Weather Service.

1 Congress gave the Weather Service more money than
2 it's been asking?

3 MR. HIRN: I'm sorry. Am I going too fast?

4 ARBITRATOR SHARNOFF: I just wanted to say
5 Union Exhibit 72 is admitted.

6 (The document referred to,
7 previously identified as
8 Union Exhibit No. 72, was
9 received in evidence.)

10 MR. HIRN: Yes. I did it again.

11 ARBITRATOR SHARNOFF: And I'm sorry. Where
12 are you now?

13 BY MR. HIRN:

14 Q Okay. Directing your attention back to your
15 testimony about Bullet Point No. 1, you said Congress
16 has given the Weather Service additional money?

17 A Yes.

18 Q Did the Weather Service get additional money
19 in early 2013 in the Hurricane Sandy supplemental?

20 A Yeah. I believe it was around \$25 million.

21 (The document referred to was
22 marked for identification as
23 Union Exhibit No. 64.)

24 BY MR. HIRN:

25 Q Directing your attention to Union Exhibit

1 64, this is the Department of Commerce section of the
2 Sandy supplemental. And do you see anything in here
3 giving the Weather Service more money for weather
4 forecasting capabilities?

5 A Yes. Chapter 2, Section 4, \$25 million to
6 improve weather forecasting and hurricane intensity
7 forecasting capabilities, to include data assimilation
8 from ocean observing platforms and satellites.

9 MR. HIRN: I will move the admission of
10 Union Exhibit 64, but it's a Public Law. I just have
11 copied it here for the convenience of everybody
12 because the original is quite long.

13 MS. CIOFFALO: No objection.

14 ARBITRATOR SHARNOFF: Okay. Union 64 is
15 admitted.

16 (The document referred to,
17 previously identified as
18 Union Exhibit No. 64, was
19 received in evidence.)

20 BY MR. HIRN:

21 Q Okay. Bullet paragraph No. 3. How did you
22 come to that figure, \$20 million annually?

23 A Actually we got a separate document that
24 spelled out these grants, and what shocked me is that
25 many of those grants aren't even weather-related.

1 They're wet side NOAA -- they're fish-related -- but
2 the Weather Service is handing that money out.

3 (The documents referred to
4 were marked for
5 identification as Union
6 Exhibit Nos. 73 and 74.)

7 BY MR. HIRN:

8 Q Directing your attention to Union Exhibits
9 73 and 74, can you identify these documents?

10 A Okay. Well, 73 is a list of the grants that
11 the National Weather Service is handing out.

12 Q And how about 74?

13 A I think this is a -- yeah, I know. I see.
14 But it's I think a lot more detailed, and I believe it
15 has a lot -- I believe it goes back further than
16 the -- the first one is just generalized numbers of
17 how much. For instance, Arizona State University. Of
18 course I picked that one. City College of New York in
19 2010 got \$100,000, in 2011 \$50,000, a total for
20 \$150,000. The other document, 74, more specifically
21 says okay, that money went to this specific purpose.

22 Q And how did you get these documents?

23 A I believe it was an information request.

24 Q From whom?

25 A David Murray or Stan Kensky, one of the two.

1 Q And did you get these this year? I'm sorry.

2 Not --

3 A It was in 2013, early 2013.

4 MR. HIRN: I'll move the admission of Union
5 Exhibit 73 and 74.

6 MS. CIOFFALO: No objection.

7 ARBITRATOR SHARNOFF: Okay. They're
8 admitted.

9 (The documents referred to,
10 previously identified as
11 Union Exhibit Nos. 73 and 74,
12 were received in evidence.)

13 (The document referred to was
14 marked for identification as
15 Union Exhibit No. 65.)

16 BY MR. HIRN:

17 Q Going back to the Weather Service's
18 appropriations, in the Commerce Appropriations Act for
19 FY 2013, Union Exhibit 65, directing your attention to
20 page 16, you'll see it says the funding recommendation
21 includes an additional \$17.1 million for operational
22 shortfalls in the Weather Service under local warnings
23 and forecasts?

24 A Yes.

25 Q That's an additional amount in the

1 appropriation. Is that to your understanding over and
2 above what the Administration requested?

3 A Yes. And more specifically, local warnings
4 and forecasts is where almost all the salaries of
5 bargaining unit members come from.

6 Q All right. Directing your attention to the
7 last page of Union Exhibit 65, and this is, by the
8 way, the report accompanying the 2013 Commerce
9 Department Appropriations Act. Do you recognize --
10 have you seen the chart like that before?

11 A Yes.

12 Q And can you tell us what that is?

13 A It's the appropriation, where it's going and
14 the amounts.

15 Q Okay.

16 A Local warnings and forecasts, \$706,079,000,
17 and specifically different parts of it like the
18 mesonet network, \$12 million; the profiler network, it
19 looks like 4.288. That's what it has.

20 MR. HIRN: I move the admission of Union
21 Exhibit 65.

22 MS. CIOFFALO: Can I ask, is this chart, the
23 last page, part of --

24 MR. HIRN: Yes. It was part of the report,
25 Monique.

1 MS. CIOFFALO: -- the report that you're
2 giving us the piece of here?

3 MR. HIRN: Yes.

4 MS. CIOFFALO: Okay. And that report is?

5 MR. HIRN: The Conference Committee report
6 on the FY '13 omnibus. It was the continuing -- the
7 whole bill was the one that was passed in early March.
8 It was the continuing and omnibus, partial omnibus
9 Appropriations Act for most of the government
10 agencies, and Division B was the CJS title.

11 MS. CIOFFALO: Okay. So this chart is what
12 you're saying represented the Agency's budget as of
13 2013?

14 MR. HIRN: This is the level of specificity
15 that Congress in their reports accompanying the
16 Commerce Department appropriations specifies with
17 funding at the National Weather Service. You will see
18 this chart under these categories accompanying for the
19 past number of years all the appropriations bills in
20 the accompanying report of the Appropriations
21 Committees.

22 ARBITRATOR SHARNOFF: Okay. On this one, on
23 page 16, the sentence that you were reading, the
24 \$17 million, goes on to say "to address current
25 operational shortfalls identified by an investigation

1 of financial mismanagement within the NWS and
2 consistent with proposed realignment of the NWS budget
3 in the wake of the investigation." And do we have
4 that information?

5 BY MR. HIRN:

6 Q Well, Dan, I'll ask you. Were you at all
7 familiar with the current operational shortfalls
8 Congress was referring to?

9 A Yes.

10 Q And could you tell us what that is?

11 A Apparently allegedly --

12 ARBITRATOR SHARNOFF: Well, rather than --

13 MR. HIRN: Well, maybe the Agency is going
14 to --

15 ARBITRATOR SHARNOFF: Rather than your
16 characterization of it, my question goes to do you
17 have the report? This refers to a specific
18 investigation.

19 THE WITNESS: I have not seen --

20 ARBITRATOR SHARNOFF: Identified by an
21 investigation. Do you have that report?

22 THE WITNESS: I have not seen the report.
23 I've seen the recommendations from the report and then
24 I've subsequently seen a draft Inspector General
25 investigation.

1 MR. HIRN: Mr. Sharnoff, Monique in her
2 opening this morning talked about her witnesses were
3 going to testify to this I believe.

4 MS. CIOFFALO: Yes.

5 MR. HIRN: Perhaps that might be the more
6 authoritative --

7 ARBITRATOR SHARNOFF: It may be. I mean, I
8 don't want the record to be left with an impression
9 that this is just free money given out by the federal
10 government to do whatever they want with. It seems to
11 me from reading it, and this is the first time I've
12 seen it, that it's tied to specific things that were
13 supposed to be remedied by the \$17 million. It was
14 directed towards certain things and couldn't just be
15 spent on anything the Agency felt like spending it on.

16 THE WITNESS: The National Weather Service
17 was taking money out of certain projects and applying
18 it to salaries to make ends meet and that was directed
19 to remedy that, but it was over and above the amount
20 they had before so that they would be able to pay the
21 salaries for people without playing the shell game
22 that they were playing of moving money around.

23 ARBITRATOR SHARNOFF: Okay. That may be the
24 case, but in any event, maybe we'll find out more
25 specifically.

1 MS. CIOFFALO: The Agency will certainly
2 clarify it during its testimony as to --

3 ARBITRATOR SHARNOFF: I had a feeling you
4 might.

5 MS. CIOFFALO: -- what was going on with all
6 the money.

7 MR. HIRN: Okay. We'll move the admission
8 of 65.

9 ARBITRATOR SHARNOFF: Any objection?

10 MS. CIOFFALO: No objection.

11 ARBITRATOR SHARNOFF: Okay. Well, with that
12 understanding, because it's referred to in there --

13 MR. HIRN: Yes.

14 ARBITRATOR SHARNOFF: Anyway, it's admitted.
15 65 is admitted.

16 (The document referred to,
17 previously identified as
18 Union Exhibit No. 65, was
19 received in evidence.)

20 BY MR. HIRN:

21 Q Going back to your March 28 letter, the
22 bottom bullet point on the first page.

23 ARBITRATOR SHARNOFF: I'm sorry. Which
24 exhibit?

25 MR. HIRN: This is Union Exhibit 63.

1 ARBITRATOR SHARNOFF: Okay.

2 MR. HIRN: You know what, Mr. Sharnoff? One
3 of my later exhibits explains all that, puts it in
4 context in the context of the reprogramming that was
5 done, and I have the reprogramming documents, so we'll
6 be able to hook that up in a minute.

7 ARBITRATOR SHARNOFF: Okay.

8 BY MR. HIRN:

9 Q Your last bullet.

10 A Uh-huh.

11 ARBITRATOR SHARNOFF: I'm sorry. The last
12 bullet on that page?

13 MR. HIRN: Yes.

14 ARBITRATOR SHARNOFF: Okay.

15 MR. HIRN: On the first page of Union
16 Exhibit 63.

17 BY MR. HIRN:

18 Q Can you explain what your understanding was
19 about how easy or difficult it would be for the
20 Weather Service to reprogram the funds?

21 A Okay. Unlike other parts of Congress or
22 parts of the government, the Commerce, Justice, and
23 State appropriation allowed those departments to
24 reprogram money with just notification to Congress.
25 It didn't take an act. It didn't take an act of

1 Congress essentially. They just needed to give
2 notification to Congress and Congress's concurrence.

3 MR. HIRN: Okay. Mr. Sharnoff, for your
4 ease and for the Agency's ease for reference, I have
5 prepared -- we have Union Exhibit 66, which is the
6 relevant portion of the Consolidated and Further
7 Continuing Appropriations Act, basically the FY 2013
8 Commerce Department Appropriations Act, and I've
9 copied the relevant sections that I will be referring
10 to in our brief about the reprogramming procedures.
11 And while this law is obviously a law and not
12 evidence, I brought it today marked as an exhibit to
13 help you.

14 (The document referred to was
15 marked for identification as
16 Union Exhibit No. 66.)

17 MS. CIOFFALO: Could you just -- and I think
18 it's just because I can't read your handwriting.

19 MR. HIRN: Sure.

20 MS. CIOFFALO: Would you mind just reading
21 what this says?

22 MR. HIRN: Okay. I apologize for that. It
23 is H.R. 933, The Consolidated and Further Continuing
24 Appropriations Act of 2013. Within that Act, which
25 was passed in early March, Division B was the

1 Commerce, Justice, Science, and Related Agencies
2 Appropriations Act for 2013. I have taken relevant
3 provisions out of that -- Section 103 and Section 505
4 -- which discusses the authority and procedures for
5 reprogramming funds.

6 MS. CIOFFALO: Okay. I have no objection.

7 MR. HIRN: And this way you don't have to go
8 hunting down through a thousand pages of the
9 Consolidated and Further Appropriations Act of 2013 to
10 find out what we're talking. In case you want to,
11 it's there, but --

12 MS. CIOFFALO: It's fun leafing through it.

13 MR. HIRN: Okay.

14 ARBITRATOR SHARNOFF: Okay. It's admitted.

15 (The document referred to,
16 previously identified as
17 Union Exhibit No. 66, was
18 received in evidence.)

19 BY MR. HIRN:

20 Q Okay. Now, to your knowledge, has the
21 Weather Service ever reprogrammed funds before?

22 A Yes.

23 Q Is this something that they don't know how
24 to do?

25 A In 2012, as a result of that investigation

1 about moving money around inappropriately, the Weather
2 Service had or NOAA or the Weather Service through
3 NOAA had to ask for a reprogramming of money to keep
4 the Weather Service from being antideficient, and
5 that's what your Union Exhibit 67 shows.

6 (The document referred to was
7 marked for identification as
8 Union Exhibit No. 67.)

9 BY MR. HIRN:

10 Q And do you remember how you got this
11 document?

12 A This might be the one that --

13 Q Well, let me ask this. Did you have the
14 occasion to meet with the chief of staff to the NOAA
15 Administrator, Margaret Spring, in --

16 A Yeah. I was going to say -- I was going to
17 say that. Well, I remember it because actually I was
18 supposed to be on a plane flying home at that time,
19 and I had to cancel that to meet with her.

20 And she briefed us on both the actions that
21 were going on within the National Weather Service and
22 the suggestions that the then Undersecretary for
23 Oceans and Atmosphere, Jane Lubchenco, was taking
24 based on the report, as well as that the Weather
25 Service was going to ask for a reprogramming, and

1 that's where we got these documents.

2 MR. HIRN: Okay. I'll move the admission of
3 Union Exhibit 67 and Chairwoman Mikulski's response,
4 Union Exhibit 68.

5 (The document referred to was
6 marked for identification as
7 Union Exhibit No. 68.)

8 MS. CIOFFALO: No objection.

9 ARBITRATOR SHARNOFF: Okay. 67 is admitted.
10 (The document referred to,
11 previously identified as
12 Union Exhibit No. 67, was
13 received in evidence.)

14 MR. HIRN: And these will help explain your
15 question a moment ago, Mr. Sharnoff.

16 (The document referred to was
17 marked for identification as
18 Union Exhibit No. 69.)

19 BY MR. HIRN:

20 Q Now back to your last bullet on Union
21 Exhibit 63. I direct your attention to Union Exhibit
22 69. Can you identify this, Union Exhibit 69?

23 A Yeah. This is -- well, it's a letter from
24 the chairman of the Appropriations Committee, the
25 House of Representatives side, Congressman Frank Wolf,

1 to Secretary or actually it was Acting Secretary
2 Blank, and it stated that making sure that the Weather
3 Service is funded is very important to him and that in
4 order to ensure that sequestration does not negatively
5 impact the National Weather Service's ability to
6 forecast the weather that the committee would be
7 willing to consider a reprogramming on an expedited
8 basis, and again, that was March of 2013 before the
9 hiring freeze.

10 Q And did he follow up with subsequent
11 requests to your knowledge --

12 A Yes.

13 Q -- urging the Agency to reprogram funds?

14 A Yes.

15 (The documents referred to
16 were marked for
17 identification as Union
18 Exhibit Nos. 70 and 71.)

19 BY MR. HIRN:

20 Q And looking at Union Exhibit 70 and 71, how
21 did the Union come into possession of these letters?

22 A From the congressman's office.

23 MR. HIRN: Okay. I'll move the admission of
24 Union Exhibits 69, 70, and 71.

25 MS. CIOFFALO: Just a quick question. Are

1 these marker marks from Frank Wolf to your knowledge,
2 or is it somebody else's?

3 THE WITNESS: That's Congressman Wolf's
4 handwriting. Yes.

5 MS. CIOFFALO: All right. No objection.

6 THE WITNESS: And in fact on the first one,
7 on Exhibit 69, he actually has a Thanks, F.A. on that.

8 MS. CIOFFALO: Oh, is that what that says?

9 THE WITNESS: Yes.

10 ARBITRATOR SHARNOFF: Okay.

11 (The documents referred to,
12 previously identified as
13 Union Exhibit Nos. 69 through
14 71, were received in
15 evidence.)

16 THE WITNESS: Or F.W. I'm sorry.

17 BY MR. HIRN:

18 Q Directing your attention to the second page
19 of Union Exhibit 63, the bullet that you have at the
20 top, could you explain what you meant in that
21 paragraph?

22 A The process of advertising a vacancy, people
23 sending their résumés in, somebody being selected, and
24 then after they're selected there's a negotiation
25 between the office they're at now and the office

1 they're going to and the date that they report, and
2 the time it takes them to move there and report and
3 everything takes a good deal of time.

4 And the point I was trying to make is that a
5 hiring freeze that allows -- a hiring freeze would
6 have no impact on the current year's budget, which is
7 what they were worried about because of sequestration,
8 because those positions, those people, wouldn't be on
9 station for several months anyway until the end of the
10 fiscal year. That's in a nutshell what I'm trying to
11 say.

12 MR. HIRN: All right. And have I moved
13 Union Exhibit 63 yet?

14 MS. LUCIANI: No.

15 MR. HIRN: Okay. Okay. I have?

16 MS. LUCIANI: No, you have not yet.

17 MR. HIRN: I move the admission of Union
18 Exhibit 63.

19 MS. CIOFFALO: No objection.

20 ARBITRATOR SHARNOFF: Okay. It's admitted.

21 (The document referred to,
22 previously identified as
23 Union Exhibit No. 63, was
24 received in evidence.)

25 MS. LUCIANI: And did you move 69, 70, and

1 71?

2 MR. HIRN: And 69, 70, and 71 were admitted?

3 ARBITRATOR SHARNOFF: Yes, but not 68. I
4 don't have that.

5 MR. HIRN: 68? Which was 68?

6 MS. CIOFFALO: The response to the
7 reprogramming.

8 MR. HIRN: Yes. I moved 67 and 68 together.
9 I heard no objection.

10 ARBITRATOR SHARNOFF: It's quite possible.
11 All right.

12 MS. CIOFFALO: No objection.

13 ARBITRATOR SHARNOFF: There's no objection,
14 so 67 and 68 are admitted at this point if they
15 haven't already been admitted.

16 (The document referred to,
17 previously identified as
18 Union Exhibit No. 68, was
19 received in evidence.)

20 ARBITRATOR SHARNOFF: I do have 67 as
21 admitted, but somehow I didn't have it on 68. Okay.

22 BY MR. HIRN:

23 Q Dan, let me ask you about the impact of the
24 hiring freeze on the conditions of employment for
25 bargaining unit employees. The hiring freeze, has it

1 resulted in any change of conditions for bargaining
2 unit employees?

3 A I mean, the answer is clearly yes. I mean,
4 I can't say that emphatically enough. Training has
5 been canceled across the board.

6 Q Well, the hiring freeze.

7 A Yes.

8 Q Not the sequestration.

9 A No. Training has been canceled because
10 there are no extra shifts. I believe Mr. Sierra
11 explained that there were supernumerary type shifts
12 that were available within an office because you need
13 21 shifts to fill a seven-day rotation, and you have
14 25 if you have five people rotating seven days a week.

15 You're going to have to take annual leave
16 out of that and everything, so there's not a whole lot
17 of extra time, but it does give people some extra time
18 to complete training, and almost all of our training
19 is on station now. You don't go to a course
20 somewhere. You're on the internet taking a course
21 over the internet.

22 So that has been just severely impacted, and
23 that training is just nonexistent. The forecasters
24 aren't learning the latest techniques on how to
25 determine tornadoes or flooding conditions. I know in

1 fact in the Fairbanks, Alaska, office that all annual
2 leave was canceled for like six months and all the
3 employees at the office were forced to work a day of
4 overtime. So they got no vacations and they were
5 working a day of overtime every pay period.

6 And in many offices around the country you
7 have forecasters that are now out watching balloons
8 that were traditionally intern and HMT work because
9 there's nobody else to do it. And in fact, in two
10 offices, Tallahassee and Sterling, Virginia, we have
11 emails from the MIC saying, you know, we're not going
12 to be able to launch balloons, and if you just don't
13 have anybody to do it -- in the one case, it said if
14 you don't have anybody to do it, just code it as
15 equipment failure and don't send the balloon up.

16 Q Well, having to launch a balloon, why is
17 that a negative impact on a forecaster?

18 A Well, first of all, it's lower graded work,
19 but also in many cases the forecasters are doing it in
20 addition to their regular duties. And in fact, in
21 some cases, forecasters -- in some cases, you have GS-
22 14 and GS-15 people doing the work of the
23 administrative support assistant, which is GS-7 or GS-
24 8 work. And so, I mean, it's just they're doing
25 everything they can to keep operations moving forward.

1 But I'll tell you we're hearing just every day, you
2 can see the service assessments that the Agency itself
3 does.

4 Q Well, we'll get to those in a moment, but
5 let me ask you this. With regard to the forecaster
6 vacancies, who is covering those shifts now?

7 A Well, in one case, one office used interns
8 to cover those shifts, and an intern is a training
9 position. On one shift, I got an email that had three
10 interns all working together. There were the three
11 interns that were in the office. They were the ones
12 covering the shift that day.

13 Q Were there no professional meteorologists?

14 A Nobody overseeing them or anything. The
15 three interns were the people running the shift.

16 Q When you have an intern covering for a
17 journeyman and a lead forecaster is present, does that
18 create any additional burden on the lead forecaster?

19 A Yeah. Yes, but that's something the lead
20 forecaster is kind of used to doing. His job is to
21 kind of oversee the work of everybody else. He has
22 his own work to do, but he also oversees the work of
23 everybody else.

24 If the person you're overseeing you really
25 trust, they have a lot of experience, there's a whole

1 lot less overseeing than somebody straight out of
2 college who might be very bright and really have a lot
3 of new knowledge to pass along to the office but just
4 doesn't have the experience to make the kinds of
5 decisions you need to make. The maturity level is
6 sometimes not there too. So it does add a slight
7 dimension of change to it.

8 Q How about workload during severe weather?

9 A What do you want to know about severe
10 weather?

11 Q Well, what's the workload like during severe
12 weather?

13 A It's incredible.

14 Q And does the Weather Service usually cover
15 in the severe weather? Do they just rely on the staff
16 that was scheduled for that shift, or do they bring
17 people in?

18 A No. Like Ramon said, you have 25 shifts and
19 you need 21. What he didn't say is that if it's say,
20 for instance, a lead forecaster slot where they
21 generally have enough time in grade where they're
22 getting eight hours a pay period of leave, two and a
23 half of those shifts go to annual leave every year --
24 I mean every week -- so that really takes you down to
25 having available 22½ shifts, and you need 21. If

1 anybody gets sick, that throws a monkey wrench into
2 that.

3 But even if nobody gets sick and you have
4 that extra day and a half, people working rotating
5 shifts, you don't have the flexibility to take
6 someone, for instance, that's working from midnight to
7 8 a.m. for two days and put them in an 8 a.m. to
8 4 p.m. shift and then put them back to midnight to
9 8 a.m. It just disorients them and they'd be useless
10 on the shift anyway.

11 So we really don't have the staff. I made
12 the comment before we really don't have the staff to
13 do just what we're doing right now.

14 Q All right.

15 A So, when you throw severe weather on top of
16 it and that triples or quadruples the workload, while
17 you typically bring in extra people to work overtime,
18 in some cases like in the Alabama tornado that hit
19 Tuscaloosa right before the ones that hit in Missouri,
20 people were working 16-, 18-hour shifts for almost a
21 straight month.

22 Q Well, how would a reduction in the number of
23 staff at the office then impact the workload during
24 severe weather of the other employees?

25 A Well, obviously --

1 Q It may seem like an obvious question, but I
2 don't know that your answer was obvious.

3 A Okay. Let me answer it a different way. If
4 your office is covering shifts right now with overtime
5 just to cover the vacancies that are there because
6 they're not filling the positions and then you throw
7 severe weather on top of that, it makes it an
8 impossible thing.

9 Q What is impossible about it?

10 A Well, there's only 24 hours in a day that
11 somebody can work and realistically you need to get
12 some sleep, and especially if you're working those
13 overnight shifts. That takes a lot out of you.

14 Q And if you can't come in, then what happens
15 to the workload of the people who --

16 A Well, somebody has got to do it. And we're
17 very lucky. We had a very quiet hurricane season last
18 year, very quiet. And that's a major workload, a
19 hurricane coming on shore. And so are our big tornado
20 outbreaks, but they tend to be localized and in
21 shorter durations. I'm telling you the straw is --
22 that camel is just almost doing a split right now.

23 Q Has there been any studies of the impact of
24 understaffing at the Weather Service on the Agency's
25 ability to respond and protect the public during

1 severe weather?

2 A After every major event, the Weather Service
3 goes back and does an assessment of what it did and
4 how it could do it better.

5 Q All right. Did they conduct a --

6 A Yes.

7 Q -- service assessment after Hurricane Sandy?

8 A Yes.

9 (The document referred to was
10 marked for identification as
11 Union Exhibit No. 77.)

12 BY MR. HIRN:

13 Q And directing your attention to Union
14 Exhibit 77 --

15 A I would love to, but I don't have Union
16 exhibits.

17 Q Yes, you do.

18 A Sorry. I stand corrected.

19 Q 77.

20 A Okay.

21 Q Can you identify this document?

22 A Yeah. This is the service assessment from
23 Hurricane/Extratropical Storm Sandy.

24 Q And were there any findings in the service
25 assessment about the impact of vacancies at the

1 Weather Service on the Agency's ability to respond to
2 the public during Hurricane Sandy?

3 A Finding 21, National Hurricane Center and
4 National Weather Service Eastern Region had critical
5 staff shortages. Because these are operational units,
6 these shortages make them vulnerable to failure during
7 significant weather events when FEMA, emergency
8 managers, media, and other important partners and the
9 public depend on them the most.

10 Q And did the assessment team make any
11 recommendations or warnings of recommendations to fill
12 positions or warnings about the failure to fill
13 positions?

14 A Yes. Recommendation 21-A said the Weather
15 Service should identify and fill critical positions at
16 operational facilities. If these positions cannot be
17 filled, the Weather Service should ensure awareness at
18 higher levels in NOAA that these vacancies may result
19 in reduced levels of service.

20 And then 21-B, Weather Service headquarters
21 should work closely with NOAA Workforce Management to
22 reduce the amount of time it takes to fill positions.
23 By the way, to my knowledge, these positions still
24 have not been filled.

25 MR. HIRN: I'll move the admission of Union

1 Exhibit 77.

2 ARBITRATOR SHARNOFF: Any objection?

3 MS. CIOFFALO: I'm sorry. No objection.

4 (The document referred to,
5 previously identified as
6 Union Exhibit No. 77, was
7 received in evidence.)

8 BY MR. HIRN:

9 Q Are you familiar with a study that was
10 conducted by the National Academy of Science National
11 Research Council on the Weather Service modernization?

12 A Yes.

13 (The document referred to was
14 marked for identification as
15 Union Exhibit No. 75.)

16 BY MR. HIRN:

17 Q And did they make any findings, the National
18 Research Council of the National Academy of Science
19 make any findings recently with regard to the
20 criticality of adequately staffed forecast offices
21 during severe weather events? And I'm directing your
22 attention to Union Exhibit 75.

23 A Yeah. I'm looking at that one. And Finding
24 4-3B states staffing levels have resulted from the
25 modernization and associated restructuring, MAR,

1 allows for at least two people to be on duty for all
2 shifts. The timely planning and coordination by field
3 office managers and supervisors are required to be
4 able to increase the staffing level for times when
5 severe weather threatens life and property.

6 Q Directing your attention to the first
7 paragraph on that page, the upper left-hand corner,
8 the last sentence --

9 A And?

10 Q -- would you agree with that statement?
11 Appropriate levels of staffing beyond normal fair
12 weather staffing during major weather events are
13 critical for fulfilling the Weather Service's
14 protection of life mission.

15 A Yes. Yes. Absolutely.

16 MR. HIRN: And I'll move the admission of
17 Union Exhibit 75.

18 MS. CIOFFALO: No objection other than to
19 note that this is just one small piece of the actual
20 document, so I'll request that the full document be
21 replaced at some point so the Arbitrator can refer to
22 it in full.

23 MR. HIRN: Well, okay. We can do that. I
24 have reproduced the entire section that pertains to
25 the workforce. The document is a public document that

1 was done for the Weather Service by the National
2 Academy of Science, so I would suggest that since it
3 is a document that was prepared for the Agency they
4 have a copy, and perhaps if there are other sections
5 that they think are pertinent that it would be easier
6 for them to introduce a document of those sections or
7 whatever rather than just --

8 MS. CIOFFALO: My point --

9 MR. HIRN: Rather than just throwing an
10 unnecessary photocopying burden on the Union.

11 MS. CIOFFALO: My point only is that if in
12 closing briefs or anything like that we need to refer
13 to other parts of this document that it be considered
14 in the record as a whole given that it is a public
15 document that they've only given us portions of.

16 MR. HIRN: Yes. I think that's entirely
17 appropriate. It's a National Academy publication.

18 MS. CIOFFALO: Then no objection.

19 ARBITRATOR SHARNOFF: Okay. It's admitted.

20 (The document referred to,
21 previously identified as
22 Union Exhibit No. 75, was
23 received in evidence.)

24 ARBITRATOR SHARNOFF: And if there are any
25 additional -- let's do it this way. If there are any

1 additional sections that you want to use, you're free
2 to use them.

3 MS. CIOFFALO: Okay.

4 ARBITRATOR SHARNOFF: Just let the Union
5 know you're going to be using them.

6 MS. CIOFFALO: Sure thing.

7 BY MR. HIRN:

8 Q Dan, did you participate or assist earlier
9 this year the National Academy of Public
10 Administration in an investigation and study of the
11 National Weather Service operations?

12 A Yes.

13 Q And are you familiar with the report that
14 they issued in May 2013?

15 A Yes.

16 (The document referred to was
17 marked for identification as
18 Union Exhibit No. 76.)

19 BY MR. HIRN:

20 Q And directing your attention to Union
21 Exhibit 76, is this a portion of that report?

22 A Yes.

23 Q In the report, did they address the staffing
24 levels of the Weather Service and the impacts of the
25 vacancies?

1 Q What's an IMET?

2 A An IMET is a specialized forecaster that has
3 training for fires, forest fires, large forest fires,
4 and they're deployed to the fires and work on the fire
5 line with the firefighters to help prevent like the
6 horrible thing that happened in Arizona where the fire
7 switched directions and killed all those people. You
8 know, there have been some occasions where offices
9 were so short staffed that they had to deny an IMET
10 going to a certain fire.

11 Q Now how did that impact the IMET? Would he
12 or she have the opportunity to earn more pay on the
13 dispatch than normally earned?

14 A Yes. I'm not an IMET, so I'm not the person
15 to ask specifics about it except that typically they
16 don't work an eight-hour day. They're long days.
17 You're the only person there, and, you know, you're
18 briefing long hours and sometimes sleeping in tents or
19 little hotels in the middle of nowhere or something
20 when you can. So, yes, it would have taken away
21 overtime potential there.

22 Q Has management been doing bargaining unit
23 work?

24 A Yes. Management has had to fill in shifts
25 in many locations. I mean, Shreveport, 20 to 25

1 percent of their staff is gone. They're not there.
2 And somebody has got to do the job. So, yes,
3 management has been filling in those shifts.

4 Q Has there been any career mobility?

5 A Very good point. I didn't even think about
6 that. For instance, interns who come in from college.
7 They really dislike being an intern. They really want
8 to get those forecaster positions, and it's very
9 important and they've worked really hard and it's
10 really unfortunate that none of those forecaster
11 positions are there right now because they're not
12 filling those vacancies.

13 So, yes, the career progression and it
14 actually costs them money because typically
15 forecasters, they usually bid these journeyman
16 positions down lower, and typically interns can bid on
17 them at a lower grade. They don't have to have the
18 whole year in grade at a GS-11, so they automatically
19 then go from 11 to a 12. Well, now many of them are
20 sitting at the GS-11 level and just getting the step
21 increases instead of the grade promotions, so it's
22 actually costing some of them money.

23 MR. HIRN: I think I've completed my direct
24 examination of this witness. And have I moved
25 admission of everything, Lisa?

1 (Counsel confer.)

2 MR. HIRN: Yes.

3 ARBITRATOR SHARNOFF: Okay. Any questions
4 that leap out at you that you'd like to have answered
5 before you leave, or just wait until tomorrow?

6 MS. CIOFFALO: No. I think we should do it
7 all at once.

8 ARBITRATOR SHARNOFF: Okay. All right.
9 You're still technically on the stand, but you don't
10 have to remain here. So don't discuss the case or
11 your testimony with anybody in terms of I don't know
12 if you need his assistance in preparing other exhibits
13 or anything not dealing directly with your own
14 testimony if you need his assistance. That's okay.

15 THE WITNESS: Thank you.

16 ARBITRATOR SHARNOFF: All right. Anybody
17 else have anything before we adjourn?

18 MS. CIOFFALO: No.

19 ARBITRATOR SHARNOFF: All right. We are
20 adjourned. Thank you.

21 ALL: Thank you.

22 (Whereupon, at 5:10 p.m., the hearing in the
23 above-entitled matter was adjourned, to reconvene at
24 9:30 a.m. on Tuesday, January 14, 2014.)

25 //

REPORTER'S CERTIFICATE

DOCKET NO.: FMCS-13-02465-A
CASE TITLE: Arbitration Between NOAA and NWSEO
HEARING DATE: January 13, 2014
LOCATION: Silver Spring, Maryland

I hereby certify that the proceedings and evidence are contained fully and accurately on the tapes and notes reported by me at the hearing in the above case before the National Oceanic and Atmospheric Administration.

Date: January 13, 2014

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