



## A Message from NWSEO President John Werner

July 17, 2020

Dear NWSEO brothers and sisters,

I hope this message finds you well and your spirits strong. As you're aware, we received the Decision and Order regarding the new Collective Bargaining Agreement (CBA) from the Federal Service Impasses Panel (FSIP; hereafter referred to as the "Panel") last Wednesday afternoon, July 8, 2020. Since that time, NWSEO leadership has worked diligently to analyze and assess the impacts of the decision and to plot out the best path forward per the law and agreed upon CBA ground rules. In the paragraphs that follow, we'll present a brief summary of the Panel's decision; summarize the impacts that Panel-imposed Articles would have on your rights and benefits compared to our current/2001 CBA, and explain how NWSEO currently plans to move forward given the recent correspondence it has had with NWS leadership.

Of the 45 proposed Articles which were originally submitted as part of the new CBA, NWS and NWSEO had not reached agreement on 28 articles, which were included in the Panel's decision and order. The Panel adopted most of Management's proposals, which sought to take back many of the benefits the Union had bargained for NWS employees over the years, and placed severe restrictions on the ability of NWSEO to represent NWS bargaining unit employees.

However, the Panel rejected Management's proposal to gut the scheduling Articles contained in the 2001 Agreement, and it accepted NWSEO's Articles 20 and 21. These Articles proposed by NWSEO maintained our previous rights while allowing us the right, in appropriate circumstances, to negotiate flexible work schedules in Article 20 and allowing additional alternative work schedules in Article 21 such as maxi-flex and flexitours. Management had proposed a new scheduling Article 20 that would allow them to make unilateral changes to the fixed work schedule, cancel alternative work schedules, single-person staffing on shifts, reduction of staffing to zero on shifts at their discretion. This was a major victory for NWS employees, as eliminating our existing scheduling protections was a primary objective of Management when it demanded to renegotiate the current CBA. The Panel also rejected Management's proposal to reduce employees' entitlement to court leave, which currently takes the employee off the work schedule for the entire period of jury service.

**The following is a summary of the rights and benefits that NWS bargaining unit employees may lose because of the FSIP decision:**

**Article 39 - Employee Relocation**  
**FSIP Adopted the Agency's proposal.**

- **PCS is entirely at Management's discretion - not guaranteed**
- **Third-party relocation service is no more**

Article 39 is a new Article not in the current/2001 CBA which covers employee relocation and reimbursement of moving expenses. Management's language for this Article, as imposed by the Panel, makes changes to existing practices which will severely impact employee mobility within the NWS. Management would now reserve the right to decide whether they will pay relocation expenses for any Permanent Change of Station (PCS) move under the Merit Assignment Program (MAP), including promotions, transfers, and reassignments. This is a major break from past practice, under which NWS has, in almost all cases, paid relocation expenses for MAP promotions and transfers, as they have been considered "in the interest of the Government" under law. Unless specifically authorized in the job opportunity announcement for a particular vacancy, there will be no reimbursement of moving expenses for the PCS of any employee selected for that vacancy. This new contract language will allow Management to force employees to essentially buy their way into any off-station promotion, and illegally restrict access to those promotions to those who are willing and able to pay their own PCS relocation expenses.

Management's new contract language also now flatly prohibits any use of a third-party relocation services company to purchase an employee's home at the old duty station.

Combined with the negative impacts to employee mobility caused by the unintended consequence of the GS 5-12 progression program, this contract language sought by Management and imposed by the Panel in Article 39 would allow Management to further eliminate reimbursement of PCS relocation expenses for NWS employees in Agency hiring actions.

**Article 24 - Safety and Health**  
**FSIP adopted the Agency's proposal.**

- **Health Club and Wellness Services Reimbursement Program can be terminated**

The Union agreed with the Agency's proposal for this Article, except the Union wished to maintain the Health Club and Wellness Services Reimbursement Program. The Agency asserted that it remains committed to employee health and welfare but claimed that this program impacts the Agency's budget and that it needed to retain flexibility over the administration of such discretionary expenditures.

If this imposed CBA is ratified, the Agency may now cancel the Health Club and Wellness Services Reimbursement Program at any time.

**Article 31 - Employee Awards**  
**FSIP adopted the Agency's proposal.**

- **Award funding levels are completely discretionary and no longer guaranteed to be at least 1.5% of salary budget; \$4 million of awards at risk**
- **Awards can be decreased or eliminated at Management's whim**

Management made, and the Panel imposed, several negative changes to the 2001 CBA language, which seem to be intended to allow Management to reduce or eliminate employee awards as they see fit. Most importantly, Management is now allowed, in their “sole and exclusive discretion”, to determine the amount allocated for award funding levels. This may well be interpreted to preclude bargaining over the impact of any reduction in the amount of award funding, or percentage for allocation, as well as to preclude any grievance or unfair labor practice charge over a unilateral change in percentage of payroll allocated to awards. This language allows Management to overturn a long-standing past practice, which for the past decade or longer, has seen NWS allocate 1.5% of its salary budget for bargaining unit employee awards. This money has been distributed by local supervisors from their proportionate share of this allocation, based on their individual judgment of an employee’s performance, and has resulted in awards totaling approximately \$4 million annually to bargaining unit employees. NWSEO, in its proposal, sought no change to that practice, and asked only that in the event that Management determines to reduce the amount that it allocates for employee awards, that it bargain over the impact of that reduction with NWSEO.

The new Article 31 language also gives Management the right to no longer grant any “non-mandatory” awards without violating the contract. This would allow Management to unilaterally suspend or terminate Special Act awards (these are the most common type of award granted to BU employees), On-the-Spot awards and the Cline Awards.

Management also makes the establishment of the Peer Recognition Awards program at each office subject to the “sole and exclusive discretion” of local office Management. This clearly violates the spirit of the existing Memorandum of Understanding (MOU) on this subject. You can view the MOU here: ([Link to MOU](#))

### **Article 25 - Union Communications** **FSIP adopted the Agency’s proposal.**

- **NWSEO Bulletin Boards can be censored**

If Management desires, they can remove any items from the Union bulletin board by claiming they are malicious. NWSEO would then have to go through a lengthy grievance process to possibly gain the right to repost any items removed by Management.

### **Article 10 - Grievances** **FSIP imposed “compromise language”.**

- **Prohibits grievances over performance plans and discretionary awards**
- **Limits the Union’s ability to files grievances on behalf of employees**
- **Form for filing grievances is required, but no form was agreed to or imposed by the FSIP**

The Panel imposed what it called “compromise language” for this Article, although most of the language imposed is actually from Management’s proposal.

The language imposed by the Panel excludes these additional areas from the grievance process, as compared to the 2001 CBA:

- Disapproval of honorary or discretionary awards not directly related to job performance.

- The substance of performance standards and elements/measures and/or the determination as to whether an element/measure is critical or non-critical.

The provision for an automatic seven-day extension on any deadline in the current grievance Article has been replaced with the provision allowing an extension of up to 15 days only by mutual consent. Apparently, the Parties cannot agree even by mutual consent to extend a deadline for longer than 15 days. As pointed out in Article 11, Management can now insist on separate “arbitrability hearings” in any arbitration resulting from a grievance. This will cause additional delays to the already lengthy process needed to resolve grievances via arbitration and will also allow Management to drive up the cost incurred by NWSEO when taking a grievance to arbitration.

The imposed Article mandates the use of a form to file employee grievances, but no such form has been proposed for inclusion in the contract. Without the mandated form, how does one file a grievance?

### **Article 7 – Union Representation**

**FSIP imposed the Agency’s proposal with modifications.**

- **Time provided to Union officers to represent our members cut by more than 50%**
- **Reimbursement of travel costs for Union representation eliminated**
- **No official time will be granted to Stewards to file a grievance**

The language imposed by the FSIP for Article 7 will severely impact the time available for NWSEO to represent bargaining unit employees.

The Panel’s order restricts the total amount of official time used by NWSEO for most representational functions to the equivalent of one (1) hour per bargaining unit employee per fiscal year. This will cause the total amount of official time available to NWSEO Regional and National officers to be reduced by more than 50% from current levels.

The imposed Article also requires that all employees shall spend at least  $\frac{3}{4}$  of their paid time, measured each fiscal year, performing Agency business or attending necessary training (as required by NWS). This will restrict NWSEO national officers to a maximum of 20 hours of official time per pay period. This represents a 75% reduction in official time for the National President, a 50% reduction in official time for the Executive Vice President, and a 38% reduction in official time for the Secretary-Treasurer.

Makes it difficult for regional and national Union Officers to schedule official time in advance. Management may deny the request for official time with the claim that no shift coverage was available, thereby preventing the regional or national officer from performing any representational duties in that pay period other than on their own personal time.

The imposed Article forces NWSEO to pay travel and per diem costs for representational duties, in contrast to the current/2001 CBA, which requires Management to pay those costs. This will impose major additional costs on NWSEO, and may, in many cases, preclude face to face bargaining, even at the regional or national levels.

Stewards and all other NWSEO officers will no longer be allowed to use official time to prepare grievances; instead, they will be required to do so on their own personal time.

## **Article 42 - Pay**

**FSIP Adopted the Agency's proposal.**

- **No improvements for resolving pay issues**

Article 42 was a new Article which NWSEO proposed for inclusion in the new CBA to educate the workforce on all things pay-related. There is a lot of confusion, even amongst managers, on the different types of pay, on issues such as the pay cap and how to effectively address errors in pay. The NWS counterproposal to the Article, imposed by the Panel, is very generic and non-specific, stating it will follow all applicable laws and regulations regarding pay, and if employees have issues, to contact their "Local, Regional, or National Representative, or payroll administrator, Human Resources Specialist". It also states if the NWS feels any training related to pay is needed, it will be done following the procedures of Article 17, the Training Article. The Panel-imposed Article is so generic that the NWS absolves itself of any responsibility for handling pay issues, instead allowing Management to blame third-party contractors who work for NOAA or DOC and claim that they have no control over them.

## **Article 32 - Contracting Out**

**FSIP adopted the Agency's proposal with modification.**

This Article addresses contracting out as outlined in Office of Management and Budget (OMB) Circular A-76. OMB Circular A-76 sets a process for comparing non-inherently governmental work performed by in-house federal employees with contractor bids to perform the same duties. There is a Congressionally imposed moratorium on A-76 activities through at least the remainder of FY 2020. Management's Article 32 allows them to contract out positions once the moratorium is lifted.

The FSIP did modify the Agency's proposal to include the following language: "The Agency shall post on the Internet an annual report of the use of contractors at the Agency in accordance with 15 U.S.C. 8547." Note: Within the Weather Research and Forecasting Innovation Act, NWS has been required to submit a report to Congress by October 2017, and annually thereafter, about the number of contractors at the NWS, what they do and how much they are paid. To date, they still have not complied with this requirement.

## **Agency Article 29 - Duration and Terms of Agreement**

**FSIP adopted the Agency's proposal.**

- **Allows Management to terminate the contract before a new contract is negotiated**

The key difference is that Management's language, as imposed by the Panel, did not include one provision originally put into the contract many years ago by the Panel itself and proposed by the Union to continue in the new contract, which ensured that the contract would remain in effect for ninety (90) calendar days from the start of formal renegotiation, and would also keep the contract in effect beyond that time if mediation is invoked. This provision, which is in the current/2001 CBA, has allowed key employee protections in that contract to remain in effect during the last several years while the new contract was being negotiated.

### **Article 26 - Telework**

**FSIP adopted the Agency's proposal.**

This is a new Article not in the current CBA. The NWS proposal places restrictions on the positions eligible for telework, and places restrictions and conditions on who can apply for telework. NWSEO had hoped to expand the use of regular telework to field offices, as the COVID-19 situation has shown it is possible for operational staff to telework under certain conditions.

### **Article 22 - Facilities**

**FSIP adopted the Agency's proposal with modification.**

- **Facilities decisions are the sole discretion of Management - no kitchens?**

The imposed Article 22 largely leaves decisions on facility-related issues solely in the hands of Management, with little to no pre-decisional involvement with NWSEO. It also does away with the past practice of providing kitchen areas in new NWS facilities, making it the unilateral discretion of Management on whether to do so. NWSEO had sought additional benefits such as exercise areas and "safe rooms", but application of those and other benefits is at the sole discretion of Management.

### **Article 13: Performance Plans**

- **Eliminating Pass/Fail performance ratings and instituting 5-tier performance ratings (which cannot be grieved)**
- **If an employee is placed on a Performance Improvement Plan (PIP), they only have 30 days to show improvement.**

Commits NWS Management to implement a 5-tier performance appraisal system for all employees. The Article imposed by the Panel would also remove the current employee right to grieve their performance rating. This Article also reduces the time period allowed for an employee to improve performance during a PIP from 45 to 90 days and no less than 30 days in the current CBA, to a vague standard of 30 days "which will generally be considered reasonable".

### **Article 11 – Arbitration**

**FSIP imposed the Agency's proposal with modifications.**

- **Would result in prolonging the arbitration process, creating additional costs to NWSEO, and could delay resolution of grievances by a year or more.**

The Panel accepted the Agency's proposal to bifurcate the Arbitration process, which means that if a grievance goes to arbitration where an "impartial lawyer" weighs-in to resolve a dispute, there are now two steps versus one. The added first step is for the arbitrator to determine whether the grievance (complaint) is arbitrable and if deemed so, the second step is to arbitrate the dispute. In the past, this was all included in one step. Now, NWSEO will have to pay for both decisions if it passes the first step. This will also likely delay resolution of any grievances that reach arbitration as much as a year.

## **Management's Article 8 – Labor-Management Relations and Article 9 – Mid-term Bargaining**

**FSIP imposed the Agency's proposal with modifications.**

- **Pre-decisional input is restricted**
- **Reimbursement of travel costs for conducting union negotiations are eliminated**

Management's proposal split what is now covered in Article 8 in the 2001 CBA into two Articles: Article 8 and Article 9. The Panel accepted the Agency's proposal with some minor changes.

Pre-decisional input (PDI) that can be sought from the Union is restricted. Management will allow only to the extent it determines the cost of doing so brings tangible benefits to the Agency. It fails to identify what costs could possibly be involved – especially since it is no longer willing to pay any related travel and per diem expenses for Union representatives. But more fundamentally, the Agency cannot possibly know the utility of the Union's PDI until it seeks and obtains that input. Restricting PDI essentially allows Management to make up plans, processes, and policies in a vacuum before presenting their final decisions to the Union.

NWSEO will also be forced to pay all travel costs for Union representatives to conduct any face to face negotiations. Under the current/2001 CBA, Management paid those costs.

## **Article 19 – Leave**

**FSIP imposed the Agency's proposal with modifications.**

- **Designation of peak leave periods are at Management's discretion**

The NWS proposal denies the current right of the local Steward to designate peak leave periods in the office, and instead, only says peak leave periods will be specified in terms of pay periods at local Management discretion.

The NWS proposal also changes documentation requirements for sick leave, now requiring medical documentation in all cases of sick leave, more than three days, which may result in an unnecessary medical visit and additional cost for the employee.

## **The Path Forward**

**After close coordination with our General Counsel, we've put together what we believe federal law and our ground rules set forth as our path forward.**

***Before the new CBA can become effective, it must first be approved by NWSEO's membership in a ratification vote.*** Under the ground rules governing the CBA negotiations, before this vote is conducted, the NWS must provide an electronic copy of the negotiated Agreement to the Union to ensure that the typed document conforms to the initialed proposals and contains all negotiated language. The Parties will edit the draft copy to correct any misspellings or awkward language. After both Parties agree that the editorial review has been completed, the Union may submit that Agreement to its membership for ratification and report the results to Management within 35 days. ***The NWS agreed in the ground rules that "if the membership fails to ratify the proposed Agreement, the Parties will resume negotiations" to reach a revised Agreement acceptable to NWSEO's membership.***

If membership ratifies the Agreement, the Secretary of Commerce will have 30 days to approve or disapprove the Agreement to ensure that it conforms to law and does not infringe on Management's rights. If the head of the Agency disapproves any provision of the Agreement, the Parties will resume negotiations on the provisions of the Agreement that the Agency head disapproves, plus any other provisions at the election of either Party. None of the provisions of the Agreement will be implemented while the Parties resume negotiations unless otherwise agreed.

If the membership does not ratify the Agreement, the Parties will return to the table to negotiate a CBA agreeable to Management and NWSEO members.

***In the meantime, other legal actions may affect the validity of the July 8 Panel decision.***

NWSEO and several other unions have filed suit in Federal court challenging the constitutionality of the FSIP since the Panel members appointed by the President were not confirmed by the Senate. A decision is expected any day now in two of those cases filed by other unions. NWSEO has also requested that the Federal Labor Relations Authority (FLRA) put the FSIP's decision on hold pending an outcome of its Federal court challenge to the constitutionality of the Panel, as it did in one of the other cases brought by the Association of Administrative Law Judges.

Finally, the House Appropriations Committee has included in the Financial Services and General Government Appropriations Bill for FY 2021 a provision invalidating any decisions of the FSIP issued after April 2019. It is unlikely that the Senate will include a similar provision in its appropriations bill, and the matter will be resolved in conference committee - but not likely before January or February of 2021.

**NWS has taken a completely different stance on how we are to move forward.** Based on recent correspondence from NWS, they intend to skip the editorial review as defined in Ground Rule #18: "The Agency agrees to provide an electronic copy of the negotiated agreement to the Union to ensure that the typed document conforms to the initiated proposals and contains all negotiated language. The Parties will edit the draft copy to correct any misspellings or awkward language." The following is from an email I received from the NWS Senior Advisor, Management Representative for National Labor Issues, on July 13, 2020:

*FSIP imposed contract terms are final and binding and are not subject to ratification by NWSEO's membership. The Statute and caselaw make clear that a Union may not condition acceptance of Panel-imposed CBA terms to a ratification vote of its members. Pursuant to Ground Rule 19, the Union may hold a ratification vote on the four Articles that were agreed upon and were not part of the Panel's final and binding order, but the CBA Articles that were resolved under FSIP's jurisdiction are not subject to ratification.*

Therefore, NWS contends that we only have the right to undergo ratification of the four Articles we agreed to prior to the FSIP asserting jurisdiction over the contract. NWSEO contends that the NWS assessment is incorrect, and after incorporating information from our General Counsel's exhaustive analysis, I drafted and sent a letter stating and providing supporting federal law and case law on NWSEO's stance on the matter. The contents of the letter are available at the following link: [July13 Letter](#)

This dispute is going to be submitted to an arbitrator for resolution.

In the meantime, since NWS has bypassed the editorial review and there is currently no agreed upon electronic copy of the CBA, NWSEO is working to put together what the new CBA would look like, incorporating the Panel's decision and Parties' Last Best Offers. We will be submitting the entire contract to our members for ratification.

The ratification process will be conducted via a secure online vote of NWSEO members, with the assistance of the American Arbitration Association (AAA). Only dues paying NWSEO members may participate in the ratification vote. Notices will be sent to members' personal email addresses, as provided to NWSEO, when the voting period opens. These notices will include a secure website at which members will cast their votes for or against contract ratification, and an individual PIN to be used in the voting process. We anticipate that the voting period will be open for a period of ten days in late July and early August. Once the voting period has ended, AAA will tabulate the votes and provide the result to NWSEO within 24 hours. We will then report the result of the ratification vote to our members and to NWS Management.

If the contract is ratified, we will execute the new Agreement and it will be submitted for Agency Head review and potential approval. If the membership does not ratify the Agreement, we will demand to renegotiate a better deal as provided for by the ground rules.

Thank you for your membership! Please be safe and look out for one another. As always, wishing you all the best!

In Solidarity,

A handwritten signature in cursive script, appearing to read "John Werner".

John Werner  
National President

**NWSEO proudly represents more NOAA employees than any other Union. NWSEO serves bargaining unit employees of the National Weather Service, NESDIS Office of Satellite and Product Operations, Office of General Counsel, Aircraft Operations Center, and Atlantic Oceanographic and Meteorological Laboratory.**