



The Four Winds

National Weather Service Employees Organization

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Up to 20% of Performance Awards Budget Could Be Affected by NOAA Management Proposal

Negotiators for NWS and NOAA have demanded that NWSEO sign an agreement which would permit NWS and NOAA to divert up to 20% of the funds budgeted for bargaining unit employee awards to pay additional awards to agency managers - some of whom already received \$10,000 a year in awards.

As part of NWSEO's negotiations with NOAA management over implementation of the 5 Tier Performance Rating System, NOAA management has submitted a proposal that only 80% of the budgeted amount for bargaining unit performance awards be given out as awards to unit members. In other words, management wants to be able to use up to 20% of the amount budgeted for bargaining unit employee awards to instead give managers increased awards. It has long been NOAA's practice to budget a specific pool of funds for use by managers to award employees' performance. NWSEO has been trying to ensure that 100% of this awards budget is used for employee awards, instead of for management awards or other uses that do not encourage and reward employee focus and productivity, such as refurbishing a manager's office.

Throughout bargaining over the new 5 Tier system, NWSEO has advocated for provisions for awards to bargaining unit members. NOAA employees need to be assured that in exchange for their hard work and dedication, they will benefit from the funds NOAA has set aside to award their performance. NWSEO will continue the fight to protect NOAA employees' awards budget from being diverted for other uses.

NWSEO Win in DC Circuit Called This Year's "most serious loss for the FLRA."

Cyberfeds, a company that publishes Federal Sector labor case law, has deemed NWSEO's 2006 win in a case involving impact and implementation bargaining over staffing of forecasters in Alaska as the Federal Labor Relations Authority's most serious loss of 2006. NWSEO's winning case, if followed in the future, would substantially broaden the scope of collective bargaining in the Federal Sector.

In a recent article, Cyberfeds said, “Despite the lack of significant rulings at the FLRA, FY 2006 generated plenty of excitement for federal labor relations practitioners. **The FLRA had some wins and losses also in court. But the losses were a bit more significant than the wins. The most serious loss was *National Weather Service Employees Organization v. FLRA*, No. 05-1397, 106 LRP 46076 (D.C. Cir. 07/17/06, unpublished), in which [a three-judge panel of] the U.S. Court of Appeals, D.C. Circuit shot down the FLRA’s ‘excessive interference’ analysis. That ruling could potentially change the way the FLRA views the issue.”**

On December 15, as Cyberfeds was releasing this review of FLRA activity for 2006, the U.S. Court of Appeals for the District of Columbia Circuit denied the FLRA's Petition for Rehearing of the July *NWSEO* decision, further cementing the court's interpretation of the proper resolution of the tension between ‘appropriate arrangements’ for employees who are adversely affected by the exercise of management’s rights, and ‘excessive interference’ with management rights.

You first read about *NWSEO v. FLRA* in the July 19, 2006 **FOUR WINDS**. Back in 2005, the FLRA had agreed with NWS management that NWS had no duty to bargain with the union over staffing levels at the Anchorage Forecast Office. NWS management had refused to bargain with NWSEO over the union’s proposal to increase staffing to 20 forecasters. The union’s proposal was intended to mitigate the adverse effect of an increased forecasting workload resulting from the immense geographical size of the “domains” assigned to Anchorage forecasters. Management alleged that the union’s proposal interfered with management’s right to determine staffing. The FLRA held that NWSEO’s proposal was non-negotiable because it excessively interfered with management’s right to determine staffing.

However, since federal labor law requires agencies to bargain over union proposals that impact staffing and other management rights IF the proposals are intended as appropriate arrangements for employees adversely affected by the exercise of management rights, UNLESS such union proposals excessively interfere with management’s rights, NWSEO appealed the FLRA decision to the Court of Appeals (the highest court before reaching the U.S. Supreme Court). NWSEO’s General Counsel Richard Hirn argued that the proper test to determine whether its proposal “excessively interfered” with management’s right is to ask whether the proposal hampers the ability of the agency to get its job done in an effective and efficient manner. The Court of Appeals agreed with NWSEO’s position. A three judge panel found that the FLRA was not asking the right question, and sent the issue back to the FLRA to consider the question as NWSEO had properly presented it.

Soon after receiving this decision from the Court of Appeals, the FLRA filed a motion for rehearing by the full twelve member Court of Appeals, because it believed that the court’s three judge panel had not reached the right conclusion. On December 15, 2006, the Court of Appeals denied the FLRA’s request for a rehearing. This means that the court stands behind its earlier decision. However, the filing of such a petition is an indication that the FLRA may eventually seek review by the U.S. Supreme Court of the *NWSEO* decision.

The new standard set by the NWSEO case makes it much harder to disqualify bargaining proposals as constituting excessive interference with management's rights than did the standard formerly in use by the FLRA. Previously the FLRA ostensibly balanced the benefit to employees of a union proposal against the degree of interference with management's rights from the proposal. For many years, the FLRA found very few proposals to be negotiable as appropriate arrangements. Now agencies objecting to negotiating over an appropriate arrangement must prove that the union proposal will "seriously hamper" its mission.