



The Four Winds

National Weather Service Employees Organization

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ARBITRATOR SAYS NWS VIOLATED COLLECTIVE BARGAINING AGREEMENT BY ADOPTING SINGLE PERSON MIDNIGHT SHIFT

ORDERS MANAGEMENT TO SCRAP MISSOULA SCHEDULE AND REIMBURSE EMPLOYEES FOR LOST PREMIUM PAY.

Federal Labor Arbitrator James Lundberg has issued a decision that is a major set back for NWS management's plans to reduce staffing at WFOs. In a decision issued on January 15 and received by the union and management on January 18, Lundberg held that the NWS violated several sections of the NWSEO-NWS collective bargaining agreement last May when it reduced staffing on the midnight shift at WFO Missoula to one person.

The Arbitrator found that the NWS had a past practice since the modernization in the early 1990s of having at least two persons - a forecaster and at least another forecaster or intern/HMT - on every shift. The Arbitrator noted that at the hearing, NWS management could produce only two examples outside of Missoula in which there had ever been single person coverage. "Based on the evidence of the parties' conduct, the arbitrator concludes that it is a past practice of the WFO to staff at least two persons per shift around the clock," Lundberg wrote.

"There are three additional facts that support the contention that staffing at least two persons per shift around the clock at WFOs has become a contractual past practice," Lundberg continued. "First, Southern Region Director Proenza . . . testified that it was 'operationally impossible' to operate the WFOs with fewer than two persons around the clock."

Second, "in her PowerPoint presentation to the Corporate Board October 16, 2000, the Western Region Director wrote "No WFO will have staffing below a level which would prevent maintaining two persons per shift around the clock.' This statement strongly suggests that the policy existing at the time was to have two persons scheduled around the clock and the policy would continue, be maintained."

Third, “a number of new concepts have been considered at the national level, including a staffing concept identified as ‘nesting.’ The new concepts are being considered as alternatives to the current practice of staffing two persons around the clock.”

Arbitrator Lundberg ruled that the NWS and NWSEO have agreed to incorporate all past practices into the terms of their collective bargaining agreement. “The collective bargaining agreement between the parties at Article 8, Section 7 contemplates incorporation of past practices into the collective bargaining agreement and specifies the method by which the past practice may be changed,” he wrote. Article 8, section 7 of the CBA states:

Any existing non-contractual past practices as of the effective date of this Agreement, which are not contrary to law or government wide regulation, may only be changed through the provisions of this Article.

The Arbitrator rejected management’s claim that it could adopt the single midshift schedule at WFO Missoula because it had discussed the matter with the local steward. He also ruled that management violated the contract by discussing the proposed schedule directly with Missoula employees, rather than exclusively with their union representative:

“In changing the past practice, the Missoula WFO did not follow the provisions of Article 8 of the collective bargaining agreement. Article 8 of the collective bargaining agreement specifically prohibits the Local Office Team from modifying a national agreement. . . . The manner in which the plan was developed circumvented the exclusive representative in derogation of Article 8 of the collective bargaining agreement.”

According to the Arbitrator, the local steward and LOT did not have the authority to agree to single person shift coverage because it was a **national** past practice that can only be changed by negotiations at the **national** level. “The employer changed a national past practice, which is equally a part of the collective bargaining agreement, on the local level, which violates Article 8, Section 7 and Article 8, Section 2,C, 6 of the collective bargaining agreement. Hence, the grievance must be upheld,” he wrote.

The Arbitrator ordered the NWS to cancel the current work schedule at Missoula and to reinstate the old work schedule within 30 days. He also ordered the NWS to pay the employees at Missoula all lost night differential and Sunday premium pay they would otherwise have earned if they had continued to work the under the past practice of having two persons on the midnight shift.

As a consequence of this decision, NWS management must now get the union's agreement, at the national level, before reducing staffing on any shift below two persons as part of any of its "CONOPS" plan - since the Arbitrator held that the staffing level has been incorporated into the collective bargaining agreement as an enforceable term. NWSEO's leadership has made it clear that NWSEO will not agree to any reduction in shift staffing as part of a new CONOPS because it endangers not only NWS employees' employment security, but the safety of the American public as well.

The Arbitration hearing in this case was held in Missoula, MT, on October 5 and 6, 2006. The NWSEO was represented by General Counsel Richard Hirn. Among NWSEO witnesses were its current President, Dan Sobien, (WFO Tampa) and its former President, Ramon Sierra (WFO Brownsville - retired). Former Southern Region Director William Proenza was required to testify as a NWSEO witness under a subpoena issued by the Arbitrator.

A complete copy of Arbitrator Lundberg's decision has been posted on the union's website - www.nwseo.org