



# *The Four Winds*

*National Weather Service Employees Organization*

FEBRUARY 2008

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## **154 NWS EMPLOYEES TO RECEIVE \$180,844 IN ADDITIONAL BACK PAY IN SETTLEMENT OF FLSA GRIEVANCE**

One hundred-twenty four current and 31 retired NWS employees will share \$180, 844 in back pay as a result of the settlement of a grievance filed by NWSEO last May. This settlement will benefit all NWS employees who are covered by the Fair Labor Standards Act (those who receive true time-and-one-half overtime) who receive non-foreign COLA, and who worked overtime between April 4, 2004, and September 2, 2006.

The Office of Personnel Management issued a new regulation in 2002 making it clear that non-foreign COLA should be included as part of an employee's "total remuneration" on which overtime is calculated. In April 2006, OPM discovered that virtually every Federal agency (including DOC) had ignored this regulation and were underpaying employees' overtime. OPM ordered DOC and the other agencies to pay employees lost overtime wages for two year prior to this discovery, and to correct the method by which overtime is calculated.

DOC, through the National Finance Center, made this correction effective September 17, 2006, but failed to pay employees the lost overtime wages as directed by OPM.

On May 19, 2007, NWSEO filed a grievance with NWS management on behalf of all NWS employees who were entitled to this lost overtime payment. NWSEO also demanded a third year of back pay, and an

additional amount equal to the lost overtime wages, as “liquidated damages.” Under the FLSA, there is a legal presumption that such liquidated damages be paid for every FLSA violation - basically paying the employee two times the amount of lost wages, in lieu of interest. In addition, employees are entitled to a third year of back pay if they can demonstrate that the employer acted willfully in failing to comply with the FLSA.

The grievance was denied by NWS management, but in August of last year, the NWS paid affected employees the lost overtime for the period of April 2004 through September, 2006 when the NFC began to properly calculate overtime. Interest was also included. The interest payments were far less than the liquidated damages payable under the FLSA in lieu of interest.

NWSEO decided to proceed to arbitration in this case because the employees were legally entitled to the additional amount of “liquidated damages” - not just simple interest. A hearing was scheduled for last December, but was postponed because the NWS expressed an interest in settling the case.

NWSEO and NWS have just successfully concluded those settlement negotiations. The NWS has agreed to make additional back payments to the affected employees equal to the amount that will provide them with the liquidated damages they should have received. This will be calculated by taking the total amount of lost overtime and deducting the interest which they were already paid. When all totaled, the employees will receive an amount equal to twice the amount of overtime they lost between April 2004 and September 2006. Employees who have left the agency will also receive payment.

The employees who are eligible for settlement payments will soon be receiving a letter from NWSEO informing them of the amount of their settlement. Any employee who thinks he or she is eligible for the settlement but who do not receive this letter should contact NWSEO at [wse.dms@nwseo.org](mailto:wse.dms@nwseo.org).