



The Four Winds

National Weather Service Employees Organization

July 2006

ANOTHER LEGAL VICTORY FOR NWSEO!

—
*COURT OF APPEALS OVERTURNS FLRA IN
ALASKA REGION BARGAINING CASE*
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Holds Federal agencies must bargain over arrangements for adversely affected employees unless unions' proposals "seriously hamper the ability of the agency to get its job done."

On Monday, July 17, the United States Court of Appeals for the District of Columbia Circuit set aside last year's decision of the Federal Labor Relations Authority in which the FLRA held that the NWS had no duty to bargain over staffing levels at the Anchorage Forecast Office. The Court remanded the case to the Authority to determine whether NWSEO's proposal to increase staffing to 20 forecasters to handle the increased workload of preparing IFPS forecasts for two domains would interfere with the NWS' mission.

The NWS originally refused to bargain over the union's proposal, claiming that it interfered with the agency's management right to determine staffing. Under Federal labor law, however, agencies are required to bargain over 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's rights, unless such proposals "excessively interfere" with management's rights. NWSEO explained that the proposal was intended to mitigate the impact of the additional workload assigned to the Anchorage forecasters by having to prepare grids for two domains.

The FLRA held that NWSEO's proposal was nonnegotiable because it "excessively interfered" with the NWS' right to determine staffing because it placed an "absolute requirement" on the NWS to increase staff at the Anchorage WFO. NWSEO appealed this decision to the Court of Appeals (the highest court before the U.S. Supreme Court), claiming that the proper test to determine whether a bargaining proposal "excessively interferes" with management's rights is whether the proposal "hampers the ability of an agency to get its job done in an effective and efficient manner." NWSEO explained that its proposal actually *promoted* the NWS' ability to issue warnings and forecasts for Alaska, rather than interfering with the mission.

In its decision, the Court of Appeals wrote that "we agree with the Union. . . [T]he determination whether a proposal is an appropriate arrangement depends primarily on the extent to which the interference with management rights hampers the ability of an agency to perform its core functions – to get its work done in an efficient and effective way. Thus . . . if implementation of the proposal will directly interfere with substantive managerial rights, *but will not significantly hamper the ability of the agency to get its job done*, the proposal is negotiable." The Court found that "the Authority did not make this examination" and remanded the case to the FLRA "to consider to what extent implementation of the Union's proposal would hamper the ability of the NWS to perform its work in an efficient and effective manner."

This decision means that the NWS will have to bargain over NWSEO's staffing proposals elsewhere unless it can demonstrate that increased staffing levels have a negative impact on NWS' ability to issue forecast and warnings. This will become increasingly important as the NWS attempts to implement any new "concept of operations" now under study.

The complete decision in *National Weather Service Employees Organization v. Federal Labor Relations Authority*, No. 05-1397, may be read at www.NWSEO.org.