



## *National Weather Service Employees Organization*

March 14, 2012

Jack Hayes  
Assistant Administrator for Weather Services  
1325 East West Highway  
Room 18130  
Silver Spring, Maryland 20910

Dear Mr. Hayes:

This is a union grievance filed pursuant to Article 10, section 9(b) of the parties' collective bargaining agreement concerning the agency's decision not to fill vacant Information Technology Officer Positions "until we are certain about the FY 13 budget."

This action violates the parties' collective bargaining agreements and the Federal Labor Management Relations Statute in numerous respects:

1. The decision not to fill ITO positions violates the 2000 agreement between NWSEO and the NWS concerning staffing at the Weather Forecast Offices. Pursuant to President Clinton's Executive Order 12871, the parties bargained, through "partnership," over permissive matters such as staffing. In February 2000, the NWS Corporate Board and NWSEO President Ramon Sierra agreed to restructure the staff at the WFOs by reallocating one position from the HMT/Intern unit to create and Information Technology Officer Position at each WFO. This agreement was memorialized in a broadcast email (the text of which was agreed to by Mr. Sierra) from one of your predecessors, Jack Kelly, to all NWS employees on November 22, 2000 transmitting the implementation plans for restructuring the HMT/Intern Unit. As this email stated, "In February, the Corporate Board, including NWSEO President Ramon Sierra, agreed to restructure the six positions in the

DPAM/HMT/MI unit to three HMTS, a Meteorologist Intern and an IT Specialist.” Under decisions of the Federal Labor Relations Authority, agreements made concerning permissive subjects through “partnership” discussions are binding collective bargaining agreements.

2. The decision to eliminate the ITO positions violates the assurances which your predecessor D.L Johnson gave NWSEO and all NWS employees in January 2006 that IT consolidation would not result in elimination of the ITOs but rather was designed “to reduce excess workload among our IT professionals so they can focus on mission critical tasks.”
3. Even if there was not a binding agreement mandating that each WFO be staffed with an ITO, the agency’s decision to eliminate the ITOs violated Article 8, section 1 of the parties’ collective bargaining agreement which requires that the NWS provide NWSEO with an opportunity for “predecisional input in decisions which are traditional management prerogatives. . . [such as] decisions about structuring of the workforce and the agency’s method of operations.” Section 1 further provides that the agency would obtain employee input, through NWSEO “prior to the final decision.” However, the agency failed to provide NWSEO with any prior notice of, or opportunity to provide predecisional input into the decision to eliminate the ITOs and consolidate their function prior to a final decision being made by the agency. We first learned of this decision only minutes before it was submitted to Congress as part of the President’s FY 13 budget request.
4. On February 23, 2012 we were notified pursuant to Article 8 that the NWS would not be filling any ITO vacancies until it was certain about the FY 13 budget. NWSEO promptly demanded bargaining over the impact and implementation of this decision and submitted a request for clarification of management’s proposal and an information request. Our bargaining demand has been ignored and the agency has informed us and it is apparent that it has already implemented the proposal not to fill these positions. (We know of at least seven such positions that remain vacant without any recruitment activity). The refusal to respond to our bargaining demand and the unilateral implementation of your proposal not to fill ITO positions violates Article 8, sections 3c and 6 of the parties’ CBA. Your failure to bargain and unilateral implementation is also a statutory unfair labor practice that violates 5 U.S.C. section 7116(a)(1) and (5).

5. Management's failure to respond to the information request contained in our March 1, 2012 letter violates Article 6, section 2 of the parties' collective bargaining agreement. Management's failure to respond is also a statutory unfair labor practice that violates 5 U.S.C. sections 7114(b)(4) and 7116(a)(1) and (8).
6. In management's February 23, 2012 notification, the agency stated that the decision not to fill vacant ITO positions "is being done to mitigate impacts to employees in case the President's Budget is enacted." Management does not have the right to unilaterally decide what actions it will take mitigate the impact of any potential reduction in force, transfer of function or reorganization that will occur if the ITOs are removed from the WFOs and their functions consolidated on a regional basis as envisioned. Under Article 15, section 7 of the parties' CBA, the actions taken to mitigate the impact of any future RIF are to be mutually decided through the National Labor Council process established by Article 8.
7. Management's decision not to fill ITO positions violates the FY 12 Commerce Appropriations Act, which fully funds the NWS for the current fiscal year. Congress has not yet approved the agency's proposal to eliminate the ITO positions, and no such authority was sought from Congress for FY 12.

As relief, we demand that you take immediate steps to fill all vacant ITO positions and that any selectee who receives a promotion shall be given a promotion retroactive to the date of your February 23 notice with back pay. We also demand that the union receive attorneys fees incurred in investigating and prosecuting this grievance. We also demand that a notice, similar in style and content to those utilized by the Federal Labor Relations Authority as a remedy in failure to bargain unfair labor practice cases, and signed by you, be posted at every location in which bargaining unit employees are employed.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Dan A. Sobien", with a long horizontal line extending to the right.

Daniel A. Sobien  
National President