



# The Four Winds

National Weather Service Employees Organization

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## Arbitrator Rejects NWS Efforts to Restrict Court Leave – Major Victory for Rotating Shift Workers

(July 2, 2013) Federal Labor Arbitrator Joshua Javits has ruled that the NWS violated Article 19, section 11 of the NWSEO collective bargaining agreement when it denied Robert Ruehl, the NWSEO steward and OPL at WFO Eureka, court leave on a holiday and on weekends during jury service in July, 2012. In sustaining the union's grievance, Arbitrator Javits wrote that the agency's interpretation "would effectively render [Article 19, section 11] meaningless."

Mr. Ruehl was summoned for jury duty that ran from Monday, June 25 through Wednesday, July 11. He was denied court leave for scheduled shifts on Sunday, July 1 and Wednesday, July 4 because the court did not meet those days. According to Arbitrator Javits, Mr. Ruehl was entitled to court leave for **all** shifts between the date his jury service began and the date it ended. He ruled that the agency violated the second sentence of Article 19, section 11, which reads:

*"An employee eligible for court leave shall be granted court leave to serve on a jury for the entire period of service, extending from the date on which he/she is required to report to the time of discharge by the court."*

Mr. Ruehl was required to report for jury duty on two of his scheduled days off, Monday, July 9 and Tuesday, July 10. He claimed court leave for the following Saturday, July 14, pursuant to the last sentence of Article 19, section 11, (as amended in October 2011) which reads:

*"Employees whose regular tour of duty includes Saturdays, Sundays or both, and who serve on a jury during the week, may be granted court leave and be paid premium pay for the weekend days which are a part of their regular tour of duty."*

Upon advice from Western Region, Mr. Ruehl's MIC denied him court leave for the following Saturday on the grounds that this provision says that court leave "may" be granted in these circumstances, and they, the agency, could deny court leave under these circumstances anytime it wished. The union argued that as used in § 11, "may" means "to have permission to" or "to be allowed or permitted to." To the extent that it is discretionary, NWSEO explained, its use is at the discretion of the recipient upon fulfillment of a predicate condition, as in "if you work late on Thursday, you may have Friday off" or "if you eat your peas, you may have dessert." Arbitrator Javits agreed with the union and rejected the NWS's constrained reading of the contract, writing, "to allow Agency management to say it can decide whether or not a

rotating employee should be granted court leave at all would eliminate the parties' agreement."

The Arbitrator ordered the NWS to either pay Mr. Ruehl for the three days that it denied him court leave or grant him three days of court leave at a later weekend date.

At the hearing, then Southern Region Director Bill Proenza testified that he believed that Mr. Ruehl was entitled to court leave for the days in question and that the parties' CBA has been interpreted and applied in the Southern Region in the same manner as interpreted by the union (and subsequently by the Arbitrator). In fact, there was no evidence at the hearing that in the twenty or so years that this contractual provision has been in effect that any other employee was denied court leave under these circumstances. It became clear that management provoked this grievance and forced it to arbitration in an unsuccessful effort to cut back on employees' entitlement to court leave.

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National Weather Service employees.**

**No one works harder for National Weather Service employees than  
National Weather Service employees.  
We are NWSEO.**