Department of Commerce insists on Gag Order on NWSEO Grievance Settlements

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**DOC doesn't want employees to know what NWSEO has accomplished –
NWS and NWSEO will arbitrate a $30 overtime claim as a result.**

(July 13, 2015) The General Counsel of the Department of Commerce instituted a new policy demanding that <u>any</u> settlement of unresolved grievances include a non-disclosure clause that will prohibit NWSEO from letting NWS employees know what the union has achieved, or how the parties' collective bargaining agreement has been interpreted and applied. As a result, NWS and NWSEO will be arbitrating a case on September 21 over $30.26, which management is willing to pay provided the union keeps it secret.

This grievance arose when an employee at WFO Eureka was called at home to perform duties remotely. Under Article 20, section 7c of the parties' contract, the employee was entitled to overtime for this work, but management initially refused to pay. The union filed a grievance and, at a later stage, management agreed to pay the overtime. However, under the Fair Labor Standards Act, an employer is also required to pay an equal amount as "liquidated damages" to compensate the employee for the delay in paying overtime wages, as well as attorney fees. Federal Arbitrator Lawrence Evans will decide whether the grievant is entitled to these payments.

NWSEO insists that it retain its First Amendment rights to inform its members about what it does on their behalf, how their dues money is spent and how the contract is applied. As a result of the Department of Commerce's insistence on a gag order, the taxpayers and union members will incur thousands of dollars of expenses litigating over $30. If the union prevails, the NWS will also be liable for $20,000 or more in the union's attorney's fees.

The union has, however, assented to confidentiality when settling disciplinary cases because it would not otherwise have publicized the case in order to protect the employee's privacy.

The Department of Commerce's policy is a direct violation of Department of Justice regulations that prohibit confidentiality clauses in settlement agreements except in the most extraordinary cases. Title 28 C.F.R. section 50.23(a) reads:

> "It is the policy of the Department of Justice that, in any civil matter in which the Department is representing the interests of the United States or its agencies, it will not enter into final settlement agreements or consent decrees that are subject to

confidentiality provisions, nor will it seek or concur in the sealing of such documents. ***This policy flows from the principle of openness in government and is consistent with the Department's policies regarding openness in judicial proceedings."***

The NOAA Office of General Counsel also has a policy prohibiting non-disclosure clauses in settlement agreements. However, the Office of General Counsel of the Department of Commerce has apparently decided that the rules that are applicable to everyone else do not apply to them – or that it is too dangerous for NWS and other NOAA employees to know how effective NWSEO is.

In response to the Office of General Counsel's demand, NWSEO has filed a complaint of waste, fraud and abuse with the Department of Commerce Inspector General.

NWSEO and NWS and other NOAA line offices have routinely settled other arbitration cases over many years without such non-disclosure clauses. Among these are settlements of grievances over:

- failure to pay night differential agreement on scheduled overtime (2012),
- failure to fill ITO positions (2012 and 2013),
- failure to make temporary promotions (2012),
- failure to pay gainsharing awards (2012),
- paybanding at the SWPC (2011).

There are other grievances prior to 2011 under which hundreds of NWS employees received lost overtime payments.

-NWSEO-

No one cares more for National Weather Service employees than National Weather Service employees.

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