



May 27, 2021

Dr. Louis Uccellini, Director
National Weather Service
1325 East West Highway
Room 18130
Silver Spring, MD 20910

Dear Dr. Uccellini:

This is a union grievance filed pursuant to Article 10, section 11(b) of the parties' 2021 collective bargaining agreement over violations of Article 39, section 1, which guarantees that employees will be reimbursed for relocation expenses in accordance with 5 U.S.C. § 5724; as well as violations of 5 U.S.C. § 2301(b)(1) Merit System Principles, and 5 U.S.C. § 2302(b)(4),(5),(6) and (12), Prohibited Personnel Practices.

Title 5 U.S.C. § 5724 provides for reimbursement of relocation expenses when an employee is transferred "in the interest of the Government" but precludes such reimbursement when a transfer is "primarily for the convenience or benefit of an employee ...or at [the employee's] request." In *Dante P. Fontanella*, B-184251 (July 30, 1975), the Comptroller General articulated the standard for evaluating relocation reimbursement requests under Section 5724, as follows:

Generally . . . if an employee has taken the initiative in obtaining a transfer to a position in another location, an agency usually considers such transfer as being made for the convenience of the employee or at his request, whereas, if the agency recruits or requests an employee to transfer to a different location it will regard such transfer as being in the interest of the government.

Id. at 3; see also *Michael J. Deangelis*, B-192105 (May 16, 1979). In *Bernard J. Philipps*, B-206624 (Aug. 16, 1982), an IRS employee sought reimbursement of relocation expenses associated with his transfer and promotion under a competitive civil service merit selection program. The Comptroller General awarded relocation expenses even though the employee initiated several conversations with agency officials indicating his desire to relocate. The Comptroller General reasoned:

When an agency issues a vacancy announcement under its merit promotion program such action is a recruitment action and when an employee transfers pursuant to such action the transfer is normally

regarded as being in the interest of the Government in the absence of agency regulations to the contrary.

Id. at 3. *Accord, Eugene R. Platt*, 59 Comp. Gen. 699 (1980), *recon. denied*, 61 Comp. Gen. 156 (1981); *In the matter of James F. Hansard- Relocation Expenses*, B-201732 (June 30, 1981); *In the matter of Fred L. Spillan*, B-203439 (Jan. 27, 1982). In particular, the Comptroller General has ruled that the selection of a NWS employee from Alaska for a position in San Antonio advertised under NOAA's Merit Promotion Program was in the interest of the government. *In the Matter of Frank E. Hanson, Jr.*, B-201256 (April 27, 1981).

On April 22, 2021, management issued a vacancy announcement through the Merit Assignment Program (MAP) for a GS-1340-13 Lead Forecaster position at the Alaska Aviation Weather Unit (NWS-AR-2021-0021)¹. Additionally, on May 24, 2021, management issued another vacancy announcement through the MAP for a GS-2210-13 IT Specialist (SYSADMIN) position at the Alaska Region Headquarters, Systems Operation Division, IT Branch (ITB) in Anchorage, AK (NWS-AR-2021-0027).

Both MAP announcements stated that relocation expenses would not be reimbursed. This violates Article 39, section 1 and 5 U.S.C. § 5724 because, as discussed above, payment of relocation expenses for employees selected for promotion through the NOAA MAP are not discretionary because such relocations are in the interest of the agency and not primarily for the convenience of the employee.

Article 39, section 1 provides that "Job opportunity announcements will indicate whether discretionary PCS benefits are authorized." The Department of Commerce Travel Policy Handbook (October 2016) lists the relocation expenses that are "entitlements" and those that are "discretionary" on tables 2a and 2b on pages 51 and 52; most allowances are designated as "entitlements."

Furthermore, NWSEO was informed that relocation reimbursement was not offered in the announcement because management anticipated selecting local candidates in order to avoid payment of relocation expenses. Effectively limiting recruitment of candidates in order to avoid relocation expenses is a non-merit factor and constitutes a violation of merit system principles. Title 5 U.S.C. § 2301(b) provides that "[r]ecruitment should be from qualified individuals from appropriate sources . . . solely on the basis of relative ability, knowledge, and skills, after fair and open competition." The violation of this merit system principle constitutes a prohibited personnel practice in violation of 5 U.S.C. § 2302(b)(12).

¹ Per Article 10, section 4 of the parties' collective bargaining agreement, NWSEO obtained a seven (7) day extension to file a grievance on April 29, 2021.

The failure to offer reimbursement of relocation expenses in this case is intended to discourage applicants from outside Alaska. As such, it also constitutes a prohibited personnel practice in violation of:

- § 2302(b)(4) - because it obstructs other applicants from competing for the positions.
- § 2302(b)(5) - because it is intended to influence applicants from outside Alaska to withdraw from competition for the purpose of improving the prospects of local applicants.
- § 2302(b)(6) - because it grants a preference or advantage not authorized by law, rule, or regulation to local applicants (by defining the scope or manner of competition).

An unknown number of qualified GS-12 bargaining unit meteorologists and qualified 2210 IT specialists have been harmed by this violation because they have been dissuaded from applying for this promotional opportunity; and the eventual selectee has been harmed by not having his or her relocation expenses reimbursed.

As relief, we demand that the vacancy announcement be extended and reissued noting that relocation expenses will be authorized, and that the NWS inform all unit employees by email of this reissuance. If other than local a candidate is selected in the interim, he or she shall be granted reimbursement of his or her relocation expenses, and an additional Lead Forecaster vacancy at the Alaska Aviation Weather Unit and IT Specialist in the Alaska IT Branch should be announced properly. The selectees should be granted back pay retroactive to the date of the initial selections.

Sincerely,

A handwritten signature in cursive script, appearing to read "John Werner".

John Werner
National President