



*National Weather Service
Employees Organization*

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

July 19, 2021

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 1, Section 3 of our 2021 collective bargaining agreement which requires that all past practices not in conflict with the agreement remain in effect, as well as Article 39, section 1, which guarantees that employees will be reimbursed for relocation expenses in accordance with 5 U.S.C. § 5724.

On June 22, 2021, management issued a vacancy announcement through the MAP for three GS-1340/1315 Interdisciplinary Meteorologist/Hydrologist (Hydrometeorological Analysis and Support or "HAS" Forecaster) vacancies in three River Forecast Centers in the Western Region. (NWS-WR-2021-0048). Additionally, on June 23, 2021, management issued another vacancy announcement through the Merit Assignment Program (MAP) for eight GS-0856 electronic technician vacancies in the Western Region. (NWS-WR-2021-0041). Both Merit Assignment Program announcements stated that relocation expenses would not be reimbursed.

The failure to offer relocation expenses on these Merit Assignment Program vacancies is a violation of past practice and therefore a violation of Article 1, section 3.

- For the HAS forecaster vacancies, there were 13 MAP vacancy announcements for 18 positions located at 16 offices in five regions (all except Pacific) from July 2017 through June 11, 2021, and every one of those vacancies was advertised with relocation expenses.
- During the same period, the NWS issued 38 vacancy announcements for 120 electronics technician vacancies through the Merit Assignment Program, and all but one offered relocation expenses.

As noted, Article 1 section 3 requires the agency to maintain all past practices that predate the new agreement "*which are not in conflict with this agreement.*" (emphasis added). Although the new CBA added language that addresses the payment of relocation expenses, the past practice of offering relocation expenses for HAS forecaster and electronic technician vacancies is not in conflict with any provision of Article 39.

Thus, even if the decision to offer relocation expenses for these vacancies was discretionary under the Federal Travel Regulations and applicable law, the NWS created and maintained a past practice of offering relocation expenses as an exercise of that discretion and, under Article 1, section 3 that practice “must remain in effect unless otherwise change[d] as a result of mid-term bargaining.”

Furthermore, the blanket failure to offer relocation expenses in these vacancy announcements is not discretionary and violates Article 39. 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 only 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).

Thus, the failure to offer relocation expenses on these Merit Assignment Program announcements violates 5 U.S.C. § 5724 and therefore Article 39, section 1 because payment of relocation expenses for employees selected through the Merit Assignment Program are regarded as being in the interest of the agency and not primarily for the convenience of the employee.

An unknown number of qualified bargaining unit hydrologists, meteorologists and electronics technicians have been harmed by this violation because they have been dissuaded from applying for these positions by the agency's failure to offer relocation expenses; and the eventual selectee has been harmed by not having his or her relocation expenses reimbursed.

As relief, we demand selections for these positions be placed on hold and that these vacancy announcements be 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 candidates are selected in the interim, they shall be granted reimbursement of his or her relocation expenses, and additional vacancies at these locations should be announced properly. The selectees from these readvertisements should be granted back pay retroactive to the date of the initial selections.

Best regards,

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

John Werner
NWSEO National President