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July 27, 2016

Ms. Jessica Bartlett
Acting Regional Director
Washington Regional Office
Federal Labor Relations Authority
1400 K Street NW, 2nd Floor
Washington, DC 20424-0001

RE: *National Weather Service and National Weather
Service Employees Organization, WA-CA-TBA*

Dear Ms. Bartlett:

Enclosed please find an unfair labor practice charge which alleges that the National Weather Service has been conducting surveillance of internal union discussions and communications on NWSEO's members-only Facebook page. In addition, this charge alleges that agency officials have chilled the exercise by employees of their right to engage in those discussions by letting bargaining unit employees know that it is conducting this illegal surveillance and by making disparaging remarks to union members about the content of those discussions.

Because of the continuing and irreparable harm that is being caused by these illegal surveillance activities, the Charging Party hereby requests that the General Counsel seek interim injunctive relief pursuant to § 7123(d) of the Statute.

As you may know, NWSEO represents a nation-wide bargaining unit of approximately 3,500 professional and non-professional employees of the National Weather Service at over 150 offices nationwide, among other units within the National Oceanic and Atmospheric Administration. NWSEO maintains what is known as a "secret" Facebook page, for access and use by dues-paying members only. According to procedures established by Facebook, only those individuals specifically approved by the administrator of a "secret" Facebook page can access it. In fact, those Facebook users not authorized access a "secret" Facebook page will not even be able to ascertain that such a

page exists in the search feature on Facebook. (See exhibits A and B, “What are the privacy settings for groups?”). The primary administrator of NWSEO’s Facebook page is Lisa Luciani, the union’s Director of Communications. When a new member joins NWSEO, Ms. Luciani sends them an email inviting them to join this private Facebook page. (See exhibit C). Current NWSEO members may also gain access privileges by making a request to Ms. Luciani or to another one of the page’s administrators, who first verifies the individual’s membership in NWSEO.

This Facebook page is used by NWSEO members to debate and discuss internal union political issues and workplace disputes, to criticize management, and to seek guidance and advice from other members, stewards and officers about the interpretation and enforcement of the collective bargaining agreement or how to resolve workplace disputes with local management. The Authority has ruled that management presence at a union meeting constitutes illegal surveillance. *Department of the Army, Ft. Bragg Schools*, 3 FLRA 364 (1980). NWSEO’s members-only Facebook page is, in effect, a “virtual” union meeting that goes on 24/7 and is an important tool used by NWSEO to service a bargaining unit of mostly shiftworkers that spans offices from San Juan to Guam.

To illustrate, enclosed as exhibit D is a print out of how this Facebook page appeared on the afternoon of July 25, 2016. The names of those who have posted questions and comments (other than that of the union’s President, Dan Sobien and Communications Director Lisa Luciani) been redacted to preserve their privacy. An examination of this print-out reveals discussions and debates about the state of labor-management relations generally (p.2); work scheduling issues (pp. 2, 12-13); time and attendance accounting (pp. 3, 14); overtime (p.3); hiring delays (pp. 4,7); merit promotion complaints (p.5); the vacancy rate among the bargaining unit (pp. 6, 13); compensatory time (p.7); employee entitlement to temporary promotions (p. 10); and the very issue involved in this charge - management surveillance of the Facebook page (p.13).

The union has been aware for some time, that agency management has been monitoring the contents of this Facebook page in some surreptitious manner. At an arbitration hearing on January 14, 2014, Department of Commerce counsel complained to the arbitrator about the content of a posting that the undersigned union counsel made on the union’s Facebook page the night before about the prior day’s arbitration session.¹

¹ Not only did this constitute surveillance in violation of the Statute, but DOC counsel’s reading of union counsel’s confidential communication to his client was an egregious breach of professional ethics.

However, the NWS has more recently made sure that the union and its members are aware of its surveillance activities, and has made disparaging remarks to employees about what has been said on the Facebook page, in order to chill the vigorous discussion that takes place on this Facebook page.

The NWS is now conducting an “Operational Workforce Analysis” to find efficiencies in the agency’s operations in order to downsize the workforce. The agency has engaged the management consulting firm McKinsey and Company in that effort. Among the initiatives being considered by the NWS’s Operations and Workforce Committee (“OWC”) comprised of agency leadership, is what has been termed as the “Collaborative Forecast Process” (“CFP”) that would, through automation and centralization, reduce the role and responsibilities of approximately 1,200 rank and file forecasters at the NWS’s 122 Weather Forecast Offices nationwide. On June 16, 2016, NWSEO President and bargaining unit member Dan Sobien obtained and posted on the union’s Facebook page a PowerPoint slidedeck which describes the proposed “collaborative forecast process” and which was presented to the Operational Workforce Committee, along with commentary that sharply criticized this initiative. (Exhibit E).

Bargaining unit employees Chris Jacobson and Shannon White serve as NWSEO representatives on a team comprised primarily of NWS managers that is discussing and developing a “Fully Integrated Forecast System” (or “FIFS”), which is part of the NWS’s ongoing Operational Workforce Analysis, and is an aspect of the Collaborative Forecast process. FIFS, if and when implemented, will reallocate among the NWS operational structure and workforce the responsibility for developing and issuing the forecast products now being generated by the bargaining unit forecasters at the 122 Weather Forecast Offices around the country. FIFS, as envisioned by the agency, will centralize and automate much of these forecasts, placing over 1,200 forecaster jobs in jeopardy. This FIFS development team is led by Daniel Cobb, an NWS manager and supervisor who is the Meteorologist-in-Charge of the Grand Rapids Forecast Office. He is assisted by other management members on this team, as well as by a consultant from McKinsey and Company.

On June 20, 2016, Mr. Cobb sent the FIFS team members, including bargaining unit members Jacobson and White, an email in which he claimed that Mr. Sobien’s June 16 Facebook posting “demonstrates a lack of integrity.” (Exhibit F). Among the other recipients of the email was Katherine LaBelle, who works in the NWS headquarters Office of Communications. Although she is not an NWSEO representative on the FIFS team, she is listed as another bargaining unit member on a roster recently provided by NWS management.

On June 27, Mr. Sobien posted another commentary on the Facebook page criticizing management's failure to timely fill bargaining unit vacancies. (Exhibit G). On July 6, the NWS's Director of Management and Organization, David Murray, (who is also the agency's chief labor relations contact), sent Mr. Sobien an intimidating email complaining about the content of this posting. Mr. Murray wrote that NWS management officials "were once again, disappointed in the tone, tenor and misrepresentations you made." (Exhibit H). Mr. Murray sent a copy of this email to another bargaining unit employee, Bill Hopkins, who serves as NWSEO's Vice President.

On July 6, Mr. Murray forwarded a copy of the disparaging email that he sent to Mr. Sobien to hundreds of NWS managers and supervisors nationwide. At least one supervisor, Matt Lorentson, the Meteorologist-in-Charge of the Green Bay, Wisconsin Forecast Office, sent a copy of Mr. Murray's email to the entire staff of his office on July 11. (Exhibit I).

The Authority has not had the occasion to rule on the legality of management monitoring of a union's Facebook page because no Federal agency other than the NWS would be so unscrupulous as to engage in such surveillance. However, Administrative Law Judges at the National Labor Relations Board have recently ruled in less egregious circumstances that review by management of even public Facebook page postings constitutes illegal surveillance in violation of identical language in the NLRA. In *Grill Concepts, Inc.*, 2015 WL 4709435 (NLRB Div. Of Judges), Case No. 31-CA-126475 (Aug. 6, 2015), ALJ Laws found that a supervisor's act of going to a union's non-secret Facebook page and informing an employee that he had done so constituted illegal surveillance. (Copy enclosed, slip op. at 14). Noting that "[u]nlawful surveillance occurs when an employer's agency takes intentional action to observe or learn of employee union activity," another Board ALJ recently found that a supervisor engaged in illegal surveillance when he searched a suspected union activist's public Facebook page to confirm her union activities. Judge Goldman wrote:

Although carried out with a more modern methods, this is no different than the "curious" supervisor who, upon hearing that there would be union activity at a roadside park or a local tavern, takes a ride over there to see what he or she could see. *Dadco Fashions*, 243 NLRB at 1198-1199; *Astro Shapes, Inc.*, 317 NLRB at 1133.

The Respondent argues that Ramirez merely consumed publicly available media, but that is beside the point. Just as it is not necessary for a supervisor to sneak into a private union meeting in order to unlawfully surveil employees, it was not necessary for Ramirez to enter unauthorized or break through

password-protected websites in order to be engaged in unlawful surveillance. Rather, as with supervisors who unlawfully surveil by intentionally seeking out protected and concerted activity in the physical world to view, Ramirez violated the Act by seeking out information on the internet about the employees' union activity on the radio and then by investigating who liked it.

Advancepierre Foods, Inc. 2016 WL 3519322 (NLRB Div.of Judges) Case No. 09-CA-153966 (June 27, 2016). (copy enclosed, slip op. at 22).

In order to conduct your investigation, you are invited to contact the following union witnesses:

Daniel Sobien, President, NWSEO, president@nwseo.org, 202-420-1043

Lisa Luciani, Director of Communications, NWSEO,
mediarelations@nwseo.org, 202-907-3036

Please contact undersigned counsel if I can be of further assistance in the investigation of this charge or to discuss its merits. I will serve as the Charging Party's official representative in this matter.

Sincerely yours,



Richard J. Hirn

General Counsel
National Weather Service Employees
Organization

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