Management’s Compliance with Article 30: Performance Appraisal of the HUD-AFGE Agreement effective July 23, 2015

Dear San Juan Field Office Management:

I would like to remind Management of the following terms of Article 30 of the HUD-AFGE Agreement (“Agreement”) on Performance Appraisal noted below.  I am attaching the HUD-AFGE Agreement effective July 23, 2015 for your reference.  Please be advised that Article 30 of the HUD-AFGE Agreement (collective bargaining agreement) takes precedence over any conflicting agency regulation, handbook, policy and guidance in accordance with Article 30, Section 30.15 of HUD-AFGE Agreement and the Federal Service Labor-Management Relations Statute.  *See Department of the Army and AFGE Local 2022*, 37 FLRA 186 (September 13, 1990); and *Department of Veterans Affairs and AFGE Locals 903 and 3399*, 66 FLRA 856 (August 1, 2012).

* Management is supposed to finalize performance elements and standards within 30 days of the beginning of the rating period (October 31) barring exceptional circumstances.  *See* Article 30, Section 30.04(3) of the Agreement.
* HUD management has an obligation to encourage employees' and the Union's participation in the establishment of performance elements and standards as required by law [5 U.S.C. § 4302(a)], U.S. Office of Personnel Management (OPM) regulations [5 C.F.R. § 430.204(c)] and Article 30, Section 30.06(1)(b)(i), (ii), and (iii) of the Agreement.  The U.S. Federal Labor Relations Authority (FLRA) has upheld an arbitrator's order striking a performance element rating for not encouraging employee participation in the establishment of the performance standards for the element because management made no substantive changes to the element based on employee comments.  *See U.S. Department of Labor and AFGE National Council of Field Labor Locals*, 46 FLRA 3 (1992).
* Management may not retroactively apply performance elements standards in an adverse manner for the period before performance elements and standards were finalized in writing.  *See* Article 30, Section 30.07(1) of the Agreement.  So employees cannot be rated in an adverse manner for the time period prior to the elements and standards being finalized in writing in InCompass after meeting with employees to take into consideration employees’ comments and feedback.
* **Critical elements must be based on major duties in an employee's position description** and the employee's organization's Management Plan/Annual Performance Plan.  *See* Article 30, Section 30.06(3)(d) of the Agreement.
* Prohibition of Absolute Standards:Performance standards should avoid the appearance of requiring perfection rather than excellence. Standards should not be absolute, allowing no room for error.  *See* Article 30, Section 30.06(3)(f) of the Agreement.
* In applying performance element(s) and standards, an employee's performance appraisal shall take into account all of the job functions the employee is expected to perform and the actual amount of time available (or not available) to perform those functions.  Factors beyond an employee's control may include, but are not limited to, unusual or extenuating circumstances such as availability of resources, delays attributable to others, unanticipated additional work assignments, changing priorities or high volume workloads.  Deadlines and quantitative goals should be extended or adjusted by management as conditions warrant.  *See* Article 30, Section 30.07(5) of the Agreement.
* Management may not rate employees for work that has not been assigned.  If management does not assign work under an element, employees cannot be rated in that element and the element must be excluded from in the overall rating.  If Management does not assign work under a particular performance standard, employees cannot be rated for that standard; the rating for the element must be made based on the remaining standards excluding the standard for which work was not assigned work.  *See* Article 30, Section 30.11(6) of the Agreement.

Please note that Article 30, Section 30.06(3)(d) of the HUD-AFGE Agreement does not allow management to create elements and standards containing duties that are not major duties in the employee’s position description.  Therefore, employees cannot be rated on the basis of “other duties as assigned” or duties that are not major duties in the employee’s position description.

Please also be advised that under the law at 5 U.S.C. § 4302, the Merit Systems Protection Board (MSPB) has found that absolute performance standards that one mistake is sufficient to meet the criteria for a Level 1/unacceptable performance rating is an abuse of discretion and a basis to reverse an employee removal action for unacceptable performance.  *See* *Callaway v. Department of Army*, 23 MSPR 592 (October 22, 1984).

Employees cannot be penalized in their evaluation for factors beyond their control in accordance with Article 30, Section 30.07(5) of the HUD-AFGE Agreement and the law at 5 U.S.C. § 4302(b)(1) because performance standards must be objective defined as reasonable, realistic, and attainable based on reasonably accurate measures.  *See U.S. Department of Labor, Bureau of Labor Statistics (BLS) and AFGE National Council of Field Labor Locals*, 67 FLRA 77 (December 14, 2012); *Newark Air Force Station and AFGE Local 2221*, 30 FLRA 616, 628-29 (December 29, 1987).

Thank you in advance for your compliance with Article 30 of the HUD-AFGE Agreement.

Sincerely,

Ricardo Miranda

President

AFGE Local 2837

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