

United States of America

BEFORE THE FEDERAL SERVICE IMPASSES PANEL

In the Matter of

DEPARTMENT OF AGRICULTURE
FARM SERVICE AGENCY
KANSAS CITY, MISSOURI

and

CHAPTER 264, NATIONAL TREASURY
EMPLOYEES UNION

Case No. 11 FSIP 102

ARBITRATOR'S OPINION AND DECISION

Chapter 264, National Treasury Employees Union (Union) filed a request for assistance with the Federal Service Impasses Panel (Panel) to resolve a negotiation impasse under 5 U.S.C. § 7119 of the Federal Service Labor-Management Relations Statute (Statute), 5 U.S.C. § 7101, *et seq.*, between it and the Department of Agriculture, Farm Service Agency, Kansas City, Missouri (FSA or Employer).

After an investigation of the request for assistance, which arises from negotiations over a successor to the parties' master collective bargaining agreement (MCBA), the Panel determined that the parties' dispute over parts of eight articles should be resolved by mediation-arbitration with the undersigned, Panel Member Martin H. Malin. The parties were informed that if they were unable to reach a settlement during mediation, I would issue a binding decision resolving their dispute. Accordingly, on November 8, 2011, I conducted a mediation-arbitration proceeding with representatives of the parties in Kansas City, Missouri. Voluntary settlement efforts during the mediation phase resolved all but two issues. Therefore, in accordance with 5 U.S.C. § 7119 and 5 C.F.R. § 2471.11 of the Panel's regulations, I am required to issue a final decision resolving the parties' outstanding issues. In reaching this decision, I have considered the entire record in this matter, including the parties' final offers and post-hearing supporting documents.

BACKGROUND

The FSA was formed in 1994 as part of a reorganization within the Department of Agriculture that merged the Agricultural Stabilization and Conservation Service, the Farmers Home Administration, and programs from the Federal Crop Insurance Corporation. Its mission is to implement farm conservation laws, regulations and programs related to farm commodities, crop insurance, and credit, environmental, conservation and emergency assistance. The Union represents approximately 671 professional and non-professional employees most of whom work at FSA's Kansas City office. The bargaining unit includes positions such as procurement officer, financial auditor, grain inspector and computer programmer. The parties' current MCBA was to have expired on December 1, 2007, but its terms and conditions remain in effect until agreement is reached on its successor.

ISSUES AT IMPASSE

The parties disagree over whether: (1) under Article 27, "Performance Appraisal System," performance standards should be defined at the Exceeds as well as the Fully Successful level for each element; and (2) under Article 30, "Awards," employees rated Fully Successful should receive Ratings Based Awards (RBAs).

1. Article 27, "Performance Appraisal System"

a. Background to the Dispute

The parties are moving from a pass/fail performance appraisal system (PAS) to a 5-tiered system where employees receive summary performance ratings of: Outstanding, Superior, Fully Successful, Marginal and Unacceptable. Each employee is given a performance plan that specifies the elements and standards on which s/he will be rated.^{1/} An element is a "component of a position consisting of one or more duties and responsibilities on which the employee is rated." Each element is supported by a number of performance standards that describe the "requirements" or "expectations" an employee must satisfy in order to receive one of three rating levels: Meets Fully

^{1/} Article 27, Section E.1.

Successful, Exceeds Fully Successful, and Does Not Meet Fully Successful.^{2/}

Under Article 27, Section D.17, for an employee to receive a Superior performance rating, s/he must be rated Exceeds Fully Successful on more elements than Meets Fully Successful. An Outstanding rating can only be achieved if all elements are rated Exceeds Fully Successful.

b. The Union's Position

The parties agree that the Employer is to define the performance standards for elements of an employee's performance plan at the Fully Successful level. The Union proposes that the Employer also be required to define the performance standard for each critical and noncritical element at the Exceeds Fully Successful level. Thus, under the proposal, Article 27, Sections D.12 and E.3.b. would read as follows:

Section D. Definitions

12. *Performance Standard* - The management-approved expression of the performance threshold(s), requirement(s), or expectation(s) that must be met to be appraised at a "Fully Successful" or "Exceeds" level of performance.

Section E. Performance Plans

3. Standards . . .

The Employer has determined that the standards will be:

- b. defined at the "Fully Successful" and "Exceeds" levels for each Employee, and . . .

The Union argues that, if performance standards are not written at the Exceeds level, employees will not be evaluated on standards that "permit the accurate evaluation of job performance on the basis of objective criteria related to the position in question," as required by Article 27, Section E.3. Employees are given standards describing what they need to do to be rated at the Fully Successful level and almost all consistently do so. The problem is that they do not know what

^{2/} Article 27, Section D.4.

is expected of them to achieve the Exceeds Fully Successful level.

This becomes critical during the annual appraisal process when supervisors assign summary ratings - the justification for all RBAs - to their employees. Because an overwhelming majority of employees are consistently rated at the end of the appraisal period as "Fully Successful," the Employer's definition of performance standards at that level has had its intended effect. In the Union's view, it follows that because the Employer has not defined standards at the Exceeds Fully Successful level, employees do not know what is expected of them to meet that level. Therefore, very few receive enough ratings at that level to achieve either a Superior or Outstanding summary rating. According to the Union, the obvious solution is to require the Employer to include a definition of every performance standard at the Exceeds Fully Successful performance level so that employees will know what they need to do in terms of "quality and quantity" to be awarded a higher summary rating. Clear written guidance from the Employer in this regard will lead to a "greater understanding" of what employees need to do to improve their evaluations, decrease the potential for subjective evaluations and increase the likelihood of fairer, more objective ones.^{3/}

The Union points to two performance plans in the Kansas City Finance Office (KCFO) to support its position.^{4/} The Union maintains that these performance plans demonstrate that employees cannot be expected to infer what is required to be

3/ The Union argues that the fact that an employee is only Fully Successful when s/he is rated Exceeds on as many elements as Meets is indicative of a PAS weighted towards Fully Successful summary ratings. Another indication that the system is skewed towards Fully Successful is the fact that standards for meeting Fully Successful are typically "written high" and are "difficult to achieve." This is borne out by the fact that the vast majority of employees are Fully Successful. In the Union's view, these facts tend to show that employees do not know what they need to do to achieve a higher performance rating.

4/ According to the Union, the KCFO on its own initiative decided to include a definition of Exceeds Fully Successful performance level for every performance element. The Employer did not disagree with the Union's characterization of the KCFO's actions in this regard.

rated Exceeds Fully Successful from the definition of Fully Successful.

The first plan cited by the Union concerns Voucher Examiners. Three standards for Critical Element No. 1, "Execution of Duties," were highlighted. The first standard evaluates how well an employee "[c]omplies with EO/CR policies and completes required training." To be Fully Successful, the Examiner needs to "complete all required EO/CR required training within the allotted time frame" and "treat all staff with fairness, and politeness, in accordance with EO/CR policies." To be rated Exceeds Fully Successful, an employee must also "actively promote[] and encourage[] others within the organization to uphold EO/CR issues" and "[b]ring[] discriminatory issues to the attention of management and [p]articipate[] in, or attend[], diversity sessions."

A second standard involves compliance with procurement procedures and states that an employee meets the Fully Successful standard when s/he "complies with all standard operating procedures" and "notates any modifications or updates" necessitated by changes in the procurement program. An employee Exceeds Fully Successful when s/he "[i]n addition, works with other staff to develop [an] outline of expected requirements, including supporting documents and/or flowcharts, and presents findings to [the] manager."

The third standard requires employees to "[r]eview and document all voucher discrepancies." For a Meets Fully Successful rating an employee must document discrepancies discovered, notate the "source and type of discrepancy found" and submit the voucher to appropriate personnel for correction or additional research. An employee Exceeds Fully Successful when s/he additionally "recommends and notates appropriate adjustments to the vouchers and secures approval" of the changes made.

The Union relies on two standards in Critical Element No. 2, "Individual Contributions to the Team/Problem Solving" to support its position that defining performance at the Exceeds level will help employees know how and what to do to achieve that level. One standard rates an employee on how well s/he "[e]ngages in clean-up of personal workspace and surrounding area" and considers an employee's performance Fully Successful if s/he "maintains a clean and organized workspace that enhances the professional image of the organization." If s/he also is proactive by "ensuring that items outside of the personal

workspace are functionally organized and in [their] appropriate location," s/he Exceeds Fully Successful. A second standard evaluates an employee's ability to accept "change that creates enhanced solutions and work overload." If "changes to processes or accounting environment are recognized and readily incorporated in [the] existing environment to insure intended success" by an employee, and if "[i]ssues or concerns are brought to the attention of the appropriate management level along with potential solutions," the employee will receive a Fully Successful rating. If s/he, "[i]n addition, proactively participates in the recognition and development of appropriate changes to the department" and "documents proposed modifications to existing program including an explanation for the change as well as an expected outcome," the performance Exceeds Fully Successful.

The Union references one standard for Critical Element No. 3, "Communication." The standard evaluates employees on how well they share "accurate information with their immediate supervisor and peers." To be Fully Successful, an employee must inform the "supervisor and co-workers of actual/potential problems, program information, and customer-related activities." An employee Exceeds Fully Successful by identifying, documenting and presenting processes that streamline and enhance organizational communication.

The Union also presented the performance plan for a GS-12 Accountant. Two standards were highlighted. The first involves Critical Element No. 3, "Execution of Duties," which rates employees on whether their assignments are completed in a timely manner. To be Fully Successful, an employee must independently complete assignments within established target dates with only occasional revisions 90 percent of the time. For an Exceeds Fully Successful rating, s/he must accomplish this task 95 percent of the time with no substantive revisions to the work product.

The second standard referenced by the Union is Noncritical Element No. 4 involving "Administrative Support/Professional Growth/Health and Safety," requires that employees demonstrate a "desire to maintain/increase employee competence." When an employee stays "informed of system changes, technological advances, and new business practices" related to the position, s/he is Fully Successful. When s/he seeks additional information "outside of the office and USDA/FSA," becomes involved in professional organizations, and looks for mentoring

opportunities and/or engages in continuing education, s/he merits an Exceeds Fully Successful rating.

c. The Employer's Position

According to the Employer, once the parties were forced to give up their negotiated Pass/Fail PAS, they worked hard to resolve their differences and came to agreement on the PAS incorporated in Article 27. The Employer notes that it implemented the 5-tier PAS in 2006 and it has worked well since.^{5/} It is respectful of the Union's claim that many employees are frustrated because so few are rated at the Superior or Outstanding levels. However, the Employer observes that there has been only one performance appraisal grievance since 2006 and it was not initiated until 2010. The Employer notes that although 5 C.F.R. § 430.206 (b)(8)(i)(B) allows for the establishment of performance standards at other levels, it only requires them for critical elements at the Fully Successful level. Where noncritical elements are involved, a performance standard is established at whatever level is appropriate. 5 C.F.R. § 430.206 (b)(8) (ii)(B). When designing the PAS incorporated in Article 27, the Employer consulted with experts at the Agency and Departmental levels. Both have systems that define performance standards only at the Meets Fully Successful level, and both recommended that FSA/Kansas City implement the same system.

The Employer maintains that its proposal to define performance standards only at the Fully Successful level promotes dialogue between employees and their supervisors over what employees must do to achieve an Exceeds Fully Successful level. The Employer urges that the Union has not established a need for definitions at the Exceeds Fully Successful level.

The Employer's greatest concern is for its managers. Asking supervisors to establish written performance standards at the Exceeds Fully Successful level for every critical element of every employee's performance plan would put a tremendous burden on them. Since they are already required to create these standards at the Meets Fully Successful level, it would essentially double their workload. In light of the fact that 90 percent of FSA/Kansas City employees are already rated Fully Successful or higher, the Employer wonders if is prudent or fair to ask supervisors to take on this task.

^{5/} The Employer's unilateral implementation of the PAS was successfully challenged by the Union.

CONCLUSIONS

Having carefully considered the evidence and arguments presented by the parties on this issue, I have decided to impose the Union's final offer and require the Employer to define the standards for an Exceeds Fully Successful rating. Article 27, Section E, states that "performance standards must, to the maximum extent feasible, permit the accurate evaluation of job performance on the basis of objective criteria related to the position in question." This principle which, as the parties point out, is derived from 5 U.S.C. § 4302 provides significant guidance to my resolution of this dispute. The Union's proposal to require the definition of performance standards at the Exceeds Fully Successful level is more consistent with this principle than the Employer's proposal that establishes them only at the Meets Fully Successful level.

I acknowledge that this change, in the short run, will require a large investment of managers' time and effort to draft the standards. I do not impose that up front burden on the Employer's managers lightly. The Union has made persuasive arguments justifying the amount of time that will be required.

The concrete examples from the KCFO's voluntarily adopted standards at the Exceeds Fully Successful level demonstrate the need for such standards generally. A number of the examples articulated very different standards at the Fully and Exceeds levels and, more importantly, advised employees how to reach the latter.

Actively promoting and encouraging others to uphold EO/CR issues, bringing discriminatory matters to the attention of management, and participating in diversity training require a Voucher Examiner to make a significant emotional and intellectual investment at the Exceeds level that goes way beyond the Fully Successful requirement to simply "complete all EO/CE training." Moreover, I do not believe that a reasonable employee reading the definition of this standard at the Fully Successful level would infer or otherwise understand what is required to gain an Exceeds Fully Successful rating.

Similarly, a Voucher Examiner, advised that a Fully Successful rating for complying with procurement procedures requires compliance "with all standard operating procedures," is not likely to infer that to obtain an Exceeds Fully Successful rating, s/he has to work with other staff to develop an outline

of expected requirements with relevant documents such as flow charts and present findings to management. Furthermore, a Voucher Examiner advised that to achieve a Fully Successful rating for *accepting change* that creates enhanced solutions, s/he must recognize and readily incorporate changes and bring issues of concern to management attention could not reasonably be expected to infer that to achieve an Exceeds Fully Successful rating, s/he must also proactively participate in *developing* changes, *document* proposed changes and *explain* the change and its expected outcome.^{6/}

The two standards for Accountants introduced by the Union further illustrate the need for written standards at the Exceeds Fully Successful level. The standard for Fully Successful completion of assignments in a timely manner indicates that the Accountant must meet established target dates with only occasional revisions 90 percent of the time. That standard by itself leaves the Accountant to guess how much better s/he must perform to be rated Exceeds Fully Successful. The KCFO standard tells the Accountant that to achieve an Exceeds rating, s/he must meet target dates with no substantial revisions 95 percent of the time.

Similarly, the standard for maintaining and increasing competence advises the Accountant that to be Fully Successful, s/he must stay informed of changes, advances and new practices related to his/her position. A reasonable Accountant reading that standard alone could not be expected to infer that to attain an Exceeds rating, s/he must go outside FSA and be active in professional organizations and seek mentoring and continuing education opportunities.

I am persuaded that, in each of these instances, written standards at the Fully Successful level do not clearly tell

^{6/} I was not persuaded by the Union's inclusion of the Voucher Examiner standard requiring employees to "review and document all voucher discrepancies." It seems that asking appropriate personnel to sign off on discrepancies found would not require any additional substantive or independent work on the part of the employee and is essentially a ministerial task. I was similarly unimpressed with the Union's argument that "maintaining the overall professional appearance of the department" exceeds the expectation that, in order to be Fully Successful, an employee should "maintain a clean and organized workspace that enhances the professional image of the organization."

employees what they needed to do to perform at the Exceeds Fully Successful level. By expressly defining Exceeds Fully Successful standards, KCFO has provided employees with that information. For these reasons, I find that the Union's proposal which requires all other departments in FSA to follow this model will encourage "the accurate evaluation of job performance on the basis of objective criteria related to the position in question."

2. Article 30, "Awards"

a. The Union's Position

Only employees rated at the Outstanding level are currently eligible for all RBAs. Employees who receive Superior ratings are eligible for all RBAs other than Quality Step Increases (QSIs). The Union's proposal extends the latter contractual benefit to employees rated Fully Successful. Thus, it proposes the following language for Article 30, "Awards," Section C, 2.b. and 3.b.(1):

Section C. Ratings Based Awards

2. Eligibility

b. Employees rated as "Superior" or "Fully Successful" (or their equivalents) are eligible for all RBAs, except QSIs.

3. Types of RBAs

b. Monetary (lump sum)

(1) If funds are available, all employees rated Outstanding," "Superior," and "Fully Successful" must be given a RBA.^{7/}

The Union argues that since the Meets Fully Successful performance standards are written at such a "high" and "difficult" level, employees rated at that level are good performers and ought to be monetarily rewarded for their consistently high achievement. This point is underscored by the

^{7/} The Union also proposes, in Section C.3.b.(4), a procedure for distributing any awards money available among the three groups. Essentially, the amounts would be based on a 3/2/1 split, depending on the employee's rating.

fact that both parties agree that most employees receive Fully Successful summary ratings, leaving all of the award pool to the very few at the Superior and Outstanding levels. If employees knew that they could be monetarily compensated for their Fully Successful performance, they would not only be more comfortable with that assessment but would also be motivated to continue working at that level. Spreading the wealth around would also counter the perception many employees have that high ratings and awards are subjectively meted out on the basis of favoritism rather than objectively distributed on the basis of performance. Thus, morale within the bargaining unit would be greatly improved if employees knew there was a possibility they could receive even a small monetary award for their work efforts.

b. The Employer's Position

The Employer argues that extending RBAs to Fully Successful employees will dilute the awards pool to such an extent that an award will become meaningless. If 90 percent of the employees in Kansas City are already rated at least Fully Successful, there would be very little real money to give to those at the Superior or Outstanding levels. The Employer asks whether these exceptional employees would continue to push themselves towards excellence if they know that, at most, they will receive a hundred dollars because "Fully Successful" employees were receiving the same award. The Employer adds that there are other ways the parties' agreement compensates those who have made significant contributions to the Agency. Article 30, Section B., "Superior Accomplishment Awards," details a number of non-RBA recognition awards. Superior Accomplishment Awards recognize employees for a "single action or series of actions, either within or outside normal duties, which are so significant that special recognition is clearly supported." In addition, all employees are eligible for On the Spot and Extra Effort awards, as well as Mementos and Written Commendations. For these reasons, the Employer opposes changing the current language of Article 30, which limits eligibility for RBA/non-QSI awards to employees who receive a summary rating of Superior or Outstanding, and calls for a 2:1 payoff ratio, with Outstanding employees receiving 50 percent more than Superior ones.

CONCLUSIONS

After thorough review of the parties' positions on this issue, I have determined that the Employer's final offer for Article 30, Section C.2.b. and Section C.3.b.(1) and (4) should be imposed. The Union has not convinced me that the *status quo*

should be changed so that employees who receive Fully Successful summary ratings receive a monetary RBA. The record is clear that the overwhelming majority of FSA/Kansas City employees are rated at the Fully Successful level or higher. The record is also clear that very few are in the Superior or Outstanding performance categories. Based on these findings, in accordance with the Employer's position, diluting the award pool by extending it to the mass majority would significantly reduce the meaning of a monetary award. I further note that my decision with respect to Article 27, Section E means that employees will now know what is expected of them to achieve Superior and Outstanding ratings. Such knowledge may lead to a larger number of employees qualifying for RBAs. In the meantime, I am persuaded by the Employer's argument that restricting RBAs to employees rated Superior or Outstanding maintains their meaning while employees rated Fully Successful who make significant contributions to their work and workplace remain eligible for a number of other recognitions, including Superior Accomplishment Awards, Extra Effort Awards and On the Spot Awards.

DECISION

1. Article 27, "Performance Appraisal System"

The parties shall adopt the Union's final offer on this issue.

2. Article 30, "Awards"

The parties shall adopt the Employer's final offer on this issue.



Martin H. Malin
Arbitrator

December 21, 2011
Chicago, Illinois