Performance Evaluation Rights under Article 30 of HUD-AFGE Agreement effective July 23, 2015

Dear AFGE Local 2837 Union Members:

I want to point out to you some important terms of Article 30 of the HUD-AFGE Agreement effective July 23, 2015 regarding your right to receive a fair, objective and accurate performance evaluation based on work assigned by management at the individual-employee level.

Performance standards are to be finalized within 30 days of the beginning of the rating period (October 31) barring exception circumstances [Article 30, Section 30.04(3)]. Mid-year review meetings shall occur by the end of April or the mid-point of the rating period barring exceptional circumstances [Article 30, Section 30.07(3)]. Performance appraisal ratings are to be communicated to employees within 45 days (November 14) of the end of the rating period barring exceptional circumstances [Article 30, Section 30.07(6)]. If management does not meet these deadlines, a low or bad performance appraisal rating can be invalidated through the grievance-arbitration process by an arbitrator as the U.S. Federal Labor Relations Authority (FLRA) has upheld such an arbitration decision before. *See U.S. Department of the Army and AFGE, Local 1658*, 67 FLRA 14 (October 24, 2012).

Management may not retroactively apply performance elements standards in an adverse manner for the period before performance elements and standards were finalized [Article 30, Section 30.07(1)]. Management is supposed to finalize performance elements and standards within 30 days of the beginning of the rating period (October 31) barring exceptional circumstances. If management finalizes the performance standards after holding performance planning meetings with employees say in February when the performance rating period began on October 1st of the prior calendar year, Management cannot rate you negatively for any missed deadlines or goals from October 1 through January 31st.

Management also may not rate you for work that has not been assigned to you. If management does not assign you work under an element, you cannot be rated in that element and the element must be excluded from your overall rating. If Management does not assign you work under a particular performance standard, you cannot be rated for that standard; the rating for the element must be made based on the remaining standards excluding the standard for which you were not assigned work. *See* Article 30, Section 30.11(6).

Below are some important quotes from Article 30:

Section 30.02(1)(d)

Critical Element means a work assignment or responsibility of such importance that unacceptable performance on the element would result in a determination that an employee's overall performance is unacceptable. **Such elements shall be used to measure performance only at the individual level.**

Section 30.04(2)  
Performance Plans: **To the maximum extent feasible, performance plans shall permit the accurate evaluation of job performance on the basis of objective criteria (which may include the extent of courtesy demonstrated to the public) related to the job in question for each employee or position under the system**. Employee behavior may be appropriate in performance plans provided that it is consistent with an employee's position description. Performance plans are specific descriptions of relevant work activities, assignments, and responsibilities. **In the application of elements and standards, the qualitative and quantitative goals and objectives and deadlines must be achievable in the determination of the employee's final performance rating.**

Section 30.04(5)

Evaluation:Each employee will be evaluated during the appraisal period on performance elements and standards. **An employee shall be evaluated based on work assigned during the appraisal period**.

Section 30.06(3)(c)

Attainable: **All elements and standards must be achievable**. The employee and the supervisor will discuss the work relating to the critical elements to establish a clear expectation of what must be done to achieve the results expected. **In the discussion, consideration will be given to the time, tools, training, support or other resources and control factors that are necessary for the employee to perform at the required level. The supervisor should create a situation where the employee has a reasonable expectation of achieving his/her goal given the necessary resources (training, time, support) to perform at the required level.**

Section 30.06(3)(d)

Relevant: Critical elements and performance standards are to be aligned with the goals of the Department and the mission of the employee's organization. **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. Supervisors will communicate to employees how their role contributes to the success of the organization and how their critical elements support that contribution. If the employee does not have a position description, the Department shall prepare one within sixty (60) days of the establishment of the employee's performance plan, and the employee will have five (5) work days to review the new position description and recommend further revisions to the performance standards consistent with major duties in the position description.

Section 30.06(3)(f)

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**.

Section 30.07(1)

**The Department agrees not to adversely affect employees in their performance appraisal ratings for the period when they were working without finalized, written elements and standards. The rating period for new or modified elements will begin at the time they are issued. Any modified or additional elements shall not be applied retroactively in an adverse manner.** Standards implemented after the beginning of the rating period shall be achievable by the end of the rating period.

Section 30.07(4)

The employee may submit self-assessments to the supervisor at any time during the performance period (e.g. monthly, quarterly, mid-year, etc.). **The employee's self-assessment shall be voluntary.** The Department shall provide guidance or training to the employee on preparing self-assessments and using the system. **The Department shall not alter an employee's self-assessment.** The Department shall provide employees no less than seven (7) days to insert their self-assessment for mid-year and final approvals. Employees who submit a self-assessment should expect that it will be seriously considered and, upon request, may meet with their supervisor prior to proposing the initial rating. The self-assessment does not relieve the rating official of the responsibility for preparing a fair and thorough performance assessment. The rating official should be aware of the accomplishments of the employee throughout the performance period.

Section 30.07(5)

**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**.

Section 30.07(10)

**If during the performance cycle, the employee's summary rating is rated at Level 2, a written Performance Improvement Plan (PIP) shall be prepared**.

Section 30.07(11)

If an employee is put on a Performance Improvement Plan (PIP), supervisors shall identify the critical elements that are at Level 2 and ways the employee may improve performance. Supervisors also are encouraged to provide continual feedback, technical assistance or training to assist the employee in improving performance. **The supervisor shall meet with an employee and explain and document performance deficiencies once the employee's performance is at Level 2; the employee will be provided with summary and illustrative examples of the performance deficiencies and ways to improve.** The employee will be placed on a PIP as soon as possible after the explanatory meeting. **The supervisor will regularly meet with the employee to provide assistance, which may include training (formal, on-the-job, etc.), and/or technical assistance during the PIP period to assist the employee to achieve fully successful/Level 3 performance. The mere assignment of outstanding, pending or new work shall not be construed as constituting training or technical assistance in a Performance Improvement Plan (PIP)**. A PIP must provide at least thirty (30) days to improve performance prior to the end of the appraisal year. **The purpose of the PIP is to improve performance and not to be a predetermined step to impose a performance-based adverse action**.

Section 30.07(15)

**The performance plan expires at the end of the appraisal period, unless the rating is delayed in accordance with the Agreement**.

Section 30.11(6)

**If work has not been assigned under a Critical Element, then there will be no rating under that Critical Element and that Critical Element will not be considered in the computation of the summary rating. If work has not been assigned under a particular performance standard, the rating will be based on the remaining performance standards under the Critical Element**. If a fully successful performance rating is based on a given number of completed items, and less than that number of items has been assigned, the performance standard will be adjusted downward accordingly.

Section 30.15

Policy and Guidance**. Any differences between Departmental policy and guidance and this Agreement on the subject of performance appraisal will be resolved in favor of this Agreement**.

I am attaching the HUD-AFGE Agreement effective July 23, 2015 for your records. I recommend that you read Article 30: Performance Appraisal in its entirety to know all of your rights.

Hope this helps you ensure that your performance-appraisal rights are honored. If your rights are violated, please schedule an appointment with me or another AFGE Local 2837 Union representative, Vice President/Chief Steward, Luis Machargo, or Secretary-Treasurer/Steward, Rosa Rodríguez.

In solidarity,

Ricardo Miranda

President

AFGE Local 2837

(787) 274-5896 (Union Office)

“Power concedes nothing without a demand. It never has and never will.” –Frederick Douglass