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**U.S. Army Aviation Technical Test
Center, Fort Rucker, Ala. and AFGE
Local 1815**

Federal Arbitration

06-566693

September 16, 2006

Related Index Numbers

45.007 Critical Elements

45.014 Performance Evaluation

45.030 Performance Standards

45.033 Satisfactory Rating

54.045 No Attempt at Improvement

54.057 Uncooperative

Judge / Administrative Officer

Joseph M. Schneider

Ruling

Arbitrator Joseph M. Schneider found that the agency justified its 2005 performance evaluation of the grievant, although it was lower than the evaluations for previous years.

Meaning

The arbitrator explained it is reasonable to conclude an employee's performance level may change from year to year. Otherwise, it would not be necessary to conduct an annual evaluation.

Case Summary

The supervisor rated the grievant's performance "excellence" in two categories and "success" in two others. The previous year, the same supervisor rated the performance excellence in all four categories.

The grievant contended, among other factors, she had received no complaints during the year; she had received numerous awards over a protracted period of time; her supervisor told her she did not get along well with others, but provided no specifics; her supervisor failed to give her a memorandum summarizing a counseling session; it was not her job

to pick up errant faxes; she did not intend to challenge her supervisor's authority.

The success ratings were for the elements technical competence and working relationships. The grievant's supervisor and the second level manager defended the ratings by testifying among other factors that the grievant was given examples of her failure to demonstrate interpersonal skills; following counseling meetings improvement did not last; there were too many processing discrepancies during the year; the grievant refused to provide training to a new employee, requiring a change in her job description; the grievant had to be directed to pick up a misdirected fax at an office only a short distance away.

The arbitrator found no evidence that the grievant's compensation or reduction in force standing were likely to be affected by the rating. The arbitrator explained it was necessary to examine the degree of change in the ratings from one year to the next. He concluded that if there were major differences in the ratings and there was evidence of violations of regulations or policies, it might be necessary to find against the agency. However, in this case, the agency was able to show some decline in the grievant's performance while maintaining her rating at an acceptable level.

Full Text

APPEARANCES:

EMPLOYER REPRESENTATIVE: Jennifer K. Williamson, Labor Attorney, Office of Staff Judge Advocate, Department of the Army, 453 Novosel Street, Fort Rucker, Alabama 36362-5105

UNION REPRESENTATIVE: J. Emerson Garrison, President, AFGE Local 1815, P.O. Box 620726, Fort Rucker, Alabama 36362-5105

Decision/Award

Background Information

In a letter dated June 9, 2006 from the Federal Mediation and Conciliation Service (FMCS) Joseph

M. Schneider was notified that he had been selected to arbitrate Case Number 06-56693 relating to an issue of the grievant's non-concurrence with the civilian evaluation report for the 2005 year. Subsequent contacts with the parties resulted in an arbitration hearing being held on August 2, 2006 on the U.S. Army Base in Fort Rucker, Alabama. The Arbitration Hearing began at about 9:00 a.m. and ended in early afternoon.

The Arbitration Hearing was held open pending the receipt of post-hearing briefs by both parties which were received by September 1, 2006.

The Issue

Consistent with the letter from the Federal Mediation and Conciliation Service (FMCS) the issue was a disagreement concerning the ratings on the Civilian Evaluation Report (CER) of Bettye Whitfield, the grievant and Purchasing Agent, which were initially completed by her supervisor, Deborah Craig, the Chief Contracting Officer, and subsequently approved by Larry Martin, the Senior Rater and Director of Technical Support.

Related Contractual Provisions

ARTICLE 33, PERFORMANCE APPRAISALS, states

... "Section 3. Employees who are dissatisfied with their performance rating may file a grievance under the negotiated grievance procedure. Such grievances should be initiated at the approving official's level."

ARTICLE 37, GRIEVANCE PROCEDURE, states

..."(4) If the grievance is not satisfactorily settled at Step 4, the Union or the Employer may refer the matter to arbitration (see Article 38)."

ARTICLE 38, MEDIATION/ARBITRATION, states

... "Section 5. Regardless of the outcome of the arbitration, at the Step 5 and 6 levels, each party shall be responsible for bearing its own costs, expenses and attorney's fees (or representative's fees). Likewise the

fees and expenses of the arbitrator shall be borne equally the Employer and the Union." ...

..." Section 7. The arbitrator will be requested by the parties to render a decision as quickly as possible, but in any event, no later than thirty (30) calendar days after the conclusion of the hearing unless the parties otherwise mutually agree."

Summary of Facts

Following introductory statements by the Arbitrator, opening statements were given by J. Emerson Garrison, President of AFGE Local 1815 and Jennifer K. Williamson, Labor Counselor for the Fort Rucker Army Base.

The first witness was the grievant, Bettye Whitfield. She testified that her evaluation ratings during the 2005 calendar year had been lowered from the all excellents she received on her 2004 calendar year evaluation ratings to two "excellent" ratings and two "success" ratings for the 2005 calendar year. In summary she provided the following information.

- She never had any complaints regarding her performance from her supervisor.

- She had received numerous awards for her excellence over a protracted period of time.

- She received additional training during the evaluation period which enabled her to increase her purchasing certification to Level 2.

- She had worked many hours of overtime beyond her regular 80-hour biweekly normal schedule.

- Her supervisor told her she does not get along well with others, but she never was given any specifics.

- At various times she was performing two jobs when there was an office vacancy.

- The Federal Acquisitions Regulations (FAR) specifically stated that the Contracting Officer was responsible for inserting information on the purchase order which she was being told to do.

- She did not receive a copy of counseling notes or "Memorandum for Record" relating to a session

with her supervisor which was Employer Exhibit #1.

- It was the Mail Clerk's job to pick up faxes, and she was not personally responsible to go to pick up information which had been errantly sent.

- Her response to her supervisor regarding substituting about an hour off on another day was not intended to challenge the supervisor's authority.

The next witness was Deborah Craig, the grievant's immediate supervisor and the Contracting Officer. She provided the following relevant information.

- Her evaluation was consistent with Chapter 4302, Total Army Performance Evaluation System (TAPES).

- She had evaluated the grievant during the 2004 and 2005 calendar years.

- During the 2005 year she had given a "success" rating to the grievant for "Technical Competence" and "Working Relationships & Communications" and the other two ratings were excellent.

- During the 2004 year, her first year in the position, she had rated the grievant "excellent" in all four rating categories.

- The grievant had refused to sign the evaluation form, and therefore she prepared a "Memorandum of Record" which was Employer Exhibit #1.

- She gave the grievant four examples of not demonstrating interpersonal skills which are outlined in Employer Exhibit #1.

- She also provided additional information relative to the difficulties she encountered with the grievant relative to the incident relating to the picking up the errant fax.

- She indicated that following counseling meetings there was temporary improvement which did not last.

- She acknowledged that the Contracting Officer has the ultimate responsibility for recording certain information on the purchase order form, but indicated it was necessary for the Purchasing Agent to be familiar with the FAR procedures to avoid

inaccuracies, and she indicated there were too many processing discrepancies during the 2005 calendar year evaluation period.

- She also indicated that the grievant was unwilling to initial information on the counseling form.

- She cited several examples of a lack of cooperation including initially refusing to provide training to a new employee which required revising her job description to specifically include a requirement for providing training.

- She provided information on an event dealing with taking time off where she and the grievant had exchanged e-mails relative to the grievant leaving early as a compensatory date because she had not taken time off when the office was closed on an earlier date.

The third and last witness was Larry Martin, the Senior Rater and the Technical Support Director, who supervises the Contracting Officer. In summary he stated 1) that bi-monthly counseling evaluations were done; 2) he had to direct the grievant to pick up the fax which was sent to an office only a short distance away; 3) he had to see to it that a specific training responsibility was added to the grievant's responsibilities by revising her job description; 4) he did not believe the grievant should be considered for promotion; and 5) he felt the grievant's ratings were too high.

Arguments of the Parties

The essential argument of the Union in behalf of the grievant relates to the objective application of performance standards in completing the evaluation process. They indicate that it is necessary to identify both critical and non-critical elements of the job description in order to effectively complete the evaluation process.

The Employer (i.e. U.S. Army) indicated that the grievant has a strong burden to show that she is entitled to a higher rating, and further indicated in their brief that the Federal Labor Relations Authority has held that an arbitrator can only change a grievant's

performance rating under "limited circumstances" which do not exist in this case. They also argued that the grievant did not receive low ratings indicating that a rating of "success" cannot be interpreted as "failure".

Discussion/Reasoning

The sole issue being contested relates to the performance evaluation ratings of the grievant for the 2005 calendar year by the supervisor which was subsequently approved by the senior rater. The 2005 calendar year evaluation ratings were lower than the 2004 calendar year, and were also lower than a number of years preceding the 2005 calendar year.

A comparison of the 2005 year versus the 2004 year on the four rating factors and the overall performance is summarized below:

2005	2004	Technical Competence	Success	Excellence
		Adaptability and Initiative	Excellence	Excellence
		Working Relationships & Communications	Success	
		Excellence	Responsibility	and Dependability
		Excellence	Excellence	Overall Performance
				Level 2
				Level 1

During the Arbitration Hearing it was indicated that compensation could be affected by a reduced rating and that reduction-in-force could also be related to the lower evaluation. However, no specific evidence was presented to suggest that either situation was likely, and it appeared that a small office with a single purchasing agent was not likely to sustain a staff reduction.

It is also necessary to look at the degree of change in the individual and overall ratings. In this case the supervisor/rater had the option of selecting from four choices available on the evaluation form: 1) excellence (exceeds standards), 2) success (meets standards), 3) Needs Improvement or 4) Fails.

It is reasonable to conclude that employee performance levels may change from year to year. Indeed if they did not, an annual evaluation should not be necessary. In this case the evaluation ratings suggest that there was some decline in performance levels, but the ratings appear to be well within an

acceptable range.

If there were major differences in the evaluation ratings which reflected violations of TAPES, FAR, other policies or job duties outlined in the job description, there could be a basis for an arbitrator ruling against the Employer and in favor of the grievant. In this case, however, the Employer representatives supported their rationale for the reduced, but still positive evaluation ratings, of the grievant.

Decision/Award

The 2005 annual performance evaluation on Bettye Whitfield, the grievant, was properly completed by the Employer. Accordingly it is justified and is being upheld.