ARBITRATION AWARD

IN THE MATTER BETWEEN:

COMMUNICATIONS WORKERS OF AMERICA (“CWA”),
LOCAL 7076, IN BEHALF OF
EMPLOYER COMPLIANCE BUREAU &

WORKERS’ COMPENSATION ADMINISTRATION (“WCA”),
STATE OF NEW MEXICO,
ALBUQUERQUE, N.M.

PERFORMANCE EVALUATION DISPUTE

GRIEVANTS:
SARAH DURAN,
BARBARA GARCIA,
LESLIE TORREZ

ARBITRATOR:
BARRY J. BARONI

FMCS CASE NO:
09-57397

HEARING WAS CONDUCTED ON APRIL 28, 2010, IN ALBUQUERQUE, N.M.

APPEARANCES

UNION

SHANE C. YOUTZ, ESQ. - ATTORNEY
SCOTT GOOLD - ECONOMIST, LOCAL VICE-PRESIDENT & STEWARD
ROBIN GOULD - OBSERVER, FORMER LOCAL PRESIDENT
SARAH DURAN - REPRESENTATIVE GRIEVANT

ADMINISTRATION (“WCA”)

ROBERTA L. BACA, ESQ. - ATTORNEY, ASSISTANT GENERAL COUNSEL
RENEE E. BLECHNER - LEGAL ASSISTANT
SANDY PEREZ - DIRECTOR, STATE PERSONNEL OFFICE
PRISCILLA PENA - JOHNSON – HUMAN RESOURCE MANAGER
SANDY MARTINEZ - OBSERVER, SPO LABOR DIRECTOR
2.

**ISSUE**

PARTIES COULD NOT STIPULATE TO AN EXACT WORDING OF THE ISSUE, SO THEY AGREED TO SUBMIT SEPARATE ISSUE PROPOSALS TO THE ARBITRATOR FOR HIS FRAMING. THE ARBITRATOR FRAMES THE ISSUE, AS FOLLOWS:


**RELEVANT CONTRACT PROVISIONS**

SECTION 1. EMPLOYEES SHALL RECEIVE WRITTEN PERFORMANCE EVALUATIONS ON AN ANNUAL BASIS.

SECTION 2. PERFORMANCE CRITERIA SHALL BE SPECIFIC, ATTAINABLE, RELEVANT, MEASURABLE, AND CONSISTENT WITH AN EMPLOYEE’S DUTIES, RESPONSIBILITIES AND RELATE TO HIS/HER JOB DESCRIPTION. MEASUREMENT CRITERIA SHALL BE JOB AND OUTCOME RELATED. THE CRITERIA SHALL BE PROVIDED TO AN EMPLOYEE IN WRITING AT THE OUTSET OF THE RATING PERIOD AND CHANGED DURING THE PERIOD ONLY AFTER REVIEW WITH THE EMPLOYEE. IF AN EMPLOYEE DOES NOT HAVE AN OPPORTUNITY TO PERFORM WORK DESCRIBED BY THE CRITERIA THAT CRITERION WILL NOT BE CONSIDERED IN THE PERFORMANCE APPRAISAL PROCESS. PERFORMANCE MEASUREMENT CRITERIA SHALL BE APPLIED FAIRLY, OBJECTIVELY, AND EQUITABLY. THE EMPLOYER SHALL TAKE INTO ACCOUNT WHEN EVALUATING AN EMPLOYEE’S PERFORMANCE, MATTERS OUTSIDE AN EMPLOYEE’S CONTROLS, SUCH AS EQUIPMENT AND RESOURCE PROBLEMS AND LACK OF TRAINING. PRE-APPROVED TIME AWAY FROM THE JOB INCLUDING SICK LEAVE (NOT INCLUDING CALL IN NOTIFICATION), PERSONAL DAYS,
3.

ANNUAL LEAVE, AND AUTHORIZED DUTY TIME FOR UNION REPRESENTATIONAL PURPOSES AND OTHER AUTHORIZED ACTIVITIES WILL NOT BE CONSIDERED NEGATIVELY IN THE APPLICATION OF PERFORMANCE CRITERIA. EVALUATIONS SHALL FULLY TAKE INTO ACCOUNT SUCH APPROVED ABSENCES IN A MEASURE OF TIMELINESS AND QUANTITY OF WORK.


SECTION 4. END-OF-YEAR APPRAISAL. THE END-OF-YEAR APPRAISAL SHALL INCLUDE AT LEAST THE FOLLOWING:

A. PERFORMANCE RATING FOR THE YEAR;
B. PERFORMANCE EXPECTATIONS APPLICABLE TO THE NEXT PERIOD WHICH MAY BE CHANGED ONLY AFTER REVIEW WITH THE EMPLOYEE;
C. MODIFICATIONS TO THE EMPLOYEE’S JOB DESCRIPTION, IF ANY; AND
D. RECOMMENDATIONS, IF ANY, FOR TRAINING TO ENHANCE THE EMPLOYEE’S SKILLS.

THE EMPLOYER WILL NOT PRESCRIBE A FORCED DISTRIBUTION OF LEVELS FOR RATINGS FOR EMPLOYEES COVERED BY THIS AGREEMENT.
4.

THE EMPLOYER MAY CHANGE AN EMPLOYEE’S END-OF-CYCLE FINAL EVALUATION ONLY WITH WRITTEN JUSTIFICATION, WHICH CITES THE EMPLOYEE’S PERFORMANCE CRITERIA AND THE EMPLOYEE’S ACTUAL PERFORMANCE. THE SUPERVISOR SHALL GIVE EMPLOYEES A COPY OF THE END-OF-YEAR APPRAISAL AND A COPY WILL BE PLACED IN THE EMPLOYEE’S PERSONNEL FILE. A STATEMENT OF AN EMPLOYEE’S OBJECTION TO AN APPRAISAL OR COMMENT MAY BE ATTACHED AND PUT IN THEIR PERSONNEL FILE.

PARTIES’ POSITIONS

THE UNION POSITION CAN BE SUMMARIZED, AS FOLLOWS:

THE EMPLOYER VIOLATED ARTICLE 17 OF THE COLLECTIVE BARGAINING AGREEMENT IN THE MANNER IN WHICH IT CONDUCTED ITS 2008/2009 PERFORMANCE EVALUATIONS. FIRST, IT DID NOT PROVIDE EMPLOYEES WITH REQUIRED “SPECIFIC, ATTAINABLE, RELEVANT, MEASURABLE, AND CONSISTENT WITH DUTIES AND RESPONSIBILITIES RELATING TO HIS/HER JOB DESCRIPTION” CRITERIA. INSTEAD, THE EMPLOYER PROVIDED HIGHLY SUBJECTIVE CRITERIA. ALSO, THE CHANGED CRITERIA WAS NOT PROVIDED IN A TIMELY MANNER. GIVEN THE EMPLOYER’S OBVIOUS CONTRACT VIOLATION, IT IS REQUESTED THAT AN ORDER BE ENTERED: 1.) FINDING THAT THE EMPLOYER VIOLATED THE AGREEMENT WITH REGARD TO GRIEVANTS’ PERFORMANCE EVALUATIONS; 2.) ORDER THAT EACH GRIEVANT’S
5.

JUNE/JULY, 2009, PERFORMANCE EVALUATIONS REFLECT “ACROSS THE BOARD” ( “4’S”)/EXEMPLARY FOR THE CYCLE ENDING JUNE/JULY, 2009; AND, 3.) WHATEVER OTHER RELIEF THE ARBITRATOR DEEMS APPROPRIATE.

THE ADMINISTRATION’S POSITION IS SUMMARIZED, AS FOLLOWS:

THE WCA HAS COMPLIED WITH ALL CONTRACTUAL OBLIGATIONS WITH RESPECT TO GRIEVANTS BY: 1.) PROVIDING EMPLOYEES WITH WRITTEN PERFORMANCE EVALUATIONS ON AN ANNUAL BASIS; 2.) WORKING WITH THEM IN ESTABLISHING PERFORMANCE CRITERIA THAT IS SPECIFIC, ATTAINABLE, RELEVANT, AND MEASURABLE AND CONSISTENT WITH DUTIES AND RESPONSIBILITIES RELATED TO THEIR JOBS; 3.) PROVIDING CRITERIA IN WRITING AT THE OUTSET OF THE RATING PERIOD; 4.) REVIEWING CHANGES WITH EMPLOYEES; 5.) PROVIDING EMPLOYEES WITH PERFORMANCE APPRAISAL DOCUMENTS PREPARED BY THEIR SUPERVISOR; AND, 6.) PROVIDING EMPLOYEES WITH AN “END-OF-YEAR” APPRAISAL. IN ADDITION, CRITERIA FOR THE PRIMARY JOB ASSIGNMENTS REMAINED THE SAME AS THOSE ESTABLISHED BY THE PRIOR SUPERVISOR, AND THE EMPLOYEE’S REFUSAL TO SIGN ACKNOWLEDGEMENT OF CHANGES DOES NOT NEGATE

DISCUSSION AND OPINION

AMONG ARBITRATORS, SUPERVISORY OPINION HAS BEEN AFFORDED OPTIMAL WEIGHT WHEN SEVERAL LEVELS OF SUPERVISION FAMILIAR WITH AN EMPLOYEE’S WORK PERFORMANCE AND REQUIREMENTS OF THE JOB REACH UNANIMOUS DECISION. (SEE: PITTSBURG STANDARD CONDUIT CO., 32 LA 481, 482-83 (1959), (ARBITRATOR LEHOCZKY UPHELD AN EVALUATION “WHERE COMPANY OFFICERS WERE IN ALMOST DAILY CONTACT OVER MANY YEARS WITH THE EMPLOYEES, AND THUS KNEW THEM WELL AND KNEW THE PROCESSES AND MACHINES WELL”); AND, SEE: ARBITRATORS TSUKIYAMA, IN 55 LA 477, 480; WOLFF, IN 54 LA 447, 448; BEESON, IN 54 LA 298, 301-02; AND
LARKIN, IN 45 LA 129,130-31). ON THE OTHER HAND, LITTLE IF ANY WEIGHT, HAS BEEN ACCORDED SUPERVISORY OPINION WHERE THE SUPERVISOR HAD LITTLE OR NO CHANCE TO OBSERVE EMPLOYEES THEY WERE RATING AND WERE NOT FAMILIAR WITH THE DETAILS AND REQUIREMENTS OF THE JOB BEING RATED. (SEE: RAINIER PORT COLD STORAGE, 79 LA 441 (ARMSTRONG, 1982) AND MARSHALLTOWN AREA COMMUNITY HOSPITAL, 76 LA 978 (SMITH, 1981)). ALSO, SUPERVISORY PERFORMANCE RATINGS MUST RELY UPON “OBJECTIVE FACTORS” (SEE: ARBITRATORS CHALFIE, IN 85 LA 72L, 727; HUNTER, IN 75 LA 181, 189, AND IPAVEC, IN 72 LA 524, 528), AND, BE BASED UPON “SPECIFIC AND UNDERSTANDABLE EVIDENCE.” (SEE: FORD MOTOR CO., 2 LA 374, 376 (1945), CITED WITH APPROVAL BY ARBITRATORS ROUMELL, IN 72 LA 1061, 1064; ROBERTS, IN 55 LA 261, 269; AND KATES, IN 45 LA 743, 748).

CONTRACT REQUIREMENTS

ARTICLE 17 OF THE COLLECTIVE BARGAINING AGREEMENT CONTAINS VERY SPECIFIC REQUIREMENTS RELATING TO EMPLOYEES' PERFORMANCE EVALUATIONS. IT NOT ONLY INCORPORATES THE ABOVE MENTIONED TRADITIONAL NOTIONS OF “OBJECTIVITY, SPECIFICITY, AND JOB RELATEDNESS” INTO ITS PROVISIONS, BUT ALSO PROVIDES TIMELY WRITTEN CRITERIA AND A DETAILED “THREE-STEP” PROCESS FOR CONDUCTING THE ANNUAL EVALUATION. SECTION 1 OF ARTICLE 17 REQUIRES THAT AN ANNUAL WRITTEN PERFORMANCE
8. EVALUATION BE PREPARED, AND SECTION 2 CONTAINS A FRAMEWORK FOR THE EMPLOYER’S ESTABLISHMENT OF PERFORMANCE CRITERIA. THE FRAMEWORK IN SECTION 2 REQUIRES THAT THE CRITERIA BE “SPECIFIC, ATTAINABLE, RELEVANT AND MEASURABLE...AND RELATE TO HIS/HER JOB DESCRIPTION,” AND BE GIVEN TO THE EMPLOYEE “IN WRITING AND AT THE OUTSET OF THE RATING PERIOD.” THUS, IT REQUIRES SPECIFICITY; MUST BE JOB RELATED; AND IS TIME SENSITIVE, THREE VERY IMPORTANT REQUIREMENTS. finally, SECTION 4 REITERATES THE IMPORTANCE OF PROVIDING EMPLOYEES WITH PERFORMANCE EXPECTATIONS FOR THE UPCOMING YEAR BY REQUIRING THE END-OF-THE-YEAR APPRAISAL TO INCLUDE, “PERFORMANCE EXPECTATIONS APPLICABLE TO THE NEXT PERIOD WHICH MAY BE CHANGED ONLY AFTER REVIEW WITH THE EMPLOYEE.”

“MANAGEMENT FAULT”/NEGOTIATED SETTLEMENT
EMPLOYEES ARE EVALUATED ON AN ANNUAL BASIS ON THEIR ANNIVERSARY DATE. PROCEDURALLY, AN EMPLOYEE BEGINS EMPLOYMENT AFTER BEING PROVIDED WITH A SUMMARY OF THEIR WORK DUTIES. AT THE OUTSET, THE EMPLOYER MUST “OPEN THE EVALUATION YEAR FOR THAT EMPLOYEE,” AND THERE SHOULD BE AT LEAST ONE INTERIM EVALUATION DURING THE COURSE OF THAT EMPLOYEE YEAR. AND, AT YEAR’S END, THERE SHOULD BE A “CLOSEOUT’ OF THE EVALUATION IN WHICH THE EMPLOYEE IS EVALUATED AND RATED, HAVING A DISCUSSION WITH THE
9.

EMPLOYEE ABOUT THE EMPLOYEE’S PERFORMANCE FOR THE PRECEDING YEAR. IN DECEMBER, 2007, ADMINISTRATION SUPERVISOR LAGRAVE, WAS SUDDENLY REPLACED WITHOUT “CLOSING OUT” THE EMPLOYMENT EVALUATIONS OF GRIEVANTS, PRIOR TO LEAVING THE AGENCY. THIS SUDDEN DEPARTURE OF GRIEVANTS’ PRIOR SUPERVISOR CREATED DIFFICULTIES BECAUSE HIS REPLACEMENT SUPERVISOR, MARTINEZ, HAD NO ACTUAL TIME OBSERVING GRIEVANTS, IN ORDER TO COMPLETE THEIR EVALUATIONS. EMPLOYEES IN THE BUREAU HAD ACTUALLY BEEN LEFT ON THEIR OWN FOR A COUPLE OF MONTHS WITH THE DEPARTURE OF LAGRAVE AND THE APPOINTMENT OF MARTINEZ. THUS, THERE WAS APPROXIMATELY A TWO-MONTH GAP IN WHICH GRIEVANTS HAD TO FUNCTION ALONE WITHOUT A DIRECT FORMAL SUPERVISOR. IN ITS BRIEF, THE AGENCY ARGUED THAT WHEN MANAGEMENT LEARNED OF LAGRAVE’S “MISSTEP,” IN NOT CLOSING OUT HIS EMPLOYEE EVALUATIONS, THE DEPUTY DIRECTOR, A SECOND LEVEL SUPERVISOR, CLOSED OUT THE EVALUATIONS AND EVALUATED GRIEVANTS FOR THE PERIOD IN WHICH THERE WAS NO SUPERVISOR. IN THIS CONTEXT, THE NEW SUPERVISOR, MARTINEZ, ATTENDED THE MANDATORY STATE EMPLOYEE EVALUATION COURSE AND ISSUED HER FIRST EMPLOYEE EVALUATION. EMPLOYEES RECEIVED SCORES THEY FELT WERE BELOW WHAT THEY EXPECTED AND VOICED THEIR CONCERNS AND PROVIDED THEIR INPUTS TO MANAGEMENT. IN AN
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EFFORT TO CORRECT THE “MISSTEP,” THE DEPUTY DIRECTOR OF EXTERNAL OPERATIONS, MS. TRUJILLO, CLOSED OUT THE EVALUATIONS OF GRIEVANTS AND Recognized EACH ONE OF THEM FOR:

“HAVING FUNCTIONED WITHOUT CLOSE SUPERVISION WHILE MAINTAINING AND EXCEEDING THEIR PERFORMANCE CRITERIA AND PROVIDING GUIDANCE AND FEEDBACK TO EACH OTHER DURING THE TIME THEY WERE WITHOUT A BUREAU CHIEF.”


EVALUATIONS’ CHANGED CRITERION/TIMELINESS DEFECTS

11. COMMUNICATION AND LISTENING SKILLS... PROFESSIONAL NON-DEFENSIVE COMPOSURE... POSITIVE ATTITUDE.” THIS ARBITRATOR AGREES WITH THE UNION THAT ALTHOUGH THE NEW PERFORMANCE CRITERIA ARE WORTHWHILE, THEY DID NOT BELONG AMONG A LIST OF CRITERIA WHICH MUST BE “SPECIFIC, ATTAINABLE, RELEVANT AND MEASURABLE,” AS REQUIRED BY ARTICLE 17. AS A RESULT OF UNION OBJECTIONS TO MS MARTINEZ’S CRITERIA LANGUAGE, THE EVALUATIONS WERE WITHDRAWN, AND, EVIDENCE SUGGESTS (TR, 37:2-21) THAT MARTINEZ, THE BUREAU CHIEF, WOULD BE SENT BACK FOR ADDITIONAL TRAINING ON HOW TO PROPERLY PREPARE AN EVALUATION. HOWEVER, THE AGENCY DID NOT PROVIDE A NEW OPENING EVALUATION DOCUMENT (CONTAINING APPROPRIATE AND CONTRACTUALLY ACCEPTABLE PERFORMANCE CRITERIA) UNTIL APPROXIMATELY ONE YEAR LATER, ON JUNE 3, 2009. AND, ACCORDING TO GRIEVANT DURAN, SHE TESTIFIED THAT SHE DID NOT RECEIVE THESE DOCUMENTS UNTIL SHE WAS CALLED INTO THE OFFICE TO MEET WITH HER SUPERVISOR AND WAS PRESENTED WITH “A DOCUMENT WHICH WAS (BOTH) THE CLOSING DOCUMENT AND THE OPENING DOCUMENT,” WITH NO INTERIM EVALUATION. THUS, GRIEVANTS WERE EVALUATED BASED UPON PERFORMANCE CRITERIA WHICH THEY DID NOT ACTUALLY RECEIVE OR REVIEW UNTIL THE SAME DAY THAT THEY WERE EVALUATED FOR THE PREVIOUS YEAR’S WORK, ALL IN VIOLATION OF THE AGREEMENT. IN FACT, AT THE ARBITRATION
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13.
OF WHAT (WORKERS) ARE SUPPOSED TO DO,” AND FURTHER EXPLAINED THAT, “FOR WORKERS TO PERFORM ADEQUATELY. . .IN A WAY THEY FEEL THEY ARE BEING TREATED FAIRLY, THEY NEED TO KNOW THE CRITERIA.” ONCE BUREAU CHIEF MARTINEZ’S NON-COMPLYING LIST OF CRITERIA HAD BEEN “WITHDRAWN’ BY THE AGENCY, A NEW OPENING EVALUATION DOCUMENT, CONTAINING CONTRACTUALLY ACCEPTABLE CRITERIA, SHOULD HAVE BEEN IMMEDIATELY SUBMITTED TO GRIEVANTS. AND, THE ONE YEAR DELAY IN SUBMISSION CONSTITUTED A SERIOUS ELEMENT OF “MANAGEMENT FAULT” WHICH CANNOT BE DISMISSED AS “HARMLESS ERROR,” AS MANAGEMENT APPEARS TO SUGGEST.

CONCLUSION

BASED UPON THE “TOTALITYOF EVIDENCE”, IT IS THE ARBITRATOR’S CONSIDERED OPINION THAT THE UNION HAS MET ITS BURDEN OF PROOF IN THIS CASE. THE EVIDENCE CONTAINS SEVERAL EXAMPLES OF “MISSTEPS” IN THE AGENCY’S PROCESSING AND PREPARATION OF GRIEVANTS’ 2009 EVALUATIONS, IN VIOLATION OF ARTICLE 17 OF THE AGREEMENT. THE FIRST OF THESE “MISSTEPS”, OR EXAMPLES OF “MANAGEMENT FAULT”, WAS GRIEVANTS’ PRIOR SUPERVISOR’S FAILURE TO “CLOSE OUT” THEIR PERFORMANCE EVALUATIONS PRIOR TO LEAVING THE AGENCY. THIS CAUSED A TWO-MONTH GAP IN WHICH GRIEVANTS WERE REQUIRED TO FUNCTION ALONE WITHOUT A DIRECT FIRST-LINE SUPERVISOR. THE SECOND “MISSTEP” OCCURRED WHEN
14.
INEXPERIENCED REPLACEMENT SUPERVISOR MARTINEZ, WHO HAD NO ACTUAL TIME OBSERVING GRIEVANTS, ISSUED HER 2008 “FIRST-EVALUATIONS”. THESE EVALUATIONS HAD TO BE “CLOSED OUT” AND EVENTUALLY CONVERTED TO TOP SCORES “ACROSS THE BOARD” EXEMPLARY EVALUATIONS (“4’S”), WHICH WERE MORE REFLECTIVE OF GRIEVANTS’ PERFORMANCE RATINGS THE YEAR BEFORE THEIR REPLACEMENT SUPERVISOR’S ARRIVAL. IT SHOULD BE NOTED THAT DEPUTY DIRECTOR TRUJILLO, IN CORRECTING THIS MISSTEP, RECOGNIZED GRIEVANTS FOR “HAVING FUNCTIONED WITHOUT CLOSE SUPERVISION, WHILE MAINTAINING AND EXCEEDING THEIR PERFORMANCE CRITERIA AND PROVIDING GUIDANCE AND FEEDBACK TO EACH OTHER DURING THE (2 MONTHS) THEY WERE WITHOUT A BUREAU CHIEF.” (TR. AT 87). THE THIRD “MISSTEP” OCCURRED WHEN REPLACEMENT SUPERVISOR MARTINEZ USED IMPROPER SUBJECTIVE CRITERIA, NOT IN COMPLIANCE WITH ARTICLE 17, IN HER 2008 OPENING EVALUATIONS, WHICH WERE SUBSEQUENTLY WITHDRAWN BY THE AGENCY. SUPERVISOR MARTINEZ’ CRITERIA DID NOT RELY UPON “OBJECTIVE FACTORS” AND WERE NOT “SPECIFIC” OR “JOB RELATED,” AS REQUIRED BY ARTICLE 17 AND PREVAILING ARBITRAL PRECEDENT. FINALLY, THE FOURTH IDENTIFIED “MISSTEP” WAS MANAGEMENT’S FAILURE TO PROVIDE GRIEVANTS WITH A NEW OPENING EVALUATION DOCUMENT (CONTAINING APPROPRIATE AND CONTRACTUALLY ACCEPTABLE PERFORMANCE CRITERIA) UNTIL
15. APPROXIMATELY ONE YEAR LATER. EQUITY DEMANDS THAT GRIEVANTS SHOULD NOT BE HELD ACCOUNTABLE FOR MANAGEMENT’S FAULT, AND THE AGENCY HAS ALREADY ADMITTED THIS FACT IN ITS DECISION TO “CLOSE OUT” AND CONVERT GRIEVANTS’ FIRST 2008 EVALUATIONS TO “ACROSS THE BOARD” EXEMPLARY EVALUATIONS (“4’S”). AND, WHILE MANAGEMENT SHOULD BE APPLAUDED FOR CORRECTING ITS SECOND “MISSTEP” AND FAIRLY TREATING GRIEVANTS IN THE 2008 NEGOTIATED SETTLEMENT, THE AGENCY HAS A BIT MORE EQUITY TO DISPERSE. SPECIFICALLY, EQUAL TREATMENT SHOULD BE AFFORDED GRIEVANTS FOR AGENCY “MISSTEPS” THREE AND FOUR, BY ALSO CONVERTING THEIR JUNE/JULY, 2009 PERFORMANCE EVALUATIONS TO “ACROSS THE BOARD” EXEMPLARY EVALUATIONS (“4’S”). GIVEN THE FACT THAT PARTIES HAVE ALREADY NEGOTIATED THIS REMEDY FOR PAST INFRACTIONS, IT APPEARS TO BE THE ONLY “APPROPRIATE” ONE IN THIS CASE. THE ARBITRATOR IS OF THE OPINION THAT THIS “MAKE WHOLE” REMEDY PROVIDES MAXIMUM PROTECTION TO GRIEVANTS, WHILE PROVIDING THE EMPLOYER WITH THE APPROPRIATE INCENTIVE TO HONOR ITS OBLIGATIONS TO PROVIDE A NEUTRAL AND FAIR EVALUATION SYSTEM.
AWARD

THE GRIEVANCE IS SUSTAINED.

IT IS, HEREBY, CONCLUDED THAT: THE AGENCY VIOLATED
ARTICLE 17 OF THE COLLECTIVE BARGAINING AGREEMENT,
IN ITS PROCESSING AND PREPARATION OF THE 2009
PERFORMANCE EVALUATIONS OF GRIEVANTS.

IT IS, HEREBY, ORDERED THAT: EACH OF GRIEVANTS’ JUNE/
JULY, 2009 PERFORMANCE EVALUATIONS BE CHANGED TO
“ACROSS THE BOARD” EXEMPLARY EVALUATIONS (“4’S”),
IMMEDIATELY, UPON RECEIPT OF THIS OPINION AND AWARD.

NEW ORLEANS, LA.
JULY 9, 2010

BARRY J. BARONI, ARBITRATOR