GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

In the Matter of:	
AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 1403,	PERB Case No. 03-N-02
	Opinion No. 709
Petitioner,	
and	
DISTRICT OF COLUMBIA OFFICE OF THE CORPORATION COUNSEL,	
Agency.	

DECISION AND ORDER

This case involves a Negotiability Appeal filed by the American Federation of Government Employees, Local 1403 ("AFGE"). AFGE and the D.C. Office of the Corporation Counsel (OCC) are engaged in bargaining concerning non-compensation and compensation matters. The present Appeal concerns the negotiability of AFGE's proposal concerning Performance Evaluations, a non-compensation matter. In a written response to AFGE, OCC declared the subject of Performance Evaluations and AFGE's specific proposal concerning Performance Evaluations non-negotiable[1]. As a result, AFGE filed the present Negotiability Appeal. AFGE is now seeking a determination concerning whether AFGE's proposal related to "Performance Evaluations" is within the scope of bargaining. In addition, AFGE seeks to have the Board decide whether its specific proposal, Article 11[2], entitled "Performance Evaluations", is negotiable.

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[1]OCC's declarations of non-negotiability were made in a December 16, 2002 letter to the Union through its representative, the Office of Labor Relations and Collective Bargaining (OLRCB).

[2]Article 11, which forms the basis of this Negotiability Appeal, is attached to this

(continued...)

The Board has the authority to consider the negotiability of the proposals pursuant to Board Rules 532.1[3] and 532.4[4]. This Negotiability Appeal presents several issues for the Board to resolve. As a result, we will summarize those issues and give the Board's determination concerning each in the following paragraphs.

Issue 1: Article 11- "Performance Evaluations"

Whether the subject of Performance Evaluations is an unlawful subject of bargaining?

OCC contends that D.C. Code §1-613.53 (b) (2001 ed.)[5] prohibits bargaining over the subject of performance evaluations, and is therefore, an illegal subject of bargaining under the *Borg -Warner* standard adopted by the Board in the University of the District of Columbia Faculty Association/NEA and University of the District of Columbia [6]case. 29 DCR 2975, Slip Op. No. 43, PERB Case No. 82-N–01 (1982). Specifically, D.C. Code §1-613.53 (b) provides, in pertinent part, that: "notwithstanding any other provision of law or any other collective bargaining agreement, the implementation of the Performance Management System established in this subchapter is a non-negotiable subject for collective bargaining." Furthermore, OCC asserts that D.C. Code §1-613.53

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[2](...continued)
Decision and Order and should be referred to when reading this Opinion. (Exhibit C of Negotiability Appeal).

[3]Board Rule 532.1 provides outlines the procedure for filing a negotiability appeal with the Board.

[4] Board Rule 532.4 outlines the procedure for handling a negotiability appeal once it is filed.

[5]Throughout this Opinion, all references to the D.C. Code will refer to the 2001 edition.

[6]In UDCFA/NEA v. UDC, the Board adopted the Supreme Court standard concerning subjects for bargaining that was established and defined in the National Labor Relations Board v. Borg-Warner Corp. case. 356 U.S. 342 (1975); 29 DCR 2975, Slip Op. No. 43 at p. 2, PERB Case No. 82-N–01 (1982). Under this standard, the three categories of bargaining subjects are as follows: (1) **mandatory** subjects-over which the parties must bargain; (2) **permissive subjects**, over which the parties may bargain; and (3) **illegal** subjects, over which the parties may not legally bargain. Id. In the present case, OCC contends that the subject of Performance Evaluations is an illegal subject of over which the parties may *not* legally bargain.

(b), which is contained in Subchapter XIII-A[7] of the D.C. Code, has general applicability to D.C. Government employees, unless those employees are excluded from coverage by D.C. Code §1-602.01 (2001 ed.). According to OCC's interpretation of the coverage section noted above, there is nothing which specifically exempts OCC attorneys from coverage by Subchapter XIII-A or the Performance Management System described therein. As a result, OCC concludes that the prohibition against bargaining over the subject of Performance Management pursuant to D.C. Code §1-613.53 (b)(2001 ed.) applies to attorneys employed by OCC, including those who are represented by AFGE.

AFGE contends that the prohibition against bargaining over the Performance Management System, which is contained in D.C. Code §1-613.53 (b), applies to other employees in the District of Columbia Government, but does not apply to attorneys covered under the Legal Services Establishment Act (LSEA).[8] Specifically, AFGE contends that the prohibition found in D.C. Code §1-613.53 (b) does not apply to attorneys employed by OCC because OCC has its own independent authority pursuant to D.C. Code §1-608.57©)) to establish its own Performance Management System[9] and regulations for attorneys. In addition, AFGE contends that the LSEA, contained in Subchapter VIII-B, contains no such language indicating that bargaining over the Performance Management System is prohibited. As a result, AFGE contends that the subject is negotiable.

Board's Finding: The Board finds that this is a negotiable subject for bargaining based on the negotiability presumption found in D.C. Code §1-617.08 (b). OCC relies on D.C. Code §1-613.52(b) to support its argument that the CMPA prohibits negotiation over this issue. However, the Board finds that D.C. Code§ 1-613.52 (b) does not apply to the Performance Management System that is in place for attorneys. We make this finding based on the fact that the D.C. City Council, through its legislation, gave the Corporation Counsel the exclusive authority to "develop and establish a performance management system" of its own which would apply to attorneys in the Legal Service. Furthermore, there is no language contained in the Legal Services Establishment Act (LSEA) itself or specifically, in D.C. Code §1-608.57 (b), which prohibits negotiating over the Performance Management System for attorneys. More importantly, under a strict interpretation of the relevant statutes, the Board believes that *if* the D.C. City Council had intended for the subject of Performance Management to be a non-negotiable subject for attorneys, it would have included

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[7]Subchapter XII-A is entitled "Performance Management."

[8] The Legal Services Establishment Act (LSEA) is codified in Subchapter VIII-B of the D.C. Code entitled "Legal Service".

[9]The Performance Management System for Attorneys is contained in Chapter 36 of the District Personnel Manual, entitled "Legal Service."

language similar to that contained in D.C. Code §1-613.53(b)[10]. Specifically, this language would have expressly prohibited attorneys from negotiating over the subject of Performance Management. No such language is present in this case. Additionally, the Board notes that Chapter 36 of the District Personnel Manual, which outlines the Performance Evaluation System that is applicable to attorneys in the Legal Service, does not include any language which prohibits negotiating over the subject of Performance Evaluations. In addition, there is no Board precedent which prohibits bargaining over the subject of Performance Management, in general, or the subject of Performance Evaluations, in particular. In view of the above, the Board finds that subject of Performance Evaluations is *negotiable.*

Issue 2: Article 11, §A-Interpretation With Other Laws and Regulations

Whether a provision stating that : "to the extent that this Agreement conflicts with District law or regulation, this Agreement controls ", is negotiable?

OCC characterizes this section as requiring that the terms of the parties' collective bargaining agreement supercede any applicable District of Columbia law or regulation. As a result, OCC argues that an Employer may not negotiate on a proposal that is inconsistent with law. Therefore, OCC contends that this provision, is non-negotiable, because on its face, it requires the OCC to violate applicable law and regulations.

AFGE does *not* address this particular contention in its Negotiability Appeal or in its Response to the Respondent's Reply to the Negotiability Appeal, although it does contend that the subject of Performance Evaluations is *negotiable.* (Appeal at pg. 1).

Board's Finding: The Board believes that §A of Article 11 is negotiable. First of all, the CMPA is clear that all subjects are negotiable unless proscribed by law. In OCC's discussion of this issue, it does not identify a particular law or regulation that is being violated by this section. However, it does contend that §A is non-negotiable and also seems to assert that D.C. Code §1-613.52 (b) is being violated by the inclusion of language from §A of this proposal. As stated earlier, the Board's position is that D.C. Code §1-613.52 (b) is not applicable to attorneys covered by the LSEA. This is the case because attorneys have their own law concerning performance management and evaluation. As a result, the Board finds no prohibition on using this language in a proposal.

Furthermore, if the Board found that the language in §A was not permissible, employees covered by a collective bargaining agreement would never be able to negotiate over any subject that was

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[10] As mentioned earlier, D.C. Code §1-613.53(b) contains language which expressly prohibits negotiating over the Performance Management System applicable to most D.C. Government employees.

defined by law or regulations. For example, where the D.C. Code or District Personnel regulations address the subject of "Benefits," represented employees would be barred from negotiating over the subject of "Benefits." Since most areas relating to D.C. Government employees are addressed in collective bargaining agreements or by some portion of the D.C. Code and/or the District Personnel Manual, the parties would only be able to negotiate concerning a limited number of topics under OCC's interpretation of §A. The Board does not believe that this is the result that the D.C. City Council contemplated when it enacted legislation permitting represented employees to engage in negotiations concerning non-compensation and compensation matters. [11] As a practical matter, many subjects are negotiated by parties even though they are covered by the city's personnel regulations. In view of the above, the Board finds that §A of Article 11 is negotiable.

Issue 3: Article 11, §B Purpose and Objective of Performance Evaluation Systems

Whether a provision which establishes the purpose of the performance evaluation system, and outlines five (5) objectives for meeting that purpose, including setting standards that performance appraisals must meet[12], is negotiable?

OCC contends that this entire provision is non-negotiable. Specifically, OCC points to the fact that the Union's proposed language, which, *inter alia,* requires that the Employer "provide periodic appraisals of job performance which are *objective, fair, and reasonable*", violates management's right to assign and direct employees pursuant to D.C. Code §1-617.08 (2001ed.). OCC explains its position by asserting that this is an attempt by AFGE to dictate the content of performance appraisals. Furthermore, OCC contends that these vague standards, *"objective, fair, and reasonable"*, impinge directly on the performance standards that the Employer establishes for its employees. (See Response at pg. 8 ; Exhibit A to Appeal).

AFGE responds to OCC's contention by acknowledging that management has the right to assign and direct employees. That notwithstanding, AFGE relies on American Federation of Government Employees, Local 383 v. D.C. Department of Human Services, to support its contention that the union has a right to bargain over the impact and effects of, and procedures concerning, the implementation of management's rights. 49 DCR 770, Slip Op. No. 418, PERB Case No. 94-U-09 (2002). AFGE contends that §B of Article 11 fits into the category of permissible bargaining, notwithstanding management's rights. On this basis, AFGE contends that this section of the proposal is negotiable.

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[11]Employees have the right to negotiate concerning non-compensation and compensation matters pursuant to D.C. Code §1-617.08 and D.C. Code §1-617.17.

[12]Article 11, §B, subsection 1, states that one of the purposes of the performance evaluation system is to provide periodic appraisals of job performance which are *objective, fair, and reasonable.* (See attached Exhibit C, for the complete and exact language of proposal.).

Board's finding: The Board finds that § B of Article 11 is *non-negotiable*. The Board does not have any precedent which addresses this exact issue, namely whether it is permissible for a Union's proposal to determine the purpose of management's Performance Evaluation System. However, the Board did locate Federal Labor Relations Authority (FLRA) precedent which stated definitively that "the evaluation of employee performance is an exercise of management's rights to direct and assign work." [13] Patent Office Professional Association and U.S. Department of Patent and Trademark, 48 FLRA 129, 142 (1993). The Board relies on precedent of other the labor relations agencies, where it has no precedent on an issue. See, Washington Teacher's Union v. D.C. Public Schools, 49 DCR 762 , Slip Op. No. 417, PERB Case No. 92-U-13(2002). In view of the fact that the FLRA has held that the evaluation of employee performance is an exercise of management's right to direct and assign employees, the Board will use this precedent as a guide in finding that this portion of AFGE's proposal, which seeks to outline the purposes of management's Performance Evaluation System, is non-negotiable. Specifically, the Board finds that management's right to evaluate employee performance is an exclusive one. As a result, the Board views the Union's proposal in §B of Article 11 as one that usurps OCC's authority to determine the purpose(s) of its Performance Evaluation System.

In response to AFGE's argument that it has the right to negotiate over the impact and effects, as well as the procedures concerning the implementation of a management right, the Board acknowledges that AFGE has this right. However, the Board finds that the language proposed in §B goes well beyond an attempt to negotiate concerning the impact and effects of or the procedures used for implementing a management right. The Board does not think it necessary to analyze the effect of the Union's use of words such as *objective, fair, and reasonable* to describe its proposed standards for conducting performance appraisals, as described in subsection 1 of §B, because the Board concludes that the Union has no right to determine the purpose of the Performance Evaluation System that management will use to review its employees. As a result, the Board finds that §B of the proposal 11 is *non-negotiable* .

Issue 4: Article 11, §C Achievement of Purposes and Objectives

Whether §C, which, *inter alia* : (1) sets forth criteria for performance standards, individual accountability plans, and evaluations; (2) requires management to consult with the Union over whether the criteria is met; and (3) requires the parties to submit the criteria to the grievance and arbitration procedure if the parties cannot agree, is negotiable?

OCC asserts that the proposal is non-negotiable. Specifically, OCC argues that the proposal

[13]The Federal Labor Relations Authority's management's rights statute, codified at 5 U.S.C. 7106 (a)(2)(A)and (B), is very similar to the CMPA's management's rights statute.

restricts OCC's right to determine the content of performance standards. On this basis, OCC contends that it interferes with management's rights to "direct employees of the agencies and assign employees within the Agency pursuant to D.C. Code §1-617.08(a)(1) and (2)." (See, Response to Appeal and Exhibit A to Appeal-Letter from Joseph Reyna to Charlotte Bradley). OCC cites Federal Labor Relations Authority precedent to support its position that a proposal which restricts an Agency's right to determine the content of its performance standards and critical elements directly interferes with management's rights to direct employees and assign work. See, Patent Office Professional Assoc. and U.S. Department of Commerce Patent and Trademark Office[14], 48 FLRA No. 14(1993); NTEU and U.S. DHHS, Office of Hearing and Appeals [15], 44 FLRA 293,300 (1992.); and NTEU and Dept. Of Treasury, Bureau of the Public Debt,[16] 3 FLRA 769, 775-776(1980), aff'd 691 F 2d 553 (D.C. Cir. 1982). OCC also contends that the Union's proposal is susceptible to abuse by the Union and individual employees who wish to contest either their performance standards or evaluations.[OCC specifically objects to the use of the words *"objective, fair, reasonable, and possible to attain"* in describing criteria for performance standards; OCC is concerned that the language is too vague and broad and that arbitrators, and not supervisors, would be in the position of determining the meaning of the language and the employee's rating. This would be the case especially, where the parties could not agree on what the language means.].

Board's Finding: The Board finds that the entire provision in §C is *non-negotiable* and is a violation of management's rights. As noted above, the Board has not ruled on this specific issue, but may use FLRA's precedent on this issue as a guide.[17]

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[14]In this case, the FLRA held that proposals which restrict an agency's right to determine the content of performance standards and critical elements directly interfere with management's rights to direct employees and assign work under §7106(a)(2)A) and (B) of the statute. Patent Office Professional Assoc. And U.S. Department of Commerce Patent and Trademark Office, 48 FLRA No. 14 (1993).

[15] In this case, the FLRA held that any proposals which would prohibit management from holding employees accountable for work performance directly interfere with management's right to direct employees and assign work. NTEU and U.S. DHHS, Office of Hearing and Appeals 44 FLRA 293, 300 (1992.)

[16]In this case, the FLRA stated that it has long held that management's right to direct employees and assign work includes the right to supervise employees and direct the quantity, quality, and timeliness of employees' work products and to establish the employees' work priorities. NTEU and Dept. Of Treasury, Bureau of the Public Debt, 3 FLRA 769, 775-776(1980), aff'd 691 F 2d 553 (D.C. Cir. 1982).

[17]As noted earlier, the Board relies on precedent from other labor relations agencies where it has not decided an issue. See, Washington Teachers' Union v. D.C. Public Schools, 49

(continued...)

When reviewing proposals that relate to an employee's performance, the FLRA has found that any proposals which would prohibit management from holding employees accountable for work performance interferes directly with management's right to direct and assign employees. See NTEU and U.S. DHHS, Office of Hearing and Appeals , 44 FLRA 293,300 (1992.). In addition, the FLRA has long held that management's right to direct employees and assign work includes the right to supervise employees and direct the quantity, quality, and timeliness of the employees' work product and to establish the employees' work priorities. NAGE Local R14-52 and U.S. Department of Defense, DFAS, Washington, DC, 45 FLRA 910, 913 (1992). Also, the FLRA has held that an essential aspect of management's assignment of work and direction of employees is the establishment of job requirements for various levels of performance in order to achieve the quality and amount of work needed from employees to effectively and efficiently fulfill the agency's mission and functions. Id. at 914. Thus, management's right to direct employees and assign work includes the establishment of the productivity requirements that employees must attain for their performance to meet acceptable or superior levels for the purposes of receiving an award or avoiding punitive action . Id.

In light of the above noted FLRA case holdings, the Board finds that the language requiring that performance standards, individual accountability plans and evaluations be *objective, fair, reasonable, and possible to attain,* infringes on management's right to direct and assign employees. Furthermore, the Board believes that such language in a proposal, which also requires management to consult with the union in order to determine whether the standards are met, is non-negotiable. In addition, the Board finds that this proposed language seeks to give the Union too much control in an area where, by law, the Union has no authority to control.[18]

While neither party offers much discussion concerning Subsection 3[19] of §C, the Board finds that this portion of the proposal is also non-negotiable because it seeks to limit the factors that management may consider when determining what performance rating a person is assigned. In view of the above, the Board finds that §C, in its entirety, is *non-negotiable.*

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[17](...continued)
DCR 762 , Slip Op. No. 417, PERB Case No. 92-U-13(2002).

[18] The Board finds the above noted portion of §C non-negotiable because it would ultimately require management to submit the matter to grievance and arbitration procedures for a determination concerning: (1) what the standard is and (2)whether the standard was met, under circumstances where the parties could not agree.

[19]Subsection 3, under §C, prohibits management from considering the availability of appropriations or the number of employees who receive various ratings as a factor in determining an employee's evaluation rating..

Issue 5: Article 11, §D-Grievances

Whether a provision which subjects performance evaluations[20] to the contractual grievance and arbitration procedure is negotiable?

OCC contends that the proposal is non-negotiable. Specifically, OCC argues that subjecting performance evaluations to contractual grievance and arbitration procedures would impermissibly impinge on management's rights pursuant to D.C. Code §1-618.08(a)(1) and (2). In its response to the Appeal, AFGE contends that it objects to §D because it impermissibly extends coverage of the grievance and arbitration procedure to the contents of performance standards and performance evaluations. (Response to Appeal at p. 4). However, OCC does not elaborate on or provide much support for this contention.

AFGE does not specifically address this issue in its Response. It merely states its belief that performance appraisals are grievable. (See, Appeal at p.1).

Board's Finding: The Board finds that the issue of subjecting performance evaluations to the grievance process is *negotiable*. We make this finding based on the negotiability presumption found in D.C. Code §1-617.08 (b). [21] After a careful review of the relevant D.C. Code sections, including the Legal Services Establishment Act, in particular, the Board did not locate any language which prohibited attorneys from submitting performance evaluations to the grievance and arbitration process. As a result, the Board finds that the subject of submitting grievances concerning performance evaluation ratings is *negotiable.*

However, the Board also finds that the portion of §D which states that "an employee may elect to appeal evaluations to the Office of Employee Appeals" presents an illegal subject of bargaining.

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[20]The words "Performance Evaluations" and "Performance Appraisals" are used interchangeably in this Opinion.

[21] Pursuant to D.C. Code §1-608.57, the Corporation Counsel was given authority to develop and establish a performance management system. The performance management system which was established appears in Chapter 36 of the District Personnel Manual, entitled "Legal Service." DPM §3605 , entitled "Evaluation of Performance-Office of the Corporation Counsel Line Attorneys", outlines the evaluation procedures for attorneys employed at the OCC. This section also sets forth a review process for attorneys who dispute their ratings and indicates that the evaluation ***shall be final and not subject to further appeal***, once the evaluation and any issues concerning it, have received due consideration through the designated chain of command. However, the Board finds *no* language in the D.C. Code which restricts represented attorneys at the OCC to using the process outlined in Chapter 36. On this basis, the Board concludes that negotiating over a grievance or review process for performance evaluations is permissible and is consistent with the law .

Specifically, pursuant to D.C. Code §1-606.03 (2001 ed.), OEA's jurisdiction for reviewing performance evaluation ratings is limited to those circumstances where the performance rating results in the termination of an employee. As a result, all evaluations are *not* subject to review, as the language in §D would suggest. Therefore, there is no general right to select the OEA process to appeal a performance evaluation rating. On this basis, the Board finds that the second sentence in §D is *non-negotiable.*

Issue 6: Article 11, § E- 360 Degree Feedback Process

Whether a provision which gives represented attorneys the authority to evaluate their employer-supervisor is negotiable?

OCC argues that this provision is non-negotiable. Specifically, OCC contends that the Union's proposal impermissibly attempts to establish a system for the evaluation of an OCC supervisor by a unionized subordinate attorney. In addition, OCC asserts that the Union impermissibly attempts to establish discipline for supervisors who do not meet the designated performance criteria and are unwilling or unable "to manage" by providing that those attorneys are subject to demotion or termination. (Response at p. 11). Finally, OCC asserts that the proposal is non-negotiable since it seeks to negotiate concerning terms and conditions of employment for non-bargaining unit employees employed by the OCC. See, UDCFA/NEA and UDC, 29 DCR 2975, Slip Op. No. 43, PERB Case No. 82--01(1982). (where the Board held non-negotiable a union proposal that would have allowed bargaining unit members to elect department chairs by secret ballot. The Board declared the proposal non-negotiable on the ground that "Department Chairpersons are not within the bargaining unit represented by the associations and are management employees.").

AFGE does not make any specific assertions in support of its contention that this section is negotiable.

Board's Analysis: Relying on our holding in UDCFA/NEA and UDC, we find that this provision is *non-negotiable* because AFGE seeks to negotiate terms and conditions of employment for individuals who are not within the bargaining unit represented by AFGE and are management employees . In addition, AFGE did not offer any support for its contention that subordinates have the authority to evaluate management officials and impose discipline, including termination, where management officials are given a low performance rating. The Board's review of the relevant D.C. Code sections and District Personnel Manual only found references to superiors (or higher graded employees) evaluating subordinates (or lower graded employees), not the reverse. In view of the above, the Board does not believe that the 360 degree feedback process, as outlined in §E is a permissible arrangement. As a result, the Board finds that §E is *non-negotiable.*

ORDER

IT IS HEREBY ORDERED THAT:

1. The subject of Performance Evaluations is a negotiable subject of bargaining based on the negotiability presumption found in D.C. Code §1-617.08 (b).

2. Section A (Interpretation With Other Laws and Regulations) of Article 11, is *negotiable.*

3. Section B (Purpose and Objective of Performance Management System)of Article 11, is *non-negotiable.*

4. Section C (Achievement of Purposes and Objectives)of Article 11, is *non-negotiable.*

5. Section D (Grievances)of Article 11, is *negotiable.*

6. Section E (360 Degree Feedback Process) of Article 11, is *non-negotiable.*

7. Pursuant to Board Rule 559.1, this decision is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD
Washington, D.C.

July 25, 2003

Office of the Corporation Counsel **October 15, 2002**
Union Revision to Original Proposal

Article – Performance Evaluations
(Currently Union Article 11)

A. Interpretation With Other Laws and Regulations

To the extent this Agreement conflicts with District law or regulation, this Agreement controls.

B. Purpose and Objectives of Performance Evaluation Systems

The purpose of the performance evaluation system is to accomplish the following objectives:

1. Provide periodic appraisals of job performance which are objective, fair, and reasonable;
2. Provide employees with recognition and appropriate rewards for their accomplishment;
3. Provide for employee participation in establishing appropriate evaluation standards;
4. Provide employees with regular informal and formal feedback to keep employees advised of employer expectations and how well they are meeting those expectations; and
5. Provide information on current performance and assist the employee in improving performance and furthering individual development.

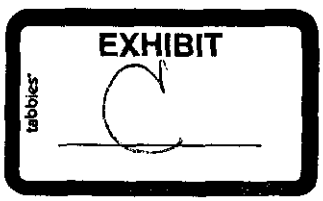
C. Achievement of Purpose and Objectives

1. Performance standards, individual accountability plans, and evaluation shall be objective, fair, reasonable, and possible to attain. They shall state specifically and definitively what is necessary to achieve a particular level of performance.

2. Management agrees to consult with the Union to ensure that these objectives are met, notwithstanding any law or regulation to the contrary. In the event that the Union and Management disagree as to whether performance standards, individual accountability plans, and/or evaluations, generally, or as applied to specific employees are objective, fair, reasonable, or possible to attain, the dispute shall be submitted to the grievance and arbitration procedure.

3. In no case will management consider availability of appropriations, or the number of employees who receive various ratings, as a factor in determining an employee's evaluation.

D. Grievances



Evaluations are grievable in accordance with the grievance and arbitration procedures of this Agreement. However, an employee may elect to appeal evaluations to the Office of Employee Appeals in accordance with controlling District law and regulations.

E. 360 Degree Feedback Process

A 360 degree feedback process will be instituted for all supervisors/managers. This will include, but not be limited to, evaluation of supervisors/managers by subordinate employees on the supervisor/manager's people management/development skills (i.e., coaching/mentoring). The evaluations by the subordinate employees will be submitted to and reviewed by the Union. Following review by the Union, the evaluations will be submitted to Management and the results shall be incorporated into the performance appraisal rating for each supervisor. Managers who are unwilling or unable to manage shall be demoted or dismissed.

F. Timely Evaluations

1. Evaluations of bargaining unit members shall be provided to the member within thirty (30) days of the close of the evaluation period and shall be considered timely if received within that time period.

2. Employees who receive untimely evaluations and whose salary will be reduced as a result of the evaluation, shall not be required to retroactively repay any amounts received as a result of the currently higher salary.

G. Appeals of Evaluations

All evaluation appeals shall be completed within thirty (30) days of their initiation, absent emergency or extenuating circumstances.