

ARBITRATOR'S DECISION AND AWARD

IN THE MATTER OF ARBITRATION)
BETWEEN;)
)
AFGE LOCAL NO 2663)
)
and)
)
DEPARTMENT OF VETERANS AFFAIRS)
VA MEDICAL CENTER, KANSAS CITY)
)
)
)ISSUES: PERFORMANCE
)STANDARDS, REMEDY

Dates of Hearing: February 11, 2015

Date of Closing of the Record: March 12, 2015

Date of Decision: March 16, 2015

Appearances:

Union: Anthony W. McKenzie

Agency: Michael Anfang

Arbitrator: Michael S. Hill

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I. BACKGROUND

The Veterans Medical Center in Kansas City provides medical services to 200,000 veterans in the Kansas City area. The population of the metropolitan area exceeds 1.5 Million people.

The American Federation of Government Employees Local 2663 through its President, Anthony McKenzie, filed a grievance that alleged that 650 employees at the Kansas City VA Medical Center were not provided with performance standards which informed them what must be achieved to receive an Exceptional rating.

A grievance was filed on November 29, 2013. The grievance was denied on December 30, 2013 and subsequently, arbitration was requested by the Union. A hearing was conducted at the facility on February 11, 2015.

The parties presented their arguments, introduced documents, examined and cross examined witnesses, and presented their cases in full. Post hearing briefs were also filed.

II. ISSUES

The issues presented to the Arbitrator were whether the VA management violated the collective bargaining agreement provision regarding the provision of performance standards to employees and if so, what is the remedy?

III. RELEVANT DOCUMENTS

Documents entered as Exhibits include the collective bargaining agreement, the grievance, the grievance decision, records pertaining to an unfair labor

practice charge filed by the Union, a Performance Standard Development guidance brochure, the Union's opening statement, a Memorandum from the Assistant Secretary for Human Resources and Administration, guidance for assigning ratings for each performance element, Appraisal Programs for an IT Specialist, a Medical Support Assistant, and a Medical Instrument Technician, Diagnostic Ultrasound.

IV. SUMMARY POSITIONS OF THE PARTIES

A. Agency

The Agency position is that no violation pertaining to Performance Plans or Standards occurred. The Agency also contends that the Union must establish a violation pertaining to 650 employees as alleged.

B. Union

The Union position is that the Agency violated the collective bargaining agreement provision that Supervisors are required to provide information to employees on what is expected of them to reach the Exceptional level. The Union alleged that 650 employees were adversely affected by failure to receive such information.

V. SUMMARY OF THE EVIDENCE

Joint Exhibit 1, the collective bargaining agreement, provides in Article 27 Section 5, Performance Standards, B. "Whether or not more than one level is defined, the rating official will provide the employee with information that is adequate to inform him/her of what is necessary to reach an "Exceptional" level

on each element. Additional information regarding performance expectations can be in the form of written instructions, work plans, records of feedback sessions, responses to employee questions concerning performance, memoranda describing unacceptable performance, or any reasonable manner calculated to apprise the employee of the requirements against which he/she is to be measured. This additional specification should be sufficient to assist the employee in achieving the “Exceptional” level.”

Joint Exhibit 2 which includes the grievance lists violations of Article 27, Section 5, Paragraphs A, B, C, D, F, G, and H. The grievance decision is a denial and states that no specific performance plans were identified, therefore, there can be no violation of this Article.

Agency Exhibit 1 includes correspondence pertaining to an unfair labor practice charge filed by AFGE Local 2663 with the Federal Labor Relations Authority that alleged that the VA failed to bargain with the Union in regard to new performance standards. The charge was for FY 2013 and was dismissed.

Agency Exhibit 2 contains guidance for performance standard development provided by Human Resources. The guidance does list some examples of Exceptional level performance.

Agency Exhibit 3 is a Performance Appraisal Program for an IT Specialist. The document shows standards for Exceptional level of achievement. The employee received an Excellent rating for the period.

Union Exhibit 1 is an opening statement of the Union for the arbitration

regarding performance appraisals. The statement indicates that Agency supervisors have failed to provide necessary information to employees to help them understand what is required to obtain an Exceptional performance standard rating.

Union Exhibit 2 is a memorandum from the Assistant Secretary for Human Resources and Administration. It provides guidance for development of performance plans and standards. The memorandum states that the performance plans should define the fully successful level for each element, but makes no mention of other levels of performance.

Union Exhibit 3 is guidance in assigning ratings and includes descriptions of outstanding, Excellent, Fully Successful, Minimally Satisfactory, and Unsatisfactory performance levels. The document is undated and does not indicate the origin or initiator of the guidance.

Union Exhibit 4 is a Performance Appraisal Program form for Tonja Rogers, Medical Instrument Technician, Diagnostic Ultrasound. The document is a performance plan and appraisal. The plan only describes the Fully Successful level and provides no requirements to meet any other levels of performance. Her overall rating is listed as Fully Successful

Union Exhibit 5 is a Performance Appraisal Program form for Antonia Brown-Smith, Medical Support Assistant in the Clinical Support Service, Prosthetics Department. Her performance plan and appraisal form lists standards for Exceptional and Outstanding levels of performance. Her overall

rating is listed as Fully Successful.

Tonja Rogers stated that her Supervisor only expressed standards for a Fully Successful rating to her. She said that she received no explanation of Exceptional or Outstanding standards. Her Supervisor was Curtis Brazil. He told her that Codes 65 and 69 made it difficult to achieve better than Fully Successful. She worked in Radiology Ultrasound. Three persons were in the unit in FY 2014. She said that one person was rated over Fully Successful. She said that she was told that she received a good rating, she should be happy with it.

Tonya Rogers indicated that Connie Stone is her current Supervisor. She said that she did not file a grievance individually.

Antonia Brown-Smith, Medical Support Assistant, Clinical Support Service, Prosthetics Department, said that she was not told what it would take to achieve an Excellent rating on her performance plan and appraisal. She said that her Supervisor, Michael Reeves, did not explain to her the standards for Exceptional performance and what an Excellent rating on her appraisal would require. She said that she asked no questions.

Jeffrey Laughlin, Supervisor Human Resource Specialist, said that FLRA had denied an Unfair Labor Practice charge filed by the Union. He said that he provided training to Supervisors pertaining to performance plans. He stated that the Union did not provide names of union represented employees in regard to the grievance. He stated that verbal communications are made of what it takes to achieve ratings of higher than Fully Successful. He estimated there are about

30 Supervisors at the facility. He said that Belinda Wolf-Whitaker's appraisal standards reflect requirements for exceptional level performance. He said that he received no feedback on performance standards.

Michael Moore, Assistant Director, Kansas City Veterans Administration Medical Center, said that no names of employees were provided in the grievance filed by AFGE. He said that Fully Successful standards must be written and that higher rating standards must be communicated to employees. He said that he denied the grievance as premature as standards had not yet been provided to employees.

VI. DISCUSSION AND DECISION

The Union alleged that the VA Medical Center Supervisors had violated the provision of the collective bargaining agreement provision listed in Article 27, Section 5B. The allegation was that employees were not informed of what was required to achieve performance standards above the Fully Successful level.

Testimony of Agency officials indicated that verbal communication of higher level standards is all that is required. The Arbitrator does not agree with this opinion. The collective bargaining agreement specifies "Additional information regarding performance expectations can be in the form of written instructions, work plans, records of feedback sessions, responses to employee questions concerning performance, memoranda describing unacceptable performance, or any reasonable manner calculated to apprise the employee of

the requirements against which he/she is to be measured. The Arbitrator regards this statement as a requirement that written documentation is required even for verbal communications.

Three witnesses and three documents were provided in evidence at the hearing. In one instance, the Arbitrator finds that the Agency complied with the provision of Article 27 Section 5B because documentary evidence indicated that the employee received written communication of the standards of performance. The fact that one Supervisor made written communication indicates to the Arbitrator that the allegation of the Union that 650 employees were adversely affected by a violation of Article 27 Section 5B was not proved at the hearing. Two employees who testified at the hearing is not considered to be representative of 650 employees.

Although the grievance is not accepted as a class case involving 650 employees, the grievance is not considered to be an interest arbitration (baseball type) and does not require evidence of violations of Article 27, Section 5B involving 650 employees.

The hearing testimony of Tonya Rogers that she did not receive an explanation of the standards to achieve in order to receive an Excellent rating on her appraisal was not refuted with any written documentary evidence or testimony at the hearing. Also, the testimony of management witnesses that only verbal communication is necessary is not the opinion of the Arbitrator. The language in Article 27, Section 5B indicates that verbal communication must be

supported by information that is adequate to inform him/her of what is necessary to reach an Exceptional level on each element. The information can be on the performance plan, written instructions, work plans, records of feedback sessions, responses to employee questions, or memoranda. It is the view of the Arbitrator that communication must be made in a timely manner, at the time of issuance of the performance plan or soon after. Verbal communication must be supported by documentation. No testimony or documentation was presented at the hearing that indicated that Tonja Rogers was informed as required by Article 27, Section 5B.

Antonia Smith-Brown also testified at the hearing that she did not receive an explanation from her Supervisor of what she was required to achieve in order to be at the Exceptional level on each element and be rated Excellent on her appraisal for the rating period. Her performance plan does list the Exceptional level for the critical element of Business Driven, but the critical elements of Customer Service and Professional Accountability list only the Outstanding level of performance above the Fully Successful level. The non-critical elements of Safety and Information Management, Security, and Confidentiality list no Performance level standards. No testimony or documentation was presented at the hearing that refuted Antonia Smith-Brown's testimony.

The guidance provided to Supervisors by Human Resources in regard to Article 27, Section 5B could be emphasized. A memorandum from the National Office was silent in regard to the collective bargaining agreement provision. In

addition, training from Human Resources in Kansas City does not include any reference to Article 27, Section 5B or the need to document information provided to employees pertaining to performance levels other than Fully Successful.

The testimony of management officials in the hearing that only verbal communication of performance standard levels other than Fully Successful is found to be inadequate to comply with Article 27, Section 5B of the collective bargaining agreement.

In conclusion, the Agency is found to be in violation of Article 27, Section 5B In regard to Tonja Rogers and Antonia Smith-Brown during Fiscal Year 2014 and the remedy is to change their FY 2014 appraisal ratings to Excellent. Any monetary award or salary increase commensurate with the higher level rating is also mandated.

VII. AWARD

Tonja Rogers and Antonia Smith-Brown are awarded an Excellent rating on their FY 2014 appraisals. In addition, a monetary award or salary increase retroactive to the first pay period after November 5, 2014 commensurate with the increased level rating is also awarded to them. The changes should be made within 30 days of receipt of the Award.