73 FLRA No. 117

AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES
LOCAL 12
(Union)

and

UNITED STATES
DEPARTMENT OF LABOR
(Agency)

0-NG-3631

DECISION AND ORDER
ON NEGOTIABILITY ISSUES

July 13, 2023

Before the Authority: Susan Tsui Grundmann, Chairman, and Colleen Duffy Kiko, Member

I. Statement of the Case

This matter is before the Authority on a negotiability appeal filed by the Union under § 7105(a)(2)(E) of the Federal Service Labor-Management Relations Statute (Statute).[1] The petition for review (petition) concerns two proposals. For the reasons that follow, we find the proposals are outside the Agency's duty to bargain.

II. Background

In April 2021, the Agency notified the Union of a proposed change to bargaining-unit employees' performance standards. Specifically, the Agency proposed to begin applying, to non-supervisory positions, the same "weighted performance[-]appraisal program" that it uses for supervisory positions.[2] Under that system, the Agency assigns weight values to employees' individual critical performance elements based on "operational priorities."[3]

The parties bargained over the matter but were unable to reach agreement. The Agency then implemented the change. Subsequently, the Union filed a request for Federal Service Impasses Panel (Panel) assistance, two negotiability petitions, and an unfair-labor-practice (ULP) charge.[4] The Panel declined to assert jurisdiction. On December 14, 2021, the Authority dismissed the two negotiability petitions without prejudice because of the pending, related ULP charge. On June 16, 2022, the Union withdrew the ULP charge.[5]

The Union filed the instant petition on July 10. On July 28, the Agency filed a motion to dismiss the petition, alleging the Union failed to properly serve the Agency bargaining representative and the Agency head. On August 8, the Authority's Office of Case Intake and Publication issued an order directing the Union to correct the procedural deficiency (PDO) by properly serving the Agency. On the same date, the Union emailed a copy of the petition to the Agency head and the Agency bargaining representative.[6]

On August 10, an Authority representative conducted a post-petition conference with the parties under § 2424.23 of the Authority's Regulations.[7] The Agency filed a statement of position (statement) on September 1. The Union filed a response to the statement (response). The Agency did not file a reply to the Union's response.

III. Preliminary Matter: The Agency's statement is timely.

In its response, the Union asserts that the Agency's statement is untimely because the Union properly served the Agency by first-class mail with its initial petition on July 11.[8]

Under § 7117(c)(3) of the Statute, an agency must file a statement within thirty days of the date that the head of the agency receives a copy of a petition.[9] The Agency asserts that the Agency head did not receive a copy of the petition until the Union sent an electronic copy on August 8.[10] Based on that date of receipt, the Agency's statement was due no later than September 7.

Although the Union asserts it served the petition on the Agency head on July 11, the postal receipt the Union provided with its response to the PDO does not indicate that the Union sent the petition to the correct

[1] 5 U.S.C. § 7105(a)(2)(E).
[2] Statement of Position (Statement), Attach. at 1.
[3] *Id.* at 6.
[4] The Panel case number was 21 FSIP 064. The negotiability petitions were docketed as 0-NG-3583 and 0-NG-3584. The ULP charge was docketed as WA-CA-22-0012.
[5] All dates hereafter refer to 2022, unless otherwise noted.
[6] Statement at 3; Union Resp. to PDO (PDO Resp.) at 2-3.
[7] 5 C.F.R. § 2424.23.
[8] Resp. Br. at 2.
[9] 5 U.S.C. § 7117(c)(3); *see also NTEU,* 72 FLRA 752, 753 (2022) (Chairman DuBester concurring in part, dissenting in part on other grounds) (quoting 5 C.F.R. § 2424.24(b)).
[10] Statement at 3.

address or individual.[11] Nor does the Union provide any evidence that the Agency head received the documents on July 11. Although the Union cites Authority precedent in which the Authority relied on postmarked envelopes or certified mail receipts in order to calculate regulatory deadlines, none of those decisions establish that the Authority should rely on the Union's unsubstantiated assertion to determine when the Union properly served the Agency.[12]

Where an agency has asserted that it received a petition on a particular date, and a union has not demonstrated that the agency actually received the petition on an earlier date, the Authority has relied on the agency's asserted date to determine whether the agency's statement was timely filed.[13] Because the record contains no evidence to rebut the Agency's assertion that the Agency head first received the petition on August 8, and the Agency filed its statement within thirty days of that date, we find the statement was timely filed.[14]

IV. Proposal 2.g

A. Wording

> DOL will provide bargaining unit employees with a 90-day acclimation period. At the conclusion of the 90-day period, Supervisors must meet with bargaining unit employees to discuss how they would be rated if the summary rating was issued that day and provide feedback in writing. This meeting will allow employees to ask questions to fully understand how the weighting system will work in practice. Bargaining unit employee's annual rating of record will not be negatively impacted for their performance during the acclimation period.[15]

B. Meaning

The parties agree that "DOL" means the U.S. Department of Labor; "acclimation period" means a one-time period for employees to adjust to the new weighted performance standards; "summary rating" refers to the final rating of record for a fiscal year; and "weighting system" refers to the assignment of percentages to measure the significance of elements in the performance standard.[16] By stating that an "annual rating of record" will not be "negatively impacted" by performance during the acclimation period, the parties agree the proposal means that any negative performance during the ninety-day acclimation period will not be reflected in the employee's summary rating.[17] Additionally, the parties agree regarding the meaning and operation of each section of the proposal, as described below.[18]

C. Severance

The Union requests we sever the proposal into three separate proposals, described below.[19] If a union supports its severance request "with an explanation of how each severed portion . . . may stand alone, and . . . operate,"[20] then the Authority severs the proposal and rules on the negotiability of its separate components.[21] The Agency opposes the Union's severance request because "if it is determined that the [ninety]-day acclimation is not negotiable[,] then referencing said [ninety] days in any other proposal [would not] be appropriate."[22]

The first severed proposal would read: "DOL will provide bargaining unit employees with a 90-day acclimation period."[23] The Union states that this proposal

[11] PDO Resp. at 6 (receipt reflecting postage payment, but not the name or address of recipients).

[12] *Id.* at 3-4 (citing *AFGE, Loc. 997*, 66 FLRA 499, 499-500 (2012) (where agency submitted unsubstantiated employee declarations alleging it timely filed its statement via certified mail, but envelope postmark showed untimely filing by regular mail, Authority found statement untimely); *AFGE, Loc. 1770*, 64 FLRA 953, 954-55 (2010) (waiving expired time limit where agency "demonstrated the extraordinary circumstance of the Postal Service's failed delivery"); *U.S. Dep't of HHS, SSA, Off. of Hearings & Appeals, Region II, N.Y.C, N.Y.*, 43 FLRA 1353, 1353-54 (1992) (finding that the date the agency-head served its disapproval by depositing it in the mail – rather than the date the union received the disapproval – controlled for purposes of calculating the petition-filing due date)).

[13] *AFGE, Loc. 1513*, 41 FLRA 589, 591 (1991) (*Local 1513*) ("As the [a]gency's statement of position was timely filed based on the date it claims to have received the [u]nion's perfected petition for review, and in the absence of any evidence submitted by the [u]nion that the petition for review was not received by the [a]gency on that date, we conclude that the [a]gency's statement of position was timely filed." (citing *AFGE, Loc. 1770*, 38 FLRA 626, 627 (1990))); *see also SEIU, Loc. 200-B*, 44 FLRA 821, 823 (1992) (time for filing statement of position begins after agency receives perfected petition); *AFGE, AFL-CIO, Loc. 1760*, 28 FLRA 160, 161-62 (1987) (*Local 1760*) (same); *cf. Haw. Fed. Emps. Metal Trades Council, AFL-CIO*, 23 FLRA 189, 190 (1986) (finding statement of position untimely based on date agency stated it received petition).

[14] *Local 1513*, 41 FLRA at 591.

[15] Pet. at 4, as amended by Record of Post-Petition Conference (Rec.) at 2.

[16] Rec. at 2.

[17] Pet. at 4; Rec. at 2.

[18] Rec. at 2-3.

[19] Pet. at 5.

[20] 5 C.F.R. § 2424.22(c).

[21] *NATCA*, 61 FLRA 658, 660 (2006).

[22] Statement at 3.

[23] Pet. at 5; Rec. at 2.

means "employees will have a one-time [ninety]-day period to adjust to the change" in performance standards, and that period "will not be applicable in following years."[24]

The second severed proposal would read: "At the conclusion of the 90-day period, Supervisors must meet with bargaining unit employees to discuss how they would be rated if the summary rating was issued that day and provide feedback in writing. This meeting will allow employees to ask questions to fully understand how the weighting system will work in practice."[25] According to the Union, this proposal means "employees will receive a rating-like document on how they are performing."[26]

The third severed proposal would read: "Bargaining unit employees' annual rating of record will not be negatively impacted for their performance during the acclimation period."[27] The Union states that this means "the [ninety]-day [acclimation] period will not harm an employees' end[-]of[-]year rating."[28]

The second and third severed proposals both presume the existence of the acclimation period discussed in the first severed proposal.[29] Therefore, the second and third severed proposals cannot operate independently from the first severed proposal. Accordingly, we deny the Union's severance request.[30]

D. Analysis and Conclusions

1. Proposal 2.g affects management's rights to direct employees and assign work.

The Agency argues that Proposal 2.g affects management's rights to direct employees and assign work under § 7106(a)(2)(A) and (B) of the Statute, respectively, because the proposal precludes management from using performance observations made during the acclimation period when evaluating employee performance.[31] The Union argues the proposal does not interfere with the cited rights because it does not "restrict" the Agency's right to determine the content of performance standards or measure performance in any way.[32] The Union also asserts that "the proposal does not prevent the Agency from measuring employees' performance during the [ninety]-day period, including for any corrections, training, opportunities to improve, discipline, or otherwise," but acknowledges that any evaluation made during that period cannot impact employees' summary performance ratings.[33]

The Authority has held that the "evaluation of employee performance is an exercise of management's rights to direct employees and assign work"[34] and "proposals that prohibit management from holding employees accountable for work performance" interfere with those rights.[35] Although the Union asserts that the proposal does not prevent management from measuring an employees' performance during the acclimation period for certain purposes, it admits that the proposal would prevent management from considering employees' acclimation-period performance when completing their summary rating if considering that performance would negatively impact the summary rating.[36] Because the proposal limits management's ability to enforce its established performance standards and hold employees

[24] Pet. at 5.
[25] *Id.*; Rec. at 2.
[26] Pet. at 5; *see also* Rec. at 2.
[27] Pet. at 5; Rec. at 3.
[28] Pet. at 5.
[29] *Id.*; Rec. at 2-3.
[30] *NTEU*, 70 FLRA 701, 705 (2018) (*NTEU 2018*) (denying severance request where severed sentences could not operate independent of the proposal's first sentence).
[31] Statement at 4.
[32] Resp. Br. at 5-6.
[33] *Id.* at 7 n.5.
[34] *NTEU*, 47 FLRA 705, 709 (1993) (*NTEU 1993*) (Member Armendariz concurring in part and dissenting in part) (citing *Local 1760*, 28 FLRA at 169).
[35] *Id.* at 710 (citing *NTEU*, 44 FLRA 293, 300 (1992)) ("Put another way, proposals that prevent management from enforcing its established performance standards directly interfere with management's rights to direct employees and assign work because they effectively alter the content of the standards."); *see also AFGE, Loc. 1164*, 49 FLRA 1408, 1414-15 (1994) (*Local 1164*) (Member Talkin dissenting) ("proposals that require an agency to change or adjust its performance expectations in light of specified factors directly interfere with management's rights to direct employees and assign work because they constitute a substantive limitation on an agency's ability to determine the content of performance standards").
[36] Rec. at 3; Resp. Br. at 6, 9-10.

accountable for work performed during the acclimation period, the proposal affects the cited management rights.[37]

2. The Union does not show that Proposal 2.g is negotiable as an exception to the affected management right.

The Union claims, without elaboration, that Proposal 2.g is a negotiable procedure under § 7106(b)(2) of the Statute.[38] However, the Union neither cites any authority to support its claim nor explains how the proposal meets the requirements of § 7106(b)(2). Where, as here, a union fails to support a § 7106(b)(2) claim, the Authority rejects it as a bare assertion.[39] Accordingly, we reject the Union's § 7106(b)(2) claim as a bare assertion.

The Union also argues that Proposal 2.g is a negotiable appropriate arrangement under § 7106(b)(3) of the Statute.[40] To determine whether a proposal is within the duty to bargain under § 7106(b)(3), the Authority applies the analysis set out in *NAGE, Local R14-87* (*KANG*).[41] First, the Authority determines whether a proposal is intended to be an "arrangement" for employees adversely affected by the exercise of a management right.[42] If a proposal is an arrangement, then the Authority determines whether it is "appropriate" because it does not excessively interfere with the relevant management rights.[43] The Authority makes this determination by weighing "the competing practical needs of employees and managers" to ascertain whether the benefit to employees flowing from the proposal outweighs the proposal's burden on the exercise of the management right or rights involved.[44]

The Agency does not dispute that Proposal 2.g is an arrangement under § 7106(b)(3),[45] so we find that it is.[46] However, the Agency argues that the proposal is not an *appropriate* arrangement because the burdens it imposes on management's rights to direct and assign work outweigh any benefits it provides to employees.[47]

The Union argues that the Agency's change to how it weights performance standards will cause employees to receive a different rating despite expending "the same effort . . . to complete their work."[48] According to the Union, "[e]mployees will be required to prioritize certain aspects of their work to meet the new weighted requirement."[49] The Union contends that Proposal 2.g "narrowly addresses those employees who would be negatively impacted by the change [to the performance standards], by preventing a negative rating due to performance during the [acclimation] period."[50] The Union also asserts the proposal will benefit employees because the ratings document provided at the end of the acclimation period will "allow employees to tangibly see how their same effort is being rated differently under the weighted standards" and "give employees sufficient time to make the necessary adjustments" so their summary ratings will not suffer.[51]

The Agency, on the other hand, asserts that the proposal would prevent it from using its strategic goals to evaluate bargaining-unit employees' performance.[52] The Agency states that "[i]t is important to note[] that the

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[37] *NFFE, Loc. 858*, 48 FLRA 552, 555 (1993) (proposal that would "not allow management to rate employees during the rating cycle on those elements for which employees do not have sufficient training or experience" directly interferes with management's right to direct employees and assign work); *POPA*, 48 FLRA 129, 130, 135 (1993) (proposal that would prevent agency from "adversely evaluat[ing] a patent classifier for failure to meet a particular performance standard if meeting the performance standard is dependent upon the action of another employee over whom the classifier has no control" directly interferes with management's rights to direct employees and assign work because it would "impose a substantive limitation on the [a]gency's ability to determine the content of its performance standards"); *NTEU 1993*, 47 FLRA at 709-10 (provision that would preclude agency from relying on instances of poor performance to justify a decrease in an employee's performance evaluation "where such instances are isolated, infrequent, or occasional" directly interferes with management's right to direct employees and assign work because, "by preventing the [a]gency from using such performance as a basis for lowering an employee's performance rating, this provision limits the extent to which the [a]gency may enforce its performance standards and hold employees accountable for such performance").

[38] Resp. Form at 2.

[39] 5 C.F.R. § 2424.25(c)(1)(ii)-(iii); *see NFFE, Loc. 1450, IAMAW*, 70 FLRA 975, 977 (2018) (rejecting assertion that proposal was procedure under § 7106(b)(2) because union did not explain how proposal met that section's requirements); *AFGE, Loc. 723*, 66 FLRA 639, 644 (*Local 723*) (rejecting assertion that proposals were procedures under § 7106(b)(2) because union failed to present any "argument or authority to support that claim").

[40] Resp. Form at 2; Resp. Br. at 6-7.

[41] 21 FLRA 24 (1986).

[42] *NAIL, Loc. 5*, 67 FLRA 85, 87 (2012) (*NAIL*) (quoting *KANG*, 21 FLRA at 31).

[43] *Id.* (citing *KANG*, 21 FLRA at 31-33).

[44] *Id.* (quoting *KANG*, 21 FLRA at 31-32).

[45] *See* Statement at 5 (arguing that "[e]ven assuming" the proposal is "intended as an arrangement," it is not appropriate because it excessively interferes with management's rights).

[46] *See* 5 C.F.R. § 2424.32(c)(ii)(2) (agency's failure to respond to an assertion raised by union will, where appropriate, be deemed a concession to that assertion); *see, e.g.*, *NTEU 2018*, 70 FLRA at 704 (citing *NAIL*, 67 FLRA at 87; *NATCA, Loc. ZHU*, 65 FLRA 738, 740, 742 (2011) (*Local ZHU*)).

[47] Statement at 6.

[48] Resp. Br. at 5-6.

[49] *Id.* at 6.

[50] *Id.*

[51] Pet. at 4; *see also* Resp. Br. at 5-6.

[52] Statement at 5-6.

appraisal system itself is not changing, [and] the collective[-]bargaining agreement[] and department policies surround[ing] the appraisal system are also not changing."[53] According to the Agency, any adverse effects caused by the change are minimized because the Agency already provides the feedback and communication necessary to inform employees how their performance will be rated under the changed weightings.[54]

With regard to Proposal 2.g's burdens on management's rights, the proposal prevents management from relying on employees' acclimation-period performance when management determines the employees' annual performance ratings if doing so would negatively affect the employees' summary ratings.[55] In other words, the proposal imposes a clear burden on management's rights to direct employees and assign work by evaluating employee performance.

With regard to Proposal 2.g's benefits to employees, we note that the Agency is not changing employees' existing performance elements; it is merely changing how those existing elements are weighted for purposes of determining the employees' summary ratings. The extent of that change's potential harm to employees is unclear from the record, and the Union does not explain the extent of the ameliorative benefits that the proposal would provide to employees. Further, the Union does not dispute the Agency's statement regarding how existing feedback and communication will mitigate any adverse effects of the change. Thus, the overall extent of Proposal 2.g's benefits is less clear. Although the Union cites several decisions to support its appropriate-arrangement claim,[56] those decisions either did not address appropriate-arrangement claims,[57] relied upon concessions,[58] or involved employees who were performing new or additional duties – so the changes' potential negative effects on employees, and the proposals' potential ameliorative benefits to employees, were more readily apparent.[59]

Weighing Proposal 2.g's clear burdens on management's rights against the proposal's less clear benefits to employees, we conclude the proposal excessively interferes with management's rights. Thus, it is not an appropriate arrangement, and we find it outside the duty to bargain as contrary to management's rights to assign work and direct employees.[60]

V. Proposal 2.e

A. Wording

> If there is more than one (1) element, but less than four (4) elements, the Supervisor must not assign any weight that will cause an element to be more than 40% of the summary rating. If there are more than four (4) elements, the Supervisor must not assign any weight that will cause an element to be more than 30% of the summary rating.[61]

[53] *Id.* at 6.

[54] *Id.*

[55] Member Kiko notes that the Authority has held that agencies have "a significant interest in being able to hold employees accountable for their performance by establishing and enforcing performance standards," *NTEU 1993*, 47 FLRA at 713, and proposals – like Proposal 2.g – that prohibit management from holding employees accountable for work performance "effectively alter the content of [performance] standards." *Id.* at 710; *see also Local 1164*, 49 FLRA at 1414-15.

[56] Resp. Br. at 6-7.

[57] *NFFE, Loc. 1853*, 29 FLRA 94, 101-04 (1987).

[58] *Local ZHU*, 65 FLRA at 742 (proposal negotiable as appropriate arrangement where the agency did "not contest that [the p]roposal [was] 'appropriate'").

[59] *Dep't. of the Air Force, Air Force Logistics Command, Wright-Patterson Air Force Base, Ohio*, 22 FLRA 15, 22-25 (1986) (proposal delaying application of new performance requirements for employees who were detailed or reassigned); *NFFE, Council of Consol. SSA Locs.*, 17 FLRA 657, 657-58 (1985), *rev'd sub nom. Dep't of HHS, SSA v. FLRA*, 791 F.2d 324 (4th Cir. 1986) (*HHS*) (proposals addressing changes in or clarifications to agency's operations manual). Member Kiko notes that one of the decisions cited by the Union was overturned by the U.S. Court of Appeals for the Fourth Circuit because the court found the Authority's decision was "inconsistent with[,] and [would] frustrate the congressional directive that [agencies] shall retain the right to direct employees . . . [and] assign their work." *HHS*, 791 F.2d at 326 (reversing Authority's determination that proposal imposing six-month moratorium before employees could be held accountable for performance errors related to changes in agency's operations manual was negotiable).

[60] *Local 1760*, 28 FLRA at 169-70; *Local 1164*, 49 FLRA at 1414-16. Because we find the proposal is outside the duty to bargain on this basis, it is unnecessary to address the Agency's argument, Statement at 5, that the proposal is outside the duty to bargain because it is covered by the parties' collective-bargaining agreement. *NAGE, Loc. R14-89*, 61 FLRA 777, 778 n.4 (2006); *AFGE, Loc. 1164*, 67 FLRA 316, 319 (2014) (Member Pizzella concurring), *recons. denied*, 68 FLRA 438 (2015).

[61] Pet. at 5.

B. Meaning

The parties agree that the proposal has the following meaning and operation. The term "elements" refers to elements of a performance-appraisal plan, and the proposal's operation depends on the number of elements in a bargaining-unit employee's performance plan.[62] If a bargaining-unit employee's performance plan has one to three elements, then under the proposal, no single element would be weighted to account for more than 40% of the total rating.[63] If a unit employee's performance plan has more than four elements, then no single element would be weighted to account for more than 30% of the total.[64]

C. Analysis and Conclusions

1. Proposal 2.e affects management's rights to direct employees and assign work.

The Agency claims that Proposal 2.e interferes with its rights to direct employees and assign work.[65] The Union argues that Proposal 2.e does not affect management's rights because "management remains in full control of the number of performance elements and its substance."[66]

The Authority has held that proposals that restrict an agency's ability to weigh and evaluate the elements for performance evaluations affect management's rights to direct employees and assign work.[67] As Proposal 2.e restricts the weight the Agency can give to any single element in the performance-appraisal plan, it affects those rights.

2. Proposal 2.e is outside the duty to bargain

The Union asserts that Proposal 2.e is a negotiable procedure under § 7106(b)(2) of the Statute.[68] Specifically, the Union claims the proposal allows the Agency to determine the content and number of elements in the performance standards, the rating levels, and the priority of mission goals, and that it only requires management to "consider weightings at the time it considers the number of elements."[69]

The Union cites no authority supporting its claim that Proposal 2.e is a procedure.[70] Moreover, the Authority has found that a proposal requiring an agency to weigh certain matters in a particular manner when evaluating an employee is not a negotiable procedure because it imposes a "substantive limitation" on the agency's ability to determine the content of performance standards.[71]

Proposal 2.e does not merely require the Agency to "consider" the weight to be given each performance element; it places a specific limitation on the maximum weighted percentage of any element. Therefore, consistent with Authority precedent, we find that Proposal 2.e is not a negotiable procedure under § 7106(b)(2).[72]

Alternatively, the Union argues that Proposal 2.e is an appropriate arrangement under § 7106(b)(3) of the Statute.[73] The Agency does not dispute that Proposal 2.e is an arrangement under § 7106(b)(3), so we find that it is.[74]

With respect to whether the arrangement is appropriate, the proposal would wholly preclude the Agency from assigning a weight to any element that exceeds the specific percentages listed in the proposal – regardless of the particular element's importance to employee performance. This would significantly burden management's ability to evaluate employees' performance – and, thus, would significantly burden management's rights to assign work and direct employees.

As for Proposal 2.e's benefits to employees, the Union argues those benefits are "manifest" because employees will "clearly understand how their performance will be measured."[75] The Union also asserts that the proposal will prevent the Agency from "claiming an employee has four (4) performance elements, then assigning a weight so extreme that the employee is effectively measured by one (1) performance element."[76] By contrast, the Agency argues that "any negative effects from not understanding how the weights are devised on an

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[62] Rec. at 3.
[63] *Id.*
[64] *Id.*
[65] Statement at 6-7.
[66] Resp. Br. at 4.
[67] *Serv. & Hosp. Emps. Int'l Union, Loc. 150*, 35 FLRA 521, 533 (1990); *see also Local 1164*, 49 FLRA at 1416 (proposal dictating extent to which specific duties are weighted when evaluating employee directly interferes with management's rights to assign work and direct employees).
[68] Resp. Br. at 4.
[69] *Id.*
[70] *See Local 723*, 66 FLRA at 644 (rejecting union's assertion that proposals were procedures under § 7106(b)(2) because the union failed to present "authority to support that claim").
[71] *Local 1164*, 49 FLRA at 1414-16 (citing *NFFE, Loc. 1214*, 40 FLRA 1181, 1188 (1991)).
[72] *Id.* at 1415-16 (proposal that "could require an adjustment in performance expectations regarding the weight to be given various duties" was not a negotiable procedure).
[73] Resp. Br. at 4-5.
[74] 5 C.F.R. § 2424.32(c)(ii)(2); *NTEU 2018*, 70 FLRA at 704.
[75] Resp. Br. at 5.
[76] *Id.* at 4.

employee's evaluation are minimized" by the Agency's existing practice of providing "communication and feedback . . . for employees to understand how they are being rated."[77]

The Union has not explained how Proposal 2.e's limitations on management's ability to assign weights to any single element in a performance plan will help employees understand how their performance will be measured once those weights have been assigned. Nor does the Union address the Agency's assertion that the current "communication and feedback" practices are sufficient to address this concern. Thus, it is unclear from the record how limiting management's ability to weigh individual elements will benefit employees overall. As such, we find the Union has not demonstrated that the proposal provides a significant benefit to employees.

On balance, we find that Proposal 2.e's burdens on management's rights to assign work and direct employees outweigh the proposal's benefits to employees. Thus, Proposal 2.e excessively interferes with those management rights and is not an appropriate arrangement.

Accordingly, we find Proposal 2.e outside the duty to bargain.

VI. Order

We dismiss the petition.

[77] Statement at 6.