

United States of America

BEFORE THE FEDERAL SERVICE IMPASSES PANEL

In the Matter of

UNITED STATES DEPARTMENT OF DEFENSE  
EDUCATION ACTIVITY

And

ANTILLES CONSOLIDATED EDUCATION  
ASSOCIATION

Case No. 18 FSIP 061

DECISION AND ORDER

The Antilles Consolidated Education Association (Union or ACEA) filed this request for Panel assistance under the Federal Service Labor-Management Relations Statute, 5 U.S.C. § 7119, over an impasse with the U.S. Department of Defense Education Activity (Agency or DoDEA) stemming from mid-term negotiations concerning the Department of Defense Performance Management and Appraisal Program (DPMAP). DoDEA's mission is to plan, direct, coordinate, manage, and provide pre-kindergarten through 12th grade education for the dependents of U.S. military personnel and federally-employed civilians living on federally-owned property.

DoDEA has historically operated two distinct elementary and secondary school systems; one system for domestic schools (Domestic Dependent Elementary and Secondary Schools (DDESS)) and the other for overseas schools (Department of Defense Dependent Schools). The instant dispute concerns the DDESS. DDESS is subdivided into the Southeast District, the Mid-Atlantic District (including Puerto Rico), and Guam. The Southeast District consists of 25 schools, the Mid-Atlantic District consists of 30 schools (4 schools in Puerto Rico), and Guam has 4 schools.

The ACEA is the certified exclusive representative of bargaining unit employees at the 4 DoDEA, DDESS in Puerto Rico, consisting of approximately 200 employees who populate positions such as Classroom Teacher, Guidance Counselor, Psychologist,

Education Technologist, Speech Pathologist, Occupational Therapist, Physical Therapist, Media Specialist, and Nurse.<sup>1</sup> ACEA and DoDEA are covered by a National Collective Bargaining Agreement (CBA).

## BACKGROUND

Representatives from the Department of Defense, unions, Office of Personnel Management, and other stakeholders worked collaboratively for more than 18 months to plan and develop recommendations for new personnel authorities impacting bargaining unit employees that work in the DoDEA, DDESS. The collaboration resulted in DPMAP on February 4, 2016. The DPMAP established policy and procedures, and provided guidelines regarding civilian personnel management for the employees in the DDESS.

Upon the promulgation of DPMAP, the Agency provided the Union notice and an opportunity to bargain. The parties met for three all-day face-to-face bilateral negotiation sessions: January 24, 2018; March 27, 2018; and April 12, 2018. The parties were unable to reach a resolution. As such, the parties engaged in mediation on May 22 and May 24, 2018, with Federal Mediation and Conciliation Service Mediator Christy Yoshitomi. The parties reached agreement on seven proposals related to the DPMAP, but were unable to resolve four additional proposals. Ms. Yoshitomi released the parties. On June 6, 2018, the Union filed a request for Panel assistance in the instant case over the four remaining proposals.<sup>2</sup>

The Panel asserted jurisdiction over the four remaining proposals in dispute and determined that it should be resolved through a Written Submissions procedure. The parties were ordered to provide the Panel and each other their written submissions, including their last and best offers, any argument and authority relied upon, and any exhibits. The parties were also afforded an opportunity to submit rebuttal statements to the Panel and each other. The parties were informed that, after considering the entire record, the Panel would take whatever action it deemed appropriate to resolve the dispute, which could include the issuance of a binding decision. The Panel has now considered the entire record, including the parties' written submissions, final offers, and rebuttal statements.

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<sup>1</sup> The majority of the bargaining unit employees encumber the position of Classroom Teacher.

<sup>2</sup> The four proposals contain seven issues.

## PROCEDURAL ISSUES

### **Rebuttal Statements**

The Agency's rebuttal statement is eight double-spaced pages. In the Procedural Determination Letter, the Panel ordered the parties to limit their rebuttal statements to "no more than five double-spaced pages..." The Union's rebuttal statement was submitted at 5:07 p.m. eastern standard time on October 5, 2018. The Panel's Procedural Determination Letter states that the parties must submit their rebuttal statements "[b]y close of business on Friday, October 5, 2018". A party has a right to object to another party's nonconformance with the Panel's Order; however, there was no such objection by either party here. As such, the Panel will consider the parties' rebuttal statements.

## ISSUES

1. Whether the appraisal period should run from May 1 through April 30 of the calendar year, or whether the appraisal period should continue to coincide with the academic year.

### **a. Union's Final Offer**

In accordance with Section 3.2(b) of DOD Instruction 1400.25, vol. 431 (February 4, 2016), the appraisal cycle will coincide with the academic year.

Currently, the appraisal cycle commences at the beginning of the academic year in August and ends in June. Employees normally receive their elements and standards during the first performance discussion when they start the school year in August, their mid-year review in November or December, and their final appraisal at the end of the school year in mid-June. The Union argues that the status quo should be maintained.

The DoD Instruction 1400.25, Section 3.2(b) requires the Agency to appraise employees based on the academic year. That section states, "[t]he appraisal cycle for employees covered by the DoD Performance Management and Appraisal Program is April 1 through March 31 of each calendar year. Components operating academic institutions may elect to apply an appraisal cycle based on their academic year to some or all of the employees of these academic institutions." The Union asserts that the Agency's proposal for a May 1 through April 30 appraisal cycle

is not consistent with either of the two alternatives permitted by the DoD Instruction.

The Union further argues that the Agency's proposed appraisal cycle will create confusion and additional work for both supervisors and employees because employees are often reassigned to teach in new schools, at different grade levels, and/or new subjects at the beginning of the school year. If the employees receive their performance standards and elements in May, as the Agency proposes, the supervisors will have to provide the employees another set of elements and standards in August, when they start school because they will have new assignments.

#### **b. Agency's Final Offer**

The appraisal period will commence on May 1st of each year and run through April 30th of the following year, except for the implementation year which will commence beginning SY 2018-2019 in accordance with Article 17, Section 2(b) of the MLA.<sup>3</sup> Employees will normally participate in a minimum of three (3) performance discussions per year. Management will schedule the three performance discussions normally as follows: (i) between May 1st and thirty (30) days after the start of the next school year; (ii) between November 21st and 30 days after employees return from the winter recess; and (iii) between May 1st and the end of the school year.

In accordance with the academic year ending in mid-June for ACEA-represented employees, the Agency created its proposed appraisal cycle (May 1 to April 30), so that supervisory personnel can finalize and present appraisals to employees before they leave for the summer recess. Thus, the Agency claims that its appraisal cycle is consistent with Section 3.2(b) of DoD Instruction 1400.25, Volume 431, Section 3.2(b) because it is based on the academic year.

The Agency also argues that having all of its employees on the same appraisal cycle would promote government effectiveness

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<sup>3</sup> Article 17, Section 2(b) states, "[t]he Agency has determined that it is not feasible to transition bargaining unit members to a new performance appraisal system except at the beginning of a school year. Therefore, should this Agreement be implemented at any time other than the beginning of a school year, the Agency has determined that the current performance appraisal system for bargaining unit members will be used through the end of that school year."

and organizational performance. There are 12,000 employees that work for DoDEA worldwide, and approximately 2,400 employees are not currently on the May 1 to April 30 appraisal cycle; the 200 employees in the instant case and 2,200 employees represented by the Federal Education Association Stateside Region. Thus, the Agency asserts that if the May 1 to April 30-appraisal cycle is adopted here, it would mirror the appraisal cycle for all Agency employees and allow it to apply one consistent appraisal cycle throughout the Agency.

### c. Conclusion

Having carefully considered the evidence and arguments presented in support of the parties' positions, we find that a modified solution is the best alternative to resolve the impasse. The Union argues that in order for the appraisal cycle to be based on the academic year, the appraisal cycle must start at the beginning of the academic year and conclude at the end of the academic year. The Agency claims that its May 1 to April 30-appraisal cycle is based on the academic year because it allows supervisors to finalize and present appraisals before the employees conclude the school year.

DoD Instruction 1400.25, Volume 431, Section 3.2(b) requires the Agency to either apply an appraisal cycle from April 1 to March 31, or an appraisal cycle based on the academic year. The parties' dispute is over the latter. Thus, the question is then what does it mean to base an appraisal cycle on the academic year.

For an appraisal cycle to be based on an academic year, in compliance with the DoD Instruction, the appraisal cycle must coincide with the academic year. This means the appraisal cycle must start at the beginning of the academic year and conclude at the end of the academic year and the performance discussions must follow, i.e., occur at the beginning of the academic year,<sup>4</sup> the middle of the academic year, and end of the academic year.<sup>5</sup> Starting an appraisal cycle at the end of the academic year, as the Agency proposes, and potentially holding the employees' first performance discussion in the subsequent year, does not comply with DoD Instruction, or the regulation. Thus, in order

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<sup>4</sup> 5 CFR 430.206(b)(2) states, "[p]erformance plans shall be provided to employees at the beginning of each appraisal period (normally within 30 days).

<sup>5</sup> 5 CFR 430.208(a) states that an employee receives his or her performance appraisal "[a]s soon as practicable after the end of the appraisal period..."

to comply with Instruction 1400.25 and the regulation, the parties must follow an appraisal cycle and performance discussion calendar that is consistent with the academic year. Accordingly, the Panel orders the parties to adopt the following language:

"The appraisal period will commence at the start of each school year in August and run through the end of the school year in June. Employees will normally participate in a minimum of three (3) performance discussions per year. Management will schedule the three performance discussions normally as follows: (i) within thirty (30) days after the start of the appraisal period; (ii) halfway through the school year; and (iii) as soon as practicable after the end of the appraisal period. For employees that will work during the summer, they will receive their first Performance Discussion prior to the start of their assignments."

**2. Whether employees should be compensated for extra time they spend performing work as a result of the assignment of training on the new performance appraisal system.**

**a. Union's Final Offer**

Any training on the new performance appraisal system that cannot be accomplished within the duty day without displacement of other assigned duties to time when the employee is otherwise not compensated will be compensated in accordance with Article 19, Section 3(d) of the Negotiated Agreement.<sup>6</sup>

The Union states that if training is assigned during the duty-day and, as a result, employees are required to perform other assigned duties after the end of the duty-day, they should be compensated for the extra time spent on those duties. If management assigns such training during the duty day, when teachers would otherwise be performing planning and preparation work, the Union claims that this would effectively force the teachers into performing those assignments outside of the duty day, uncompensated.

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<sup>6</sup> Article 19, Section 3(d) states in part, "[w]hen additional work hours are assigned, the bargaining unit member will be compensated by the Agency at either the employee's earned hourly rate or with compensatory time."

#### **b. Agency's Final Offer**

Any training on the new performance appraisal system that cannot be accomplished within the duty day will be compensated in accordance with Article 19, Section (3)(d) of the Negotiated Agreement.

The Agency states that it intends to provide all training on the DPMAP to employees during the duty day; however, if circumstances require the training to be conducted outside the duty day, then it will compensate the employees in accordance with Article 19, Section 3(d) of the parties' CBA. The Agency further states that if training prevents the teachers from completing an assignment during the duty day, then the teachers must ask their supervisors for instructions on how to proceed, which is no different than any other assignment.

#### **c. Conclusion**

Having carefully considered the evidence and arguments presented in support of the parties' positions, we find that the Agency's proposal is the best alternative to resolve the impasse. The Union is concerned that if, as a result of training on the new performance appraisal system, employees cannot accomplish their day-to-day assignments, they will be required to complete those tasks during off-duty time, uncompensated. However, the Union did not present compelling evidence indicating that training on the new performance appraisal system will impact the employees' ability to accomplish their assignments. Therefore, the Agency's proposal is the better alternative. Accordingly, the Panel orders the parties to adopt the following language:

Any training on the new performance appraisal system that cannot be accomplished within the duty day will be compensated in accordance with Article 19, Section (3)(d) of the Negotiated Agreement.

- 3. Whether employees should be expected to accomplish tasks related to the use of the "My Performance" appraisal tool on their own, uncompensated time if they are unable to complete those tasks during the duty day, and approval to perform those tasks after the end of the duty day is denied.**

**a. Union's Final Offer**

Employees shall be entitled to compensation in accordance with Article 19, Section 3(d) of the Negotiated Agreement for time spent utilizing the My Performance tool when they are unable to accomplish the tasks required by the system within the duty day, provided they obtain written supervisory approval in accordance with Article 19, Section 3(g) of the Negotiated Agreement. Employees shall not be expected to accomplish these tasks on their own uncompensated time if approval is denied.

The Union states that its proposal seeks to ensure that employees who are unable to complete performance appraisal tasks during the duty-day using the MyPerformance tool are not required to perform these tasks after hours, uncompensated. Instead, the Union asserts that if the supervisor denies the employee's request for additional compensation to complete the tasks after hours then the Union seeks assurance from the Agency that the employees will not be required to accomplish these tasks during off-duty time, uncompensated.

**b. Agency's Final Offer**

Employees shall be entitled to compensation in accordance with Article 19, Section 3(d) of the Negotiated Agreement for time spent utilizing the MyPerformance tool when they are unable to accomplish the tasks required by the system within the duty day, provided they obtain written prior supervisory approval in accordance with Article 19, Section 3(g) of the Negotiated Agreement.

The Agency argues that the employees can use their preparation period to complete any task related to the "My Performance" tool. The Agency states that employees will only be required to acknowledge receipt of their elements and standards, their mid-year review, and their final appraisal in the MyPerformance tool and will not be required to create a performance plan. Thus, the Agency asserts that there is plenty of time during the employees' duty day to accomplish those tasks. If employees are unable to complete tasks related to the MyPerformance tool during the duty day, the Agency asserts that employees will need to obtain supervisory approval to receive compensation for completing those duties outside of work.



### **c. Conclusion**

Having carefully considered the evidence and arguments presented in support of the parties' positions, we find that the Agency's proposal is the better alternative to resolve the impasse. The Union seeks assurance that the employees will not be required to perform tasks related to the MyPerformance tool during off-duty hours, uncompensated. Based on the evidence provided, it appears that employees will only be required to acknowledge their performance plans using the MyPerformance tool. If the employees need additional time to complete those tasks, they can request the time through the procedures outlined in the CBA. Therefore, the Agency's proposal is the better alternative. Accordingly, the Panel orders the parties to adopt the following language:

Employees shall be entitled to compensation in accordance with Article 19, Section 3(d) of the Negotiated Agreement for time spent utilizing the MyPerformance tool when they are unable to accomplish the tasks required by the system within the duty day, provided they obtain written prior supervisory approval in accordance with Article 19, Section 3(g) of the Negotiated Agreement.

### **4. Whether employees can continue to use the paper form to document their elements and standards, mid-year review, and final appraisal.**

#### **a. Union's Final Offer**

The employee may elect to continue to use the paper copy of DD Form 2906 to document the performance plan, progress review(s) and rating of record.

The Union argues that employees should be able to continue to use the paper appraisal forms (DD Form 2906) to document their elements and standards, mid-year review, and final appraisal because the MyPerformance tool is far more complicated and time consuming. The Union also points to DoD Instruction 1400.25, Section 3.2(g)(2)<sup>7</sup> to state that this section acknowledges that there may be situations where the paper forms are used in lieu of the automated system.

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<sup>7</sup> DoD Instruction 1400.25, Section 3.2(g)(2) states that the paper form can be used "[w]hen supervisors or employees do not have access to the electronic MyPerformance appraisal tool."

### **b. Agency's Final Offer**

Management has determined to use the MyPerformance Appraisal tool to provide an automated appraisal system.

The Agency intends to use the MyPerformance Appraisal tool for all its employees as a key component in assessing its organizational performance. The paper appraisal was very inefficient since the Agency had to manually enter all of the employees' performance data into a spreadsheet in order to analyze it. The new automated system will allow it to track employee performance in a more effective and efficient manner because the system will keep track of every employees' performance appraisal, along with their rating of record. This, the Agency states, will allow the Agency to analyze the employees' performance and determine what areas need improvement.

### **c. Conclusion**

Having carefully considered the evidence and arguments presented in support of the parties' positions, we find that the Agency's proposal is the better alternative to resolve the impasse. The Agency makes a compelling argument for the implementation of the MyPerformance tool - to create a more efficient and effective tool to monitor and track employee performance by maintaining a centralized database of all of the employees' performance plans. In order to effectuate the purpose of the tool, employees and supervisors must utilize an electronic appraisal system. The Union's argument is unconvincing - the tool is cumbersome and time consuming to learn. Furthermore, the Union's argument that DoD Instruction 1400.25, Section 3.2(g)(2) permits employees to use the paper appraisal form on a regular basis is unpersuasive, as that section permits employees and supervisors to use the paper form "[w]hen supervisors or employees do not have access to the electronic MyPerformance appraisal tool" (emphasis added). The Instruction provides an exception to the rule, not the rule. Thus, the Agency's proposal is the better alternative. Accordingly, the Panel orders the parties to adopt the following language:

Management has determined to use the MyPerformance Appraisal tool to provide an automated appraisal system.

**5. Whether employees who are rated outstanding should be guaranteed a performance award.**

**a. Union's Final Offer**

The employee may elect to continue to use the paper copy of DD Form 2906 to document the performance plan, progress review(s) and rating of record.

The Union argues that employees who are rated outstanding should be entitled to a least a minimum award amount of two percent. The Union asserts that the Agency's refusal to commit to a performance award is inconsistent with 5 U.S.C. Section 9902(a)(1)(B). That section states, "[t]he Secretary, in coordination with the Director, shall promulgate regulations providing for a fair, credible, and transparent system for linking employee bonuses and other performance-based actions to performance appraisals of employees." Also, "[r]ewards should be an integral part of performance management."<sup>8</sup> The Union further argues that employees may even receive a 10 percent monetary award for a satisfactory performance rating and up to a 20 percent performance award for an exceptional rating.<sup>9</sup> Finally, the Union proposes that the Agency pay awards by the end of the pay year, July 24, so that the employees will receive their awards when they earned it.

**b. Agency's Final Offer**

Performance awards are contingent on budget and any budgetary constraints or caps in effect at the time and are given at the discretion of the Agency.

An employee rated as "Outstanding" is eligible to receive a one-time cash award of a maximum of up to 2% of his or her total salary. It is understood that the actual percentage available for any rating cycle will be dependent on the amount budgeted by the Agency for the ACEA bargaining unit for that rating year. The award shall normally be paid no later than the last pay period of the fiscal year in which the award was earned.

Exceptions to awards under this section also include:

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<sup>8</sup> DoD Instruction 1400.25, Volume 431, Section 3.6(c).

<sup>9</sup> DoD Instruction 1400.25, Volume 451, DoD Civilian Personnel Management System: Awards, Enclosure 3, Section 5, *Performance-Based Cash Awards*.

A delay when an employee is under investigation for a conduct matter until the investigation is resolved and the allegations are not sustained;

A denial for any employee who was disciplined in the 12 months prior to the close of the appraisal period for which the award would be granted;

A denial for any employee who did not work at least 120 work days in the school year in which the appraisal period ended;

A reduction or denial (as circumstances require) for all employees due to reductions in awards spending by the Agency.

The Agency states that its proposal is consistent with 5 U.S.C. Section 9902(a)(1)(B) and DoD Instruction 1400.25, Volume 431, Section 3.6(c) since it links employee performance with performance awards. However, the Agency stresses that it is important that it has discretion to determine whether to issue the awards. The Agency's proposal will allow it to respond to any changes in fiscal conditions that could impact the mission by repurposing, if necessary, part or all of the awards budget to mission critical priorities, such as classroom supplies, student meals, student transportation, salaries, utilities, etc.

The Agency points to Section 3.6(b) of DoD Instruction 1400.25 and states that "[r]ecognition and rewards are not entitlements." The Agency asserts that the Union's proposal, which requires the Agency to reward employees with a 2 percent award, is inconsistent with Section 3.6(b). Finally, the Agency states that if employees receive an award, the Agency will pay the award by the last pay period of the fiscal year. This will allow the Agency to determine the total amount of award money available, the eligible employees, the award amounts, and a sufficient amount of time to process the awards.

### **c. Conclusion**

Having carefully considered the evidence and arguments presented in support of the parties' positions, we find that the Agency's proposal is the better alternative to resolve the impasse. 5 U.S.C. Section 9902(a)(1)(B) and DoD Instruction 1400.25, Volume 431 and Volume 451 do not require the Agency to grant a specific amount of money to employees for their performance. Instead, 5 U.S.C. Section 9902(a)(1)(B) indicates

that the Agency must promulgate regulations that link employee performance to awards. DoD Instruction 1400.25, Volumes 431 and 451 provide guidance on the monetary amount that an Agency can provide an employee for a performance award. The Agency's proposal complies with 5 U.S.C. Section 9902(a)(1)(B) and DoD Instruction 1400.25, Volumes 431 and 451 by linking outstanding employee performance to a potential 2 percent award.

Under the Union's proposal, it would amount to a mandatory awards system. Limitations upon the discretion to distribute performance awards cannot be unilaterally imposed upon the Agency. The Union's proposal would limit the Agency's discretion by requiring it to issue performance awards. In order for the Agency to be fiscally responsible, the Agency must maintain flexibility in determining when and if to issue awards, so it can balance its awards budget with mission-critical priorities. Finally, the Agency must have the flexibility to pay awards by the last pay period of the fiscal year so that it has a sufficient amount of time to calculate and process the awards. Accordingly, the Agency's proposal is the better alternative. Accordingly, the Panel orders the parties to adopt the following language:

Performance awards are contingent on budget and any budgetary constraints or caps in effect at the time and are given at the discretion of the Agency.

An employee rated as "Outstanding" is eligible to receive a one-time cash award of a maximum of up to 2% of his or her total salary. It is understood that the actual percentage available for any rating cycle will be dependent on the amount budgeted by the Agency for the ACEA bargaining unit for that rating year. The award shall normally be paid no later than the last pay period of the fiscal year in which the award was earned.

Exceptions to awards under this section also include:

A delay when an employee is under investigation for a conduct matter until the investigation is resolved and the allegations are not sustained;

A denial for any employee who was disciplined in the 12 months prior to the close of the appraisal period for which the award would be granted;

A denial for any employee who did not work at least 120 work days in the school year in which the appraisal period ended;

A reduction or denial (as circumstances require) for all employees due to reductions in awards spending by the Agency.

**6. Whether employees should be permitted to substitute a time off award for a monetary performance award.**

**a. Union's Final Offer**

Employees may, at their election, substitute a time-off award of three days which may be used in the remainder of that school year or in a subsequent school year.

The Union argues that employees who are rated "outstanding" should have the option to elect a time-off award in lieu of a monetary award. The Union states that the Agency is authorized to grant employees up to 80 hours a year in a time-off award. Employees seek this option because time-off awards are not subject to additional tax withholdings. Some employees value time off more than money because they only receive twelve sick days and three personal days per year.

**b. Agency's Final Offer**

The Agency is against this proposal and did not provide a counter-proposal.

The Agency did not provide a counter-proposal because it is having a hard time finding substitute teachers, and if it allows employees to take additional time off, it will be even more difficult to adequately fill in for that teacher. The Agency asserts that it does not want to commit to something that can compromise its mission.

**c. Conclusion**

Having carefully considered the evidence and arguments presented in support of the parties' positions, we find that the Agency's proposal is the better alternative to resolve the impasse. The Agency presents a legitimate concern to granting time-off awards - it is difficult to find qualified substitute teachers to fill in for certified teachers - which can

effectively compromise the Agency's mission. Accordingly, the Panel orders the Union to withdraw its proposal.

**7. Whether employees who receive two consecutive outstanding ratings should be eligible for a quality step increase in addition to their automatic step increase in their pay scale.**

**a. Union's Final Offer**

Any unit employee who receives an outstanding rating in two consecutive school years shall receive a quality step increase to the next highest step of their pay lane (in addition to their scheduled longevity step to which they would otherwise be entitled), effective at the beginning of the next pay year. Such quality step increases shall replace the one-time monetary award to which the employee would otherwise be entitled under subsection (a). Employees who are already at the top of the pay lane shall receive the one-time monetary award instead.

DOD Instruction 1400.25, Volume 431, Section 3.7(c) authorizes the Agency to award employees with a quality step increase (QSI). That section states, in part, "[t]he purpose of a QSI is to recognize excellence in performance by granting an accelerated step increase. To be eligible for a QSI, an employee must: currently be paid below step 10 of his or her grade; have a most recent rating of record of outstanding; have demonstrated sustained performance of high quality for a significant period of time; and have not received a QSI within the proceeding 52 consecutive calendar weeks." The Union, therefore, states that the Agency should reward employees for two consecutive years of outstanding performances with a QSI in addition to their automatic performance step increase. Thereafter, the system would start over again, requiring the employee to receive another two consecutive outstanding ratings before being eligible for the QSI.

**b. Agency's Final Offer**

The Agency is against this proposal and did not provide a counter-proposal.

The Agency did not provide a counter-proposal because it states that its employees already receive an automatic step increase every year and can receive a total of 29 step increases throughout their career.

### **c. Conclusion**

Having carefully considered the evidence and arguments presented in support of the parties' positions, we find that the Agency's proposal is the better alternative to resolve the impasse. The employees receive automatic step increases each year, and can receive up to 29 step increases during their tenure at the Agency. Accordingly, the Panel orders the Union to withdraw its proposal.

### **ORDER**

Pursuant to the authority vested in it by the Federal Service Labor-Management Relations Statute, 5 U.S.C. § 7119, and because of the failure of the parties to resolve their dispute during the course of proceedings instituted under the Panel's regulations, 5 C.F.R. § 2471.6(a)(2), the Federal Service Impasses Panel, under § 2471.11(a) of its regulations, hereby orders the adoption of the following to resolve the impasse:

1. The appraisal period will commence at the start of each school year in August and run through the end of the school year in June. Employees will normally participate in a minimum of three (3) performance discussions per year. Management will schedule the three performance discussions normally as follows: (i) within thirty (30) days after the start of the appraisal period; (ii) halfway through the school year; and (iii) as soon as practicable after the end of the appraisal period. For employees that will work during the summer, they will receive their first Performance Discussion prior to the start of their assignments.
2. Any training on the new performance appraisal system that cannot be accomplished within the duty day will be compensated in accordance with Article 19, Section (3)(d) of the Negotiated Agreement.
3. Employees shall be entitled to compensation in accordance with Article 19, Section 3(d) of the Negotiated Agreement for time spent utilizing the MyPerformance tool when they are unable to accomplish the tasks required by the system within the duty day, provided they obtain written prior supervisory approval



in accordance with Article 19, Section 3(g) of the Negotiated Agreement.

4. Management has determined to use the MyPerformance Appraisal tool to provide an automated appraisal system.
5. Performance awards are contingent on budget and any budgetary constraints or caps in effect at the time and are given at the discretion of the Agency.

An employee rated as "Outstanding" is eligible to receive a one-time cash award of a maximum of up to 2% of his or her total salary. It is understood that the actual percentage available for any rating cycle will be dependent on the amount budgeted by the Agency for the ACEA bargaining unit for that rating year. The award shall normally be paid no later than the last pay period of the fiscal year in which the award was earned.

Exceptions to awards under this section also include:

A delay when an employee is under investigation for a conduct matter until the investigation is resolved and the allegations are not sustained;

A denial for any employee who was disciplined in the 12 months prior to the close of the appraisal period for which the award would be granted;

A denial for any employee who did not work at least 120 work days in the school year in which the appraisal period ended;

A reduction or denial (as circumstances require) for all employees due to reductions in awards spending by the Agency.

6. The Union is ordered to withdraw its proposal.
7. The Union is ordered to withdraw its proposal.

By direction of the Panel.

A handwritten signature in blue ink, consisting of several overlapping, slanted strokes that form a stylized, somewhat abstract representation of the name 'Mark A. Carter'.

Mark A. Carter  
Chairman

November 19, 2018  
Washington, D.C.