

New Article 25

Old Article 27

Performance Appraisal System

27.1 Contract Precedence

Performance appraisals for bargaining unit employees will be done in accordance with NRC ~~M~~management ~~D~~directives ~~10.67~~ except as provided below. Wherever the terms of this contract and ~~MD 10.67~~ a management directive conflict, the contract takes precedence.

~~27.2—NTEU Announcement~~

~~The NRC agrees to distribute annually (in August or September), via the intra-agency mail system, a document prepared by NTEU which explains facts about performance elements and standards to employees. Such distribution will be within 3 workdays, if practical, after NTEU provides the necessary number of copies to the Chief, Organization and Labor Relations.~~

27.3 Changes to Elements and Standards

The NRC will notify employees of changes to elements and standards in their present positions at least 10 workdays prior to implementation. ~~Management will send copies to NTEU.~~ At the request of any employee a meeting will be held between the employee and his/her supervisor to discuss the elements and standards and to allow the employee to comment and make recommendations concerning them. The employee may also provide comments and recommendations within the ten workdays of such notification without a meeting. The employee may, if he/she desires, seek advice and guidance from NTEU during the time frame concerning these changes. The supervisor will provide the employee with feedback as to his/her comments and/or recommendations.

27.4 Management Responsibilities

The law provides that it is the right and responsibility of management to determine the number of rating levels and final performance elements and standards, subject to the Union's right to negotiate over the impact and implementation of management's determination of these matters.

27.5 Receipt of Elements and Standards

A copy of the final version of the elements and standards will be provided to the employee. The new elements and standards become effective upon receipt by the employee. The employee should sign the NRC Form-412 which acknowledges only receipt of the performance plan and that the opportunity to provide comments has been provided. If an employee declines to sign the NRC Form-412, ~~management will ask a disinterested non-bargaining employee (normally, another supervisor) to witness that the Form 412 has been given to the employee. A brief statement to this effect should be made on the Form 412 on the line which the employee would~~

~~otherwise sign. Both the disinterested party and the management representative (normally, the supervisor) will sign the Form 412. If no disinterested non-bargaining employee is available (such as a remote site location), the supervisor will annotate the employee's refusal to sign the Form-412 on the line designated for the employee's signature. In no event may the implementation of elements and standards be made retroactive without the written consent of the employee.~~

27.6 ~~Minimum~~ Appraisal Period

Annual ratings will be based on performance during the rating period, which runs from October 1 through September 30. All bargaining unit employees who have been in their positions and worked under the a set of critical elements and performance standards for 120 calendar days or more will receive a written appraisal of performance (rating of record) by October 31 each year for the rating period just completed. For employees who do not work under at least one set of critical elements and standards for at least 120 days by the end of the rating period (September 30), the rating period will be extended until 120 days have been completed, at which time the rating will be prepared (with the subsequent rating period being less than 12 months). This Article will apply to trial period employees except nothing in this Article will supersede Article 6 of the Agreement or waive any rights trial period employees have under Chapter 43 of 5 U.S.C.

Employees who serve in a position for 120 days or more and who are transferred to a new position with different critical elements and standards will receive a close-out appraisal and interim rating based on their performance in the vacated position. When a supervisor departs 120 days or more into the rating period, that supervisor will provide written feedback on the employee's performance at that time, a copy of which will be given to the employee. Close-out appraisals, interim ratings and feedback from departing supervisors will be given appropriate weight when determining the employee's annual rating of record. When a close-out appraisal is given for a period ending less than 120 days before the end of the annual rating period (i.e., after May 31), then the close-out appraisal and interim rating becomes the rating of record.

27.7 Notice of Delay

If the rating period is delayed beyond 10 workdays of the annual due date (October 31), management will inform the employee when the rating of record might be expected. Such date will be as soon as practicable.

27.8 Supporting Individual Element Ratings

In addition to indicating the rating, the supervisor shall write a brief narrative for each critical element, rating performance against the written Fully Successful standard. When performance exceeds or does not meet the Fully Successful standard, justification should be included to clearly and explicitly justify the assignment or a rating above or below the Fully Successful level.

27.98 Grievances

Should an employee disagree with the rating of record, he/she has the right to file a grievance pursuant to Article 51.

The parties agree that when any element and standard is alleged to be inconsistent with the NRC's regulations as well as any government-wide rule or regulation, such elements and standards may be grieved.

~~27.9 — Career Ladder Promotions~~

~~Non-competitive career ladder promotions will be granted or denied in accordance with Article 23.~~

~~27.10 — Within Grade Increases~~

~~Within grade increases shall be granted or denied in accordance with Article 37 of the Agreement.~~

27.1~~0~~¹ Progress Reviews

Each bargaining unit employee shall be given a progress review mid-way through the appraisal period (generally in March, but no later than April 30) if they have served under a performance plan for 120 days by that time. During the progress review, the employee and his/her supervisor shall discuss the employee's performance. No summary rating calculations are required. An employee whose performance in any element is believed by the supervisor to be below the fully successful at a Minimally Successful level at any time during the rating period shall receive a counseling memo specifying 1) the area(s) in which his/her performance is deficient; 2) recommendations as to how his/her performance can be improved. In addition, all employees should be given feedback at other times during the year, especially if their performance deteriorates significantly.

The employee should sign the NRC Form-412 which acknowledges only that the Progress Review has occurred. If an employee declines to sign the NRC Form-412, the supervisor will annotate the employee's refusal to sign the Form-412 on the line designated for the employee's signature.

27.1~~1~~² Performance Improvement Requirements Memorandum (PIRM)

When an employee's performance is deemed unacceptable, management shall assist the employee. Such assistance may include formal training, on-the-job training, counseling, and/or closer supervision as appropriate. The employee shall be given a reasonable opportunity to demonstrate required level of performance (currently minimally successful) Fully Successful performance or higher.

Prior to taking a performance-related action under Section 27.13 of this Article, Eemployees whose performance is unacceptable will be given a performance improvement period ~~for a~~

~~minimum~~ of not less than 60 calendar days to bring their performance up to at least the Minimally Successful level. Performance improvement periods ~~may be longer than 60 days and~~ will be extended beyond the initial period if circumstances so warrant, as determined by management. Management shall prepare a Performance Improvement Requirements Memorandum (PIRM) which:

27.12.1 identifies the critical element(s) for which employee's performance is unacceptable;

27.12.2 details the way in which the employee's performance is not meeting the standard for the critical element(s);

27.12.3 communicates new performance standards at the required level of performance (currently Minimally Successful) level for critical elements in which performance has been deemed to be unacceptable. These standards shall be reviewed, approved, and documented on the employee's performance plan as an addendum to the performance plan;

27.12.4 describes how management (normally the supervisor) will assist the employee to improve performance;

27.12.5 informs the employee of the time frame allowed to bring his/her performance up to at least the required level of performance (currently Minimally Successful) level;

27.12.6 states that failure to improve performance to the Fully Successful level will result in denial of within grade increase; and failure to improve to at least the required level of performance (currently Minimally Successful) level, and sustain that level for 1 year from commencement of the PIRM, may result in initiating an action to reassign, reduce the grade level of the employee, or remove the employee.

The employee will be given ~~two~~ the original and a copyies of the PIRM notice, one of which may be given to the employee's NTEU representative, if any, who may be present for the presentation of the PIRM. An employee may not grieve the Agency's decision to place an employee on a PIRM, but may grieve or file an appeal over any Agency action upon completion of the PIRM, as provided in 27.13 -15, below.

Within 30 days after completion of the PIRM period, the agency will advise the employee of the status of the PIRM. Failure to provide such status, however, will not preclude the agency from taking any action it deems appropriate based on the PIRM.

If the employee successfully completes the PIRM, he/she should receive a written notice of that decision as soon as practicable after completion of the PIRM period. This notice should also advise the employee that failure to sustain at least the required level of performance a (currently Minimally Successful) level for one year after the commencement of the PIRM may result in an action to reassign, reduce in grade, or remove the employee from the Federal service.

If, because of performance improvement to at least the required level of performance (currently Minimally Successful)-level by the employee during the notice period, the employee is not reduced in grade or removed, and the employee's performance continues to be acceptable for 1 year from the date of the advance written notice, any entry or other notation of the unacceptable performance shall be removed from all NRC records relating to the employee, notwithstanding other retention schedules for performance appraisals.

27.13 Proposed Performance-Related ~~Adverse~~ Actions

Subject to the applicable provision of this Agreement, OPM regulations and 5 U.S.C. Section 4303, the NRC may reduce in grade or remove an employee for unacceptable performance. When taking such action, the NRC will do so in accordance with the following procedure. An employee whose reduction in grade or removal is proposed under this section is entitled to at least 30 calendar days advance written notice of the proposed action which:

27.13.1 identifies specific instances of unacceptable performance by the employee on which the proposed action is based;

27.13.2 specifies the critical element(s) of the employee's position involved in each instance of unacceptable performance;

27.13.3 informs the employee of the right to representation by an attorney or other representative;

27.13.4 provides, by attachment, copies of all documents relied upon by management in proposing the action.

The employee shall be provided a reasonable time frame (not less than 7 workdays) in which to answer orally and/or in writing, and the employee shall be provided with a reasonable amount of official time within such period to prepare an oral and/or written reply.

The oral and/or written reply will be received by an official designated by the NRC in the proposal notice. If an employee is not represented by the Union, the Union will be given the opportunity to be present at all meetings between the NRC and the employee regarding the proposed action, and the Union will be provided reasonable advance notice of such meetings

The NRC shall prepare a verbatim transcript of the oral reply. A copy shall be provided to the employee's representative Union at the same time that it is provided to the deciding official.

27.14 Final Decision ~~on Adverse Action~~

The decision letter shall be issued within 30 calendar days after the expiration of the notice period. The decision shall inform the employee of his/her appeal rights. If the decision involves a reduction in grade or removal, it shall address which instances of unacceptable performance if any, have been rejected and which, if any, have been sustained and are being relied upon to

support the action. It shall also describe the appeal rights of the employee and indicate the effective date of the decision.

Unless proposed by the head of the Agency, the decision must be concurred in by a higher level manager in the organization than the one who proposed the action.

27.15 Appeal ~~of Adverse Action~~

A non-preference eligible employee against whom a removal or downgrade decision has been issued under the terms of this Article, who has two years of creditable service, may appeal the decision to the Merit Systems Protection Board, when appropriate, or, alternatively, may appeal (with the consent of the Union) pursuant to Article 52, "Arbitration Procedures" or any other provision available under law.

A preference eligible employee against whom a removal or downgrade decision has been issued under the terms of this Article, who has one year of creditable service, may appeal the decision to the Merit Systems Protection Board, when appropriate, or, alternatively, may appeal (with the consent of the Union) pursuant to Article 52, "Arbitration Procedures" or any other procedure available under law.

~~A preference eligible employee may appeal the reduction in grade or removal to the Merit Systems Protection Board when appropriate, or may appeal pursuant to Article 52, "Arbitration Procedures," but not both.~~

27.16 Details and Rotational Assignments

Employees detailed or serving on a rotational assignment for more than 120 days shall be entitled to a fair and objective evaluation of their performance while on the detail or rotational assignment. Such evaluation shall be completed by the appropriate supervisor and will be received by the employee within 30 days after the end of the detail or rotational assignment. The evaluation will be given appropriate weight when providing the employee his/her rating of record.

27.17 Self-Assessment

During the final 30 days of an employee's annual appraisal period (normally September), the employee may prepare a brief self-assessment to submit for their supervisor's consideration.

Employees will be allowed a reasonable amount of duty official time to prepare such an assessment.

27.18 Receipt of Appraisal and Comment Period

Each employee will be provided any appraisal and rating. Employees will be allowed five workdays after receipt of their appraisal to review, comment, sign and return their appraisal to their supervisor. Signature on NRC Form-412 acknowledges receipt of the appraisal, and not acceptance or agreement with the appraisal or rating. Any employee comments submitted will

become part of the appraisal. Exceptions to this time frame may be granted by the supervisor on a case by case basis. Exceptions may be based on, but not necessarily limited to, an employee's being in a travel status or on approved leave. If an employee declines to sign the NRC Form-412, the supervisor will annotate the employee's refusal to sign on Form-412 on the line designated for the employee's signature.

27.19 Appraisal Data

Annually, ~~upon request by the President, NTEU Chapter 208, no later than November 30 of each year,~~ the agency will provide ~~the President, NTEU Chapter 208~~ a numerical listing (no names) of performance appraisal ratings by Office, Division, and/or Branch. If the appraisal data is not complete at this time, the Union will be advised of which each office or region for which data is missing and its expected completion date, and updated data will be provided as soon as available.

~~27.20 Performance Appraisal System Projects~~

~~NRC and NTEU may agree to conduct demonstration projects related to the employee performance appraisal system during the life of the Collective Bargaining Agreement (CBA). Agreements establishing such projects may include provisions that change the performance appraisal system as described in this Article.~~