United States of America

BEFORE THE FEDERAL SERVICE IMPASSES PANEL

DEPARTMENT OF HEALTH AND HUMAN SERVICES, SOCIAL SECURITY ADMINISTRATION, OFFICE OF HEARINGS AND APPEALS, HEADQUARTERS OFFICE, FIELD OFFICE COMPONENT, OFFICE OF PROGRAM INTEGRITY AND REVIEW, AND PROGRAM SERVICE CENTERS AND COUNCIL 215, LOCAL 1923, COUNCIL 220, NATIONAL COUNCIL OF SSA FIELD ASSESSMENT LOCALS, AND NATIONAL COUNCIL OF SOCIAL SECURITY PAYMENT CENTER LOCALS, AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO	Case Nos. 92 FSIP 95, 102, 104, 114, and 126

DECISION AND ORDER

Council 215, Local 1923, Council 220, National Council of SSA Field Assessment Locals, and National Council of Social Security Payment Center Locals, American Federation of Government Employees, AFL-CIO (Union) filed requests for assistance with the Federal Service Impasses Panel (Panel) to consider negotiation impasses under the Federal Service Labor-Management Relations Statute (Statute), 5 U.S.C. § 7119, between it and five of six components[1/] within the Social Security Administration of the Department of Health and Human Services. The components involved are the Headquarters Office, the Office of Hearings and Appeals, the Field Office Component, the Office of Program Integrity and Review, and the Program Service Centers (Employer or SSA).

1/ The Data Operations Center, the smallest component, is the only one that reached agreement with the Union during bargaining over the new performance evaluation plans, and, therefore, did not participate in these proceedings.

After investigation of the requests for assistance concerning new performance assessment plans,[2/] with the parties' agreement, the Panel consolidated the cases for the purpose of dealing with the issues common to the five components. The Panel directed the parties to meet informally with Panel Member N. Victor Goodman for the purpose of resolving such common issues. The parties were advised that if no settlement were reached, Member Goodman would notify the Panel of the status of the dispute, including the parties' final offers and his recommendations for resolving the dispute. After considering this information, the Panel would take whatever action it deemed appropriate to resolve the impasse including those issues not addressed in the proceeding before Member Goodman.

Member Goodman met with the parties on August 25 through 27, 1992. Since the common issues in dispute were identified, though not resolved during the conference, he reported to the Panel based on the record developed by the parties. The Panel has now considered the entire record, including his recommendations for settlement.

BACKGROUND

The Employer administers retirement, disability, Medicare, and Supplemental Security Income entitlement programs for the public through its six components. The Unions represent approximately 48,000 employees who are part of a nationwide consolidated bargaining unit. They work in positions such as claims, service, and teleservice representative; data review technician; developmental and legal processing clerk; decision writer; computer specialist; and hearing assistant. The parties are covered by a national collective bargaining agreement that is due to expire on January 25, 1993.

The Employer implemented the new plans on June 1, 1992, so that employees could be appraised in Fiscal Year 1992.[3/]

2/ In a previous agreement between the parties entitled "PMS 430-1 Memorandum of Understanding" (September 18, 1991), performance plans were defined as "the aggregation of all of an employee's written critical and noncritical elements and performance standard(s)."

3/ Under Office of Personnel Management (OPM) regulations the minimum period that an agency shall establish for which an employee may be appraised is at least 90 but not more than 120 days, 5 C.F.R. § 430.205(b) (1992).

Subsequently, the Union filed a grievance alleging that the implementation was unilateral. The plans, generally, are written in a narrative style and do not apply numeric assessment methods.[4/] Although impact-and-implementation bargaining over the plans began at the national level, at an early point, a decision was made to move bargaining to the component level. Besides the provisions affected by this decision, the plans also would be subject to Article 21 of the national agreement entitled "Performance Appraisal." Through a Letter of Understanding attached to that agreement, the Article was carried forward from the 1982 agreement with minor modifications to reflect new Office of Personnel Management regulations. The parties also state that a national-level Memorandum of Understanding on the Employee Performance Management System (PMS 430-1), numerous component-level, and some local memoranda of understanding exist on the subject, and, as relevant, may continue to be applied to such matters.

ISSUES AT IMPASSE

Essentially, the dispute concerns proposals that would: (1) identify for employees, for performance assessment purposes, the work product that would be counted, the content of progress reviews, and the standards that would be applied at more than one performance level; (2) attempt to promote principles of fairness in applying standards to employees who share identical position descriptions but work in different parts of the country; (3) require consideration of performance-related factors that are beyond an employee's control, and discount sporadic poor performance which might otherwise reduce an employee's rating; and (4) permit employees to rebut supervisors' observations of their performance, errors found in their work, and complaints received from the outside. Other proposals deal with the Union's representation and bargaining rights, aspects of training, further negotiations, and the implementation date and distribution of the agreement.

4/ More than 2 years ago, partly at the Union's urging, the Employer discontinued reliance on most, if not all, numeric standards. Such standards were believed to be leading to a breakdown of teamwork and counterproductive competition that affected SSA's overall mission of serving the public. The development of the new plans followed the termination of numerics.

THE POSITIONS OF THE PARTIES

1. The Employer's Position

The Employer's proposals are as follows:

The parties agree to abide by and comply with the parties' negotiated National Agreement and this MOU in effecting all actions. This MOU shall not alter, add to, subtract from, modify, or otherwise change the terms and conditions of the Agreement, supplementals thereto, the Civil Service Reform Act or the rights and conditions of either party derived therefrom, or any other MOU between the Union and Management. Neither party waives rights provided by law, governmentwide rule, regulation or the National Agreement. (Covers Union common issue 4.)

1. At the beginning of the appraisal period, the appraising official(s) and the employee(s) will meet to discuss the performance plan so as to attempt to arrive at a full and complete understanding of what is required to achieve the levels of performance described in the plan, including performance plan terminology, the method(s) to be used to determine the level of performance in each GJT, the nature and type of work product or other result to be counted, reviewed, or otherwise monitored. The discussion may also include examples of the performance requirements for level 2 and level 4 as they relate to the requirements for Fully Successful. The discussion(s) shall attempt to avoid subsequent misunderstandings about the performance standards and their application to the employee's performance. (Covers Union common issues 2, 6, 8, 27, and 30.)

2. Each performance plan will be clearly stated in writing and given to all employees in accordance with Article 21, Section 3 of the National Agreement. With respect to the FY 1992 appraisal period, such plans will be issued at least by June 1, 1992, in order to allow sufficient time for preparation of the FY 1992 appraisal. (Covers Union common issue 3.)

3. In accordance with the EPMS MOU dated September 18, 1991, performance will not be assessed under PMS S430-1 procedures for any period of time that a performance plan has not been assigned. In accordance with 5 CFR 430.204 (d) (1), an employee's rating will not be lowered or raised for any period of time for which the plan was not in effect. (Covers Union common issue 5.)

4. In accordance with Article 16, Section 1, of the National Agreement, any necessary training as determined by management will be provided for employees who do not have the necessary skills to properly perform the duties of new GJTs at the Fully Successful level. This training may include classroom refresher courses and personal mentoring among other formal and informal training programs. (Covers Union common issue 9.)

5. Management agrees to make every reasonable effort to ensure that the assignment of work to employees is done in a fair and equitable manner. (Covers Union common issues 18 and 19.)

6. The appraising official will determine whether the employee was assigned sufficient duties in a given GJT to allow comparison of performance with the standard for that GJT in order to be given a rating, consistent with law, rule, regulation, and the National Agreement. (Covers Union common issue 20.)

7. Management agrees that an employee's performance appraisal will be based on overall performance for the entire period of time the performance plan is in effect. (Covers Union common issue 28.)

8. In accordance with Article 21, Section 7 of the National Agreement, documented progress reviews will summarize the employee's progress in comparison to the performance expectations, any problems encountered or anticipated, any corrective actions taken or planned and any changes in the performance expectations warranted by changes in the work situation. For the FY 1992 appraisal period, a documented progress review will be conducted with each employee between 60 and 90 days after the employee receives a performance plan. All other reviews will be conducted pursuant to the parties' National Agreement. (Covers Union common issues 32, 33, and 34.)

9. The Union will be given an opportunity to be present at any meeting(s) related to these revised performance plans if any such meeting is a "formal discussion" as defined at 5 U.S.C 7114 (a) (2) (A). (Covers Union common issue 47.)

10. The Parties understand that Management does not intend to use numeric goals, guidelines, indicators, or pars to evaluate individual employee performance unless stated in the performance standard. (Covers Union common issues 11 and 39.)

11. Consistent with Article 21, Section 3.E, of the National Agreement, Management shall consider factors which affect performance that are beyond the control of the employee. (Covers Union common issues 6 and 7.)

12. To the extent that any changes, including supplements, are made regarding performance plans, Management will give notice consistent with Article 21, Section 2 of the National Agreement and Article 4 of the National Agreement. (Covers Union common issues 12 and 39.)

13. To the extent feasible and consistent with workload requirements, management intends to assign duties so that employees have the opportunity to perform work covered by the GJTs contained in their plans. (Covers Union common issues 20 and 21.)

14. Consistent with Article 21, Section 3.A of the National Agreement, performance standards and critical or noncritical elements must be consistent with the duties and responsibilities contained in the employee's position description. (Covers Union common issues 2 and 21.)

15. In accordance with Article 21, Section 3.D of the National Agreement, the procedures that are used to gather information in order to evaluate employee performance must reasonably ensure the accurate evaluation of performance. Furthermore, supervisory conclusions based upon observations of an employee by management will be communicated to the employee during informal discussion and/or progress reviews. (Covers Union common issues 26 and 27.)

16. In the application of Article 21, Section 7.C, of the National Agreement, prior to making a determination that remedial action is necessary based on performance, management will make every reasonable effort to ensure that the decision is based on sufficient information to make an objective assessment. (Covers Union common issue 35.)

17. A copy of this MOU will be made available to each employee within thirty (30) days of the effective date of this agreement. (Covers Union common issue 40.)

18. Concerns and suggestions regarding the new performance plans are a proper matter for consideration by the joint Union/Management Appraisal System Review Committee established as a result of the EPMS MOU dated September 18, 1991. (Covers Union common issue 41.)

19. The Agreement shall become effective after having been signed by the Parties and upon completion of Agency Head review pursuant to 5 U.S.C 7114 (c). Should any provision of this Agreement be disapproved, the provisions of Article 4, Appendix A, Section VII.B, of the National Agreement shall apply. (Covers Union common issue 43.)

20. The appraising criteria used to determine levels of performance will be applied in accordance with Article 21, Section 3.A, of the National Agreement. (Covers Union common issues 2 and 30.)

21. Appropriate Agency operating and administrative procedures, as determined by Management, will be made available to employees as required to perform the full duties of his/her job. (Covers Union common issues 8 and 22.)

22. In accordance with Article 21, Section 7.C, of the National Agreement, if the Administration intends to place an employee on a performance improvement plan the appraising official shall identify the employee's performance deficiencies, the action that must be taken by the employee to improve the performance, and any provisions for counseling, training, reassignment, or other assistance as appropriate. (Covers Union common issue 36.)

23. When a management official receives an error rebuttal and the error is not clearly backed by procedure, policy, or law, he/she may seek additional information, as appropriate, to resolve the issue prior to making a final determination. (Covers Union common issue 31.)

Basically, the Employer believes that current contractual provisions and memoranda of understanding include procedures that are adequate to ensure that employees would be appraised fairly under the new plans. Additionally, although the work of the components may differ, general wording which gives employees a full and complete understanding of the performance plan (Employer 1) and takes into consideration factors beyond an employee's control (Employer 11), provides the necessary degree of accountability and flexibility to make adjustments for a wide variety of both regularly occurring and special circumstances. On the other hand, the Union's proposals would force supervisors to pick their way through a "minefield" of requirements and discourage free communication with employees regarding performance matters by excessive reliance on documentation. Furthermore, the Union has

failed to show harm related to the new standards. For example, figures comparing the number of employees rated "Outstanding, Excellent, and Fully Successful" in 1990 and 1991 show a negligible change in numbers of employees at each level of achievement. No effect, therefore, is attributable to discontinuing the use of numerics in the new plans. Neither has there been any increase in performance-related grievances, nor other signs that employees are having difficulty understanding the new standards. Moreover, the award program continues to recognize employees' performance-related achievement; the number of employees receiving awards actually increased between 1990 and 1991.

As to further negotiations over measurement, assessment, or audit systems, it has no obligation to open bargaining on the subject (Union 2) since it has not changed such systems. If the Union wants to overhaul the system, successor national negotiations would be a more appropriate opportunity, and preferable to the piecemeal, component-level approach that the Union prefers. Furthermore, in addition to these negotiations, through a consultation process established by the PMS 430-1 Memorandum of Understanding, the Union already has had an opportunity to discuss its views on the new performance standards.

Lastly, the Employer raises a number of preliminary questions regarding its duty to bargain over certain Union proposals either because the matter is covered by the current contract, or under Federal Labor Relations Authority case law, the proposal is nonnegotiable. It would reject Union proposals numbered 32, 33, 34, 35, 36, and 47 because those matters are covered by the national agreement. In regard to its nonnegotiability allegations, Union 11 on numeric standards would require it to provide such standards at additional levels, and interfere with the well-established right of management to determine the content of performance standards.[5/] The Employer also objects to Union 28

5/ In National Treasury Employees Union and U.S. Department of Health and Human Services, Social Security Administration, Office of Hearings and Appeals, Baltimore, Maryland (Office of Hearings and Appeals) 39 FLRA 346, 350-354 (1991), the Federal Labor Relations Authority (FLRA) found a proposal nonnegotiable that required standards to be written at three levels based on position requirements, and, to the maximum extent feasible, that they be objective, explicit, observable or measurable, and attainable. The FLRA held that the proposal impermissibly interfered with management's right to direct employees and assign work.

for the same reasons because it would base an employee's performance appraisal on overall performance rather than "sporadic instances of unrepresentative performance." 6/

2. The Union's Position

The Union proposes the following wording with respect to the issues at impasse:

> Provision 2: Prior to the beginning of the appraisal period, the appraising official(s) and employee(s) will meet to discuss the performance plan so as to arrive at a full and complete understanding of what is required to achieve each level of performance for each generic job task (GJT). The systems and procedures utilized to monitor, measure, assess, and/or audit employee performance will also be discussed with the employee upon completion of negotiations with the Union on this impact issue. These discussions will be reduced to writing, with a copy to the employee. The employee may add written comments which will be placed in the employee's 7-B File.
>
> Provision 3: A performance plan will be clearly stated in writing and given to each employee in accordance with Article 21, Section 3(C) of the National Agreement.
>
> Provision 4: This agreement cannot add to, modify, or detract from the National Agreement, supplementals thereto, the Civil Service Reform Act, or the rights and conditions of either party derived therefrom.
>
> Provision 5: An employee's performance appraisal under PMS-430-1 procedures will not be adversely affected for any period of time that a performance plan has not been assigned.

6/ The Employer cites a decision where the FLRA found a proposal to be an appropriate arrangement that required the employer to consider an uncharacteristic performance in one situation when giving an overall rating. It apparently believes that the case may be distinguished because the employer retained the flexibility of determining how to accommodate an uncharacteristic rating, whereas under Union 28, it would not retain a similar flexibility. National Treasury Employees Union and U.S. Department of the Treasury, Internal Revenue Service, 39 FLRA 731, 736-739 (1991).

Provision 6/7: The Employer shall consider in the application of performance standards unusual, time-consuming, and/or complex duties which could present a distorted or misleading assessment of individual performance.
Provision 8: Office policies, format guides, maintenance and operations instructions referenced by specific GJTs will be clearly communicated and made available in writing to employees upon request.

Provision 9: Appropriate training, as determined by management, will be provided for employees who do not have the necessary skills to properly perform the duties of the new GJTs. No employee will be adversely affected by the lack of opportunity to receive appropriate training.

Provision 11:

A. No numeric goals, guidelines, indicators, or pars will be used to assess employee performance unless specifically and clearly stated in the performance standard.

B. For any position where numerics are defined for level 3, a numeric performance standard will be developed for levels 2 and 4.

Provision 12: Management has determined that where a national performance standard is developed, no local numeric supplements or deviations are permitted.

Provision 18: Management agrees to make every reasonable effort to ensure that the assignment of work to employees is done in a fair and equitable manner.

Provision 19: Withdrawn without prejudice; withdrawal of issues such as rotation and future assignments does not constitute a waiver of the Union's right to bargain such subjects in the future.

Provision 20: The appraising official will determine whether the employee was assigned sufficient duties in a given GJT to allow comparison of performance with the standard for that GJT in order to be given a rating, consistent with law, rule, regulation, and the National Agreement.

Provision 21: To the extent feasible and consistent with workload requirements, management intends to assign duties so that employees have the opportunity to perform work covered by the GJTs contained in their plans will not be disadvantaged in their appraisal of record.

Provision 26: Complaints about an individual employee will be brought to the attention of the involved employee in writing as soon as possible. Complaints based on hearsay, conjecture, or speculation will not be used to assess performance. Allegations made against employees must be supported by verifiable evidence prior to use in assessing employee performance.

Provision 27:

A. To the maximum extent feasible, the Employer will use sampling techniques and evaluative conclusions that are based on valid, objective, and commonly accepted techniques so as to ensure a valid representation of the employee's performance for the entire appraisal period.

B. The sampling technique and its application must be verifiable.

C. Management observations will be applied in a fair, objective, and equitable manner, and management conclusions based upon the observation of an employee will be provided to the employee in writing with supporting documentation the day the observation occurred, or in the event same-day feedback is not practical, it will be provided by close of business of the workday after the day the observation is performed.

Provision 28: Management agrees that an employee's performance appraisal will be based on overall performance for the entire period of time the performance plan is in effect and not on sporadic instances of unrepresentative performance.

Provision 30: Criteria used to assess quality will be applied consistently to employees under the same performance plan.

Provision 31: Employees may rebut errors. Errors will be returned to the employee as soon as possible after detection. Unresolved rebuttals will, at the employee's request, be placed in the SF-7B File.[7/]

Provision 32: The timing of documented progress reviews will be conducted in accordance with Article 21, Section 7, of the national collective bargaining agreement.

Provision 33: During progress reviews, at a minimum, employees will be informed in writing of their level of performance by comparison with the performance elements and standards established for their positions, pursuant to 5 C.F.R. § 430.205(e).

Provision 34: If the supervisor determines that an employee's performance has decreased from the prior year, the employee will be informed and the progress interview will show specific written information for each GJT as to how performance has declined and what specific steps are required for improvement.

Provision 35: In the application of Article 21, Section 7(C) of the National Agreement, prior to making a determination that remedial action is necessary based on performance, management will make every reasonable effort to ensure that the decision is based on sufficient information to make an objective assessment.

Provision 36: The Union will be timely notified in writing when an employee is placed on a performance improvement plan (PIP).

Provision 39: To the extent that any changes, including supplements, are made regarding performance plans, management will give notice consistent with Article 21, Section 2, of the National Agreement and Article 4, Section 3 of the National Agreement.

Provision 40: The Union will assume responsibility for distribution of this MOU to unit employees.

7/ This is a working file maintained by the supervisor.

Provision 41: Concerns and suggestions regarding the new performance plans are a proper matter for consideration by the joint Union/Management Appraisal System Review Committee established as a result of the EPMS MOU dated September 18, 1991. If this committee fails to informally resolve identifiable impact issues/problems during the first 90 days after the close of the FY 1992 appraisal period, this agreement will be reopened on the 30th day thereof for further negotiations.

Provision 43: This agreement is effective immediately upon signing, subject to Head of Agency approval per 5 U.S.C. § 7114(c). If the Agency Head disapproves any provisions of this agreement, the Employer will notify the Union of any such disapproval with an explanation for the reason(s). The parties will then resume negotiations within 10 workdays in accordance with 5 U.S.C. 71.

Provision 47: Pursuant to Article 2, Section 3 D, the administrative (sic) will give the Union sufficient advance notice to exercise its rights. The Union representative for the representational area of the employees involved shall be given an opportunity to attend the meetings provided for in Provision 2 above.

The Union's overriding concern is that employees' performance be appraised fairly and consistently. Consistency is an appropriate corollary to fairness because a large number of bargaining-unit employees, working in different locations nationwide, occupy positions with identical descriptions and duties. To maintain these principles, assessments conducted under the appraisal plans should be based on representative work samples with a sufficient quantity of performed work. If plans specifically refer to policies, instructions, etc., such information should be provided to employees in writing. Fairness also requires that employees be given an opportunity to rebut, on the record, errors or complaints that are reported to them before memories of the actual situation have faded. Furthermore, to avoid mistakes, supervisors who review employees' work should carefully reconsider and review records before placing them on performance improvement plans. As a support to employees in this technical and vital area, it must have access to meetings at all levels to fulfill its representational obligations, and be notified when an employee is placed on a performance improvement plan.

It strenuously objects to the Employer's attempt to bypass it by allowing direct discussions between individual supervisors and employees over "supervisor-selected" methods to count, review, or monitor employees' work for rating purposes (Employer 2). As an example of the potential inequity that might arise, it provides 2 progress reviews of claims representatives with identical position descriptions, but conducted by different supervisors at different offices in North Carolina using "radically different methods"; 1 supervisor reviewed 11 cases and provided minimal comments, while the other reviewed 117 cases and provided extensive comments about how the employee might improve, and a chart comparing the individual's case processing time with that of others in the office. Under both reviews, the employees' performances were found to be fully successful.

Finally, since it has a grievance pending over the Employer's implementation of the new plans prior to completion of negotiations, it specifically urges the Panel not to adopt the last sentence of Employer 2, which might compromise its grievance rights. Further negotiations are appropriate concerning measurement, assessment, or audit systems as discussed above, and other negotiations should be conducted as well, if: (1) the Employer decides to issue new methodology for assessing performance; (2) the Agency head rejects any provision on review; or (3) the joint Union/Management Appraisal System Review Committee is unable to resolve impact issues through its discussions.

CONCLUSIONS

Having considered the evidence and positions of the parties, we generally agree with the Employer's assessment of the case. The record overwhelmingly confirms that the parties already have numerous contractual provisions in place on performance plans and standards that address many of the Union's concerns. Although local, regional, and component-based differences exist, in our view, the provisions negotiated at the national level are adequate, in most circumstances, to address a variety of regularly occurring and unique situations, and offer the advantages of consistency and simplicity. In addition, we cannot ignore the fact that national-level negotiations may begin shortly. Should the Union find that the outcome of the instant impasse is unsatisfactory, or that current contractual provisions on performance appraisals require a major overhaul, it may revisit such matters at that time.

Consistent with the foregoing discussion, we shall order the parties to adopt the following items proposed by the Employer: Preface, 1, 3, 4, 5, 6, 8 (as amended), 9, 10 (with Union 11B), 11, 12, 13, 14, 15, 16, 18, 19, 20, 22, 23 (with last sentence of Union 31). When joined with other pre-existing provisions, we believe

the interests of bargaining-unit employees in a fair appraisal of the work they have performed should adequately be protected. At the same time, the burdens placed on management in following these procedures should not interfere with its goal of providing service to the public. Significantly, this is the underlying purpose of performance management systems.[8/]

While overall we favor the Employer's position, we also shall order the adoption of Union 3, 8, 11B (to be added to Employer 10), 28, 31 (last sentence only, to be added to Employer 23), and 40 in lieu of, or in addition to, the Employer's counteroffers on these items. More specifically, Union 3, although otherwise identical to the Employer's corresponding counterproposal, is superior because it does not refer to a date which has now passed. On providing employees with clear information on matters referenced in their generic job tasks, we select Union 8 instead of Employer 21 because it more clearly ties the guidance referenced in performance plans to an employee's need for such information. Hence, an employee's ability to comply with the requirements of assigned duties may improve with what appears to be a minimal burden on management. As to extrapolating numeric performance standards when given at level 3 to levels 2 and 4, Union 11B,[9/] we believe that this would clarify for employees either what they should be striving for, or by how much they have missed the mark. The parties are in agreement on appraising employees based on their overall performance; however, we are persuaded that adding wording to temper the effect of an instance of unrepresentative poor performance is fairer to employees, so we shall adopt Union

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8/ "Performance management is the systematic process by which an agency integrates performance, pay, and awards systems with its basic management functions for the purpose of improving individual and organizational effectiveness in the accomplishment of agency mission and goals," 5 C.F.R. § 430.102 (1992).

9/ We reject the Employer's position that the proposal is nonnegotiable. In Office of Hearings and Appeals cited by the Employer, the FLRA focused on that aspect of the union's proposal that tended to control the content of performance standards by requiring them to be objective, explicit, observable or measurable, and attainable to the maximum extent possible. The FLRA found a provision nearly identical to the one in the instant case negotiable since it merely obligates management to develop numeric standards for another level when it already has determined to use numerics. The FLRA also found that the provision was not inconsistent with governing OPM regulations. American Federation of Government Employees, Local 3172 and U.S. Department of Health and Human Services, Social Security Administration, Vallejo District Office, 35 FLRA 1276, 1284-1286 (1990).

28.10/ Retaining records of an employee's rebuttal of an unresolved error when requested by the employee, Union 31, would also be fairer to employees than the Employer's counteroffer, because memories tend to cloud over time. Finally, we have adopted Union 40 which permits it to distribute copies of the parties' agreement on performance plans because the Employer's offer is unnecessarily vague.

Finally, turning to those disputed proposals not among those common to the components involved herein, in accordance with the Panel's regulations, 5 C.F.R. 2471.6 (a)(2), we recommend that the parties select a single arbitrator to resolve them, on a component-specific basis, by mediation-arbitration, with the parties to share equally the fees and related expenses of the proceeding or proceedings. Under this procedure, the designated neutral will first engage in mediation with respect to the issues. Should any of them not be resolved in this manner, the arbitrator will dispose of them by issuing a binding decision. The arbitrator may decline to consider any proposal about which either party contends it has no obligation to bargain. In the event that a written arbitration decision is issued, the Employer is requested to send a copy of it within 30 days of its receipt to the Labor Agreement Information Retrieval System (LAIRS), 1900 E Street NW., Room 7412, Washington, DC 20415.

The parties are to notify the Panel, in writing, no later than the close of business on Thursday, October 14, 1992, as to whether they accept this recommendation.

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 the 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 following:

10/ In this regard, we find that the case cited by the Employer to support its allegation that the proposal is nonnegotiable is not on point. In any event, in our view, the additional wording proposed by the Union appears to do no more than clarify the meaning of the main portion on which the parties agree.

I. The parties shall adopt the Employer's proposals as indicated below:

Preface, 1, 3, 4, 5 [agreed to], 6 [agreed to];

8 (as amended): In accordance with Article 21, Section 7, of the National Agreement, written documented progress reviews will summarize the employee's progress in comparison to the performance expectations, any problems encountered or anticipated, any corrective actions taken or planned and any changes in the performance expectations warranted by changes in the work situation, in accordance with 5 C.F.R. § 430.205 (e)(1992). For the FY 1992 appraisal period, a documented progress review will be conducted with each employee between 60 and 90 days after the employee receives a performance plan. All other reviews will be conducted pursuant to the parties' National Agreement;

9, 10 (with Union 11B), 11, 12, 13, 14, 15, 16 [agreed to], 18, 19, 20, 22, 23 (with last sentence of Union 31).

II. The parties shall adopt the Union's proposals as indicated below:

3, 8, 11B (with Employer 10), 28, 31 (last sentence only, with Employer 23), 40.

By direction of the Panel.

Linda A. Lafferty
Executive Director

September 30, 1992
Washington, D.C.