

U.S. Department of Homeland Security

Office of the Chief Counsel
20 Massachusetts Avenue, NW
Washington, DC 20529

Nebraska Service Center
850 S Street
Lincoln, NE 68508



**U.S. Citizenship
and Immigration
Services**

NEGOTIATED SETTLEMENT AGREEMENT

AFGE Local 3928 filed a grievance pursuant to Agreement 2000, Article 471(1)(b) regarding the obligation to bargain and the impact and implementation of Performance Work Plans that were implemented on January 1, 2006. The parties, AFGE Local 3928, hereinafter the "Union", and the Nebraska Service Center, U.S. Citizenship and Immigration Services, Department of Homeland Security, hereinafter the "Agency", enter into this Settlement Agreement, hereinafter "Agreement", as a resolution of the above noted grievance and pending arbitration.

For the purposes of this settlement agreement, the Performance Work Plans at issue are Adjudication Officers Performance Work Plans, hereinafter PWP's implemented on or after January 1, 2006.

The Union and the Agency here by agree to the following:

1. The Agency agrees to recalculate the ratings of the Agency employees for the periods of January 1, 2006 through September 30, 2006 and October 1, 2006 through September 30, 2007 using the standards in effect on December 31, 2005.
2. The Agency agrees to calculate the ratings of fiscal year 2008 and 2009 using the current PWP and then recalculate the ratings using the standards in effect on December 31, 2005. When a new standard is implemented, that portion of the rating year prior to the new standard shall be recalculated using the standards in effect on December 31, 2005.
3. The recalculation will be conducted on the ratings of employees currently employed and assigned to the Nebraska Service Center on the date of execution of this Agreement.
4. The recalculation will not be conducted on retired annuitants.
5. The ratings of record of outstanding will remain outstanding.

6. Any recalculation done under the terms of this Agreement will not result in a lower rating of record.
7. Any recalculation that results in the same rating of record will remain as is.
8. The recalculation will be conducted by the same supervisors who evaluated the original rating. In the event that the original supervisor is no longer available, the original Assistant Center Director, hereinafter ACD, will conduct the reevaluation. In the event the original ACD is no longer available the current ACD will conduct the reevaluation.
9. In the event insufficient data is available to accurately evaluate an element, the employee will receive a "not rated" on that element.
10. The Agency agrees to reimburse the Union for the costs incurred in the postponement of the two arbitration hearings.
11. The Union agrees to, upon the completion of the terms herein, to withdraw the arbitration now pending and all issues relating thereto and accepts this settlement as a full and complete release of all complaints and allegations.
12. No-fault Agreement: By entering into this settlement, the Agency does not admit that it or any Agency official or employee violated Agreement 2000.
13. Joint Draftsmanship: The parties acknowledge that they have fully participated in the drafting of this Agreement and that any ambiguity shall not be construed against any party on the ground that such party drafted this Agreement.
14. Voluntary Agreement: The parties acknowledge that they have read this entire Agreement and that they fully understand it. The Union acknowledges that they enter into this Agreement freely and voluntarily and that the Agency has made no threats or used any coercion of any kind to induce the Union to enter into this Agreement.
15. Integration: This Agreement contains the parties' full and complete agreement with respect to their mutual releases. No agreement or representation shall be deemed binding upon any party hereto, nor shall any amendment to this Agreement be deemed binding, unless set forth in writing after this date and signed by the parties to this Agreement.
16. Expenses. Except for the costs incurred in the postponement of the arbitration hearings, discussed herein, each party shall be responsible for costs incurred in this grievance, arbitration, and settlement.
17. Precedent: The parties agree that this Agreement shall not be precedent setting and that neither party will assert or claim that this Agreement is precedent in any current or future personnel action, administrative procedure of litigation of any kind.

18. Effective Date: This Agreement shall be effective upon signature by all parties.

19. Completion Date: The Recalculation of the ratings through FY 2008 shall be completed within 90 days from this Agreement.

20. Non-compliance Provisions: If the Union believes the Agency has failed to comply with this agreement's terms, notification shall be made to the Agency within 30 days from the date when the Union knew of the alleged non-compliance. The Union shall include in the notification the terms relating to the alleged non-compliance. The Agency shall have 30 days to respond to the alleged non-compliance. Notwithstanding any other agreement between the parties, any claim of non-compliance with this agreement may be brought immediately to arbitration. Notwithstanding any other agreement between the parties, all costs and fees of any arbitration based upon non-compliance with this settlement agreement shall be born solely by the loser of the arbitration.

I have read the negotiated settlement agreement and agree and accept its terms and provisions.



Mark Whetstone
President
AFGE Local 3928



Jerry Heinauer
Director
Nebraska Service Center
USCIS, Department of Homeland Security

Date 2-26-09

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