

OPPORTUNITY TO DEMONSTRATE ACCEPTABLE PERFORMANCE (ODAP)

Institutional Grievance

NTEU Chapter-282

Date: May 20, 2021

Oral Presentation:

No oral presentation is requested.

Grievant:

NTEU Chapter 282

Institutional Grievance against FDA:

Janet Woodcock, MD
Acting Commissioner
Food and Drug Administration
Department of Health and Human Services

Matter Grieved:

Management has implemented the “Opportunity to Demonstrate Acceptable Performance (ODAP)” in violation of the CBA.

Specific Articles/Law/Regulation Violated:

CBA Article 31, Section 6A-4, “Actions Based on Unacceptable Performance.”

Statement of Violation:

Management is violating the NTEU/HHS contract by issuing 30 day “Opportunity to Demonstrate Acceptable Performance” (ODAP’s) that does not comport with the 60-day minimum Performance Improvement Plan (PIP) requirement in Article 31, Section A-4 of the CBA. To the extent that the Agency continues to rely on the April 1, 2019 Federal Service Impasses Panel (FSIP) decision to justify this shortened ODAP period, the Agency is defying Executive Order 14003 and OPM guidance. On March 5, 2021 OPM issued guidance to agencies on the implementation of Executive Order 14003. The guidance states that agencies must suspend, revise or rescind actions covered in the CBA provisions that were imposed by the FSIP. The guidance further states “this includes collective bargaining agreements where such matters were imposed by a decision of the Federal Service Impasses Panel.” To the extent agencies were complying with the terms of an expired CBA immediately prior to implementing any EO 13839 requirements, agencies must revert to prior practices until a new agreement is negotiated with the union.” If the Agency continues with any removals because of the ODAP, the Agency is violating Article 31, Section 6 of the CBA and is violating the Executive Order 14003 and the March 5, 2021 OPM guidance.

Remedy Requested:

1. Follow the CBA Article 31 in issuing proposed action based on unacceptable performance for bargaining unit employees covered by the CBA.
2. Return to work any bargaining unit employees who were removed from FDA based on the 30-day ODAP with all back pay and entitlements due.
3. Pay attorney fees and grant any other appropriate remedy.

Marsha Hayden

Marsha Hayden
President/Steward
NTEU Chapter 282