

**Grievance #13-E-00617**

**Decision:** August 4, 2015

**Arbitrator:** Paula Knopf

**Grievor:** Laudeline Atienza

**Department:** Health

**Issue:** Performance Evaluation Process

This grievance alleges that the Employer failed to follow the proper procedures with regard to a Performance Evaluation of the Grievor and failed to comply with the terms of the Collective Agreement. The Union sought to have the Performance Evaluation removed from the Grievor's personnel record.

The Grievor had been in her position in the Department of Health for about two years when the events leading to the grievance took place, during which time she had three different supervisors. The first one did not conduct a performance evaluation. The second one conducted one in July 2013, just prior to his departure. The third one, who arrived shortly after the second one had left, advised his staff that he would be conducting performance evaluations as a follow-up to their July evaluations and to advise each of them of his expectations. In October, 2013 he advised all his staff that he was completing the performance evaluations and would meet with each of them to review and discuss their evaluations.

The Grievor met with her supervisor on October 21, 2013 to discuss her performance evaluation. She had not been given a copy of the evaluation to review prior to the meeting although was allowed to do so at the meeting. She was not pleased with the evaluation and their meeting was "difficult". The following day she provided her supervisor with a written, detailed set of comments on the evaluation. Both the comments and the Performance Evaluation were filed on her personnel file. As a follow-up, her supervisor requested a meeting to discuss the evaluation, her comments and set goals going forward. The meeting was held in mid-November 2013 with the supervisor, the Grievor and the union steward in attendance.

Following the November meeting a grievance was filed, with the union asserting that Article 33.01(d)(ii) of the Collective Agreement incorporated the Employer's Performance Management Manual into the agreement, thereby obligating the Employer to follow its procedures and giving an Arbitrator jurisdiction over its enforcement. The alternate argument was that the Employer violated Articles 33.01(c) and (d) by failing to allow the Grievor the opportunity to state career goals, failing to properly explain the review process and failing to provide the proper forms and instructions. Therefore the Performance Evaluation should be expunged from the Grievor's personnel file.

**DECISION: The grievance was dismissed.** The evidence does not support that the Performance Evaluation Manual has been incorporated into the Collective Agreement. Nothing in the CA refers to the Manual or promises that the Employer will be bound by its own policies or guidelines. Nor does the Manual refer to the CA or suggest that it is incorporated into it. "There is no reason to assume that any document published by management is incorporated into a collective agreement". The supervisor's failure to follow the guidelines does not, therefore, amount to a violation of the CA.

The Arbitrator did find that there were procedural violations of Article 33 and 33.011(d)(ii) of the CA because the Employer failed to provide forms or documents to the Grievor as required by Article 33.01(d)(ii). As this was remedied by holding the November meeting, no substantive breach of the CA was proven and no prejudice established.

**Lessons Learned:** Supervisors should follow the procedures set out in the Performance Evaluation Manual and the Collective Agreement so that employees are informed of the process, know what to expect and are provided with all the necessary documents on time so they can adequately review them.