

NTEU National Grievance
on
OCC Ratings and
Merit Pay/Merit Bonuses

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National Grievance on Ratings and Merit Increases and Merit Bonuses for Performance Year 2019-20

The following pages show the results of NTEU's preliminary analysis of the data, providing examples and evidence demonstrating that the distribution of ratings, and associated merit pay and merit bonuses for the 2019-20 performance year violates:

- Title VII of the Civil Rights Act of 1964;
- The Age Discrimination in Employment Act (ADEA);
- 5 U.S.C. section 7116(a)(1), (2) and (8) and
- Article 39 of the OCC-NTEU Collective Bargaining Agreement.

Race – Ratings and Merit Pay:

- Almost 33% of non-minority (White) employees were rated at level 4 and received the highest levels of Merit Pay
- The rate of level 4 ratings for African-American employees was less than 21.5%.
- The rate of level 4 ratings for Hispanic employees was only 23%

National Grievance on 2020 Ratings and 2021 Merit Increases and Bonuses: Race

Race – Merit Increases

- The average Merit Increase for White employees was 3.01%
- The average Merit Increase for African-Americans was only 2.62%.
- The average Merit Increase for Hispanic employees was only 2.64%.

National Grievance on 2020 Ratings and 2021 Merit Increases and Bonuses: Race

Race – Merit Bonuses

- The average Merit Bonus for White employees was 3.45%
- The average Merit Bonus for African-Americans was only 2.83%.
- The average Merit Bonus for Hispanic employees was only 2.80%.

National Grievance on 2020 Ratings and 2021 Merit Increases and Bonuses: Race

RNO Data – OCC-wide

Level 4 Ratings:

- Whites: $482/1470 = 32.79\%$
- African-Americans: $77/360 = 21.39\%$
Adverse Impact Ratio = **65%**
Standard Deviation = **- 4.209**
- Hispanic-Americans: $41/178 = 23.03\%$
Adverse Impact Ratio = **70%**
Standard Deviation = **- 2.641**

Distribution also fails the Chi-Squared, Confidence Interval and Probability Distribution tests

National Grievance on 2020 Ratings and 2021 Merit Increases and Bonuses: Race

RNO Data – By Line of Business

MCBS

- **Whites:**

- Level 4 Ratings: $177/733 = 24.15\%$

- Average Merit Increase = 2.82%

- Average Merit Bonus = 3.20%

- **African-Americans:**

- Level 4 Ratings: $17/150 = 11.33\%$

- Adverse Impact Ratio = 47%

- Standard Deviation = - 3.453

- Average Merit Increase = 2.46%

- Average Merit Bonus = 2.44%

- **Hispanics:**

- Level 4 Ratings: $16/99 = 16.16\%$

- Adverse Impact Ratio = 67%

- Average Merit Increase = 2.58%

- Average Merit Bonus: 2.68%

National Grievance on 2020 Ratings and 2021 Merit Increases and Bonuses: Race

RNO Data – By Line of Business (continued)

LBS:

- Whites:
 - Level 4 Ratings: $106/361 = 29.36\%$
 - Average Merit Increase = 3.12%
 - Average Merit Bonus = 3.37%

- African Americans:
 - Level 4 Ratings: $13/74 = 17.57\%$
 - Adverse Impact Ratio = **60.0%**
 - Average Merit Increase = 2.59%
 - Average Merit Bonus = 2.27%

- Hispanics:
 - Level 4: $4/38 = 10.53\%$
 - Adverse Impact Ratio = **35.9%**
 - Average Merit Increase = 2.48%
 - Average Merit Bonus = 2.20%

National Grievance on 2020 Ratings and 2021 Merit Increases and Bonuses: Race

OM

- Whites:
 - Level 4 Ratings: $45/98 = 45.92\%$
 - Average Merit Increase = 3.35%
 - Average Merit Bonus = 4.04%
- African Americans:
 - Level 4 Ratings: $23/80 = 28.75\%$
 - Adverse Impact Ratio = 62.6%
 - Average Merit Increase = 2.83%
 - Average Merit Bonus = 3.46%
- Hispanics:
 - Level 4 Ratings: $8/17 = 47.06\%$
 - Average Merit Increase = 3.21%
 - Average Merit Bonus = 3.76%

National Grievance on 2020 Ratings and 2021 Merit Increases and Bonuses: Race

Chief Counsel

- Whites:
 - Level 4 Ratings: $68/99 = 68.69\%$
 - Average Merit Increase = 3.10%/Average Merit Bonus: 3.86%
- African-Americans:
 - Level 4 Ratings: $14/24 = 58.33\%$
 - Average Merit Increase = 2.89%/Average Merit Bonus = 4.42%
- Hispanics:
 - Level 4 Ratings: $9/14 = 64.29\%$
 - Average Merit Increase = 3.13%/Average Merit Bonus = 4.24%

COO

- Whites:
 - Level 4 Ratings: $24/55 = 43.64\%$
 - Average Merit Increase = 3.33%/Average Merit Bonus: 4.14%
- African-Americans: None
- Hispanics: None

National Grievance on 2020 Ratings and 2021 Merit Increases and Bonuses: Race

BSP

- Whites:
 - Level 4 Ratings: $24/62 = 38.71\%$
 - Average Merit Increase = 3.27%/Average Merit Bonus = 4.19%
- African Americans:
 - Level 4 Ratings: $7/21 = 33.33\%$
 - Average Merit Increase = 3.03%/Average Merit Bonus = 3.82%
- Hispanics
 - Level 4 Ratings: $2/5 = 40.0\%$
 - Average Merit increase = 3.23/Average Merit Bonus = 3.82%

ECON

- Whites:
 - Level 4 Ratings: $24/41 = 58.54\%$
 - Average Merit increase = 3.32/Average Merit Bonus = 3.86%
- African Americans:
 - NONE
- Hispanics
 - Level 4 Ratings: $1/3 = 33.3\%$
 - Average Merit Increase = 3.07/Average Merit Bonus = 3.48%

National Grievance on 2020 Ratings and 2021 Merit Increases and Bonuses: Race

Comptroller

- Whites
 - Level 4 Ratings: $13/15 = 86.67\%$
 - Average Merit Increase = 3.64%/Average Merit Bonus = 4.11%
- African Americans:
 - Level 4 Ratings: $2/8 = 25\%$
 - Average Merit Increase = 2.12%/Average Merit Bonus = 2.01%
- Hispanics:
 - NONE

EG and Ombudsman

- Whites
 - Level 4 Ratings: $1/6 = 16.67\%$
 - Average Merit Increase = 2.81%/Average Merit Bonus = 3.61%
- African Americans:
 - Level 4 Ratings: $0/3 = 0\%$
 - Average Merit Increase = 2.36%/Average Merit Bonus = 2.24%
- Hispanics:
 - NONE

National Grievance on 2020 Ratings and 2021 Merit Increases and Bonuses: Race

- The rates of distribution for African-American and Hispanic-American employees OCC-wide and in many lines of business fall below the parameters established in the Uniform Guidelines and indicate an adverse impact on African-American and Hispanic-American employees.
- The OCC has failed to identify any valid legal justification for these results.
- This distribution demonstrates a violation of the terms of the CBA, which require that employees be evaluated and rated, and provided with merit pay and bonuses based on these ratings, in a fair, equitable and objective manner.
- These distribution rates also show a violation of Title VII of the Civil Rights Act of 1964.

National Grievance on 2020 Ratings and 2021 Merit Increases and Bonuses: Age

The data showing the distribution of ratings and merit bonuses based on age shows:

- Disparate impact on older employees in LBS, BSP, Chief Counsel, and OM;
- Adverse impact does not show up in the OCC-wide data because older employees received higher ratings, merit increases and bonuses in MCBS.

National Grievance on 2020 Ratings and 2021 Merit Increases and Bonuses: Age

Employees Age 40 and above

LBS:

- Under 40:
 - Level 4 Ratings: $70/200 = 35\%$
 - Average Merit Increase = 3.18%
 - Average Merit Bonus = 3.79%
- 40+:
 - Level 4 Ratings: $70/339 = 20.65\%$
 - Adverse Impact Ratio = **59%**
 - Standard Deviation = **- 3.671**
 - Average Merit Increase = 2.86%
 - Average Merit Bonus = 2.68%

National Grievance on 2020 Ratings and 2021 Merit Increases and Bonuses: Age

Employees Age 40 and above

OM:

- Under 40:
 - Level 4 Ratings: $24/41 = 58.54\%$
 - Average Merit Increase = 3.40%
 - Average Merit Bonus = 4.70%
- 40+:
 - Level 4 Ratings: $78/208 = 37.50\%$
 - Adverse Impact Ratio = **64.0%**
 - Standard Deviation = **-2.503**
 - Average Merit Increase = 3.07%
 - Average Merit Bonus = 3.62%

National Grievance on 2020 Ratings and 2021 Merit Increases and Bonuses: Age

Employees Age 40 and above

Chief Counsel:

- Under 40:
 - Level 4 Ratings: $48/67 = 71.64\%$
 - Average Merit Increase = 3.24%
 - Average Merit Bonus = 4.34%
- 40+:
 - Level 4 Ratings: $57/107 = 53.27\%$
 - Adverse Impact Ratio = **74%**
 - Standard Deviation = **- 2.411**
 - Average Merit Increase = 2.88%
 - Average Merit Bonus = 3.41%

National Grievance on 2020 Ratings and 2021 Merit Increases and Bonuses: Age

Employees Age 40 and above

BSP:

- Under 40:
 - Level 4 Ratings: 11/21 = 52.38%
 - Average Merit Increase = 3.46%
 - Average Merit Bonus = 4.80%
- 40+:
 - Level 4 Ratings: 25/78 = 32.05%
 - Adverse Impact Ratio = 61%
 - Average Merit Increase = 3.08%
 - Average Merit Bonus = 3.66%

National Grievance on 2020 Ratings and 2021 Merit Increases and Bonuses: Age

- The OCC has failed to demonstrate any valid legal justification for these distribution rates on employees age 40 and above.
- This distribution therefore violates the terms of the CBA, which requires that employees be evaluated and rated, and provided with merit pay and bonuses based on these ratings, in a fair, equitable and objective manner.
- This distribution also violates the Age Discrimination in Employment Act (ADEA).

National Grievance on 2020 Ratings and 2021 Merit Increases and Bonuses: BU vs. NBU

The data also shows that the average merit increase and average merit bonus for bargaining unit employees is less than the average merit increase and merit bonuses given to non-bargaining unit employees.

	BU	NBU
Average Merit Increase	2.91%	3.36%
Average Merit Bonus	3.31%	4.22%

NTEU contends that the higher distribution of merit increases and merit bonuses to non-bargaining unit employees compared to bargaining unit employees is a violation of 5 U.S.C. section 7116(a)(1), (2) and (8), and as such constitutes an unfair labor practice.

National Grievance on 2020 Ratings and 2021 Merit Increases and Merit Bonuses: Summary

- The OCC has failed to demonstrate any valid legal justification to support the distribution rates for performance ratings and merit pay and bonuses to:
 - African-American Employees;
 - Hispanic Employees;
 - Employees Age 40 and older in LBS, OM, CCO and BSP; and
 - Bargaining Unit versus non-Bargaining Unit employees.
- The OCC's distribution of ratings and merit pay and bonus increases, based on its evaluation of employees' performance, violates the terms of the Collective Bargaining Agreement, the Civil Rights Act of 1964, the ADEA and 5 U.S.C. section 7116(a)(1), (2) and (8) .