

NTEU National Grievance  
on  
OCC Ratings and  
Merit Pay/Merit Bonus  
Increases for 2019

Filed: July 1, 2020

Meeting: August 26, 2020

# National Grievance on 2019 Ratings and Merit Increases

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 2019 violates:

- Title VII of the Civil Rights Act of 1964;
- The Age Discrimination in Employment Act (ADEA); and
- Articles 8 and 39 of the OCC-NTEU Collective Bargaining Agreement.

## **Race – Ratings and Merit Pay:**

- Over 28% 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 only 18.6%.
- The rate of level 4 ratings for Hispanic employees was only 21.8%

## Race – Merit Bonuses

- The average Merit Bonus for White employees was 3.49%
- The average Merit Bonus for African-Americans was only **2.64%**.
- The average Merit Bonus for Hispanic employees was 3.03%.

## RNO Level 4 Ratings Data – OCC-wide

- **Whites:**  $451/1586 = 28.44\%$
- **African-Americans:**  $73/392 = 18.62\%$   
Adverse Impact Ratio = **65.5%**  
Standard Deviation = **- 3.94**
- **Hispanic-Americans:**  $39/179 = 21.79\%$   
Adverse Impact Ratio = **76.62%**  
Standard Deviation = **- 2.19**

## RNO Data – By Line of Business

### MCBS

- **Whites:**
  - Level 4 Ratings:  $187/848 = 22.1\%$
  - Average Merit Bonus = 3.26%
- **African-Americans:**
  - Level 4 Ratings:  $15/174 = 8.6\%$ 
    - Adverse Impact Ratio = 39.1%
    - Standard Deviation = - 4.05
  - Average Merit Bonus = 1.97%
- **Hispanics:**
  - Level 4 Ratings:  $19/106 = 17.9\%$
  - Average Merit Bonus: 3.06%

## National Grievance on 2019 Ratings and Merit Increases: Race

### **LBS:**

- **Whites:**
  - Level 4 Ratings:  $106/395 = 26.8\%$
  - Average Merit Bonus = 3.71%
- **African Americans:**
  - Level 4 Ratings:  $15/81 = 18.5\%$ 
    - Adverse Impact Ratio = 69.0%
  - Average Merit Bonus = 3.17%
- **Hispanics:**
  - Level 4:  $4/35 = 11.4\%$ 
    - Adverse Impact Ratio = 42.59%
  - Average Merit Bonus = 2.57%

# National Grievance on 2019 Ratings and Merit Increases: Race

## Chief Counsel

- **Whites:**
  - Level 4 Ratings: 57/110 = 51.8%
  - Average Merit Bonus: 3.62%
- **African-Americans:**
  - Level 4 Ratings: 9/25 = 36%
    - Adverse Impact Ratio = 69.5%
  - Average Merit Bonus = 3.55%
- **Hispanics:**
  - Level 4 Ratings: 7/14 = 50%
  - Average Merit Bonus = 3.19%



# National Grievance on 2019 Ratings and Merit Increases: Race

## OM

- **Whites:**
  - Level 4 Ratings:  $44/96 = 45.8\%$
  - Average Merit Bonus = 3.78%
- **African Americans:**
  - Level 4 Ratings:  $26/79 = 32.9\%$ 
    - Adverse Impact Ratio = 71.8%
  - Average Merit Bonus = 3.30
- **Hispanics:**
  - Level 4 Ratings:  $6/16 = 37.5\%$
  - Average Merit Bonus = 3.31%

# National Grievance on 2019 Ratings and Merit Increases: Race

## BSP

- **Whites:**
  - Level 4 Ratings: 22/65 = 33.8%
  - Average Merit Bonus = 3.92%
- **African Americans:**
  - Level 4 Ratings: 6/21 = 28.6%
  - Average Merit Bonus = 3.27%
- **Hispanics**
  - Level 4 Ratings: 2/5 = 40.0%
  - Average Merit Bonus = 4.79%

## ECON

- **Whites:**
  - Level 4 Ratings: 19/38 = 50.0%
  - Average Merit Bonus = 3.88%
- **African Americans:**
  - NONE
- **Hispanics**
  - Level 4 Ratings: 1/3 = 33.3%
  - Average Merit Bonus = 2.03%

# National Grievance on 2019 Ratings and Merit Increases: Race

## Comptroller

- **Whites**
  - Level 4 Ratings: 13/16 = 81.3%
  - Average Merit Bonus = 4.27%
- **African Americans:**
  - Level 4 Ratings: 1/7 = 14.3%
  - Average Merit Bonus = 0.87%
- **Hispanics:**
  - NONE

## EG and Ombudsman

- **Whites**
  - Level 4 Ratings: 3/6 = 50.0%
  - Average Merit Bonus = 3.89%
- **African Americans:**
  - Level 4 Ratings: 1/5 = 20.0%
  - Average Merit Bonus = 2.48%
- **Hispanics:**
  - NONE

## National Grievance on 2019 Ratings and Merit Increases: 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 2019 Ratings and Merit Increases: Age

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

- Disparate impact on younger employees in MCBS;
- Disparate impact on older employees in LBS, Chief Counsel, and OM.
- In the Comptroller's Office, younger employees received slightly higher ratings, but older employees received much higher average merit bonuses.
- In Econ, older employees received higher ratings but younger employees received higher merit bonuses.

## National Grievance on 2019 Ratings and Merit Increases: Age

### Data on Age: MCBS

- 40+
  - Level 4 ratings:  $124/529 = 23.4\%$
  - Average Merit Bonus =  $3.33\%$
- Under 40
  - Level 4 Ratings:  $118/700 = 16.9\%$
  - Average Merit Bonus =  $2.86\%$

## National Grievance on 2019 Ratings and Merit Increases: Age

### Data on Age: LBS

- 40+
  - Level 4 ratings:  $78/358 = 21.8\%$
  - Average Merit Bonus =  $3.08\%$
- Under 40
  - Level 4 Ratings:  $65/221 = 29.4\%$ 
    - Adverse Impact Ratio =  $74.1\%$
    - Standard Deviation =  $-2.07$
  - Average Merit Bonus =  $4.28\%$

## National Grievance on 2019 Ratings and Merit Increases: Age

### Data on Age: Econ

- 40+
  - Level 4 ratings:  $24/58 = 41.4\%$
  - Average Merit Bonus = 2.84%

### Under 40

- Level 4 Ratings:  $12/38 = 31.6\%$
- Average Merit Bonus = 4.15%



## **Employees Age 40 and above Chief Counsel's Office (CCO)**

Although older employees in CCO were only slightly less likely to receive a “4” rating than a younger employee (46% vs. 52%), older employees were over three times more likely to receive a lower rating (a “2” or a “3”) than younger employees.

- Under 40:  $5/75 = 6.7\%$
- 40+:  $21/100 = 21\%$

Standard Deviation =  $2.64$

## National Grievance on 2017 Ratings and Merit Increases: 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 2019 Ratings and Merit Increases: 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 and
  - Employees Age 40 and older.
- 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 and the ADEA.