

Stephanie K. Rawitt
T (215) 640-8515
Email:SRawitt@ClarkHill.com

Clark Hill
Two Commerce Square
2001 Market Street, Suite 2620
Philadelphia, PA 19103
T (215) 640-8500
F (215) 640-8501

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Via Email:
Richard.altomare@tsa.dhs.gov

Richard Altomare, SAC
Supervisory Air Marshal in Charge
Philadelphia Field Office

RE: Philadelphia Field Office – Prohibited Personnel Practices

Clark Hill PLC is the legal representative of the Air Marshal Association and, as a result, represents the majority of the Federal Air Marshals ("FAMs") in the Philadelphia Field Office ("PFO"). Since on or around July 2020, the PFO has implemented a Local Action Plan (LAP), orchestrated by FAMS Director Ondocin. This LAP lasted for approximately one year, and centered around the continuously decreasing results in PFO on the Federal Employee Viewpoint Survey (FEVS). The FEVS results measured employee perceptions and the decrease in morale accompanying decisions of PFO management.

With these results, the Office of Human Capital (OHC) assisted the local workforce in identifying the PFO deficiencies and the cause of decreased morale. The following three issues were identified: Performance Evaluations, Merit System Principles, and Collaborative Management. The assigned LAP team, comprised of a group of eight FAMs and two SFAMs, were peer-selected to be the voice of the PFO. The LAP team then organized a sub-committee, called the Employee Performance Management Program (EPMP) Committee. The Committee specialized in evaluating the Performance Evaluations as a source of decreased morale. The EPMP Committee worked in tandem with the OHC, bringing several discrepancies to your attention.

In this letter, we again bring to your attention the workforce's concerns regarding the use of Prohibited Personnel Practices (PPP), specifically in Fiscal Year 2021 Performance Evaluations.¹ As you know, TSA MD 1100.43-3 (May 30, 2014) expressly provides the following: "EPMP is intended to promote a culture of high performance and accountability, and to ensure that each employee knows what is required to successfully accomplish his or her work in order to help TSA accomplish its mission."

FAMS Director Ondocin directed the implementation of these programs in PFO, but despite the EPMP and LAP's identification of issues in the workforce, you have failed to implement the

¹ Improper management practices is a continuing concern in the PFO. See our prior letter to you dated November 9, 2021 concerning improper restrictions on use of earned sick leave.

required corrective changes based on the results of the program. In or around April of 2021, you were provided a brief from the EPMP Committee regarding the issues it identified in the Performance Evaluation process. More specifically, these issues include: training for SFAMs on EPMP guidance; coaching and feedback for FAMs by SFAMs; instructing SFAMs and FAMs regarding their roles in EPMP; instructing SFAMs and FAMs regarding performance expectations; and instructing the EPMP Coordinator on the duties of this role. The EPMP Committee recognized these basic requirements of Performance Evaluations, yet no change has been made to correct the discriminatory and unfair methods presently in place and these identified issues persist.

Rather than resolve these issues when brought to your attention, you allowed these practices to continue just as your predecessors did. As a result, you are complicit and accountable for the following three Prohibited Personnel Practices which have persisted:

1. Scores have been “shaved,” “lowered” or “adjusted” by SFAMs, and during employee performance reviews the SFAMs further explain that you personally lowered the scores.
 - o This practice violates EPMP Policy as stated on page 40 of “Leading for Excellence – A Guide to the Employee Performance Management Program (EPMP) for Supervisors and Managers,” which explains that lowering scores is a prohibited action. More specifically, “you may not impose a forced rating distribution or quotas for ratings at any level. Each employee must receive the rating he or she earns, based on his or her performance, and not on an arbitrary distribution model.”
2. SFAM Cope—and presumably other managers—were permitted to advise a FAM his score was being “lowered” because the FAM “placed his family before the mission.” At its core, this action is discriminatory against the FAM’s protected marital and parental status, which have resulted in a cumulative amount of less pay; such action and result is violative of federal law. This particular FAM reportedly has no prior issues with leave and utilized leave as an approved absence from work when it was needed.
 - o This practice violates EPMP Policy as stated on page 40 of “Leading for Excellence – A Guide to the Employee Performance Management Program (EPMP) for Supervisors and Managers,” which explains that lowering scores is a prohibited action. More specifically, “you may not lower ratings because an employee was on an approved absence from work.”
3. Disagreement with performance evaluations and ratings provided by the SFAM has been communicated to the workforce as being unwelcome. Recently, one FAM voiced concern how his/her rating is strikingly different to the narrative drafted by the SFAM; the narrative indicated the FAM excels, while the rating indicates the FAM has “earned” a lower-than-average score. In contrast to the rating, the SFAM provided no coaching during the rating period and the SFAM could not provide any examples of under-performance when the FAM asked. The FAM also requested suggestions on how to achieve a higher rating. The SFAM’s response was that the FAM should change his/her home and work/life balance and volunteer more often. The FAM’s record indicates that he/she has been at work or on approved absence, with no record of unapproved absence. Once again, this action and conversation indicates discrimination against the

FAM on the basis of family-related status, in violation of federal law. The SFAM explained the SAC and agency want the ratings to be more in line among the FAM population.

- o This practice violates EPMP Policy as stated on page 46 of "Leading for Excellence – A Guide to the Employee Performance Management Program (EPMP) for Supervisors and Managers," which explains that lowering scores is a prohibited action. More specifically, "[k]eep in mind that merely disagreeing with the facts as presented is not necessarily hostile behavior on the part of the employee."
- o This practice also violates EPMP Policy as stated on page 40 of "Leading for Excellence – A Guide to the Employee Performance Management Program (EPMP) for Supervisors and Managers," which explains that lowering scores is a prohibited action and "you may not impose a forced rating distribution or quotas for ratings at any level. Each employee must receive the rating he or she earns, based on his or her performance, and not on an arbitrary distribution model."

Our first recommendation is that Director Ondocin reinstate LAP for you and PFO, in order to hold you accountable for neglecting your duties to reinstate the previous LAP Committee results. We further request that you review the FY-2021 Performance Evaluations completed for all PFO FAMs and recalculate the rates to assign employees their earned scores prior to you lowering these. Finally, we recommend you be placed on probation for an additional year before receiving SES certification. Your behavior and policy-violating decisions exhibit the opposite of those required for a tenured SES professional. You need additional time to learn how to properly run a Field Office and respect and listen to supervisees. Your actions and failures have resulted in decreased morale, as FAMs have endured discriminatory and baseless Performance Evaluations which constitute Prohibited Personnel Practices. The copied recipients of this letter are requested to take immediate action in this regard.

Do you intend to implement these recommendations? If you agree with the proffered solution, please advise us within the next seven calendar days. Otherwise we will be required to take further action on these issues.

Very truly yours,

CLARK HILL

Stephanie K. Rawitt

Stephanie K. Rawitt

SKR:djs

cc: Michael Ondocin
michael.ondocin@tsa.dhs.gov

Richard Stein
richard.stein@tsa.dhs.gov