

Points to Remember About Verbal and/or Written Formal Counseling

- Counseling Guidelines and procedures are addressed in Article 10 and Appendix C of the contract.
- Counseling sessions must be conducted in private.
- Union representation must be afforded to an employee whenever more than one supervisor is present during a counseling session.
- Appendix C defines counseling as “not disciplinary”, and therefore cannot be addressed in the grievance procedure under Article 8.
- An employee is not required to sign a counseling memo
- An Employee has the right to file a written response to a counseling memo in his/her personal history folder.
- Successful grievances address violations of the counseling procedure only (not conducted in private and not afforded appropriate Union representation).
- Grievances cannot address the content of counseling or the reason counseling is issued.
- Grievances addressing counseling often cite “harassment” as grounds to have a counseling memo expunged. The claim of harassment is often made through the grievance process; however, factually, there are no articles in the contract that address work place harassment other than discriminatory treatment based on age, race, creed, color, national origin, sex, disability, marital status or political affiliation. The proper venue to address claims of workplace harassment is through the Diversity Management office.
- Grievances addressing counseling cannot not be advanced past the Alternate Dispute Resolution Process (triage) as outlined in Article 7.1 (b). In triage, both parties, Union and the Employer must agree to a resolution. History shows that the Employer will not agree to reverse the previous findings in the grievance process. Moreover, issues addressing counseling cannot be presented to a neutral Arbitrator for his/her consideration.
- As long as an Employee has not received additional counseling or notice of discipline during the time period following the issuance of a counseling memo, a written counseling memo over three years old, and any reference to the counseling, must be removed from the Employee’s personal history folder upon written request from the Employee.

- Removed counseling memos cannot be used as evidence in subsequent disciplinary arbitrations for that employee.
- Written counseling memos cannot include threats of future disciplinary action.
- Employee evaluations can not refer to counseling.

State of New York
EMPLOYEE PERFORMANCE EVALUATION APPEALS FORM
(For Employees in the Security Services Unit)

Appellant's Name _____

Agency _____

Office/Bureau: _____

Item # _____ Title _____

Evaluation
Period: From ____/____/____ To ____/____/____

Name of Supervisor _____

Name of Reviewer _____

Rating Received _____

Date Rating Received ____/____/____

If you wish to appeal your rating, you have 14 calendar days from the date you receive your rating in which to file an appeal at the first step in the process. In most cases, the first step will be an appeal to a Local (facility, region, etc.). Performance Evaluation Appeals Board (STEP 1 below). In agencies where there is no Local Board, the first step will be an appeal to the Agency Level Performance Evaluation Appeals Board (indicated on STEP 2 on the reverse side of this form).

Check one of the following:

I wish to be represented by NYSCOPBA in the appeals process.

I do not wish to be represented in the appeals process.

STEP 1 – LOCAL LEVEL

Instructions to Appellant:

In the space provided below, explain why our rating should be changed to the next higher level. You must cite specific reasons why your work performance should be recognized by a higher rating. NOTE: In the appeal of a rating of "Needs Improvement" or higher, the burden of proving that the rating should be raised is upon the Appellant. In an appeal of a rating of "Unsatisfactory," the burden of proof for sustaining the rating is upon the agency.

REASON FOR APPEAL:

(Attach additional sheets, if necessary.)

Appellant's Signature: _____ Date Submitted: ____/____/____

(For Local Appeals Board Use)

Date Received by Local Appeals Board: ____/____/____

Your performance rating appeal as been reviewed in accordance with prescribed procedures by the Local Performance Evaluation Appeals Board. The Board has Accepted Denied your appeal. As a result of this action, your rating for this evaluation period is _____. A brief summary statement of the Board's decision is attached.

Date Decision Issued: ____/____/____

Signed _____

STEP 2 – AGENCY LEVEL

Instructions to Appellant:

If your performance rating is "Good" or lower and your appeal has been denied by the Local Performance Evaluation Appeals Board, you have 14 calendar days from the date you received the decision of the local board to appeal to your Agency Performance Evaluation Appeals Board.

REASON FOR DISAGREEMENT WITH STEP 1 – LOCAL LEVEL DECISION:

(Attach additional sheets, if necessary.)

Appellant's Signature: _____ Date Submitted: ____/____/____

(For Agency Appeals Board Use)

Date Received by Local Appeals Board: ____/____/____

Your performance rating appeal as been reviewed in accordance with prescribed procedures by the Agency Performance Evaluation Appeals Board. The Board has Accepted Denied your appeal. As a result of this action, your rating for this evaluation period is _____.

A brief summary statement of the Board's decision is attached.

Date Decision Issued: ____/____/____

Signed _____

(For the Agency Performance Evaluation Appeals Board)

STEP 3 – SECURITY SERVICES UNIT LEVEL
(For appeals from a rating of "Unsatisfactory" only)

Instructions to Appellant:

If your performance rating is "Unsatisfactory and your appeal has been denied by the Agency Performance Evaluation Appeals Board, you have 14 calendar days from the date you received the decision of the agency board to appeal to the Security Services Unit Appeals Board, c/o Governor's Office of Employee Relations, 12th Floor, Agency Building 2, Empire State Plaza, Albany, New York, 12223.

REASON FOR DISAGREEMENT WITH STEP 2 – AGENCY LEVEL DECISION:

(Attach additional sheets, if necessary.)

Appellant's Signature: _____ Date Submitted: ____/____/____

(For Security Services Unit Appeals Board Use)

Date Received by Security Services Unit Appeals Board: ____/____/____

Your performance rating appeal as been reviewed in accordance with prescribed procedures by the Local Performance Evaluation Appeals Board. The Board has Accepted Denied your appeal. As a result of this action, your rating for this evaluation period is _____.

A brief summary statement of the Board's decision is attached.

Date Decision Issued: ____/____/____

Signed _____

(For the Security Services Unit Appeals Board)

STEP 8

After the evaluation process has been completed, give a copy of the evaluation form to the employee, send the original of the form to the local personnel office, and send a copy to the central office. The original will be retained in and become part of the employee's official personnel file.

IV. APPEALS PROCESS

The program which has been developed has been designed to assist supervisors in the conduct of fair and accurate evaluations of employee performance. A face-to-face appraisal interview has been included in the evaluation process to provide for and to enhance communication between supervisors and employees concerning work performance. Provision also has been made on the rating form for employees to comment on any aspect of their job or on their supervisor's assessment of their performance of the- job. Nevertheless, there still may be disagreement between an employee and a supervisor concerning the Final Rating which the employee has been assigned. In such an instance, the employee may request a review of the rating by filing an appeal according to the process outlined below. Only Final Ratings are appealable.

A. Levels of Appeal

1. Local Level

An employee who disagrees with any assigned Final Rating may appeal within 14 calendar days of receipt of the rating to a local (agency, facility, subdivision, etc.) management review board and seek to have the rating raised to the next higher level. (If the organization of an agency is such that there is no need for a local board, this step in the process is omitted and the employee may

appeal directly to the next level.) The local board will consider the appeal and issue a determination within 14 days of receipt of the appeal.

2. Agency Level

An employee whose Final Rating is "Good" or lower and whose appeal has been denied at the local level may appeal to a management review board at the agency level and seek to have the rating raised to the next higher level. An appeal to the agency level must be submitted within 14 calendar days of receipt of the decision of the local board. The agency board will consider the appeal and issue a determination within 21 days of receipt of the appeal.

Local and agency level appeals boards are comprised of two or three management level individuals (three is preferred).

3. Security Services Unit Appeals Board

An employee whose Final Rating is "Unsatisfactory" and whose appeal has been denied at the agency level may appeal to a board established jointly by GOER and NYSCOPBA.

This board will consist of one union representative and, when necessary, a chairperson mutually agreed upon. An appeal to the Unit Appeals Board must be submitted within 14 calendar days of receipt of the decision of the agency board. The Security Services Unit Appeals Board will consider the appeal and issue a determination within 60 days of receipt of the appeal.

B. Representation

An employee may be represented at each step in the appeals process only by a person designated by NYSCOPBA.