

IN THE MATTER OF THE ARBITRATION

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WASHINGTON FEDERATION OF STATE  
EMPLOYEES

and

AAA 75 390 00392 08  
Reprimand

STATE OF WASHINGTON  
DEPARTMENT OF SOCIAL SERVICES

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Appearances:	For the Union:	Gregory M. Rhodes, Esq. Younglove, Lyman & Coker
	For the Employer:	Franklin Plaistowe, Esq. Cathleen A. Carpenter, Esq. Asst. Attorney's General

DECISION AND AWARD

The undersigned was selected by the parties through the procedures of the American Arbitration Association. Hearings were held in the above matter on February 27 and March 27, 2009 in Seattle, Washington. The parties were given the full opportunity to present testimony and evidence. At the close of the hearing, the parties elected to file briefs. The arbitrator has considered the testimony, exhibits and arguments in reaching his decision.

ISSUE

The parties agreed upon the following issue:

Did the Employer have just cause for issuing a Written Reprimand to Grievant? If not, what is the appropriate remedy?

## BACKGROUND

The State of Washington Department of Social Services, hereinafter referred to as the Employer, provides assistance to families in need in the State of Washington. The Department is divided into various Sections. The Section involved in this dispute is the Aging and Disability Services Administration. Their function is to identify individuals with developmental disabilities and to provide services to them. The Washington Federation of State Employees, hereinafter referred to as the Union, represents the employees in the Aging and Disability Administration.

The Aging and Disability Services Administration is divided into Regions. Regions are then divided into units. Some of the units in a Region provide services to individuals in nursing homes or other similar type facilities. Other units provide in-home services to individuals who continue to reside in their own homes. Brownwyn Freer is the Program Administrator for Region 4. Three of the Units in her Region provide these in-home services, Units 9, 11 and 13. Each Unit has a Supervisor, who is a Social Worker 4. Within the Unit there are also Social Workers 3's and RN's. Grievant has been the Supervisor for Unit 13 since March of 2007. He had worked for the Department as a Supervisor for several years, but only became the Supervisor for an in-home services unit when he assumed that role in Unit 13. He came into a Unit that had some difficulties in the past. There were several vacant positions that had just been filled or in the process of being filled. Of the nine employees in the Unit, five were new hires. This included two RN's and three SW 3's.

A Management Directive regarding the training to be given to new employees was issued at approximately the same time that Grievant took over as Supervisor in Unit 13. He was on leave at the time. He learned about the directive in April of 2007. Directive 1.12 required Supervisors in part to:

- Identify individual training needs for their employees in the unit
- Use the Regional Form to document training...
- Provide 1/1 training for new staff, including any applicable field observation
- Provide continuing training to their existing staff/unit.

The Regional Training Form was a new form prepared by Anita Canonica, the Program Manager for Training. The form had categories listed and the Supervisor was to evaluate the new employee in each of these categories. A new employee is on probation for six months. An evaluation was to be done at 2, 4 and 6 months.

New cases as they come into the Unit are listed on a computer. They are then assigned to the employees. This is known as in-take. An employee assigned a case must do an assessment of the individual involved to determine what needs that person has. This assessment includes doing field observations. When the employee has completed the assessment, it is moved to "current." This then goes to another area of the Department. Once a file is moved into current, the employee and supervisor can no longer make any changes.

The full caseload for an experienced SW 3 is 9.3 cases per month. It is  $\frac{1}{2}$  of that for the RN's in the Unit, as they have other duties as well. A new employee will gradually during the six-month probationary period move up to that level. The employee starts at  $\frac{1}{4}$  of the full load and then move to  $\frac{1}{2}$  and  $\frac{3}{4}$  until reaching the expected number. A new employee will shadow an existing

employee initially to learn the process. The new employee will then do their own assessment, but will be observed during his or her first few cases. The Supervisor is to do one of those observations.

The Administration was required to do quality control to make sure it was correctly applying the applicable criteria. A Quality Assurance (QA) tool was developed. The Supervisor was to review the work of the employee and notate any errors. The QA was then given to the employee to make the corrections. It then went back to the Supervisor to review. A Supervisor is to do a QA on 50% of the cases for new employees and four per year for experienced employees.

Mr. Moy was one of the new employees in the Unit. He was evaluated by Grievant at the two-month interval and received a positive evaluation. He was not evaluated at four or six months and he brought this to the attention of Ms. Freer. He also complained about the training he had received from Grievant. This occurred in October of 2007. Grievant at approximately that same time had sent correspondence to Ms. Freer recommending that Mr. Moy not be retained by the Administration. Ms. Freer felt an investigation into the situation was warranted. She had Ms. Canonica take over Mr. Moy's training. She also talked to other employees in the Unit. Following completion of the investigation it was determined that Grievant had failed in the performance of his Supervisory duties in several areas. A written reprimand was issued. Four main areas of deficiency were highlighted. It was alleged Grievant:

- 1) Failed to follow the Region 4 Training Directive 1.12;
- 2) Failed to critically evaluate staff work output and provide quality assurance per state and regional requirements;
- 3) Failed to manage and monitor your unit's workload equitably;
- 4) Failed to manage and monitor your unit's workload equitably for new employees; and

- 5) Failed to provide meaningful ongoing feedback in a manner that provides good will and enhance staff motivation.

Each charge was then divided into sub-parts and specificity was provided as to the alleged deficiencies in each of the areas listed. The Arbitrator during the discussion will set forth the alleged area of deficiency and the specifics included in the letter that the Employer believes support each allegation. Rather than list the Position of the Parties on all items at this point, their positions will be addressed as each area is discussed.

### ALLEGATIONS

#### Failed to follow the Region 4 Training Directive 1.12 and to Provide Feedback

The Charge was then broke down as follows:

- 1) You delegated training to a SW 3 and others rather than doing the training himself. Employees in the unit claimed that they “received no feedback from you on their cases.
- 2) You did not utilize the Regional Form to document training.
- 3) You did not individualize or alter your style in one-on-one meetings to address the needs of different workers.

#### Position of the Employer

The Employer implemented Training Directive 1.12. It required the Grievant to train the employees in his unit. Grievant delegated training to Yong Hee, a Social Worker 3 in violation of that directive.

The Directive also requires the supervisor to document training on a form designed specifically for that purpose. Grievant admitted that he did not use the form. He after the fact filled out one for Mr. Moy. He did so only after Ms. Canonica asked for the form. He failed to produce any kind training record that was prepared by him at the time of any alleged training.

Mr. Moy contends that he had a hard time understanding what Grievant was saying. There is no indication that Grievant modified his instruction with Mr. Moy to try to meet his needs. This is contrary to the training directive.

### Position of the Union

The Employer alleges that Grievant improperly delegated training to a Social Worker 3 in violation of the Directive. There is nothing in the Directive that states that the Supervisor cannot delegate some of the training functions to fellow workers. The Employer conceded that was so.

Grievant was on leave when the new training form was introduced. The Employer contends that this form was discussed at a meeting, but the minutes from that meeting do not indicate any discussion on this point. He was totally unfamiliar with the form when Ms. Canonica requested the one for Mr. Moy. Contrary to the assertion of the Employer, Grievant was documenting the training he provided. He testified that he had a calendar and a log that he kept with all this information on it.

The Employer alleges that Grievant failed to alter his training style to meet the needs of Mr. Moy. They concede he talked to Mr. Moy, but that he simply did not tailor the discussions for him. There is no factual support for this allegation.

### Discussion

The Employer issued a Training Directive to its Supervisors. They were required to follow it and Grievant acknowledged receiving it. Training, especially for new employees is a significant aspect of the Supervisor's job at

this Employer. Yong Hee was one of the more experienced employees in the Unit. She had been working in the Unit for many years. She testified that employees told her that she was designated the primary trainer. She stated employees often came to her with questions. Mr. Moy testified that Grievant often told him to ask her his question. Yong Hee told Grievant she was willing to help, but she was not the trainer. Xuan Tran testified that she had a case that she showed to Grievant. He told her to move it to current. She had concerns as to whether she did it right and went to Yong Hee. It was Yong Hee that checked the work. Ms. Tran also stated that Grievant told her to talk to Yong Hee if she had questions.

The Union contends that there is nothing in the Directive that precludes the delegation of training. Ms. Freer while acknowledging that the Directive did not precisely say training could not be delegated said it was implied. The Arbitrator agrees. The requirement for training by the Supervisor is not just listed in the directive. The job description for Grievant similarly required him to do the training. That was his duty, not the duty of the other employee's in the Unit.

There was testimony regarding the distinction between mentoring and training. The Employer indicated mentoring by experienced employees was permissible. Delegating training of those employees was not. It is not unusual for employees who have a specific question to ask it to a more experienced co-worker, but more than that occurred here. Yong Hee was designated the "primary trainer." That is not the same thing as being a mentor. All employees agreed that Grievant had an open door policy. However, an open door policy is not a substitute for training. The Directive requires as much. By putting

training on the shoulders of a Social Worker 3 to the degree that he did, Grievant violated the Directive and his job description.

The Employer implemented a new training form. Grievant maintains he was unfamiliar with it and that other Supervisors also were not using it. The Arbitrator cannot fault Grievant under these facts for failing to utilize the form. It was new and he still had some unfamiliarity with it, if any familiarity at all.

Ms. Freer stated that her concern was not solely that he did not use the new form. She was as concerned that Grievant did not show her he had any training log at all for Mr. Moy. The Union contends this is not part of the charge and irrelevant. Again, the Arbitrator must disagree. Grievant recommended that Mr. Moy not be retained by the Administration. Ms. Freer asked for documentation of some kind to support his recommendation. Grievant denies being asked for this, but it seems unlikely that Ms. Freer having received that type of recommendation would not want to see the information upon which it is based. While not specifically noted in the charge, this issue is sufficiently connected to the charge to merit consideration here. The non-retention recommendation, after all, was listed on the subsequently written form that is in issue.

The bottom line is that Grievant has been a Supervisor long enough to know that documentation is critical, especially when such a strong recommendation is being made. His failing to produce any documentation in lieu of the form was less than what one would expect from an experienced Supervisor. It is not an error that can be ignored.



The last allegation under this charge is that Grievant failed to “individualize or alter” his style to meet the needs of “different workers.” This charge is not directed just to the interaction between Grievant and Mr. Moy, but to Grievant’s relationship with all the workers in his Unit. While worded that way, the problems that were enumerated in the charge deal solely with Mr. Moy. There is no other evidence in the record regarding the type of interaction Grievant had with other employees when he met 1/1 with them. Grievant and Mr. Moy did talk from time to time, and according to Mr. Moy it was not a helpful dialogue. The Employer wants the Arbitrator to infer from Grievant’s problematic interaction with Mr. Moy that there was an overall failure by Grievant to alter his style to address the needs to whatever individual he is speaking. This is far too big a leap. The evidence simply does not support this proposition regarding all employees. Frankly, it is even suspect regarding Mr. Moy. It is clear that they did not get along for whatever reason, but it cannot be said that it was Grievant’s failure to adapt his style that caused those problems. Mr. Moy’s attitude towards Grievant no doubt also played a role. This charge is not sustained.

#### Failed to critically evaluate staff work output and provide quality assurance

This Charge specifically alleges:

- 1) Failed to complete required number of audits in the QA tool;
- 2) Failed to ask for assistance and did not complete thorough review of staff using any method
- 3) Your audit of Ken A. case was not in compliance with state and regional requirements
- 4) You said an employee had said not want to spend money for skilled nursing facility. The employee denied making that statement.
- 5) You failed to meet with employees one-one to identify and explain work and/or performance deficiencies.

#### Position of the Employer

Grievant as part of the Comprehensive Assessment Reporting Evaluation (CARE) was required to monitor the work of the employees in his unit. He failed

to do so. Ms. Tran at one point asked Grievant to review her work before she moved it to current and he simply told her to move it. She had the worked checked by Yong Hee instead.

The QA tool requires a Supervisor to perform a QA assessment on 50% of the cases for new employees and 4 per year on the rest of the employees in the unit. He failed to do that number and failed to ask for assistance if he felt he could not do it given the number of new employees in his unit. On one of the assessments for Ken A. he started the process, but did not complete it and he made errors in what he did do.

Grievant was to provide feedback and training to new employees. Instead of providing that training, he relied on others to provide it. The procedures for Supervisor review are there to ensure State and Federal standards are met. Grievant failed to ensure that the employees new to his unit received the training they needed to perform their tasks properly

#### Position of the Union

Grievant has acknowledged from the beginning that he could not do the mandated number of QA's. 75% of his staff was new. There were simply too many to do. He had always in the past done what was required, until this situation arose. Ms. Freer admitted that other supervisors who had fewer new employees also had difficulty meeting the QA requirement. Grievant repeatedly informed Ms. Freer that the task was impossible to complete. The allegation is that he failed to ask Ms. Canonica for assistance. He told Ms. Freer of the problem. That was sufficient. Ms. Freer offered no assistance to him after he complained.

The Employer alleges that Grievant failed to complete reviews by “any” method. They then concede that Grievant did do courtesy reviews. These two statements are inconsistent. Grievant attempted to review the work of the employees in his unit as best he could under the circumstances.

Ms. Canonica testified extensively on the alleged errors in the Ken A. assessment made by Grievant. She noted that to really understand what she was describing the original assessment needs to be seen. It was not available. She also acknowledged that she never discussed any of these alleged errors with Grievant. Discipline for this alleged failure should not be sustained.

Grievant is alleged to have made an inappropriate comment regarding a desire not to spend funds for a nursing home. Grievant denied making the statement. A witness to the alleged incident was not asked to testify by the Employer. All the Employer has to support this claim is the word of Mr. Moy, who is clearly biased against Grievant.

Grievant had an open door policy. An employee who had questions could come to him for assistance. The charge that he failed to meet one-one with employees has no basis.

### Discussion

The QA tool clearly required a supervisor to do a QA audit on 50% of the cases of a new employee. Grievant did only 3 for the 20 cases Mr. Moy had done. According to the Exhibits, he did not do much better for anyone else in the unit. What he did was well below the required number. It is also true that the number of new employees in the Unit was unusually high. To have a high percentage of the unit new presents an extraordinary challenge for any

supervisor. Ms. Canonica indicated that it takes an hour to an hour and one-half to do a review. Given the other duties, Grievant had, it is not unexpected that Grievant would find the task as he put it “impossible.” The Arbitrator finds that the expectation and requirement in this case were not reasonable. Grievant cannot be faulted for his failure to personally to do the required number of QA audits set forth in Manual given the high number that it was.

The second charge alleges that Grievant failed to ask for assistance. There is conflict in the testimony on this point. Grievant alleged on direct examination:

Q. But as to the fact that you felt you were incapable of completing that many QA’s, what specific conversations did you have with Ms. Freer?

A: I mentioned to her with many years of experience I had never had a unit with that many trainees and that I would need assistance of some kind. I recommended Anita, and we have another program manager by the name of Lee Rhime, and I suggested that one of them assist me with the training.<sup>1</sup>

Ms Freer testified that Grievant mentioned the difficulty he felt he was having, but never asked for help. Ms. Canonica testified that Grievant never asked her for help and if he had asked for assistance it would have been provided. Instead of asking for help, they noted Grievant chose to simply do a “courtesy review” of files. Ms Freer noted there is no such thing as a courtesy review.

No matter whose version is correct, it is clear Grievant never asked Ms. Canonica for help, even if he did mention her name to Ms. Freer. It seems highly unlikely given Ms. Canonica’s role and her testimony that had she been asked she would not have then helped. While the situation may have been raised by Grievant at monthly meetings, there is no evidence that he actually

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<sup>1</sup> Tr: 301

went to Ms. Canonica and said I am only doing a few QA's or only doing courtesy reviews, and I need you to do a few of the QA's for me. While some fault may lie on Management for not following up on Grievant's complaint, although it is uncertain it was made in the manner described by Grievant, it was still his responsibility as the Supervisor for ensuring that what had to be done was done. He knew what had to be done and why it was so important that it be done yet he failed to do all in his power to make it happen or to ask the one person who could have helped to help. For this he must be held accountable.

Ms. Canonica testified at great length about Exhibit 18, the audit of Ken A's assessment. She went through it line by line to describe the instances where she contends Grievant erred. As the Union noted, this detail was not provided at any time during the investigation. The Employer did not show Grievant the audit and describe the alleged errors and then give him an opportunity to explain what he did and why or even more importantly, to perhaps to use the experience as a learning one. Grievant himself was new to the in-home unit. He too had a learning curve. Ms. Canonica could have done with Grievant what the Employer alleges Grievant should have done with the employees in his unit and go over the alleged errors and explain what should have been put on the QA and then given him a chance to correct it. To instead take this one case and make it one of the grounds for discipline is unfair to Grievant, under these facts. This charge is not sustained.

The next charge concerns an alleged statement by Grievant about funding where he is said to have quoted another employee. Grievant allegedly said in a

meeting with Mr. Moy and another employee that Mr. Heartburg said the Administration did not want to spend money for a nursing home. Grievant denied making the statement. The third employee who Mr. Moys says was present when the statement was allegedly made was not called as a witness to corroborate the testimony of Mr. Moy. As the Union notes, there was without question a conflict between Mr. Moy and Grievant. Furthermore, it is unclear what the context was when the statement was made, if made. Mr. Moy's perception of what was said may have been affected by his relationship with Grievant. The fact that the third party to the conversation who seems to have no biases towards these two did not testify weakens the position of the Employer. That Mr. Heartburg has denied making such a statement is not critical since he was not present when he was allegedly quoted and has no idea exactly what was said or the context in which any such statement may have been made. The evidence does not support this charge.

The last part of this charge alleges that Grievant failed to meet one-one with employees to identify and correct employee deficiencies. Grievant testified that he did do that. Mr. Moy said he did not. The Charge like the earlier charge discussed goes to all employees, not just Mr. Moy. While it is true, as noted that Yong Hee was asked to provide training, the evidence does not show that Grievant nevertheless totally failed to meet with each employee. Grievant's testimony that he did meet with employees 1/1, apart from Mr. Moy's assertion regarding him, is not contradicted. Not all employees testified. Those that did testify did not refute Grievant's contention. The Charge alleges: "You failed to meet with employees one-one." He may not have met them enough and used

Yong Hee too much, but it cannot be said that he totally failed to meet with the employees and that is what the charge, in essence, alleges. The charge is not then sustained.

Failed to manage and monitor workload equitably for current and also for new employees

The specifics on this charge were:

New employees are not expected to carry a caseload of more than 9 cases. Two new employees were carrying caseloads in excess of this.

Position of the Employer

A new employee is not expected to carry a full caseload. Mr. Moy and the other new employees had 9 or more cases each month to assess. The in-take system is set up so that an employee who is at only  $\frac{1}{4}$  or  $\frac{1}{2}$  of a full caseload is only to get  $\frac{1}{4}$  or  $\frac{1}{2}$  of the cases that others are given. This was not done by Grievant and the new employees in-take and referrals were too high for their level of experience.

Position of the Union

There was an unusually high spike in the number of cases coming into the Unit. There was a flaw in the in-take system that was identified by Grievant in which the system failed to take into account the status of an employee and the percentage of a total caseload the employee was to handle. Grievant was also unfamiliar with the in-take system, as it was not then used in the Department where he had previously worked. When he became aware of the problem, he addressed it. The Employer had knowledge of the situation and failed to mention it to Grievant before they made it the subject of the reprimand. They

should have addressed it then rather than waiting and placing the charge into the Letter of Reprimand.

### Discussion

Employer Exhibit 5 is a chart showing the number of in-takes and assessments done by the employees in the Unit. It shows that Mr. Moy was well over the number required of a new employee. That is also true of the other new employees. Grievant testified he was unfamiliar with the system as it was new to him. There is merit to that argument. It is also true that the number of cases coming into the system is out of his control. Cases come into in-take daily. The number of cases varies on a daily basis. The Supervisor cannot be expected to monitor caseload every day, but these findings do not fully exonerate Grievant. The Supervisor still must periodically monitor caseloads. Ms. Freer and Ms. Canonica both indicated it is not difficult to have the computer list the number of cases assigned to each employee. If he did not know how to do it, he could have asked them how it was done. Instead, Grievant testified he relied on an employee to come to him when that employee felt the caseload was too high.

Relying on the employee to come to him is not sufficient. Exhibit 1a is the handbook given to Supervisors. It sets forth the Employer's expectations of the Supervisor. Under the heading "Manage Your Team Effectively" are several bullet points. One of those points state:

- Manage and monitor workload fairly.

One of the duties listed in the job description is to "manage work volume." These documents put the burden on Grievant to monitor the workload of his employees, not for them to do self-monitoring. While under different facts there



might have been some merit to the allegation of the Union that Grievant should have been given some warning prior to it being included in the Reprimand, here the Manual and Job Description sufficiently provided the requisite notice. He cannot claim that he never knew what he had to do since he was or should have been familiar with the Expectations of Supervisors set forth in the Manual and the Requirements in his Job Description. This charge is sustained.

#### Failed to provide meaningful ongoing feedback

The specific allegations were:

- 1) You did not ensure Mr. Moy understood all of the information needed to perform his assignment. When you were asked for assistance, he contends you said: “go ask someone else.”
- 2) You did not provide assistance to Mr. Moy on the QA monitoring tool
- 3) A witness indicated that Mr. Moy was more confused after he asked you for direction.
- 4) Ms. Czekaj, another new employee, stated: “when she asked you a question, she needed to go to someone else for a direct response.”
- 5) You relied on other supervisors, staff and agencies to provide meaningful feedback. This did not promote goodwill and did not enhance staff motivation.
- 6) You failed in violation of the Collective Bargaining Agreement with the Union to have discussions with Mr. Moy throughout the evaluation period and to provide feedback to him.
- 7) You failed to provide feedback to all the employees and to provide a four-month and six-month evaluation to Mr. Moy or inform him he was failing to meet the standards required for the Unit.

#### Position of the Employer

Grievant failed to provide Mr. Moy feedback and direction. Mr. Moy was to be evaluated at 2, 4 and 6 months. He received the 2-month evaluation, but not the other two. At six months, Grievant recommended that Mr. Moy not be retained, but never provided any feedback to Mr. Moy prior to making that recommendation. Grievant’s contention that he was told to

wait for receipt of Mr. Moy's Personnel File from his prior job at the University of Washington before doing the evaluation is without merit. He was never told to wait.

Grievant also failed to monitor the caseload of Mr. Moy prior to making the recommendation to see how that might have affected his performance. Mr. Moy was also never trained by Grievant on the QA tool so that he could see and correct any errors he might have made. When Mr. Moy did ask Grievant questions, he came away more confused than he was before asking. Grievant failed to make sure Mr. Moy understood what he was being told.

Grievant sent employees to others for help. He was relying on other staff to provide feedback to the new employees. It was his duty to provide that feedback.

#### Position of the Union

Grievant put a great deal of effort into training. He met with each employee daily. He did not tell Mr. Moy to ask someone else each time Mr. Moy had a question. Several of Grievant's former employees testified as to the level of training they received from Grievant. His training of employees has always been good.

Mr. Moy clearly had issues with Grievant. There is no evidence that these issues were "exacerbated by the training approach of Grievant." Witnesses familiar with the work of Mr. Moy stated that it appeared to them that he had an attitude problem and showed no willingness to work. He did not even get to the level of a full caseload until July of 2008. Given

the proven success of Grievant in training employees, it is unfair to discipline him for failing to reach Mr. Moy. Mr. Moy's attitude towards the work and towards Grievant explains Mr. Moy's failure to learn.

Grievant testified that he was waiting to receive the Personnel File of Mr. Moy from the University before completing the 4-month evaluation. He felt the file might help show why Mr. Moy was having so much difficulty understanding what he was being told. If he knew the problem, he could tailor his training towards that problem.

The Employer contends that Grievant failed to document any of the problems he saw with Mr. Moy. Grievant did tell Ms. Freer of the difficulties he was having with him. They discussed what his problems might be. No action was taken by her to address the situation. He felt at six-months that Mr. Moy was not succeeding and he sent to Ms. Freer his recommendations. That was his prerogative as Supervisor. He then provided the information to support the recommendation. He committed no error.

### Discussion

The first two allegations in this charge concern the interaction between Mr. Moy and Grievant. It is obvious that there was a problem between the two of them. Their interaction was not nearly as good as it should have been. The Employer has laid all of the blame for that on Grievant. Mr. Moy's attitude towards Grievant no doubt also impacted on their interaction. Grievant testified that he spent a great deal of his time with Mr. Moy. Moy testified that he was told to ask Yong Hee questions. Both

statements are probably true. Grievant was frustrated with Mr. Moy and Mr. Moy was frustrated with Grievant. Grievant most likely told things to Mr. Moy that he did not retain or tuned out. The same is true with regard to the allegation that Grievant failed to train Mr. Moy on the QA. Moy's idea as to what QA training was and Grievant's idea of how to do the training left the two of them on two separate pages.

It is difficult from this record to place all the blame on Grievant for Mr. Moy's failure to understand "all the information needed for his assignment." The fact that Grievant had successfully trained others, including the other new employees in his unit belies the criticism of his training of Mr. Moy. While Grievant has the responsibility as Supervisor to teach, the employee has an equal responsibility to try to learn. In this case, it was like mixing oil with water. The two never meshed and Grievant alone cannot be held accountable. The testimony of others whom Grievant trained and a review of Grievant's evaluations indicates that training issues were not a recurring problem, but a unique one as to Mr. Moy for which Grievant alone cannot be held answerable. The Arbitrator is not satisfied from the record that the evidence supports the conclusion that Grievant "did not ensure Mr. Moy understood all of the information needed to perform his assignment." The Employer places all of the blame for this broken relationship on Grievant. The Arbitrator will not do that and on that basis will not sustain these charges.

The next allegation parallels to a large extent the first charge discussed. Both describe a lack of feedback provided by Grievant. As was

found there, the Arbitrator agrees Grievant did rely on others too much to answer questions and to provide feedback to employees. The allegation by Ms. Czehaj that she had to go to someone else for a direct answer to her question is troubling. There is no evidence there was any type of personality conflict between her and Grievant. Grievant's Job Description requires him to "monitor and evaluate individual work performance." From the record, it cannot be said that Grievant met those requirements even when discounting the problems with Mr. Moy.

In so finding the Arbitrator wants to distinguish this charge from one discussed earlier where he found no merit to the charge. The Arbitrator did not sustain the charge that Grievant failed to meet 1/1 with employees. He found that Grievant did hold those meetings. Presumably, some feedback was given during those meetings. The difference is the charge here does not say that Grievant failed to provide any feedback. It alleges Grievant relied on others to provide "meaningful feedback," which did not "enhance staff motivation." Put simply, what he did with the employees in his Unit was enough to defeat that charge, but was not enough to defeat this one, just as it was not enough to defeat the first one.

The last allegation to discuss is the failure of Grievant to provide a four-month and six-month evaluation to Mr. Moy or to provide feedback to him or others.<sup>2</sup> Grievant explained his reasoning for not doing the evaluations. He was waiting for a Personnel file. He testified Ms. Freer told

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<sup>2</sup> The issue regarding feedback to employees other than Mr. Moy has already been discussed extensively and will not be repeated here.

him to wait for it. She denies that and stated she told him to do the review. Regardless of whether he was waiting to write the review or not, Mr. Moy, despite all the problems they were having, was still entitled to know his status. The Collective Bargaining Agreement requires no less. It was unfair to Mr. Moy to keep him in the dark and then to recommend he not be retained at the six-month mark. No matter whether the personnel file from the University of Washington was or was not actually needed, the end result was that Mr. Moy was left in limbo during his critical evaluation period. Grievant as the Supervisor had a responsibility to not leave him in that state. One of the obligations listed in his job description is to provide “staff with written and oral feedback.” He certainly did not do that for Mr. Moy during his probation. This charge is thus sustained.

### CONCLUSION

The Arbitrator is cognizant of a common theme that ran throughout many of the allegations. The number of new employees was inordinately high. Grievant noted that putting together interview panels as he filled vacancies was taking up a lot of his time. All of this helps explain why he was relying so heavily on the experienced workers in his unit. However, it was he, not any of them, that was responsible for training and for giving regular feedback. Ms. Canonica was available and willing to assist. Several employees testified that Grievant often told them any issues that arose concerning their work in the Unit should be kept in the Unit. He did not want to involve others in issues occurring within his Unit. Perhaps, that is

why he did not ask for the help he clearly and understandably needed. As a result, the critical training and oversight for employees new and old was less than it needed to be. For that, he must bear responsibility.

The Arbitrator has sustained roughly half of the charges in the Letter of Reprimand and not sustained the other half. The Employer felt that the totality of the charges warranted the issuance of a Letter of Reprimand. The question then is whether the charges that have been sustained by the Arbitrator warrant a finding that the Letter is still justified under the just cause standard.

The Arbitrator does find a reprimand is warranted based on the deficiencies the Arbitrator has found in the performance of Grievant. Ms. Freer testified that she issued a written as opposed to oral reprimand because Grievant received a written reprimand several years ago. She felt she could not issue a lesser discipline than was given in 2005. The Arbitrator does not feel any such constraint. An oral reprimand is sufficient discipline to address the conduct of Grievant in those matters that the Arbitrator found to be of merit.

#### AWARD

1. The Grievance is sustained in part and denied in part.
2. The written reprimand shall be removed from Grievant's file.
3. Grievant shall receive an oral reprimand.

Dated: June 5, 2009

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Fredric R. Dichter,  
Arbitrator

