In the Matter of the Arbitration	)	
	)	
between	)	
	)	
WASHINGTON FEDERATION OF STATE EMPLOYEES	)	
	)	
(Union)	)	AAA # 75-20-1400-0061
	)	OPINION AND AWARD
	)	MARY WILKINSON-ORVIK
	)	GRIEVANCE
and	)	
	)	
STATE OF WASHINGTON COMMUNITY COLLEGES OF SPOKANE	)	
	)	
(Employer)	)	

BEFORE: Kathryn T. Whalen, Arbitrator

APPEARANCES:

For the Union:

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For the Employer:

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HEARING: September 24, 2014

RECORD CLOSED: November 19, 2014

AWARD ISSUED: January 16, 2015

I. INTRODUCTION

Community Colleges of Spokane (Employer or CCS) terminated Mary Wilkinson-Orvik (Grievant) for performance-related issues in December of 2012. Washington Federation of State Employees (Union or WFSE) filed a grievance claiming Grievant's termination violated the just cause provision of the parties' Collective Bargaining Agreement.

At Step 3 of the contract grievance procedure, the Employer decided termination did not fit the offense and it demoted Grievant. Grievant, however, did not accept the demotion. The Employer notified Grievant that her failure to accept the demotion constituted resignation from employment. The parties were unable to resolve this dispute and the Union submitted it to arbitration.

A hearing was held on September 24, 2014. The proceedings were recorded and transcribed by Amy J. Brown of Bridges Reporting and Legal Video, 1312 N. Monroe, Spokane, Washington 99201.

At hearing, the parties were accorded a full opportunity to present evidence and argument in support of their respective positions. The parties agreed that this dispute is properly before the Arbitrator. Because of certain evidence at hearing, however, the Employer raised an issue concerning the timeliness of the grievance. The parties agreed that the Arbitrator could decide this issue first in her decision.

The parties also agreed that if the Arbitrator issued a remedy, she could retain jurisdiction for 90 days to resolve any remedy disputes.

The parties elected to file post-hearing briefs. The Arbitrator closed the record upon receipt of those briefs. The parties agreed the Arbitrator could have 60 days to issue her decision.

II. ISSUES

In addition to the issue of timeliness mentioned above, the parties agreed the issues are:

> Was there just cause pursuant to the parties' collective bargaining agreement for discipline?
>
> If not, what is the appropriate remedy? Transcript (Tr.) 9.

III. CONTRACT PROVISIONS

Article 29
Discipline

29.1 The Employer will not discipline any permanent employee without just cause.

29.2. Discipline includes oral and written reprimands, reductions in pay, suspensions, demotions, and discharges. Oral reprimands will be identified as such.

* * *

29.7 Prior to imposing discipline, except oral or written reprimands, the Employer will inform the employee and the union staff representative in writing of the reasons for the contemplated discipline and an explanation of the evidence, copies of written documents relied upon to take the action and the opportunity to view other evidence, if any. This information will be sent to the union staff representative on the same day it is provided to the employee. The employee will be provided an opportunity to respond either at a meeting scheduled with the Employer, or in writing if the employee prefers. A pre-disciplinary meeting with the Employer will be considered time worked.

29.8 The Employer will provide an employee with fifteen (15) calendar days' written notice prior to the effective date of a reduction in pay or demotion.

29.9 The Employer will normally provide an employee with seven (7) calendar days' written notice prior to the effective date of a discharge. If the Employer fails to provide (7) calendar days' notice, the discharge will stand and the employee will be entitled to payment of salary for the time the employee would otherwise have been scheduled to work had seven (7) calendar days' notice been given.

However, the Employer may discharge an employee immediately without pay in lieu of seven (7) calendar days' notice period if, in the Employer's determination, the continued employment of the employee during the notice period would jeopardize the good of the college/district. The Employer will provide the reasons immediate action is necessary in the written notice.

29.10 The Employer will provide the Union with a copy of any disciplinary letters.

29.11 The Employer has the authority to impose discipline, which is then subject to the grievance procedure set forth in Article 30. Oral reprimands, however, may be processed only through the top internal step of the grievance procedure and cannot be arbitrated. Joint Exhibit 1; Employer Exhibit 8.

IV. Timeliness of Grievance

Article 30.3 A of the parties' Agreement provides that a grievance must be filed within 28 days "of the occurrence giving rise to the grievance, or the date the grievant knew or could reasonably have known of the occurrence." Employer Exhibit 8.

The Employer placed Grievant on paid administrative leave commencing November 14, 2012. By an employee notice dated December 31, 2012 the Employer notified Grievant that she was separated from employment effective December 25, 2012.The Union filed a grievance protesting her termination on January 14, 2013.

At hearing, Grievant testified that her supervisor, Kyla Bates, told her she was fired when she was sent home on November 14, 2012.[1] In light of her testimony, the Employer contends the grievance was untimely filed because it was submitted two months after Grievant became aware she was terminated.

The Union argues it timely filed the grievance after official notice from the Employer of the termination and its effective date. According to the Union, the

[1] Bates denied that she did so. Tr. 222

Employer's intent was not clear prior to the official notice and Grievant was still on the payroll.

I agree with the Union. Article 30. 3 A expressly allows for filing the grievance within 28 days of the occurrence (i.e. termination) **or** the date Grievant knew or reasonably should have known of it.

The Employer did not provide official notice of Grievant's termination until December 31, 2012. The effective date of termination was December 25, 2012. The Union filed the grievance within 28 days of both official notice and the effective date. I find the grievance was timely filed.

V. OPINION

The Arbitrator finds there was not just cause to demote Grievant, but there was just cause to issue a written reprimand to her in conjunction with a reasonable opportunity to correct her performance problems. In the discussion that follows I set forth my factual findings, reasoning and conclusions.

A. Background

CCS is a district comprised of two accredited colleges: Spokane Community College and Spokane Falls Community College. CCS serves about 15,000 full-time students. This dispute arose at Spokane Community College. The Union represents non-supervisory, classified staff at CCS.

As a part of instruction activities, CCS has an Adult and Basic Education Program which includes the administration of a GED program. The primary regulatory authority for GED testing is the federal GED Testing Service. The test is now owned,

however, by Pearson VUE. The state also has some regulatory authority through the State Board for Community and Technical Colleges.

Currently, Kyla Bates is the Employer's manager of the GED program. She was Grievant's direct supervisor at the time of her termination. Prior to Bates, Candace Denowh managed the program. She is now retired.

At times relevant to this dispute, Bates reported to Dean of Adult and Basic Education Geri Swope (now retired). Swope reported to Vice President of Instruction Rebecca Rhodes. Rhodes reports to Spokane Community College President Scott Morgan.

Grievant began working for the Employer as a work study student (computer operator) in 1992 while attending classes. Within about a year, she became a program coordinator for project self-sufficiency. This program helped single, low-income mothers with their education.

In 2004-2005, the self-sufficiency program was discontinued. Grievant began working in adult and basic education as a program coordinator. She worked on budgets and helped administer existing programs. Prior to 2012, Grievant had received no discipline.

For the period from 4/2008 through 3/2011, supervisors gave Grievant satisfactory or better performance ratings on annual performance evaluations. Union Exhibits 13, 14. On a five-point scale, she mostly received ratings of 4 or 5 on performance expectations.

On her evaluation for 4/1/2010 to 3/31/2011, her then-supervisor, Lora Senf, stated:

> Mary is a vital piece to the IEL team. She excels in forming and maintaining positive relationships with our community partners. Mary does an excellent job tracking awards and scholarships as well as monitoring the bottom line of a number of foundation funds. Mary recently has stepped up to take on additional duties relating to streamlining some of our internal processes. She is a pleasure to work with and always has a warm and positive attitude. Union Exhibit 14.

B. <u>The Dispute</u>

In June of 2011, the GED department was busy and short-staffed. Grievant was not particularly busy at that time and Senf asked if she would help in the GED department. Grievant said she would. She began answering their phones, scheduling appointments for GED tests, correcting tests and similar things. Grievant also read and signed a notice concerning confidentiality and nondisclosure about the state GED electronic information system (AEGIS). Employer Exhibit 5.

Denowh was the chief examiner for GED testing at that time. In early July 2011, Denowh submitted documents to the GED testing service in Washington D.C. which recommended that Grievant be appointed as GED examiner. Shortly thereafter, Denowh was notified by the state GED Administrator that Grievant appeared to have the experience to be appointed as an examiner. Employer Exhibit 4.

Several months later, in October 2011, Denowh went over with Grievant the security protocols for test administration and handling. Employer Exhibit 6. On November 3, 2011, the GED Director in Washington D.C. notified CCS that Grievant had been appointed as examiner. Employer Exhibit 4.

A GED examiner is responsible for testing at designated locations and must ensure that all details and proper procedures are followed. Employer Exhibit 2. If there are irregularities in the testing process, they may have to be reported to the appropriate

regulatory authority. Employer Exhibit 22. Failure to follow GED protocols potentially has serious consequences, even loss of state authorization to administer GED tests. Employer Exhibit 28.

Denowh described being an examiner as a strenuous process because there are many regulations to follow. Denowh said it takes about a year to learn everything. Tr. 138-139.

In late 2011 or early 2012, then GED examiner John Nichols (now retired) trained Grievant in giving examinations to prospective GED candidates. According to Nichols, he trained her in all aspects of this process. Nichols also said that being a new examiner is stressful and you must be exact in many aspects of giving the exam. Tr. 243. Nichols said Grievant seemed to pick up the details and did well. Tr. 242-243.

In late 2011, Bates became the manager of the staff for the GED program and began supervising Grievant. In February/March of 2012, Bates began making notes concerning her verbal instructions to, and counseling of, Grievant. Bates said she always went over issues with Grievant, but she did not give Grievant a copy of her notes. Employer Exhibit 9.

On March 21, 2012 Grievant made an error in administering a test. It involved a particular student's test forms--it was unclear what time and what test form was given to the student. Tr. 191-192. On April 19, 2012 Bates issued a written reprimand to Grievant because of this issue and reviewed it with her on that date. The reprimand stated:

> This concerns the issue with [student's] test and two tests coming in saying Reading and the inability to determine what tests [student] took along with what version.

> As you know, the GED testing is extremely important to our examinees and to our institution. From the absolute security of the testing materials to how tests are conducted every detail must be attended to. The repercussions of mistakes can result in the loss of our ability to offer GED testing as well [sic] severely affecting examinees.
>
> In the future
>
> - If there is an issue with any portion of the testing process, I need to be notified in writing of issue along with any issues that still need to be resolved.
>
> - Row charts are the primary record of what happened and as you have been taught you must clearly show the number on the book as well as the form. They should remain the same for each test that person takes at that sitting of the exam.
>
> - Take the time to insure that you are attending to all the details. If you need something removed from your responsibilities in order to handle the details we can discuss that.
>
> As you are aware, I have brought several issues to you verbally with mistakes on details. The severity of this instance is why it is now in writing. Employer Exhibit 11.

According to Grievant, the March 21 test was the first test she administered by herself. Bates disagrees, and believes Grievant administered a test(s) before February. This disagreement is not important to my decision.

Grievant acknowledged and understood that she made an error on March 21, but she did not understand how it happened. After receiving the written reprimand, on April 23, Grievant asked Bates to take her off testing in order to determine if she had physical problems. In an April 23 email to Bates, she explained that the error was not like her; she had a long history of detailed work and had never received a letter of reprimand in her life. Employer Exhibit 12. Grievant further explained that she had occasional issues with hearing and visual difficulties so she would like to rule those issues out.

Bates met with Grievant on April 24, 2012 and made notes about that meeting.

According to these notes, Grievant was very upset and felt that the written reprimand was punitive. Bates explained that the letter was a "kick in the pants to pay attention--nothing else." Employer Exhibit 13.

At the meeting, Grievant also told Bates many times she had never received a reprimand and that other examiners had made the same mistake and not been written up. Bates told her she could not speak to that; but only do what she felt should be done. Grievant asked if they could just use her for answering phones and preparing row charts.[2] Bates told her that the position needed to include the ability to be an examiner. Employer Exhibit 13.

CCS gave Grievant several days of leave with pay to check for possible medical issues. The doctor found nothing wrong with her.

After April, in May through early August of 2012, Bates made notes about additional incidents/errors made by Grievant. Two of which she reported to the appropriate regulatory authority. According to Bates, she talked with Grievant about each error. Employer Exhibits 14-16. Grievant, however, said no issues stood out in her mind for that period. Grievant reported she was administering tests 4-5 times a week during this time period. Tr. 79.

On August 10, 2012, Bates gave Grievant her performance evaluation for the period from 4/1//2011 to 3/31/2012. Bates gave Grievant ratings of "2" on the five-point scale in numerous areas. The primary areas Bates identified as problems were

[2] At that time, row charts were the primary document used by the Employer to provide regulatory verification about the day's test activity. It included the name of the person and the tests each planned to take that day. The responsible staff person added information about the actual testing activity. Employer Exhibit 7.

computer/technology skills and attention to detail. At the end of the evaluation, Bates provided these additional comments:

> Sometimes it is hard for her to stay within the very strict guidelines we have for releasing information because she wants to help so much. It is imperative that she restrain herself at all times as this could put her and the college at risk. While Mary seems to have gotten better at working with details of the GED testing, there are still some issues in this area. On August 6 and 7th there were mistakes including: several writing tests had soc numbers in pen, one writing test did not have a soc, English version was not filled in as were a couple of tests missing having the social bubbled in. This is unacceptable at this time in Mary's work of testing. We should only be [sic] occasional minor errors. Continued attention to detail and notifying her supervisor when there is a problem is imperative. The testing environment must also be kept according to the rules. There should be nothing on desks except tests. It was observed on 8/6 that two people had purses on the tables. This is the only way to help insure that we are all working to the same end. Mary is outstanding at working with test takers and the general public. Expectations for work performance in the GED program is high because the impact on [unreadable] doing the job well can affect our ability to continue to offer GED testing. In addition every error can greatly affect a test taker. Improvement will be needed in order to meet the job expectations. Employer Exhibit 17.

On the same date, August 10, Bates gave Grievant a Performance Improvement Plan[3] to follow up on the performance evaluation. The plan was focused on attention to detail and computer skills. Employer Exhibit 18.

The plan was for a term of three months commencing August 24, 2012. Bates and Grievant were to meet twice a month to review progress towards objectives and to make alterations/changes as needed. Bates was to formally evaluate Grievant on November 9, 2012 for compliance. The plan also stated that if Grievant did not correct the identified deficiencies, the Employer "will take further disciplinary action, which may include demotion, suspension, reduction in salary and dismissal." Employer Exhibit 18.

[3] Performance improvement plans cannot be grieved.

The weekend following her receipt of this plan, Grievant twisted her knee and had to have a knee replacement. She was off work until November 5, 2012. Tr. 48-49. On that date, first thing in the morning, Bates again gave Grievant a performance improvement plan with the same terms. The plan was to commence on November 9, 2012. Employer Exhibit 18.

After receipt of the plan on November 5, Grievant prepared a row chart that contained problems--there were issues with high school releases that Grievant missed. According to Bates, she talked with Grievant about these omissions and had her train with Nichols for a couple more days. Tr. 211-212; Employer Exhibit 19.

On November 14, 2012, Grievant was the examiner for a test in which she gave the student the wrong test form despite a note on the row chart not to give the student that particular test form.[4] Employer Exhibit 20. Bates talked with Grievant about the error on that date and sent her home. Grievant had been back for seven work days. Union Exhibit 12.

Bates sent her home because Grievant was done testing, and she decided she needed to talk to her supervisor, Swope. Bates was at a point where she felt Grievant could not be testing at the test center. Tr. 217.

Bates made notes of the matter. Employer Exhibit 21; Tr. 216. She also found some additional problems from that date but did not talk with Grievant about them. Employer Exhibit 21.

The Employer sent an email to Grievant on December 3, 2012 which stated it was official notice of her layoff effective January 3, 2013. The email was sent by a

[4] This was a retest and the student was not to re-take the same test form. Tr. 214.

former Human Resources manager, Norm Sievert, who no longer works for the Employer. Union Exhibit 18.

According to the December 3 email, the Employer was taking this action due to Grievant's poor performance. The email advised that Human Resources had been in contact with Grievant and the Union about alternative positions; and stated that if Grievant chose not to accept a particular office assistant position, her employment would be terminated. According to Grievant, she did not see this email until later when the Union brought it to her attention. Tr. 89-91.

On December 14, 2012, Sievert sent an email to Grievant with copies to Union representatives. This email notified Grievant that a pre-disciplinary meeting was scheduled for December 18 related to Grievant's job performance issues. The email advised that because Grievant was on paid status, this was a required work meeting and that failure to attend would result in disciplinary action. Employer Exhibit 24.

Upon the advice of her Union representative, Grievant did not attend this meeting. Her Union representative told her that the Union would obtain questions from Sievert. Tr. 51. The record indicates this occurred. In turn, Grievant prepared her written responses which the Union provided to Sievert via email later in December. Employer Exhibit 26.

On December 18, 2012 Sievert sent another email to Grievant with copies to the Union advising, among other things, that given her poor performance and failure to accept another position (that was no longer an option) the Employer was considering termination. Employer Exhibit 25.

By employee notice dated December 31, 2012, the District notified Grievant that she was terminated from employment. The notice stated in part:

> Based on discussions with your union representatives and CCS, several offers were made to resolve your employment situation, including multiple extended deadlines for responding to various offers. You responded via email on December 21, 2012 in lieu of a meeting in person for a pre-disciplinary meeting scheduled for December 18, 2012. Having reviewed your response, and based on previously identified performance issues you are separated from employment for cause effective at the end of the business on December 25, 2012. This is your last day of paid status. Employer Exhibit 27.

As described before, the Union filed a grievance protesting Grievant's termination on January 14, 2013. Pursuant to the contractual grievance procedure, the Employer denied the grievance at Step One (February 21, 2013) and Step Two (April 3, 2013). Employer Exhibits 28, 29.

In May of 2013, at Step Three, President Morgan agreed with prior management determinations that Grievant was: adequately warned; that performance standards were reasonable; a proper investigation had been conducted; and that the performance standards and discipline were applied in an even-handed manner. He decided, however, that the penalty of termination did not fit the offense, primarily because of Grievant's long time service record without similar performance issues. Employer Exhibit 30.

Morgan issued a demotion to Grievant from program coordinator to program assistant effective on the same date of Grievant's termination. He directed that appropriate back pay be determined from December 26 through May 24, 2013. He returned Grievant to duty effective May 28, 2013. Employer Exhibit 30.

Grievant initially accepted the program assistant position. Employer Exhibits 31, 32. On May 31, 2013, however, Grievant advised the Employer by email that she was turning down that position. In that email, she stated that she appreciated the offer but she felt it looked like an admission of guilt to accept a lesser position. Employer Exhibit 33. In an email to her Union representative, she stated she had learned that the position was temporary. Union Exhibit 1.

The parties were unable to resolve this dispute and it is now properly before me for decision.

C. Merits

Article 29.1 of the parties' Agreement requires just cause for discipline of employees. Just cause requires that the discipline of an employee be reasonable in light of all the circumstances. Elkouri & Elkouri, *How Arbitration Works,* 15-4, 15-5 (7th Edition, 2012).

In determining just cause, arbitrators decide if the employer: (1) established the alleged wrongdoing; (2) provided a fair or due process, and (3) imposed an appropriate penalty. I must be convinced based upon the record as a whole that the Employer established just cause for discipline.

1. Parties' Positions

CCS argues there was adequate just cause to discipline Grievant for her inability to consistently and accurately perform required duties of her position. She was given repeated coaching and warnings. The Employer contends its decision to revise her termination to a demotion was a reasonable response to her grievance and should be affirmed.

The Union argues CCS did not provide due process to Grievant. That is, the Employer terminated Grievant without providing proper and formal notice of the events justifying termination. The Union further contends the Employer did not have just cause to discipline Grievant because she could have corrected the bulk of the mistakes if given an opportunity. According to the Union, other seasoned examiners made the same or similar mistakes and were not disciplined.

2. Due Process and Wrongdoing

This case does not involve employee misconduct, but rather employee performance. Grievant had 19 years with the CCS with no history of discipline. Until she began working as an examiner and for Bates, Grievant had positive evaluations.

Shortly after beginning the examiner job with a new supervisor, Grievant received a written reprimand--her first ever. Although the reprimand identifies the error in Grievant's performance on March 21 2012, it does not clearly set forth disciplinary consequences if Grievant should fail to improve.

According to Bates, she also counseled Grievant on numerous occasions between February and August of 2012. The problem, however, is that although Bates kept internal notes of her discussions with Grievant, no documentation was provided to Grievant and the Union.

Grievant remembers talking with Bates about issues on some occasions but not others. She acknowledges she made some errors (including the one for which she received the written reprimand) but not others. While I am convinced by the record that Grievant had performance problems as an examiner, the evidence does not establish

clear notice to Grievant of the scope of these problems or of specific disciplinary consequences for failure to correct them.

Several months after the written reprimand, in conjunction with her performance evaluation, CCS placed her on a 3-month plan for improvement. Grievant, however, was not given an opportunity to complete that plan. At first, she was off work for medical reasons. Then, when she returned, management sent her home after 7 work days. Subsequently, while on paid leave, she was terminated.

To summarize my findings simply: This record does not establish a fair corrective discipline process for Grievant's performance problems. She was not given clear and express warning of her problems or of specific disciplinary consequences; nor was she given a fair and adequate opportunity to correct such problems. *Elkouri & Elkouri* at 15-70 and 15-72.

As indicated above, I find that CCS established that Grievant made performance errors as an examiner. The Employer, however, did not provide due process to Grievant and the procedural defects were significant and serious.

The Union presented evidence that other employees committed the same or similar errors as Grievant but were not disciplined for their errors like Grievant. Union Exhibits 11; Also, Union Exhibits 4-10.

I have reviewed this evidence and taken it into account, but it was not critical to my decision. In order to establish lack of even-handedness, the Union must show not only that other employees were treated differently for the same offense(s) but also that surrounding circumstances for other individuals were substantively similar to that of

Grievant. *Elkouri and Elkouri* at 15-77. The evidence was insufficient to establish substantially similar circumstances.

D. Penalty

The Employer argues I should uphold the demotion because at Step 3, Morgan carefully and completely considered all relevant facts and circumstances when he determined termination was too severe and instead demoted Grievant.

According to the Union, as an employee with over 19 years with no prior discipline, Grievant should not have been permanently demoted.

I agree with the Union. There are two primary reasons I find demotion was unreasonable. First, Grievant's long and positive work record. Second, my particular findings that the Employer failed to provide Grievant with either fair notice or fair opportunity to correct performance problems.

In lieu of demotion, I will order CCS to provide Grievant with a specific written reprimand that details her performance issues and specific consequences for failure to correct those issues. I will order CCS to reinstate Grievant to her program coordinator position as GED examiner or to another suitable position mutually-agreed upon by the parties, at the same rate of pay.

If Grievant is returned to the GED examiner position, I will order CCS to institute a performance improvement plan with a fair opportunity to correct the identified problems.

From hearing testimony, it is clear that the job of GED examiner has substantially changed since 2012. If Grievant is returned to the GED examiner position, CCS is to

provide additional training in order to provide her with a fair and reasonable opportunity to succeed in that position before the start of the performance improvement plan.

At hearing, CCS argued that Grievant had a duty to mitigate and, if she disagreed with the demotion, to obey (work) now and grieve that discipline. According to CCS, if I find demotion was inappropriate, her back pay should be reduced to five months, consistent with her decline of that position.

WFSE contends back pay should not be reduced. According to the Union, Grievant refused the demotion because she had reason to believe it was a temporary position.

I agree with the Employer that Grievant had an obligation to follow the well-established principle of work now, grieve later. *Elkouri & Elkouri* at 16-31. Regardless of her beliefs about the demotion, she should have returned to work and grieved that decision. I find that her back pay should be reduced accordingly, consistent with this finding.

The parties are in the best position to determine how the above remedy is to be implemented. I will retain jurisdiction for 90 days as agreed by the parties to resolve issues, if any, with the remedy awarded.

Pursuant to Article 30.3 F of the parties' Agreement, I will order that my fees and expenses be shared equally between them.

VI. CONCLUSION

For the foregoing reasons, the Arbitrator concludes there was not just cause to demote Grievant but there was just cause to issue a written reprimand.

I have carefully reviewed all testimonial and documentary evidence. Even if not mentioned, I have considered all of the facts, arguments and authorities submitted by the parties. In this opinion, I have focused on matters that I believed needed to be addressed and those which were crucial to my decision.

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and	)	
	)	
STATE OF WASHINGTON COMMUNITY COLLEGES OF SPOKANE	)	
(Employer)	)	

Having carefully considered all evidence and argument submitted by the parties concerning this matter, the Arbitrator concludes that:

1. The grievance was timely filed.

2. There was not just cause to demote Grievant, but there was just cause to issue a written reprimand. The demotion shall be removed from her personnel file and replaced with a written reprimand consistent with this decision.

3. The Union's grievance is sustained in part and denied in part.

4. The Employer will return Grievant to her former position or to a suitable position mutually-agreed upon by the parties, with no reduction in rate of pay.

5. If returned to her former position, Grievant will be placed on a performance improvement plan and given a fair opportunity to correct identified performance problems. The Employer also will provide additional training consistent with this decision.

6. The Employer will pay Grievant appropriate back pay and benefits until the end of May 2013 consistent with this decision.

7. The Arbitrator retains jurisdiction for a period of 90 days to resolve issues, if any, regarding the remedy awarded.

8. Pursuant to Article 30.3 F, the parties shall share equally the Arbitrator's fees and expenses.

Respectfully submitted,

Kathryn T. Whalen
Arbitrator

Date: January 16, 2015