IN THE MATTER OF ARBITRATION
BEFORE
RICHARD L. AHEARN

OPINION AND AWARD

AAA No. 01-21-0001-1359

(Samantha Schaefer Grievance)

WASHINGTON PUBLIC EMPLOYEES ASSOCIATION

Union or Association,

and

WASHINGTON STATE DEPARTMENT OF REVENUE

Employer.

Appearances:

For the Union:

Frank D. Prochaska
Staff Representative

For the Employer:

Elizabeth Delay Brown
Assistant attorney General

OPINION

I. BACKGROUND

The Employer is the state agency responsible for collecting a wide variety of taxes within the State of Washington. The Union and the Employer are Parties to a collective bargaining agreement (CBA) that covers individuals employed by the Employer and was in effect at all times relevant to this matter. On July 30, 2020, the Union filed a grievance on behalf of bargaining unit member and Tax Information Specialist (SIS) Samantha Schaefer (Grievant). The grievance alleged that the Employer had violated various articles and sections of the CBA by the June 30, 2020 actions of Grievant's supervisor, as discussed below.

With no mutual resolution of the grievance, a hearing was held before me via Zoom on May 13, 2021, at which the Parties had full opportunity to call witnesses, make arguments and enter documents into the record. Witnesses were sworn under oath and subject to cross-examination by the opposing Party. Both Parties stipulated that the grievance was properly before me for a decision and thereafter to aid in the implementation of any remedy, should that be necessary. With the filing of the Parties' comprehensive post-hearing briefs on June 21, 2021, the matter was closed.

II. THE ISSUE

The Parties were unable to agree on the issue before me. However, they did stipulate to my authority to formulate the issue based on their respective proposed statements and my reading of the entire record.

The Union proposed:
Whether the Employer violated the CBA in setting performance standards for Samantha Schaefer on the day of June 30, 2020, and in the emails her supervisors sent her regarding her performance on June 30, 2020?
If so, what is the appropriate remedy?[1]

The Employer submitted the following:

Because the evidence from the arbitration hearing is undisputed that Grievant received no discipline and that there is no current performance evaluation at issue, and based upon the facts, as stated in the grievance filed on July 30, 2020, should the claims of violations of Articles 5 and 28 be dismissed?

Did the Employer correctly exercise its management rights, as outlined in Article 36 of the CBA?

Based on the proposals of both Parties and my careful assessment of the record, I set forth the issue before me as follows:

Does the grievance raise issues that are cognizable under the terms of Articles 5 and 28 of the CBA?

If so, did the Employer violate Articles 5, 28 and or 36 of the CBA in setting performance standards for Grievant on June 30, 2020, and in emails from her supervisors regarding her performance on June 30, 2020?

If so, what is the appropriate remedy?

III. RELEVANT ARTICLES OF THE CBA

ARTICLE 5
PERFORMANCE EVALUATION

5.1 Objective

The performance evaluation process gives supervisors an opportunity to discuss performance goals with their employees and assess and review their performance with regard to those goals. Supervisors will support employees in their professional development, so that skills and abilities can be aligned with agency requirements. To recognize employee accomplishments and to address performance issues in a timely manner, discussions between the supervisor and employee will occur during the evaluation period. Performance problems will be brought to the attention of the employee to give the employee the opportunity to receive any needed additional training and to correct the problem.

[1] In its brief the Union seeks a remedy that would order the Employer to change its records to show a standard of achieving 108 "connects" for June 30, 2020, and to rescind and expunge the emails her supervisor sent regarding her performance on June 30, 2020.

5.2 Evaluation Process

A. Employee work performance will be evaluated prior to the completion of probationary or trial service periods and at least annually thereafter as scheduled by each agency. Evaluations will be conducted in a private setting. Probationary or permanent employees whose work performance is determined to be unsatisfactory must be notified in writing of the deficiency(ies). Unless the deficiency(ies) is (are) substantial, the employee shall be given the opportunity to correct the deficiency(ies) and demonstrate satisfactory performance before it is documented in an evaluation.

B. The performance evaluation process will include, but not be limited to, a written or electronic performance evaluation on the Employee Development and Performance Plan (EDPP) form or the Performance and Development Plan (PDP) form, the employee's signature acknowledging receipt of the forms, and any comments by the employee. A copy of the performance evaluation will be provided to the employee at the time of the review. The employee will have one (1) week after receiving the performance evaluation to review and respond. The original performance evaluation forms, including the employee's comments, will be maintained in the employee's personnel file. Employees will be given copies of their completed evaluation within a reasonable time after insertion into the employee's personnel file.

C. When an employee remains in the same position but has a change in supervisor less than ninety (90) days prior to an employee's performance review, a joint review involving the employee's current supervisor and the employee's previous supervisor may be conducted. If the previous supervisor is no longer employed with the agency, the employee may request prior to finalizing the evaluation, that the current supervisor consult with another manager who has knowledge of the employee's performance.

D. The performance evaluation procedure may be grieved; however, the content of the evaluation is not subject to the grievance procedure in Article 30.

E. The Employer will make information on the performance evaluation process readily available to employees and supervisors. An employee may request training in the EDPP or PDP process in accordance with Article 8, Section 8.1.

ARTICLE 28
DISCIPLINE

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

28.2 Discipline includes oral and written reprimands, reductions in pay, suspensions, demotions, discharges, and reductions in accrued annual leave (overtime exempt employees only), to a maximum of three (3) days per occurrence. Oral reprimands will be identified as such.

28.3 When disciplining an employee, the Employer will make a reasonable effort to protect the privacy of the employee.

28.4 Only documentation maintained in the employee's personnel file, or supervisory file, in accordance with Article 32, may be used for the purpose of establishing a history of progressive discipline.

28.5 All agency policies regarding investigatory procedures related to alleged staff misconduct are superseded. The Employer has the authority to determine the method of conducting investigations.

ARTICLE 36
MANAGEMENT RIGHTS

36.1 The Employer retains all rights of management, which, in addition to all powers, duties and rights established by constitutional provision or statute, shall include but not be limited to, the right to:

A. Determine the Employer's functions, programs, organizational structure and use of technology;

B. Determine the Employer's budget and size of the agency's workforce and the financial basis for layoffs;

C. Direct and supervise employees;

D. Take all necessary actions to carry out the mission of the state and its agencies during emergencies;

E. Determine the Employer's mission and strategic plans;

F. Develop, enforce, modify or terminate any policy, procedure, manual or work method associated with the operations of the Employer;

G. Determine or consolidate the location of operations, offices, work sites, including permanently or temporarily moving operations in whole or part to other locations;

H. Establish or modify the workweek, daily work shift, hours of work and days off;

I. Establish the method and means by which work performance standards are set, and the performance standards themselves, which include, but are not limited to, the priority, quality and quantity of work;

J. Establish, allocate, reallocate or abolish positions, and determine the skills and abilities necessary to perform the duties of such positions;

K. Select, hire, assign, reassign, evaluate, retain, promote, demote, transfer, and lay off employees;

L. Determine, prioritize, modify and assign work to be performed;

M. Determine the need for and the method of scheduling, assigning, authorizing and approving overtime;

N. Determine training needs, methods of training, employees to be trained, and training programs to be offered;

O. Determine the reasons for and methods by which employees will be laid-off; and

P. Suspend, demote, reduce pay, discharge, and/or take other disciplinary actions.

36.2 The Employer agrees that the exercise of the above rights shall be consistent with the provisions of this Agreement.

IV. EVIDENCE

Grievant began her employment with the Employer on June 26, 2017, as a TIS 1, the position she held on the events of June 30, 2020.[2] Her supervisor was Laura Neibergs (Neibergs), District Compliance Manager for the initial contact team (ICT). The overriding purpose of the ICT is the reduction of the number of field referrals to the field. TIS 1 is an entry level position in a call center. Prior to hire, the Employer informs applicants that they can be expected to be closely monitored and that the work is highly regulated.

[2] Grievant is now employed in a different area of the Department.

Among the terms unique to the call center is "connects," that includes inbound and outbound calls, as well as voicemails. During breaks and lunch, the employees are on "Not ready time." Further, "wrap up time" arises when employees are writing notes.

Grievant's performance and development plan incorporated the following expectations:

- " Not ready time" must not exceed two hours 15 minutes, or the amount of time designated by management.
- " Connects" are to be 121 or more per day for list 1 accounts or the amount of connects designated by management. The number of connects will be adjusted where the required not ready time is either increased or decreased.
- On a monthly basis, the expectation is that on 90% or more of the days worked, the TIS 1 will meet or exceed the expectations in each of those two (2) measured statistics.

Under what is referred to as the "predictive dialer system," managers load into the system the chosen job that will be run that day. The system then selects a taxpayer to call and sends the call to the first available TIS. Monthly, TIS employees receive a chart containing the expected number of contact statistics for that month, including the number of minimum "connects" for each day.

In circumstances in which the TIS 1 will be out of the office or on leave, a partial day schedule determines the number of "connects" expected for that day. However, for employees who remain in the office, the partial day schedule is not dispositive. Thus, management will make adjustments to expectations either by a staff meeting announcement or by an email. Finally, if 50% or more of the TIS 1s fail to make their expected "connects" on any day, the day is considered "time only" and employees are reviewed only on their " not ready time."

TIS employees use a spreadsheet called RANT that helps calculate daily performance targets. Once the COVID-19 pandemic arrived, work in the call center changed substantially. As a result, the number of connect targets were reduced from the long standing 121 in a normal 9-hour day

to 81 in a normal day during the pandemic. According to Grievant, on June 30, 2020, the number of connect targets expected reverted to the former 121, even though the scripts remained longer than before the pandemic and other requirements also took more time.

Although on June 30, 2020, the normal number of required "connects" for TIS employees had returned to 121 per day, Neibergs sent an email to the staff that morning, reducing the number to 111 in consideration of a training seminar that the TIS 1s expected to attend that day.[3] She also concluded that the " not ready time" could be three hours 10 minutes. Grievant examined the Partial Day Schedule, that provides a matrix depending on various anomalies, such as her scheduled webinar and concluded that the 111 number was correct.

However, Grievant's webinar took 58 minutes rather than the expected 45. Further, she took an additional 7 minutes or so to complete unemployment insurance application paperwork as speakers in the webinar had suggested. Based on these events Grievant conducted a second review of the partial day schedule chart and concluded that 108 rather than 111 "connects" should be the proper target. Accordingly, on June 30, 2020, Grievant completed 108 "connects."

A series of emails then ensued between Neibergs and Grievant, with the dispute centered on whether Grievant's 108 "connects" fell below the proper standard. Grievant forwarded the emails to her union representative, as she considered that Neibergs' messages were belittling and unprofessional, that there were conflicting performance standards and that she was being threatened with a negative impact to her next performance evaluation.

According to Amanda Hacker (Hacker), Union representative, throughout the grievance process the Employer never understood the Union's position.

V. PARTIES' POSITIONS SUMMARIZED

UNION

[3] Neiberg established that number based on the time she spent attending a presentation of the same seminar the prior day.

The Union asserts:

1. The June 30, 2020 change from 81 to 121 connects was arbitrary, capricious and or discriminatory as the more demanding workload during the pandemic had not changed.
2. Neibergs' testimony that parts of the RANT tool are mandatory and others discretionary conflicts with the Employer's documents and is arbitrary and capricious.
3. The Employer acted arbitrarily and capriciously by treating time out of the office or on leave differently from the same amount of time in the office while participating in an assigned duty not involving "connects."
4. The Employer's refusal to adjust the expected "connects' when it knew that the June 30, 2020 webinar exceeded the projected time is arbitrary and capricious.
5. The Employer's policy of waiving the connects standard if on a given day the majority of employees fail the standard is arbitrary and discriminatory.
6. The Employer's decision after June 30, 2020 to revert back to the pre-pandemic versions of the work expectations constituted an additional separate, disconnected decision, continuing its arbitrary, capricious and discriminatory conduct.
7. Application of the reasonableness standard as established by the Washington courts and by an unpublished decision attached to the Union's brief demonstrate that the Employer did not exercise its management rights reasonably and fairly.
8. As the process of performance evaluations is subject to the grievance procedure, Neibergs' inconsistent actions and failure to be fair and reasonable constitute a failure to provide employees with a clear understanding of their expectations and how they are expected to fulfill them.
9. The series of emails from Neibergs are belittling and demeaning, constituting informal discipline subject to the just cause provisions of Article 28.1.
10. The Employer's arguments are without merit.

EMPLOYER

For its part, The Employer argues:

1. Nothing about the events surrounding June 30, 2020 constitute discipline as defined in Article 28.2 of the CBA. Accordingly, the Employer could not have violated Article 28.1.
2. Article 5.2 (D) of the CBA provides that the contents of a performance evaluation are not subject to the grievance procedure. Although the procedure regarding performance evaluations is subject to the grievance procedure, the Union's grievance concerns an alleged failure to follow the proper procedure in determining the required amount of connects for June 30, 2020. Thus, the Union's argument does not concern procedures regarding performance evaluations.
3. Article 36 (L) of the CBA memorializes the Employer's right to: "Determine, prioritize, modify and assign work to be performed." As Neibergs acted consistently with her practice in determining how the number of expected connects were determined in a variety of situations, the Union failed to meet its burden of a establishing that her actions were arbitrary or capricious rather than fair and equitable.

VI. ANALYSIS

General Principles

As in any contract interpretation issue, I am charged with determining the Parties' mutual intent and understanding. I also recognize that as the moving party in this matter of contract interpretation, the Union bears the burden of persuasion. In that regard I follow the established practice of the majority of arbitrators and rely on the standard of the preponderance of the evidence. Another way of expressing the test is that, in order to prevail, the Union must present more than equally weighted competent evidence.

As a threshold matter, I recognize the well established doctrine that where disputed language is clear and unambiguous, arbitrators will give effect to the plain meaning, even if one party considers the result harsh or unexpected. Unless there is evidence that the parties intended some specialized meaning, words are to be given their ordinary and popularly accepted meaning. Bargaining history and past practice are among the interpretive aids that arbitrators frequently rely on to assist in discerning the Parties' mutual intent. Another established

principle that can be helpful includes the determination of the principal purpose of the parties. Further, arbitrators prefer a "reasonable meaning" interpretation to one that produces unreasonable, harsh, absurd or nonsensical results. One important element of reasonableness is expressed as the doctrine of good faith and fair dealing, a set of principles that can prevent a party from evading the spirit of a bargain.[4]

In particular, the well-established plain meaning principle teaches that if words "are plain and clear, conveying a distinct idea, there is no occasion to resort to interpretation, and their meaning is to be derived entirely from the nature of the language used."[5] Although numerous arbitrators continue to apply the "plain meaning" rule, many commentators and arbitrators have questioned whether "all words have a fixed, precisely ascertained meaning."[6] Thus, as cautioned in the Restatement (Second) of *Contracts*:

> "It is sometimes said that extrinsic evidence cannot change the plain meaning of the writing but meaning can almost never be plain except in a context. Any determination of meaning or ambiguities should only be made in light of the relevant evidence of the situation and relations of the parties, the subject matter of the transaction, preliminary negotiations and statements made therein, usages of trade, in the course of dealing between the parties."[7]

In confronting whether the disputed contractual language contains an ambiguity, one arbitrator quoted a test set forth by the well-known arbitrator Dennis Nolan:15

> "The test most often cited is that there is no ambiguity if the contract is so clear on the issue that the intentions of the parties can be determined using no other guide than the contract itself. This test borders on the tautology, however, for it comes perilously close to a statement that language is clear and unambiguous if it is clear on its face. Perhaps a better way of putting it would be to ask if a single, obvious and reasonable meaning appears from a reading of the language in the context of the rest of the contract. If so, that meaning is to be applied."[8]

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[4] *The Common Law of the Workplace*, 2.12, St. Antoine, (2nd. Ed. 2005).
[5] *Elkouri and Elkouri, How Arbitration Works,* 9-8 (8th Ed., 2016).
[6] *Farnsworth, Contracts*, § 7.10, (3d. ed. 1999).
[7] *Restatement, (Second) of Contracts* §212 cmt. b (1979).
[8] *Labor Arbitration Law and Practice*, 163 (1979).

Pursuant to the above guidance I will examine the language of the Articles in dispute to determine whether or not, in the context of the entire CBA, "a single, obvious and reasonable meaning appears."

Application of Principles to the Record

Article 28

As a threshold matter, I recognize that Article 28.1 requires the Employer to have just cause in order to issue discipline. Significantly, Article 28.2 defines " discipline" as follows:

> Discipline includes oral and written reprimands, reductions in pay, suspensions, demotions, discharges, and reductions in accrued annual leave (overtime exempt employees only), to a maximum of three (3) days per occurrence. Oral reprimands will be identified as such.

In this regard, the Union recognizes that the Employer did not take any of the specific actions delineated in the mutually agreed upon Article 28.2 definition of discipline. However, the Union asserts that the belittling and demeaning nature of Neibergs' communications to Grievant and the threats to her future performance evaluations were punitive and in the nature of informal discipline. In essence, the Union asserts that the Employer is attempting to avoid the just cause standard by engaging in a ruse of issuing the functional equivalent of discipline defined in Article 28.2, while labeling its actions as something else. Thus, the Union vigorously contends that the Employer's actions are arbitrary and capricious, in violation of Article 28.1

By contrast, the Employer asserts that the record clearly demonstrates that Grievant was not disciplined within the meaning of Article 28.2. In that regard the Employer relies upon the Article 28.2 definitions and the testimony of Hacker and Grievant, who both conceded that there had been no formal discipline. Similarly, Neibergs testified that she did not discipline Grievant or take any corrective action regarding the 108 "connects." Further, there is no evidence that the Parties agreed to modify the definitions in Article 28.2.

In analyzing these competing arguments, I preliminarily follow the established admonition that:

"If the parties have defined a word or phrase in their agreement... an arbitrator should not look outside the agreement for a definition."[9] In accord with that principle, I appreciate that none of the Employer's communications or actions on which the Union relies fall within the plain meaning definition of discipline in Article 28.2. I further appreciate that arbitrators distinguish communications such as evaluations of employee performance from comments on employee behavior that are part of the progressive discipline system. In particular, one treatise recognizes that comments that are specific in relation to a perceived deficiency are not disciplinary, unless they fall within the Employer's progressive discipline system.[10] Here, Neibergs' comments were directed to Grievant's failure to achieve 111 connects on June 30, 2020. As none of Neibergs' communications threatened "discipline" or even a poor ranking on Grievant's upcoming performance evaluation, I am satisfied that they did not fall within the Employer's progressive discipline system and did not confrom the the Article 28.2 definitions. Accordingly, I must deny the grievance to the extent that it alleges violations of Article 28.1.

Article 5

With respect to Article 5, the Union contends that Neibergs was required to follow the partial day schedule that was a part of the RANT tool in establishing the expectations on June 30, 2020. Thus, by failing to follow the mandatory chart, Neibergs improperly used an invalid procedure that resulted in conflicting performance targets. Consequently, employees such as Grievant could not have a clear understanding of what they were expected to accomplish and how they were expected to carry out their assignments. In light of the foregoing, the Employer failed to meet its own policy requirements of being fair, reasonable and consistent.

For its part, the Employer initially highlights Article 5.2 (D), that provides:

" The performance evaluation procedure may be grieved; however, the content of the evaluation is not subject to the grievance procedure in Article 30." Significantly, the only performance review at issue covers the period June 26, 2019, to June 25, 2020. However, that review contains praise for Grievant's work. In addition, Grievant signed the document on July 31,

[9] Elkouri & Elkouri, supra at 9-24.
[10] Brand & Biren, *Discipline and Discharge in Arbitration*, 65 (2nd Ed., 2008).

2020, and did not include any comments. Moreover, nothing in the record supports a conclusion that Grievant's next review will contain negative comments. In particular, Neibergs testified that Grievant met the overall statistics for the month of June 2020. Accordingly, her evaluation through June 25, 2021, would contain no negative connotations regarding the June 30, 2020 events. Finally, the note template and skip trace template are the only 2 templates required in all circumstances. In light of these factors, the Employer argues that there could be no violation of Article 5.

In my judgment, the overall purpose of Article 5 is to promote the overall objective of supporting employees to be able to align their skills and abilities with the requirements of the Employer. Significantly, the content of evaluations is not subject to the contractual grievance procedure. By contrast, performance evaluation procedures may be grieved.

In consideration of the above, and contrary to the Union's characterization of Neibergs' actions, I am persuaded that the Union's argument fundamentally involves a claim that Neibergs failed to follow the proper procedures and considerations in establishing the number of expected "connects" for June 30, 2020. Significantly however, the issue of procedures impacting performance expectations is distinct from procedures concerning performance evaluations. Accordingly, I am persuaded that the Union has failed to present evidence that supports a finding of deficiencies in the performance evaluation process. In light of the foregoing, I am unable to conclude that the Employer violated Article 5.

<u>Article 36</u>

The Union contends that the Employer violated Article 36, the management rights clause, by its arbitrary, capricious and discriminatory actions in setting performance standards. As a threshold matter, I appreciate that “[e]very contract imposes upon each party a duty of good faith and fair dealing in its performance and its enforcement.” An inherent and implied covenant of reasonableness that applies to all collective bargaining agreements, the duty..."[p]revents any party to a collective bargaining agreement from doing anything that will

have the effect of destroying or injuring the right of the other party to receive the fruits of the contract..."[11] As expressed by the respected arbitrator Carlton Snow: "The emphasis of the "reasonable expectations" principle is on preventing a party from using discretionary authority in a contract to defeat essential objectives of the agreement formed by the parties.[12]

The Union's arguments rest on Neibergs' actions, particularly her methodology in setting performance standards, in determining that a performance standard is achievable if 50% or more of the crew successfully meet the standard, and in failing to adjust standards as the workflow increases. According to Hacker's testimony, the allegation regarding Article 36 is because "management is erring in its responsibility to appropriately direct and supervise staff and to do so in a fair and equitable manner." Further, expectations need to be clear and employees should not be "shooting" for different numbers. Based on its analysis of Neibergs' determinations, the Union argues that the Employer's actions have been arbitrary, capricious and discriminatory.

In analyzing the Union's contentions, I appreciate in particular that Article 36 (L) provides that the Employer retains all rights of management to: "Determine, prioritize, modify and assign work to be performed." On the basis of that expansive language, I am persuaded that considerable weight should be given to bona fide conclusions of the Employer's management in these areas, if supported by objective considerations and factual evidence.

Unlike the term "discipline" that is defined in the CBA, "arbitrary, capricious and discriminatory" are not defined. Thus, I must look to commonly held definitions or to interpretations by other arbitrators and the courts to understand the standard to be applied to those terms. As one example, "arbitrary and capricious" have been defined as follows: "a willful and unreasonable action without consideration or in disregard of facts or without determining principle."[13] Similarly, an arbitrator defined "arbitrary and capricious" as: "Arbitrary conduct is

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[11] *How Arbitration Works*, supra at 9-49

[12] *City of Salem*, 2003 WL 26556957 (2003).

[13] *Black's Law Dictionary*, 5th Edition.

not rooted in reason or judgment but is irrational under the circumstances. It is whimsical in character and not governed by any objective rule or standard. The term, 'capricious' also defines a course of action that is whimsical, changeable, fickle, unsteady or inconstant."[14] Finally, the term "discriminatory" is commonly understood to mean that similarly situated individuals are treated disparately.

In applying the above definitions to Neibergs' actions, I initially recognize that she followed longstanding protocols and standards in determining the expectations for June 30, 2020. Although the Union disagrees vehemently with her application of various criteria, I find no evidence that her actions were devoid of reason or judgment, or that they were irrational. Further, there is no basis to conclude that her actions were whimsical, fickle or lacking any objective rule or standard. Rather, the evidence supports a conclusion that Neiberg relied on factual evidence, such as the length of her training meeting the prior day, applied longstanding criteria and reached objective conclusions. In addition, there is no record evidence to suggest that Grievant was subjected to more stringent standards than her colleagues. Accordingly, I am persuaded that the Union's disagreements with Neibergs' methodology and conclusions fail to support its contention that Neibergs acted arbitrarily, capriciously, or discriminatorily.

I have also carefully reviewed the unpublished Opinion and Award submitted by the Union in support of its argument.[15] In that matter, involving the Union and the State of Washington, Arbitrator William Greer concluded that the State violated that CBA by exercising its management rights in a manner that was arbitrary and capricious. Although I consider Arbitrator Greer's Opinion well -reasoned, I unable to attach significance to it here as that employer's action was based on a policy "that in turn was based upon rules that had been repealed and no longer existed at the time of the employer's decision.[16] Under those unique circumstances, Arbitrator Greer properly concluded that the employer's reliance on a repealed policy was an arbitrary and unreasonable exercise of management rights. By contrast, there is

[14] *City of Solon*, 114 LA 321,326 (Oberdank, 2000).
[15] *State of WA, Clark College and WPEA*, AAA Case No. 75-390-00323-06 (Greer, 2007).
[16] Id at 10.

no evidence and indeed no allegation here that the Employer relied on any repealed or nonexistent policies in support of its actions at issue here. Thus, I am persuaded that Arbitrator Greer's Opinion is factually distinguishable and unpersuasive for purposes of my analysis.

CONCLUSION

The Union presented intriguing and creative arguments on behalf of Grievant. However, my evaluation of entire record and the arguments and authorities presented by the Parties persuade me that the Union was unable to meet its burden of establishing that the Employer violated any provision of the CBA, including Articles 5, 28 or 36. Accordingly, I am compelled to conclude that the grievance must be denied. In reaching my conclusions I addressed only those matters I deemed necessary for a proper resolution, but did consider all the arguments of the Parties, including the evidence on which they relied, even if not specifically addressed in this Opinion.

AWARD

AAA No. 01-21-0001-1359

(Samantha Schaefer Grievance)

WASHINGTON PUBLIC EMPLOYEES ASSOCIATION

and

WASHINGTON STATE DEPARTMENT OF REVENUE

Based on careful consideration of the evidence and the arguments of the Parties in their entirety, I award the following:

1. The grievance is denied.
2. Pursuant to Article 30.2 (E) of the CBA, my fees shall be shared equally by the Parties.

Respectfully submitted,

Richard L Ahearn, NAA
Arbitrator
June 29, 2021