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November 11, 2016

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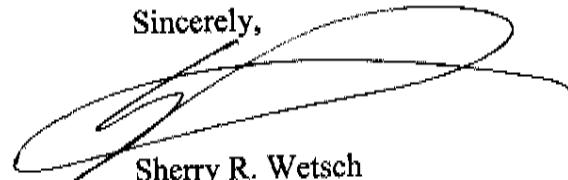
Angela Galvis Schnuerle
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Re: FMCS # 16-53197-8

Dear Parties:

Enclosed please find the Award for this matter. If you need anything else, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read 'Sherry R. Wetsch', with a large, sweeping flourish extending to the right.

Sherry R. Wetsch

Enclosure

**IN THE MATTER OF ARBITRATION BEFORE
ARBITRATOR SHERRY WETSCH**

**KAREN MUSICK
And AFGE, LOCAL 2959
Grievant**

and

FMCS No. 16-53197-8

**U.S. SMALL BUSINESS ADMINISTRATION
Respondent**

AWARD

This proceeding is an appeal of a two-day suspension by Karen Musick (Grievant) taken to a third-party Arbitrator. Respondent suspended Karen Musick for two days on December 15, 2015. (Grievant's Exhibit 28) The following grievance were addressed during this arbitration proceeding: 2959-06-19-2015 including Addendums 1, 2 & 3, and 2959-12-17-2015.

On August 29 and 30, 2016, a hearing was held in the Little Rock. Attorney Anthony Parham represented the Respondent. Attorney Angela Galvis Schnuerle represented the Grievant. Appearing as sworn witnesses were Grievant Karen Musick, Zane Wilson, Meghan Hudson, Hollis Carter, Anna Sadler, Randy Musick, Johnnie Green, Robert Harrison, Steve Park, Sarah Hawkin, Charla Nique Carrington, and John Brown. Appearing by telephone were, Dr. Linda Hartsfield, Shannon Hawes, and Karen M. Musick. (Karen M. Musick is a relative of Grievant Musick.) The parties utilized the services of a court reporter.

Petitioner was given the deadline of September 9, 2016, to file a *Motion For Attorney Fees*. A deadline of September 30, 2016 for Responses to the Motion was set. A deadline of October 21, 2016 for submission of post hearing briefs was established. On September 9th, Attorney Schnuerle requested an extension of the September 9th deadline for submission of the *Motion For Attorney Fees*. The request for this extension was GRANTED. Petitioner was given an extended deadline of September 12th to file the *Motion For Attorney Fees*. On October 11, 2016, Petitioner requested an extension of the deadline to submit post hearing briefs to November 7, 2016. This request to extend the deadline for submission of post hearing briefs to November 7th was granted. Respondent filed *Agency's Post Hearing Brief* on November 7, 2016. On November 7th Petitioner filed *Post Arbitration Brief On Behalf Of The Grievant and Amended Motion For Attorneys' Fees*.

The following exhibits were admitted:

JOINT EXHIBIT

1. Master Labor Agreement

GRIEVANT'S EXHIBIT

1. Master Labor Agreement Cover Page
2. Grievance 2959-6-19-2015
3. Grievance 2959-12-7-2015
4. Informal notice given by Steve Park to employees
5. E-mail chain including Wayne Vickery
6. E-mails between Sarah Hawkins and Steve Park
7. Karen Musick phone log
8. E-mail from Sarah Hawkins to Karen Musick
9. Text messages
10. Computer calendar screen shot
11. E-mails
12. E-mails between Alexandria Wolfe and Karen Musick
13. Medical receipts of Karen Musick
14. E-mails regarding Quarterly Performance Review of Karen Musick
15. Patient ledger from Dr. Hartsfield
16. September 10, 2015 letter from Sarah Hawkins to Karen Musick
17. E-mail from Eduardo Maglione
18. September 16, 2015 proposed two -day suspension letter
19. Screen Snapshot
20. Response to proposed suspension
21. E-mails
22. E-mails between Karen Musick and Steve Park
23. E-mail regarding sick leave certification
24. Letters re: medical certification
25. E-mails regarding medical documentation
26. October 21, 2015 memorandum from Dr. Hartsfield
27. E-mails regarding Karen Music medical leave
28. December 15, 2015 letter of suspension
29. January 21, 2016 e-mail from Karen Musick to Joanne Saberre
30. Karen Musick performance appraisals
31. Appendix 5 of the Master Labor Agreement
32. Medical receipts
33. Dr. Linda Hartsfield license from Arkansas Psychology Board
34. SOP 37 52 2

AGENCY EXHIBITS

1. March 2014 e-mails between Karen Musick and Shannon Hawes

On September 26, 2016, the Agency offered by e-mail proposed rebuttal evidence. The Union objected. The Union's objection to the proffered rebuttal evidence was sustained on September 29, 2016.

ISSUES AND REQUESTED RELIEF

On August 24, 2016, a telephone prehearing conference was held with the parties. The following outstanding issues and requested relief was outlined:

1. *Whether or not the Agency had just cause to suspend Karen Musick, and if not, what is the appropriate remedy?*
2. *Whether the Agency violated Articles 4, 11, 12, 22, 28, 37, 39 & 44 of the Master Labor Agreement during the period of May 28, 2015 through March 20, 2016.*
 - a. *Did Steve Park create a hostile work environment for Karen Musick?*
 - b. *Did Steve Park violate Articles 11 & 12 when he refused to allow Grievant Union Representation?*
 - c. *Did Steve Park violate Article 28 when he completed the Grievant's performance appraisal?*
 - d. *Did the Agency commit an Unfair Labor Practice in violation of Article 44?*

The Petitioner's requested relief was identified by the Grievant during the August 24th PHC as follows:

1. *Cancellation of the two-day suspension action, and restoration of all related benefits and pay.*
2. *Restoration of medical and sick leave taken as a result of the alleged violations of the MLA.*
3. *Compensation for overtime worked for official duties.*
4. *Legal fees plus interest.*
5. *Adjustment of annual leave.*
6. *Emotional and psychological damage caused by harassment and hostile work environment.*
7. *Investigation and corrective actions of PII violations.*
8. *Refund of medical expenses related to grievances.*

In their post hearing brief, Respondent raised the following issue:

1. *Did the Union act in bad faith and/or contrary to the MLA by failing to provide enough facts to support the allegations of violations of Articles 4, 11, 12, 22, 28, 37, 39 and 44 of the MLA during the grievance process.*

APPLICABLE RULES, REGULATIONS AND PROVISIONS

SBA MASTER LABOR AGREEMENT

ARTICLE 4 CHANGES IN PERSONNEL POLICIES, PRACTICES AND CONDITIONS OF EMPLOYMENT

Section 1. Agency Notification.

Before implementing a change in personnel policies, practices, procedures, or conditions of employment applicable to employees in the bargaining unit, the Agency will notify the appropriate Union representative in accordance with the provisions of this Article. The giving of such notice shall not constitute a waiver or admission of any claim or contention by either the Agency or the Union that the subject matter of such notice is either de minimis or within the scope of bargaining. This applies whether the proposed change is initiated by the Agency or imposed by an external source, i.e. a change in laws, an Executive Order or judicial decision.

ARTICLE 8 EMPLOYEE RIGHTS AND RESPONSIBILITIES

Section 5. Union Representation.

In accordance with the Federal Service Labor Management Relations Statute, the Union shall be given the opportunity to be represented at any examination of an employee in the unit by a representative of the Agency in connection with an investigation if: (1) the employee reasonably believes that the examination may result in disciplinary action against the employee; and (2) the employee requests representation. The Agency shall annually inform employees of this right.

ARTICLE 11 UNION RIGHTS AND RESPONSIBILITIES

Section 1. Exclusive Representation.

Pursuant to 5 U.S.C. 7114(a)(1), the Agency recognizes the Union as the exclusive representative of the employees in the unit it represents and recognizes that it is entitled to act for and negotiate collective bargaining agreements covering all employees in the unit. The Union is responsible for representing the interests of all employees in the unit it represents without discrimination and without regard to labor organization membership.

Section 2. Representation Requirements.

- a. Pursuant to 5 U.S.C. 7114(a)(2)(A), the Union shall be given the opportunity to be represented at any formal discussion between one or more employees it represents and one or more representatives of the Employer concerning any grievance (to include settlement discussions) or any personnel policy or practice or other general condition of employment. This right to be represented does not extend to informal discussions between an employee and a supervisor concerning a personal problem, counseling, or work methods and assignments.
- b. The appropriate Union official will be given advance notice of any formal discussions that is to be held. If that official or designee is not available, the SBA shall notify the Council President. This advance notice will be given unless management has been prevented from doing so due to an emergency. In situations involving a meeting with a

large group of employees (such as a meeting with a Branch, Division or office), the Union shall receive at least a two (2) workday notice of the meeting.

- c. At the start of each formal discussion, the SBA management representative will ask any Union representative who may be present to state their name and Union position title. Furthermore, the SBA management representative will permit the Union representative to ask relevant questions, and to present a brief statement before the end of the meeting outlining the Union's position concerning the issues presented by management, and to have full participatory rights during the meeting to the extent accorded to other employees.
- d. Nothing in this Section shall be construed to deny any unit employee any right protected by 5 U.S.C. 7114(a)(2)(B).

ARTICLE 12 UNION REPRESENTATION

Section 1. Union Recognition.

The Agency agrees to recognize those Union representatives designated by Council 228 President, or designee, having authority to represent the Council. Such designations shall be made in writing and shall specify the scope of authority of the designated representative. Designated representatives of the Council may re-delegate, in writing, their authority. All designations and re-delegations of authority will be provided to Agency Labor Relations representative, and re-delegations of authority shall also be provided to the appropriate Regional Administrator(s). Failure to receive notice of change in designation or re-delegation will mean the designated individual of record remains authorized to represent the Union.

Section 2. Representational Activities.

- a. Covered Representational Activities. The Agency agrees that Union representatives shall be authorized such official time as is reasonable and necessary for Union representation activities. Such activities shall include, but not be limited to:
 1. Discussing and investigating complaints, grievances or appeals with bargaining unit employees;
 2. Preparing grievances and appeals of bargaining unit employees;
 3. Attending meetings with supervisors and other agency officials;
 4. Attending meetings as an employee's representative or as a Union observer when a Union representative does not represent the employee;
 5. Meetings/Hearings at MSPB, EEOC, arbitration and/or in discussion with FLRA;
 6. Preparing and participating in statutory appeals and Unfair Labor Practice charges and complaints; and
 7. New employee/transfer briefing.
- b. Activities Not Covered. Official time shall not include time spent on internal union business, including, but not limited to:
 1. Attending Union meetings;
 2. Soliciting members;
 3. Collecting dues;
 4. Posting notices of Union meetings;

5. Carrying out elections.

ARTICLE 22 EQUAL EMPLOYMENT OPPORTUNITY

Section 1. General. The Employer recognizes its responsibilities under law, and the Parties will strive to assure that all employees have equal employment opportunities and that no one is discriminated against because of race, marital status, color, national origin, sex, religion, age, or mental or physical disability. Additionally, no employee will be subjected to any form of reprisal for participating in the EEO process. The Parties recognize their responsibility for promoting equal opportunity through a positive, continuing program.

Section 2. Objectives. The Parties agree that they will give full support to the equal employment opportunity policy and program objectives established by law and comprehensive plans and programs established by the Parties to attain equal employment opportunity objectives. The parties will work aggressively and effectively to assure that:

- a. Complaints of discrimination on any of the grounds listed in this Article are given prompt and fair consideration and that every effort is made to provide for just and expeditious resolution of each complaint;
- b. Persons who complain of alleged discrimination or who participate in the EEO process will not be impeded in their efforts, and are free from restraint, interference, coercion, discrimination, or reprisal; and
- c. Every employee has the right to work in an environment free of intimidating, hostile, offensive sexual overtures and sexual harassment. Sexual harassment is a prohibited personnel practice when it results in discrimination for or against an employee on the basis of conduct not related to performance, such as taking or refusing to take a personnel action, including promotion of employees who submit to sexual advances or refusing to promote employees who resist or protest sexual overtures.

ARTICLE 28 PERFORMANCE APPRAISAL SYSTEM

Section 1. General Provisions.

There are few activities in an organization that have greater importance to its overall success than the method an organization chooses to evaluate and manage its personnel resources. The Parties agree that performance management for bargaining unit employees covered by SBA's Performance Appraisal System (PAS) will be carried out in accordance with this Agreement. Where there are conflicts between SBA policies, procedures, and SOPs on performance appraisal and this Agreement, the provisions of this Agreement will prevail.

This Article provides for the following:

- (1) Personal Business Commitment (PBC) Plan, SBA Form 2223A, which includes the employee's critical elements and performance standards;
 - (2) Communication of personal business commitment plan to employees;
 - (3) Establishment of methods and procedures to appraise employee performance;
 - (4) Correcting employee deficiencies.
- a. The Parties agree that the PAS will be administered in a fair, measurable, achievable, understandable, verifiable, reasonable, and equitable manner so as to permit the accurate

evaluation of employee job performance. Ratings will be based upon employee performance against critical elements and performance standards, and definitions for applicable rating levels, as described below in this Article. Appraisal results will be objectively and consistently applied when used as a basis for personnel decisions. Appraisal of employee performance will be conducted in accordance with applicable laws and regulations, including, but not limited to, the Privacy Act, 5 U.S.C. Chapter 43, 5 C.F.R. Part 430, and the Civil Rights Act of 1964, as amended, and this Agreement.

Section 3. Quarterly Progress Reviews.

- a. All employees will receive at least three (3) quarterly progress reviews and one final review. The Parties agree not to use measures of program effectiveness to evaluate or appraise an employee's performance.
- b. During quarterly progress reviews, which will take place at approximately the middle of January, April and August, both the employee and the supervisor will exchange information concerning the performance of the employee as compared to the established critical elements and performance standards found in the PBC Plan. At the review, the employee will discuss information that impacts their performance. The review will include identification and consideration of any formal or informal assistance and/or training felt to be helpful in aiding the employee to accomplish his/her PBC Plan. Progress reviews will be documented by a memorandum similar to the following:

MEMORANDUM

DATE:

TO: Employee

FROM: Supervisor

SUBJECT: Quarterly review

This is to acknowledge that a meeting was held on (Date) with (Employee's name) to discuss his/her quarterly review for the period covering (Date) to (Date). Your performance as measured by your performance standards (state productiveness, needs improvement in the areas of, etc.)

- c. If performance is determined to be at the "Below Expectations" level, the supervisor must describe the specific critical element(s) that is/are deficient, how the employee can improve performance, and any assistance provided in the memorandum.
- d. An employee's performance against the elements and standards should be monitored by the rating official throughout the rating period, and the rating official should communicate with the employee about problems, successes, and progress, as warranted.

ARTICLE 37 DISCIPLINARY ACTION

Section 1. Definition

- a. For the purposes of this Article, disciplinary action is defined as a Letter of Reprimand or a suspension from employment of fourteen (14) days or less.
- b. No bargaining unit employee will be the subject of a disciplinary action except for just and sufficient cause. Disciplinary action shall be appropriate to the offense. Upon request, an employee may have a Union representative present when disciplinary action is administered.

Section 2. Uses and Representation.

- a. Disciplinary actions for performance deficiencies may only be taken after performance standards have been communicated to the employee in accordance with Article 28 of the Agreement.
- b. An employee may have Union representation with respect to possible discipline in accordance with Article 8 of the Agreement.
- c. In all cases of disciplinary action taken against any bargaining unit employee, the appropriate local Union shall be notified of the action taken at the same time that the employee is notified, or as promptly thereafter as possible, provided that the employee has indicated either orally or in writing that they have Union representation.

Section 3. Timeliness.

Disciplinary or adverse actions will be initiated in an expeditious manner given the nature and circumstances of each incident. If the incident is subject to investigation by the Office of Inspector General or an outside source, the Agency will move forward with any disciplinary or adverse action as expeditiously as is reasonable under the circumstances after being notified it is free to pursue such action.

ARTICLE 39 GRIEVANCE PROCEDURE

Section 1. Purpose. The purpose of this Article is to provide an effective and efficient process that is fair, equitable, and consistent to timely resolve disputes in the workplace.

Section 2. Definitions. A grievance is defined as any complaint by an employee or by the Union concerning any matter relating to the employment of the employee; any complaint by an employee, the Union, or the Employer concerning the effect or interpretation, or a claim of breach, of this Agreement; or any claimed violation, misinterpretation, or misapplication of any law, rule, or regulation affecting conditions of employment.

Section 3. Scope of Procedures.

- a. The procedures set forth herein shall be the sole and exclusive procedures available to employees within the unit of recognition and to the Parties to this Agreement for resolution of grievances, except as otherwise specifically hereinafter provided. The parties hereto agree that every effort will be made to settle grievances at the lowest possible level.
- b. This grievance procedure does not apply to any grievances concerning:
 1. Any claimed violation of Subchapter III of Chapter 73 of Title 5 U.S.C., relating to prohibited political activities;
 2. Retirement, life insurance, or health insurance;
 3. A suspension or removal under Section 7532 of Title 5 U.S.C., concerning National security;

4. Any examination, certification, or appointment, including separation during probationary period; or
 5. The classification of any position which does not result in the reduction in grade or pay of an employee.
- c. An employee shall be deemed to have exercised their option under this provision to raise the matter under either a statutory procedure or applicable appellate procedure at such time as the employee timely initiates a formal action.
1. An aggrieved employee affected by a prohibited personnel practice under Section 2302(b)(1) of Title 5 U.S.C. (discrimination), may raise the matter under a statutory procedure or this procedure, but not both.
 2. An aggrieved employee affected by matters covered under Section 4303 and 7512 of Title 5 U.S.C. (performance and adverse actions), may raise the matter under the appropriate appellate procedures or this procedure, but not both.

Section 4. Representation. An employee may be represented by AFGE or may present a grievance on the employee's own behalf, provided the Union is given the opportunity to be present during the processing of the grievance and at the adjustment of the grievance. The right to be present at any grievance-related discussion is separate from the Union's right to be present at any formal discussion. The Union shall promptly receive copies of written decisions on grievances within the time frame contained herein.

Section 5. Grievance Contents. All grievances filed under these procedures shall be submitted on the approved grievance form contained herein as Appendix B. This form can be changed or altered at any time by mutual consent of the Labor Relations Officer and the Council 228 President. The grievance form shall provide enough information to determine the nature of the dissatisfaction and the requested remedy.

Section 6. Time Limits.

- a. Unless mutually agreed upon, all time limits contained in this procedure shall be strictly observed. In the event the expiration date falls on a non-workday, the expiration date will be the next workday.
 1. Failure by the Bargaining Unit Employee (BUE) to adhere to the time limitations for filing a grievance at any step of the procedure shall result in cancellation of the grievance.
 2. Failure by the Appropriate Management Official (AMO) to adhere to the time limitations for responding to a grievance, as identified in Step One or Step Two of Section 7 (b) and (c), shall result in the grievance being elevated immediately to the Office of Human Resources Solutions (OHRS) in Headquarters who is authorized to resolve, settle, and/or render a final Agency decision. A final Agency decision shall be rendered within fourteen (14) calendar days.

Section 7. Employee Grievances.

INFORMAL STAGE

- a. Prior to the initiation of a formal grievance, within twenty-one (21) calendar days of the action being grieved or of the date the employee(s) first learned of the action, an employee has the option of discussing with the management official who took the action they wish to

grieve, the substance of the grievance and the resolution which is sought. While speaking with the manager who took the action is not a formal part of this procedure, it is highly encouraged to resolve informally employee grievances at the lowest possible level. Where such a meeting is held, the employee and manager should document the discussion, and all parties to the discussion should sign such documentation. The employee may request Union representation at this stage.

FORMAL STAGE

- b. **Step One.** Within twenty-one (21) calendar days of the discussion set forth in paragraph (a), if the grievance is not otherwise resolved through that process, or within twenty-one (21) calendar days of the action being grieved or of the date the employee(s) first learned of the action, the employee(s) or representative shall file a written grievance (personally, by Email, facsimile, or postmarked) with the lowest level management official who has the authority to grant the relief requested who is above the management official who took the action grieved. This person is the AMO. The AMO receiving the grievance shall make such investigation as necessary, including the interviewing of witnesses, the aggrieved, or any other person having knowledge of the pertinent facts relating to the grievance. The AMO shall render a decision in writing, to the employee(s), or the employee's representative, if one has been designated, within fourteen (14) calendar days from receipt of the grievance. The decision will include the name and title of the individual at the next higher level to which the grievance may be directed if it is not resolved at this step.
- c. **Step Two.** If the grievance is not resolved at step one of this procedure, the grievance may be directed to the next level of supervision in the office to which the employee is assigned, or to the appropriate similarly situated official. The written grievance must be presented in person, by Email, facsimile, or postmarked to the second level of review within fourteen (14) calendar days from receipt of the decision at step one. The second level reviewing official, or designee, shall make whatever investigation or interviews they deem appropriate, and shall render a decision to the employee(s), or to the employee's representative, in writing, within fourteen (14) calendar days from receipt of the grievance. The decision shall specify the name and title of the official to whom the grievance may be directed if the grievance is not resolved at step two.
- d. **Step Three.** If the grievance is not resolved at step two of this procedure, the written grievance may be submitted to the final reviewing official or designee. The final reviewing official for an employee grievance shall be the Regional Administrator for the region in which the employee works or the Headquarters Management Board member for the office in which the employee works. The grievance must be submitted in writing (personally, by Email, facsimile, or postmarked) within fourteen (14) calendar days from the date of receipt of the decision at step two.
Prior to a final decision, the Grievance Review Committee (GRC) shall convene via phone or in person. The GRC shall be comprised of a Union, Legal, and Human Resources Solutions representative. The purpose of the committee is to make oral recommendations(s) to the deciding official for their consideration prior to the Agency's final decision. The GRC will render a recommendation within fourteen (14) calendar days.

The Regional Administrator, or the headquarters Management Board member, or their designee, shall render a decision, in writing, within twenty -one (21) calendar days from the date of receipt of the recommendation of the GRC. The decision shall specify that it is the final Agency decision on the grievance.

- e. The parties agree that the final Agency decision can be reached at the first or second step of the grievance procedure when the reviewing official is the Regional Administrator for the region in which the employee works, or the Headquarters Management Board member for the office in which the employee works, in cases of Headquarter employees.
- f. If at any step, the grievant has filed a grievance with a management official who lacks the authority to grant the relief requested, the grievance shall be forwarded within two (2) work days by that management official to the appropriate management official who has the authority to grant the relief requested. In this event, the management official with appropriate authority will be given fourteen (14) calendar days from receipt of the grievance to respond to the employee or representative as if this management official had received the grievance in the first instance.

Section 8. Union Grievance.

The Union may initiate a grievance in accordance with the following procedures:

- a. Step One. Grievances Involving One Local: If the grievance involves one (1) local, the following procedure shall be used:

The local Union president or designee shall discuss the matter informally with the AMO within twenty-one (21) calendar days of the event giving rise to the grievance or within twenty-one (21) calendar days of the date the union first learned of the event causing the grievance. The deciding official shall render a decision within fourteen (14) calendar days from the date of the informal discussion.

ARTICLE 40 ARBITRATION

Section 12. Attorney Fees.

The arbitrator has full authority to award attorney fees in accordance with the provisions of the Civil Service Reform Act of 1978.

ARTICLE 44 UNFAIR LABOR PRACTICES

Section 1. The parties hereto agree that each shall make every reasonable effort to prevent the occurrence of any Unfair Labor Practice under 5 U.S.C. 7116, and to attempt to resolve any Unfair Labor Practice, if possible, prior to filing a charge with the Federal Labor Relations Authority (FLRA). Nothing herein shall in any way limit the rights each Party has in accordance with 5 U.S.C. 7118, and any relevant regulations issued by the FLRA.

5 U.S.C § 5596

- (a) For the purposes of this section, "agency" means-

- (1) An Executive Agency;
- (2) The Administrative Office of the United States Courts, the Federal Judicial

Center, and the courts named by section 610 of title 28;

- (3) The Library of Congress;
- (4) The Government Publishing Office;
- (5) The government of the District of Columbia;
- (6) The Architect of the capitol, including employees of the United States Senate Restaurants; and
- (7) The United States Botanic Garden.

(b)

(1) An employee of an agency who, on the basis of a timely appeal or an administrative determination (including a decision relating to an unfair labor practice or a grievance) is found by appropriate authority under applicable law, rule, regulation, or collective bargaining agreement, to have been affected by an unjustified or unwarranted personnel action which has resulted in the withdrawal or reduction of all or part of the pay, allowances, or differentials of the employee---

(A) is entitled, on correction of the personnel action, to receive for the period for which the personnel action was in effect---

(i) an amount equal to all or any part of the pay, allowances, or differentials, as applicable which the employee normally would have earned or received during the period if the personnel action had not occurred, less any amounts earned by the employee through other employment during that period; and

(ii) reasonable attorney fees related to the personnel action which, with respect to any decision relating to an unfair labor practice or a grievance processed under a procedure negotiated in accordance with chapter 71 of this title, or under chapter 11 of title I of the Foreign Service Act of 1980, shall be awarded in accordance with standards established under section 7701(g) of this title.

5 U.S.C. § 7106

(a) Subject to subsection (b) of this section, nothing in this chapter shall affect the authority of any management official of any agency---

(1) To determine the mission, budget, organization, number of employees, and internal security practices of the agency; and

(2) In accordance with applicable laws----

(A) To hire, assign, direct, layoff, and retain employees in the agency, or to suspend, remove, reduce in grade or pay, or take other disciplinary action against such employees;

(B) To assign work, to make determinations with respect to contracting out, and to determine the personnel by which agency operations shall be conducted;

(C) With respect to filling positions, to make selections for appointments from---

(i) Among properly ranked and certified candidates for promotion; or

(ii) Any other appropriate source; and

(D) To take whatever actions may be necessary to carry out the agency mission during

emergencies.

- (b) Nothing in this section shall preclude any agency and any labor organization from negotiating---
- (1) At the election of the agency, on the numbers, types, and grades of employees or positions assigned to any organizational subdivision, work project, or tour of duty, or on the technology, methods, and means of performing work;
 - (2) Procedures which management officials of the agency will observe in exercising any authority under this section; or
 - (3) Appropriate arrangements for employees adversely affected by the exercise of any authority under this section by such management officials.

5 U.S.C. § 7116

- (a) For the purpose of this chapter, it shall be an unfair labor practice for an agency-
- (1) To interfere with, restrain, or coerce any employee in the exercise by the employee of any rights under this chapter;
 - (2) To encourage or discourage membership in any labor organization by discrimination in connection with hiring, tenure, promotion, or other conditions of employment;
 - (3) To sponsor, control, or otherwise assist any labor organization, other than to furnish, upon request, customary and routine services and facilities if the services and facilities are also furnished on an impartial basis to other labor organizations having equivalent status;
 - (4) To discipline or otherwise discriminate against an employee because the employee has filed a complaint, affidavit, or petition, or has given any information or testimony under this chapter;
 - (5) To refuse to consult or negotiate in good faith with a labor organization as required by this chapter;
 - (6) To fail or refuse to cooperate in impasse procedures and impasse decisions as required by this chapter;
 - (7) To enforce any rule or regulation (other than a rule or regulation implementing section 2302 of this title) which is in conflict with any applicable collective bargaining agreement if the agreement was in effect before the date the rule or regulation was prescribed; or
 - (8) To otherwise fail or refuse to comply with any provision of this chapter.

5 U.S.C. § 7701

(g)(1) Except as provided in paragraph (2) of this subsection, the Board, or an administrative law judge or other employee of the Board designated to hear a case, may require payment by the agency involved of reasonable attorney fees incurred by an employee or applicant for employment if the employee or applicant is the prevailing party and the Board, administrative law judge, or other employee (as the case may be) determines that payment by the agency is warranted in the interest of justice, including any case in which a prohibited personnel practice was engaged in by the agency or any case in which the agency's action was clearly without merit.

DISCIPLINARY LETTERS

The September 16th proposed suspension letter (Grievant's Exhibit 18) includes the following:

This is to inform you that in accordance with Title 5 of the Code of Federal Regulations, Part 752, Subpart B, I am proposing to suspend you without pay for a period of two (2) calendar days from your position of Loan Specialist (Commercial, GS-1165-12), within the Little Rock Commercial Loan Center and the U.S. Small Business Administration (SBA). I am proposing this action to promote the efficiency of the service. The reasons supporting this proposed suspension are as follows:

Charge: Failure to Follow Instructions

Specification 1: On May 28, 2015, I asked about your availability to join and assist an audit team from another SBA program office, the Office of Credit Risk Management ("OCRM"), which was scheduled to perform an audit beginning on June 1, 2015 and ending on June 5, 2015 in Austin, Texas. I instructed you to work with your immediate supervisor, Steve Park, Supervisory Loan Specialist, for authorization to participate in the OCRM audit. In an email dated Thursday, May 28, 2015, at 4:26 p.m., I specifically stated, "Please work with your Supervisor for authorization to participate in the OCRM audit. I in no way want to usurp his (Mr. Park's) authority in this matter." My instruction was very clear, and in accordance with Agency practice, requiring you to get authorization from Mr. Park prior to participating in the audit. However, you did not obtain Mr. Park's authorization to participate in the audit. On May 29, 2015, you created a travel order request without proper authorization. On May 31, 2015, you traveled to Austin, Texas without obtaining Mr. Park's authorization, to participate in the OCRM audit. You did not follow the order I gave you to obtain authorization from Mr. Park. Therefore, you failed to follow my instructions.

Considerations

In proposing this action, I am taking into account the following factors as they relate to the efficiency of the service and the seriousness of the misconduct stated above. Your misconduct erodes my confidence in your reliability and trustworthiness as a federal employee. On May 28, 2015, I instructed you to get authorization from your supervisor to assist an OCRM audit in Austin, Texas. On May 29, 2015 you completed a travel request, without obtaining permission from Mr. Park, or having any further discussion with me. Although your travel authorization was approved by Paul F. Kirwin, Supervisory Financial Analyst in OCRM, funding the trip, Mr. Kirwin is not within your chain of command, and does not have the authority to authorize your travel as a volunteer from another office.

In an e-mail dated June 3, 2015, Mr. Park instructed you to return to the Little Rock Loan Servicing Center because you did not have authorization to be in Austin, Texas for the OCRM audit. In your reply e-mail to Mr. Park that same day, you acknowledge that you were required to get authorization from someone within your chain of command for travel to Austin, TX. You claimed that you left a voicemail on Mr. Park's personal phone asking that he contact you as

soon as possible, if he did not want you to participate in the audit. Mr. Park has stated that he did not receive any such message. In any case, by your own admission, you did not get his permission, or even ask for it. Assuming approval in the absence of denial is not the same as getting approval. Therefore, you failed to follow my instruction to obtain Mr. Park's authorization before traveling.

In issuing this action, I also took into consideration your five (5) years of federal service, your satisfactory performance, and that you do not have any formal discipline. However, I find the nature of your behavior to be serious and deliberate. You do not have the right to arbitrarily schedule travel plans to participate in any OCRM audits without prior authorization. Moreover, an office cannot operate successfully when an employee operates independently and outside the goals and mission of the office. An essential part of an employee's job is to follow the instructions of their supervisor and to ensure that the office meets its daily mission and goals. Therefore, I am proposing your suspension without pay for two (2) calendar days in accordance with SBA SOP 37 52 2 Disciplinary Actions and Adverse Actions, for just cause and to promote the efficiency of the office.

The December 15th disciplinary suspension letter (Grievant's Exhibit 28) states the following:

By letter dated September 16, 2015, you were informed that in accordance with Title 5 Chapter 75 of the United States Code and 5 C.F.R. Part 752, your suspension without pay for two (2) calendar days from your position of Loan Specialist, GS-1165-12, with the Little Rock Commercial Loan Servicing Center and Small Business Administration was being proposed. The proposal was based on the following charge: Failure to Follow Instructions.

The September 16, 2015 proposal letter informed you of your right to respond orally, in writing, or both orally and in writing, and submit documentary evidence within 15 calendar days of receipt of the proposal letter. You replied to the proposal letter, by letter from your attorney dated September 23, 2015, and you submitted a phone log as documentary evidence attached to the letter. After a thorough review of the proposal letter, supporting documentation, and your written reply, I have determined that the charges as specified in the proposal letter are supported by a preponderance of the evidence.

I considered all of the factors covered by Douglas v. Veterans' Administration and in particular, but not limited to, the following elements as they relate to the efficiency of the service and the seriousness of the misconduct:

Factor 1: The nature and seriousness of the offense, and its relation to the employee's duties, position and responsibilities, including whether the offense was intentional or technical or inadvertent, or was committed maliciously or for gain, or was frequently repeated;

You have been employed with the Little Rock Commercial Loan Processing Center for five (5) plus years and are employed as a GS-1165-12-06 Loan Specialist. You perform various tasks to ensure our external customer's loans are processed accurately and in a timely manner.

Therefore, following the instructions of the management team is vital to the overall mission and

goals of the Little Rock Commercial Loan Processing Center. The failure to follow instructions from your second line supervisor is a serious offense, especially due to the nature of the instruction regarding authorized travel. The offense was "planned" since you booked the travel after you received your second line supervisor's e-mail, dated May 28, 2015, instructing you to work with your first-line supervisor for approval, and before you had your supervisor's authorization you booked the trip.

Factor 2: The employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position;

You are responsible for working with our Certified Development Companies on files in liquidation and frequently engage in initial negotiations concerning the liquidation of collateral and approval of other actions committing the Agency and advises them on SBA's practices. This position carries with it a high level of Agency trust, confidence and reliability. The Agency must trust and rely that the information that you convey to our customers and other offices is accurate, truthful and that you as the loan officer, are communicating the instructions and/or commitment and have the authority and/or authorization to do so.

Factor 3: The employee's past disciplinary record;

The employee has no past disciplinary record.

Factor 4: The employee's past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability;

You have been a full-time employee with the U.S. Small Business Administration since March 14, 2010. Your past ratings have been as follows: fiscal year 2013 5-Extraordinary and fiscal year 1014 4-Exceeds Expectations. You perform at an acceptable level.

Factor 5: The effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon the supervisor's confidence in the employee's ability to perform assigned duties;

Your refusal to follow your second line supervisor's instructions impacts the performance of your job duties, which not only include processing liquidation actions, and making independent recommendations to your supervisor, but also includes training other personnel. Your supervisor's confidence has been eroded and you can no longer be counted on to work with the unit in a constructive and collaborative manner.

Factor 6: Consistency of the penalty with those imposed upon other employees for the same or similar offenses;

This action is consistent with the penalties imposed for same or similar situations based on the offense itself and the egregiousness of the offense.

Factor 7: Consistency of the penalty with any applicable agency table of penalties;

The penalty is within the range of acceptable penalties listed on the table of penalties. The range for failure to follow instructions for a first offense is a reprimand to five (5) day suspension. The egregiousness of the offense warranted a two (2) day suspension.

Factor 9: The clarity with which the employee was on notice of any rules that were violated in committing the offense, or had been warned about the conduct in question;

You were warned about the infraction by e-mail (May 28, 2015) prior to booking your travel from your second line supervisor stating the following: "Please work with your supervisor for

authorization to participate in the OCRM audit. I in no way want to usurp his (Mr. Park's) authority in this matter." The e-mail is extremely clear that you had to secure your first line supervisor's express authorization to go on this audit, which you did not do.

Factor 10: Potential for the employee's rehabilitation;

You show no potential for rehabilitation based on your written response that it was your supervisor's responsibility to contact you with his objection to you attending the audit in an e-mail (June 3, 2015). You also stated that Mr. Park did not do his job to prevent the alleged unauthorized travel by returning a simple call. You further stated that Mr. Park did nothing to disagree with the arranged travel. Your actions after receiving the instructional email were deliberate and contrary to the issued instructions. You did not request or secure your supervisor's approval, and booked the travel anyway; and you do not accept responsibility for your decision to travel in the absence of your supervisor's approval.

Factor 11: Mitigating circumstances surrounding the offense such as unusual job tension, personality problems, mental impairment, harassment, or bad faith, malice or provocation on the part of the other involved in this matter; and

You did not raise any additional mitigating circumstances.

Factor 12: The adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employees or others.

There are no alternative sanctions for a blatant disregard of management's instructions that would adequately deter reoccurrence of this type of behavior since you do not accept any responsibility for your actions.

Your conduct as cited is serious in nature and the proposed penalty is supported. Therefore, I am suspending you for two (2) calendar days, to promote the efficiency of the service.

Your suspension from pay and duty is effective December 28, 2015 through December 30, 2015. You will return to a duty and pay status on December 31, 2015. You are required to turn in your SBA identification badge to your first line supervisor or their designee at the end of your tour of duty on December 28, 2015, and you may retrieve it from your first line supervisor or their designee upon your return to duty. If you engage in misconduct in the future, you will receive more severe discipline, up to and including your removal from the Federal service.

You have the right to file a grievance under the collective bargaining agreement if you believe this action is unwarranted. For additional information concerning the grievance process, you should contact your local union representative for advice.

You have the right to contact an Equal Employment Opportunity (EEO) counselor and to file a complaint through the discrimination complaint process within 45 calendar days of the effective date of this action if you believe that this action is being taken because of your race, color, religion, sex, national origin, disability, age, or in retaliation for any previous participation in the EEO process.

If personal problems are contributing to your misconduct, the Employee Assistance Program (EAP) is available and provides a variety of free and confidential counseling services. You may reach an EAP counselor at 1(800) 222-0364, 24 hours a day.

If you have any questions contact John Byron Brown III, Human Resources Specialist (ER/LR), between the hours of 7:00 a.m. -3:30 p.m. (EST) at (202) 205-6168.

DISCUSSION

On December 15, 2015, the U.S. Small Business Administration suspended Karen Musick for two days without pay. The disciplinary letter lays out the factual basis of the charge. (Grievant's Exhibit 28). Based upon all of the evidence presented, including the credibility of the witnesses, I do not find that management had just cause to issue the December 15th letter. The situation wherein Karen Music participated in the June OCRM audit was avoidable. The confusion was created by management, namely Steve Park and Sarah Hawkins. Management failed to clearly and timely communicate with Ms. Musick regarding their expectations pertaining to her participation in the audit. (Tr. 1-154 & 155; Tr. 1-279 through 282; Tr. 2-12, 13, 14) Ms. Musick tried to follow managements instructions regarding the audit. (Tr. 2-10, 11, 12) Management violated Article 37 of the Master Labor Agreement when it issued the December 15th Letter of Suspension without just and sufficient cause. Management also violated Article 37 in that the December 15th disciplinary action was not initiated in an expeditious manner given the nature and circumstances of the alleged incident.

On September 10, 2015, Management issued a letter of warning to Karen Musick. (Grievant's Exhibit 16) This letter also lays out the factual basis of the allegations against Ms. Musick. The letter alleges that during a meeting on September 3, 2015, Grievant Musick made an inappropriate statement that was an insolent remark concerning a co-worker. Based upon all of the evidence presented, including the credibility of the witnesses, I do not find that Respondent had just cause to issue the September 10th warning letter. The issuance of the September 10th letter contributed to management's creation of a hostile work environment for Karen Musick. The evidence revealed that the allegations outlined in the September 10th letter did not happen. (Tr. 1-175, 176, 177, 185, 186 & 187)

Petitioner asserts that Sarah Hawkins violated Grievant Musick's privacy when Ms. Hawkins posted the September 10th letter of warning on the Agency computer system in a manner that other employees could see the letter. (Grievant's Exhibit 19). The evidence revealed that Sarah Hawkins posted the letter on a shared drive (F Drive) on or about September 17, 2015. The posting of this letter in such a manner allowed other employees to review the letter. (Tr. 2-7, 8 & 9) Employee Misty Sheets saw the letter of warning and brought it to the attention of Ms. Musick. (Tr. 2-65) Grievant Musick found the warning letter on the F Drive. (Tr. 2-9, 2-64 & 65) This was a violation of the privacy of Ms. Musick. This allegation is sustained. Ms. Hawkins was in the supervisory chain of Grievant Musick when this violation occurred.

In September of 2015, Steve Park removed Karen Musick from the list of 504 Action Reviewers without prior discussion with Ms. Musick. (Tr. 2-13, 14, 15; Grievant's Exhibit 21)) At this time Ms. Musick had been approving these actions for approximately three years, longer than anyone else in 504 liquidation. Ms. Musick had filed a grievance in June of 2015. (Grievant's Exhibit 2) This action of removing Ms. Musick from the October Action Reviewer Calendar without discussing it with her, was an unwarranted change in her job responsibilities, and retaliation for filing a grievance in June. This is a violation of 5 U.S.C. 7116 and Article 44.

Petitioners met their burden of proof regarding the allegation that Steve Park violated Article 28 of the Master Labor Agreement when he completed the performance appraisal of Ms. Musick. (Grievant Exhibit 30) For the FY2015 Performance Appraisal, Mr. Park failed to rate Ms. Musick in the following categories: *Acquired Collateral-REO, Assigned Work Products-Quality, Mandatory for Employees-Generic Element-Customer Satisfaction, Portfolio Management-Litigation, Team A & B- Turn Time, Quality-Rate of Return and Record Maintenance.* (Tr. 2- 24, 26, 47, 48 & 49) Some of these categories were critical elements for the appraisal. At this time, Mr. Park was the supervisor of Grievant Musick and had the responsibility to complete the appraisal.

Management violated Articles 11 and 12 the MLA on July 31, 2015, when Steve Park refused to allow Ms. Musick to have a union representative with her at the quarterly performance review. The Agency was in the process of taking disciplinary action against Ms. Musick when this denial occurred. Respondent again violated Articles 11 and 12 of the MLA on or about October 27, 2105, when Steve Park denied Ms. Musick's request for union representation at the annual review. (Tr. 2-45 and 46) Respondent was still in the process of taking disciplinary action against Ms. Musick when this denial occurred.

During the relevant time period, Steve Park discussed Ms. Musick with his office door open, allowing Ms. Musick and other employees to hear what he was saying about her. (Tr. 1-178; Tr. 2-50) This contributed to the creation of a hostile work environment by management for Karen Musick.

Regarding Petitioner's request for the refund of medical expenses related to the grievances; restoration of medical and sick leave taken as a result of the alleged violations of the MLA; compensation for overtime worked for official duties; adjustment of annual leave; emotional and psychological damage caused by harassment and hostile work environment, and a refund of medical expenses related to grievance. Petitioner has the burden of proof in these matters. Petitioner has not met her burden of proof for these issues. Her request for this relief is denied.

In their post hearing brief, Respondent raised the issue of whether or not the Union acted in bad faith and/or contrary to the MLA by failing to provide enough facts to support the allegations of violations of Article, 4,11,12, 22, 28, 37 and 44 of the MLA during the grievance process. It is the finding of this Arbitrator that the evidence does not support this assertion of Respondent.

FINDINGS OF FACT

1. Karen Musick has been an employee of the Agency since July 6, 2009. (Tr. 1-383)
2. The relevant time period in this matter is February 1, 2015 through March 31, 2016.
3. Prior to the relevant time period, Ms. Musick did not have any disciplinary actions taken against her at the Agency. (Tr. 1-384; Tr. 1-233 & 234; Grievant's Exhibit 28)

4. During the relevant time period Steve Park was the immediate supervisor of Karen Musick. Mr. Park became the immediate supervisor of Ms. Musick in February of 2015. (Tr. 1-249)
5. During the relevant time period, Sarah Hawkins was in the supervisory chain of Grievant Musick.
6. Ms. Musick transferred to another position in the Agency in March of 2016. (Tr. 1-249; Tr. 2-58) In her new position, Mr. Park and Ms. Hawkins are no longer supervisors of Ms. Musick.
7. Prior to the relevant time period, Grievant Musick's work was professional and she performed well as an employee of the Agency. (Tr. 1-167, 168 & 169; Tr. -230, 231, 232, 233, 234, 235; Grievant's Exhibit 30)
8. On May 28, 2015, communications occurred between Ms. Musick and Sarah Hawkins regarding the possibility of Ms. Musick participating in an upcoming OCRM audit. (Grievant's Exhibit 8; Tr. 1-386 & 387)
9. On May 28, 2015 communication occurred between Ms. Musick and Steve Park regarding Ms. Musick participating in the OCRM audit. (Tr. 1-257 & 258)
10. On May 28, 2015 communications occurred between Sarah Hawkins and Steve Park (Management) regarding not allowing Ms. Musick to participate in an OCRM audit. (Tr. 1-255 & 256)
11. On May 28, 2015 Ms. Musick unsuccessfully attempted to reach her supervisor Steve Park regarding her participating on the OCRM audit.
12. On June 1, 2015, communications occurred between Sarah Hawkins and Steve Park regarding Ms. Musick participating in the OCRM audit, and taking disciplinary action against her. (Management)
13. On July 31, 2015, Supervisory Loan Specialist Steve Park notified Karen Musick that she was not allowed to have a Union Representative present during a quarterly performance review between Mr. Park and Ms. Musick. (Grievant's Exhibit 14; Tr. 2-144 & 145) The actions of Mr. Park was a violation of Articles 11 and 12 of the Master Labor Agreement.
14. Steve Park violated Article 28 of the Master Labor Agreement when he failed to rate Karen Musick on critical elements of her FY 2015 performance appraisal.
15. On September 10, 2015 Karen Musick was issued a letter of warning from Sarah Hawkins. (Grievant's Exhibit 16) The letter alleges that Ms. Musick made an inappropriate statement during a September 3, 2015 staff meeting.
16. The evidence revealed that Ms. Musick did not make an inappropriate statement during the September 3, 2015 staff meeting. (Tr. 1-176 & 177; Tr. 2-147 & 148)
17. On or about September 17, 2015, Sarah Hawkins violated the privacy of Karen Musick when Ms. Hawkins posted the September 10th letter of warning on the Agency F Drive. (Grievant's Exhibit 19; Tr. 2-151&152)
18. Respondent acted in bad faith when it issued the September 10, 2015 letter of warning.
19. Respondent acted in bad faith when Ms. Hawkins posted the September 10th letter of warning in a manner visible to other employees.
20. During the relevant time period, Steve Park discussed Karen Musick with his office door

- open, allowing Ms. Musick and other employees to hear his comments regarding Ms. Musick.
21. On September 16, 2015, Karen Musick was issued a letter of proposed suspension for two days without pay. (Grievant's Exhibit 18)
 22. On or about October 27, 2015 Steve Park refused to allow Ms. Musick to have a Union Representative present during a performance review. This action by Mr. Park was a violation of Articles 11 and 12 of the Master Labor Agreement.
 23. On December 15, 2015, Karen Musick received a two- day suspension without pay. (Grievant's Exhibit 28)
 24. The evidence revealed that Respondent did not have just cause to issue the December 15th two-day suspension.
 25. Karen Musick was substantially innocent of the allegations in the December 15th suspension letter.
 26. Disciplinary actions must be administered in an expeditious manner given the nature and circumstances of each incident. (Master Labor Agreement Article 37) Management violated Article 37 of the MLA when they issued the December 15, 2015 suspension for the incident that allegedly occurred in May and/or June of 2015.
 27. Respondent acted in bad faith when it issued the December 15, 2015 letter of suspension.
 28. During the relevant time period, Respondent created a hostile work environment for Karen Musick.
 29. During the relevant time period, Respondent violated Article 44 of the MLA and committed an Unfair Labor Practice.
 30. During the relevant time period, Grievant Musick suffered an unjustified personnel action, and suffered a withdrawal or reduction in part of her pay, allowances or differentials.
 31. Grievant Musick is entitled to receive all back pay and benefits she would have been entitled to had the Agency not attempted to take the unwarranted two -day suspension.
 32. Petitioner is entitled to reasonable attorneys fees and interest.
 33. Petitioner did not act in bad faith and/or contrary to the Master Labor Agreement during the grievance process.

PETITIONER'S MOTION FOR ATTORNEY FEES

On September 6, 2016, Petitioner filed a *Motion For Attorney Fees* requesting fees and costs in this matter in the amount of \$27,272.50. On November 7th, Petitioner filed an *Amended Motion For Attorneys' Fees*. The Amended Motion requests an award of attorneys' fees in the amount of \$40,070.00. Time sheets were submitted with the Motions. Petitioner requests an hourly rate of \$250.00 per hour. After a review of the evidence presented, the undersigned has determined that \$250.00 an hour is a fair and reasonable hourly rate for an attorney with the experience of Ms. Schnuerle. I find that this hourly rate is consistent with fees customarily charged by attorneys in Little Rock for similar legal services. This Arbitrator is aware of the time limitations imposed on Ms. Schnuerle when she entered into this case. I further find that

Petitioner is the prevailing party in this matter, and that an attorney client relationship was established in September of 2015. Based upon the testimony of Attorney Schnuerle, the Union is obligated to pay her attorney fees in this matter. (Tr. 2-240 through 243) I also find that awarding attorney fees to Petitioner is in the interest of justice. Ms. Musick is substantially innocent of the allegations outlined in the December 15, September 16, and September 10 letters, and Respondent violated numerous Articles of the Master Labor Agreement.

The agency objected to Petitioner's request for attorney fees. One of the Agency's objections pertains to a five-hour charge for review of e-mails for the period of June 22, 2015 to August 30, 2016. This arbitrator has discretion to reduce the requested amount for duplication, padding, frivolous claims, and to impose fair standards of efficiency and economy of time. Respondent's objection to the five hours requested for the "review of e-mails" during the period of June 22, 2015 to August 20, 2016 is sustained.

After a review of the time sheets submitted by Ms. Schnuerle, I find that given the complexities of this file, 142 hours of time spent on this matter to be fair and reasonable. I find that the Grievant did not protract litigation in this case, and that Petitioner cooperated with the Agency throughout the grievance and arbitration process. I order the Agency to pay attorney fees in the amount of \$35,500.00. Interest in the amount of 5% beginning thirty calendar days after the date of this Order is also awarded.

CONCLUSION

Based upon a review of all of the evidence submitted, the undersigned has determined that the Respondent's decision to suspend Karen Musick was not fair or reasonable, and that Respondent did not have just and sufficient cause to impose said discipline. The appeal of Grievant of the two- day suspension is GRANTED. Petitioner suffered an unjustified personnel action. She has established that she suffered a withdrawal or reduction in part of her pay, allowances, or differentials Ms. Musick is entitled to receive all back pay and benefits she would have been entitled to had the Agency not attempted to take this disciplinary action. Agency is to restore same. Respondent was in violation of Article 27 of the MLA when it issued the two- day letter of suspension against Karen Musick.

The Agency is also ordered to remove the September 10, 2015 letter of warning to Karen Musick signed by Sarah Hawkins. Management did not have just cause to issue this letter. Management has ten calendar days from the date of this Order to remove the letter.

Petitioners met their burden of proof regarding the allegation that Respondent violated Articles 11 and 12 of the Master Labor Agreement when Steve Park refused to allow Ms. Musick a Union representative during the 2015 quarterly and annual performance reviews.

Regarding the allegation that Respondent committed an unfair labor practice in violation of Article 44, the evidence revealed that Respondent violated numerous articles of the MLA. The evidence did support the allegation that Respondent committed an unfair labor practice in violation of Article 44 of the MLA. Petitioners met their burden of proof that Respondent violated Article 44 of the Master Labor Agreement.

Respondent violated Article 28 of the Master Labor Agreement when Steve Park failed to rate Karen Musick on critical elements in her FY 2015 performance appraisal.

Petitioner met her burden of proof regarding the allegation that Respondent violated the privacy of Ms. Musick when Sarah Hawkins posted the September 10th letter of warning on the Agency F Drive.

Petitioners met their burden of proof that during the relevant time period, Respondent created a hostile work environment for Karen Musick.

Grievant is awarded attorney fees in the amount of \$35,500.00. Interest in the amount of 5% is awarded on said amount beginning 30 calendar days from the date of this Order.

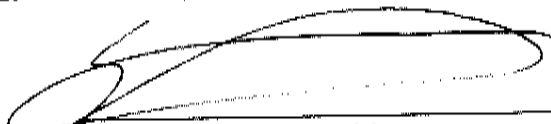
The Union did not act in bad faith and/or contrary to the MLA during the grievance process.

Any other claim or relief requested for which I have jurisdiction that is not herein granted, is denied.

This Arbitrator will retain jurisdiction on this file until April 1, 2017, to address any post hearing issues which may arise in this matter. If either or both parties desire this Arbitrator to retain jurisdiction longer than April 1, 2017, they are to submit the request for same on or before March 1, 2017.

Pursuant to Article 40 of the Master Labor Agreement, the parties are to pay equally the expenses and fees of this Arbitrator in this matter.

Signed this 11th day of November, 2016.



Sherry R. Wetsch, Arbitrator