

Shianne Scott

Multnomah County, Oregon, 2025 BNA LA 37

BEFORE SHIANNE SCOTT, ARBITRATOR

IN THE MATTER OF THE ARBITRATION BETWEEN

MULTNOMAH COUNTY EMPLOYEES UNION, LOCAL 88, AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES (AFSCME), AFL-CIO, on behalf of A__ (Grievant),

Union

and

MULTNOMAH COUNTY, OREGON,

Employer

ARBITRATION OPINION AND AWARD (A__ DISCIPLINARY GRIEVANCES)

Date Issued: May 21, 2025

May 21, 2025

BNA Headnotes

LABOR ARBITRATION

SUMMARY

**[1] Suspension — Discriminatory Treatment — Harassment — Work Rules ► 100.5507
► 100.552510 ► 100.15**

Multnomah County didn't have just cause to suspend and terminate the grievant for allegedly contravening personnel rules through unprofessional and racially discriminatory behavior towards Black colleagues, Arbitrator Shianne Scott held. The grievant—a woman who identifies as an indigenous Puerto Rican and who is a protected class member herself—was denied due process due to the county's failure to timely provide a final report before her suspension, an action which relied primarily on hearsay, lacked specificity, and contained unproven allegations. Because of the county's unsubstantiated assumption that the grievant's answers on a work form constituted retaliation against her superiors, it failed to sustain its burden of proof that she was dismissed in good faith. Arbitrator Scott ruled that the county violated the parties' collective bargaining agreement and ordered it to reinstate the grievant, expunge the suspension and dismissal from her personnel file, and tender her back pay with interest.

APPEARANCES:

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INTRODUCTION

This Arbitration Opinion and Award (this Award) arises pursuant to the Agreement between the Multnomah County Employees Union, Local 88, American Federation of State, County and Municipal Employees (AFSCME), AFL-CIO, (the Union) and Multnomah County, Oregon (the County or the Employer). This Award addresses two separate grievances (collectively, the Grievances) that the Union filed on behalf of bargaining unit member A__ (the Grievant, or A__), a former County employee. The Union and the County are hereafter referred to collectively as the Parties. This Award shall be final and binding as provided in Article 18, Section D.6 of the Agreement.

THE HEARING

An in-person hearing was held on January 28, 2025 and January 29, 2025, in Portland, Oregon (the Hearing). The Parties had the full opportunity to present opening arguments, examine and cross-examine witnesses, and introduce exhibits for admission into the record. The Parties did not provide a transcript of the Hearing; however, the Union provided a Zoom recording.

A. The Witnesses

The following witnesses appeared and testified under oath at the Hearing:

1. For the Employer:

- B__
- C____ (formerly known as C____)
- D____

- E_____

- F_____

2. For the Union:

- J_____

- K_____

- L_____ (formerly known as L_____)

- M_____

- A__

B. The Parties' Stipulations

The Parties entered into the following stipulations at the Hearing:

- The County has the burden of proof and the burden of production in this matter.
- The Parties agree that there is no dispute as to procedural arbitrability of this dispute and the issue[s] are properly before the Arbitrator.
- The Parties agree the Arbitrator is empowered to retain jurisdiction of this matter until all matters of remedy are resolved.
- The issues to be decided are:
 - 1) Did Multnomah County violate Article 17, Section I when it issued a 10-day suspension to A__? If so, what is the appropriate remedy?
 - 2) Did Multnomah County violate Article 17, Section I when it dismissed A__ from employment? If so, what is the appropriate remedy?
- The phrase, "in good faith for cause" in Article 17, Section I of the Agreement means the same thing as "just cause."
- The COVID-19 pandemic was first announced in March 2020.
- Union Exhibit 15 is admitted (without the redactions).
- The Parties will submit Post-Hearing Briefs (the Briefs) to the Arbitrator.
- The Parties will meet-and-confer to determine a due date to submit their Briefs.
- The Parties will submit argument as to what the County's burden of proof is.
- The Parties will submit a Word copy and a PDF copy of their Briefs to the Arbitrator by e-mail.
- If a Party cites a case that is not on Bloomberg or Westlaw, [*2] such as a previous award between the same Parties, that Party will provide a full copy of the case to the Arbitrator.

POST-HEARING MATTERS

Post-hearing, the Parties mutually agreed to submit their Briefs by March 14, 2025. The Parties had the opportunity to explain their version of the underlying facts, and to fully argue all the issues in dispute in their Briefs. The undersigned timely received electronic copies of both Parties' Briefs. The record was then closed.

THE ISSUES TO BE DECIDED

As stipulated to by the Parties, the issues to be decided are:

- 1) Did Multnomah County violate Article 17, Section I when it issued a 10-day suspension to A__? If so, what is the appropriate remedy?
- 2) Did Multnomah County violate Article 17, Section I when it dismissed A__ from employment? If so, what is the appropriate remedy?

RELEVANT AGREEMENT PROVISIONS

The Union and the County are Parties to the Agreement in effect July 1, 2022, through June 30, 2025. The Agreement contains the following relevant articles:

ARTICLE 3

RECOGNITION

I. Definition of the Bargaining Unit

The County recognizes Local 88, AFSCME, hereinafter referred to as the "Union," as the sole and exclusive bargaining representative for the purpose of establishing salaries, wages, hours, fringe benefits, and working conditions for all employees in the County classified service as set forth in MCC Chapter 7 except those specifically excluded in Section I.A through E of this Article.

ARTICLE 17

DISCIPLINARY ACTION

I. Forms of Discipline for Cause and Notice Requirements

Employees may, in good faith for cause, be subject to disciplinary action by oral or written reprimand, demotion, reduction in pay, suspension, dismissal, or any combination of the above; provided, however, that such action shall take effect only after the supervisor gives written notice of the action and cause to the employee and mails written notice to the Union. Oral or written reprimands do not require prior written notice.

II. Definition of Cause

A. Cause shall include misconduct, inefficiency, incompetence, insubordination, indolence, malfeasance, or failing to fulfill responsibilities as an employee.

III. Appeal Rights

A. Written Reprimand

Any regular, non-initial trial service employee who is reprimanded in writing shall have the right to appeal the reprimand through Steps 1 and 2 only of the grievance procedure set out in Article 18.

IV. Manner of Accomplishing Reprimands

If the County has reason to reprimand an employee, every reasonable effort will be made to accomplish the reprimand in a manner that will not embarrass the employee before other employees or the public.

ARTICLE 18

SETTLEMENT OF DISPUTES

III. The Steps of the Grievance Procedure

D. Step 4. Arbitration

5. The arbitrator shall be requested to begin taking evidence and testimony within twenty-five (25) days after submission of the request for arbitration; and the arbitrator shall be requested to issue their[*3] decision within thirty (30) days after the conclusion of testimony and argument. The Union and the County hereby vest the arbitrator with authority to compel the attendance of witnesses on behalf of either party by issuance of a subpoena, the cost of which shall be borne by the party requesting the subpoena.

6. The arbitrator's decision shall be final and binding, but they shall have no power to alter, modify, amend, add to, or detract from the terms of this Agreement. The arbitrator's decision shall be within the scope and terms of the Agreement and in writing. Any decision of the arbitrator may provide for retroactivity not exceeding sixty (60) days prior to the date the grievance was first filed, and it shall state the effective date of the award.

7. Expenses for the arbitration shall be borne by the losing party. Each party shall be responsible for compensating its own representatives and witnesses. If either party desires a verbatim recording of the proceedings, it may cause such record to be made, on the condition that it pays for the record and makes copies available without charge to the other party and/or the arbitrator.

ADDENDUM A; Job profiles, Rates & Ranges Rates shown represent a 5% COLA increase effective July 1, 2022

Job Code	Job Profile	Pay Grade
6031	Contract Specialist Senior	32

FINDINGS OF FACT

After a thorough review and careful consideration of the testimony, the documentary evidence, and the arguments presented by the Parties, I make the following Findings of Fact:

The Parties

The County provides a variety of services to over 800,000 residents within the County. According to the County's Office of Diversity and Equity (ODE) website, the ODE exists to hold the County "accountable to ensure access, equity, and inclusion with its services, policies, practices, and procedures." In pertinent part, the ODE website states:

We are stewards of change, committed to upholding our values of social justice and inclusively leading with race to dismantle colonization and white supremacy. Colonization refers to the historical and ongoing process in which a dominant group takes control of land, resources, and social perception of another group, to suppress and appropriate the culture, autonomy, and rights of those being colonized.

White supremacy is a system of power that prioritizes the rights, privileges, and experiences of white people over others. It manifests through laws, policies and societal norms that reinforce racial inequality.

Multnomah County acknowledges the profound ways in which race and systemic racism have shaped institutions, structures, communities, and individuals. We also recognize that this organization has historically contributed to, and upheld, the inequalities and harms of systemic racism.

The Office of Diversity and Equity (ODE) is charged with removing systemic barriers to equity and inclusion. We recognize the oppression and intentional exclusion[*4] of people of the global majority (BIPOC: Black, Indigenous, and people of color), as well as women,

people experiencing disabilities, diverse sexual orientations and genders, different age groups and other oppressed communities from our institutions and systems.

Our mission is to challenge and transform the systems, structures, and policies that were designed to privilege white people and perpetuate racial hierarchies. We will actively work to dismantle these systems by engaging the entire organization in co-designing solutions that are rooted in relationship building, accountability, and centering those most impacted by marginalization.

The Union is the sole and exclusive bargaining representative for all County employees in the classified service.¹ A__ is a bargaining unit member who worked as a full-time Contract Specialist Senior in the Health Department. A__ also served as the Treasurer for the Union. The Treasurer is an elected position and serves as a member of the Union's cabinet.

This Award determines the outcome of the Grievances filed by the Union on A__'s behalf. The first grievance concerns a ten-day suspension issued on October 12, 2023 (the Suspension); the second grievance concerns A__'s dismissal issued on May 9, 2024 (the Dismissal).

A__'s Background

A__ uses the pronouns "she/her/hers." A__ credibly testified that she identifies as an Indigenous Puerto Rican, that her "entire family" is from Puerto Rico, and that she was raised in Spanish Harlem, New York. Spanish Harlem has a large Puerto Rican community and is considered a "marginalized area" within the United States.² A "marginalized area" is defined by a reputable dictionary to mean:

having marginal social or political status: relegated to an unimportant or powerless position within a society or group³

Puerto Rico's racial composition is shaped by a mix of European, African, and Indigenous Taíno ancestry.⁴ Studies indicate that Puerto Ricans predominantly descend from Spanish settlers, enslaved Africans, and the island's original Taíno inhabitants.⁵ Additionally, census data highlights the presence of mixed-race individuals alongside distinct African and Indigenous heritage.⁶ Due to Puerto Rico's diverse racial heritage, a Puerto Rican individual may not be immediately recognized or perceived as a "person of color."

The undersigned's percipient observation is that A__ is a soft-spoken, non-threatening individual who openly embraces her cultural heritage. At the Hearing, A__ credibly testified that she speaks multiple languages, has an accent, and occasionally struggles to pronounce certain words. The undersigned finds A__'s testimony to be credible in that regard. For example, during the Hearing, A__ had difficulty pronouncing former co-worker L____'s married name of "L____" (L____).⁷ A__ also credibly testified that she did not initially know how to pronounce her manager, C____'s (C__) first name, [*5] lending credence to the fact that A__ likely did not *purposefully* mispronounce C____'s name.

A__ identifies as a person who is "queer." A__ did not specify what she meant when she testified she is "queer." More likely than not, A__ was referring to the fact that she is either non-heterosexual or non-cisgender.⁸

C__'s Previous Work History at the County

C__, who identifies as an African American woman and uses the pronouns she/her/hers, credibly testified that she has been employed by the County for approximately eight years. The record reflects that C__ is a highly accomplished and well-educated professional, holding a Juris Doctorate degree and occupying a position of authority within the County. Although C__ did not testify in person, the undersigned's percipient observation of C__'s testimony by Zoom is that C__ is well-spoken and articulate, and imminently qualified for her job. However, C__'s past experiences may have shaped her perspective in a way that makes her particularly sensitive to racial issues.

At the Hearing, M__ (M__) credibly testified that before C__ was promoted to supervisor, then manager, M__ maintained a strong working and personal relationship with C__. M__ testified in-person at the Hearing. M__ has bright red hair, is short—approximately five (5) feet, three (3) inches—and her complexion is very pale. M__ described herself as an "Army brat." While the Arbitrator just explained that one cannot always tell a person's race/national origin/ethnicity simply based on appearance, more likely than not, M__ identifies as a Caucasian (White) woman.

M__ credibly testified that when she was good friends with C__ in/about 2016, C__ was heavily involved in "Don't Shoot POX," a community-based advocacy organization in Portland, Oregon that focuses on racial justice. M__ would go to rallies with C__ and fully supported C__'s efforts. At around that same time, C__ confided to M__ that C__ suffered from racial trauma throughout her life.⁹ The undersigned finds M__'s testimony to be credible, particularly because it is buttressed by the fact that C__ herself told Human Resources by e-mail in January 2024: "I have lived in Portland most of my life and have unfortunately seen my share of racism."

The Arbitrator empathizes with C__ and recognizes that C__ has likely faced many challenges due to racism, as often experienced by non-Caucasian individuals. In fact, a 2021 survey found that 80% of Black Americans, 76% of Hispanic Americans, and 70% of Asian Americans report facing at least some discrimination in the United States.¹⁰ Additionally, broader studies on racial disparities highlight persistent inequities in employment, income, healthcare, and social treatment. Given all of these factors, it is highly likely that C__ has a heightened sensitivity to racial issues.

In February 2020, C__ filed a Protected Class Investigation Unit (CIU) Complaint against another County employee, alleging race discrimination. The[*6] County investigated and determined that C__'s complaint was "partially substantiated." The County's decision to investigate and take action on C__'s 2020 CIU Complaint indicates that the County took C__'s report of race discrimination seriously.

In March 2023, C__ filed a second CIU Complaint, discussed in detail below. The County assigned an investigator, who filed a report. Based on the investigator's findings, the¹¹ County suspended A__. Again, the fact that the County acted on C__'s concerns is further evidence that the County took C__'s second CIU Complaint quite seriously.

.[Redacted text] B__ [Redacted text] 's Previous Work History at the County [Redacted text].
[Redacted text] B__

(B__) is A__'s former supervisor. B__ identifies as an African American male and uses the pronouns "he/him/his." B__ is former military, and, like C__, appears to be very accomplished, well-spoken, and imminently qualified for his job.

B__'s military background is reflected in his concise communication style, as personally observed by the undersigned during his testimony via Zoom, and in the exhibits where he is communicating by e-mail.

B___'s concise and direct communication style differed from A___'s approach to communication, which likely contributed to conflict between B___ and A___.

More likely than not, given the statistics above, inevitably, like C___, B___ has probably experienced racism in his lifetime. B___'s life experiences may have influenced his perspective in such a way that he is inclined to interpret disagreements as being rooted in racial bias.

The February 2020, Incident

In or about February 2020, before B___ promoted to his current position, M___, L___, and a third person named H___ (last name unknown) were quietly discussing another employee's departure from the County, when B___ came out of a conference room and walked up to the trio of employees. L___ credibly testified that B___ said, "What's good?" (or words to that effect). Both L___ and M___ [Redacted text] testified that M___ replied, "Absolutely nothing." M___ was smiling at B___ when she said that.

M___ had considered her working relationship with B___ strong, thanks to their shared military backgrounds. However, B___ responded to M___'s comment by saying words to the effect of, "If you have something to say, say it to my face." Both L___ and M___ credibly testified that B___ said that in a loud and agitated tone of voice.

M___ credibly testified that B___—who is taller and physically larger than her—lunged forward, encroaching on her personal space during this incident. M___ became visibly emotional, breaking into tears, both during the incident and again at the Hearing, when she testified about the incident.

On cross-examination, M___ conceded that she is a very sensitive, very emotional person. Nonetheless, the undersigned is certain that the incident was a deeply distressing experience for both M___[*7] and L___. The record is unclear why B___ raised his voice and confronted the three employees in the manner that he did. It is possible that B___ believed the employees were talking about him, rather than the departing employee.

A "racist trope" refers to a race-based stereotype or representation, often carrying negative implications.¹² M___ credibly testified that although B___'s behavior during the February, 2020 incident left her feeling frightened and confused, she ultimately decided against reporting the incident out of concern that doing so might contribute to B___ being stereotyped as an "Angry Black Man." M___ later attempted to reach out to B___, but B___ did not respond to M___. M___'s apprehension about stereotyping B___ and her decision to reach out to him after the incident demonstrate that she bore no ill will toward him and had no intent to harass or discriminate against him based on his racial identity. More likely than not, B___ immediately filed a CIU complaint against L___, M___, and possibly H___, alleging race discrimination. The undersigned uses the word "immediately" because the County interviewed M___ and L___ the same afternoon as the February, 2020, incident. Although B___'s CIU complaint was ultimately dismissed as unfounded, the prompt interviews of these two witnesses establish that the County took B___'s complaint very seriously.

A___'s Work History

The County initially hired A___ in April 2021 to work as a contingent worker in the Contracts and Procurement section of the Health Department. A "contingent worker" is a title that is interchangeable with what is commonly known as a "temporary worker." A___ previously worked as a procurement manager for IBM for about 10 years. She also previously worked for Nike as an implementation manager.

On November 16, 2021, the County hired A___ as a permanent employee in the Contract Specialist Senior classification. A Contract Specialist Senior is responsible for ensuring that contracts between the County and its business partners are accurate and comply with Oregon's laws and rules. Like B___ and C___, A___ appears to be imminently qualified for her job as a Contracts Specialist Senior.

A___ worked remotely during her entire career at the County. For this reason, all work meetings were also held remotely. In fact, B___ credibly testified that he has never met A___ in person and has only seen her on camera.

Initially, A___ reported to R___ (R___), who apparently identifies as a Caucasian man.¹³ A___ received positive feedback from R___ concerning her work performance. In or about November 2022, A___ began reporting to the current Contract Procurement Manager, C___. C___ was the Interim Contract Procurement Manager when the County officially hired A___; the County promoted C___ to her current position in or about June 2023. C___ reports to Finance and Business Management (FBM) Director P___, who is also African American.

The County promoted B___ to his[*8] current position as Contract Procurement Supervisor in April 2023. Upon B___'s promotion, A___ began reporting to B___. At some point (the record is unclear when), G___ (G___), an African American woman, also supervised A___.

A_'s Training History at the County

At the Hearing, A___ acknowledged that the County provided training to her concerning the County's Personnel Rules. There is no evidence that the Union ever filed a grievance or otherwise challenged the reasonableness of any of the Personnel Rules, nor is there evidence that the Union filed a grievance or otherwise challenged any of the Personnel Rules as unenforceable. More likely than not, the County's Personnel Rules are both reasonable and enforceable. More likely than not, A___ knew, or should have known that she must comply with the County's reasonable and enforceable Personnel Rules. Following her Suspension, A___ completed additional training, as detailed below.

A_'s Previous Discipline

1. The First Verbal Reprimand

On or about February 1, 2023, A___ attended a staff meeting. As usual, the meeting was held online. C___ introduced her manager, P___, to her team during the meeting. A___ credibly testified that when she (A___) asked P___ what his leadership style was, P___ jokingly replied that he was a "tyrant."¹⁴ C___ credibly testified that there was "visible discontent" on A___'s face when P___ made that "joke." B___ testified that A___ should have given P___ "grace" for the joke. A___ credibly testified that P___'s comment upset her, particularly because Puerto Rico has a history of tyranny and oppression.¹⁵

On or about February 6, 2023, C___ issued a "verbal reprimand" to A___ (the First Verbal Reprimand). C___ credibly testified that she issued the First Verbal Reprimand because A___ was rolling her eyes, laughing, chatting, turning her camera off and on and failed to laugh at P___'s "joke" during the February 1st meeting. There is no evidence that C___ asked A___ to explain why A___ did not laugh at P___'s "joke" before reprimanding her. C___ credibly testified that she specifically told A___, "This is not discipline." Q___ (Q___) was present during the February 6th meeting between C___ and A [Redacted text] ___.

C___ credibly testified that she witnessed A___ rolling her eyes and laughing on camera during meetings that occurred before February 1, 2023. The record is unclear how many A___ may have rolled her eyes during meetings. C___ testified that she previously attempted to coach A___ concerning that behavior. C___ also testified that she witnessed L___ laughing during meetings.

At the Hearing, A___ did not dispute that C___ had coached her in the past; she simply testified she did not "recall" being coached for that specific behavior. A___ explained to C___ during the February 6th meeting that her dog was sick, which is why she turned the camera on and off. A___'s testimony at the Hearing was consistent with what she told C___ during[*9] the meeting. A___ did not deny that she was chatting, but denied rolling her eyes and denied laughing at inappropriate times. At the Hearing, A___ described her side chats with L___ and others as akin to "water cooler" discussions, highlighting their casual and conversational tone.

During the February 6, 2023, meeting, A___ asked C___ questions about the "color wheel," an equity framework. In response, C___ mocked A___, using a "Valley Girl" voice.¹⁶ A___ responded that C___ was being "combative." C___ then accused A___ of "stereotyping" her as a Black woman. A___ asserted that she, too, is a "woman of color." A___ credibly testified that C___ responded by saying that A___ was "not a woman of color." A___ found C___'s remarks offensive. More likely than not, most individuals, particularly those who identify as a person of color, would find C___'s comments and mockery objectionable and offensive.

At the Hearing, both A___ and L___ denied laughing during online meetings. While the undersigned does not believe they intentionally misrepresented their actions, the overall record suggests that they engaged in the behavior in question—namely, laughing during meetings—as multiple individuals reported witnessing them do so on camera. Furthermore, during the Hearing, when reviewing Employer Exhibit 105 (discussed in detail below), L___ audibly laughed. These factors make it entirely plausible that both A___ and L___ laughed during meetings, likely in response to side conversations rather than the speaker.

More likely than not, at least before February 6, 2023, A___ also engaged in eye-rolling during meetings, as multiple witnesses reported observing her do so. However, it is entirely possible that she was unaware of this behavior. For instance, during an all-staff meeting on January 3, 2023, A___ sent an eye-rolling emoji to L___ via a side chat—suggesting that she may have been rolling her eyes at the same time, perhaps even subconsciously.

At the Hearing, both B___ and C___ testified that A___'s behavior during the February 1, 2023, meeting was "micro aggressive" toward themselves as African Americans. The term "micro aggressive" is generally defined as "insensitive statements, questions, or assumptions" that are most often directed toward "traditionally marginalized identity groups of people."¹⁷

The overall evidence suggests that, more likely than not, B___ and C___ swiftly interpreted A___'s behavior during the February 1, 2023, meeting as "micro-aggressive" toward them as African Americans, without making a deliberate effort to understand A___'s perspective—particularly her visible offense at P___'s "joke."

A___ Reports C___ to Human Resources

At some point—though the exact timing remains unclear—A___ reported C___'s comment that she is "not a woman of color" and mocked her using a "Valley Girl voice" to Human Resources Analyst I___ (I___).

There is no evidence that the County ever investigated[*10] A___'s report, either when A___ initially made the report to Human Resources, or when A___ was interviewed as part of C___'s subsequent CIU complaint A___. The County's failure to investigate suggests that the County did not take A___'s report seriously.

The Union Grieves the First Verbal Reprimand

On March 14, 2023, the Union filed a grievance alleging that C___ failed to notify A___ that the First Verbal Reprimand was disciplinary in nature. On March 15, 2023, the County responded, alleging that C___ issued the First Verbal Reprimand "after previous coaching sessions regarding the same pattern of behavior."

The County ultimately agreed to rescind the First Verbal Reprimand and to replace the First Verbal Reprimand as a counseling. A counseling is not "discipline" under the Agreement.

2. The Second Verbal Reprimand.

On May 30, 2023, during a one-on-one meeting with B___, A___ requested additional training concerning "complex contracts." B___ reached out to L___ and asked her to provide the training to A___. On May 31, 2023, L___ e-mailed A___ to offer training, per B___'s request. As specified above, after viewing the May 31, 2023 e-mail during the Hearing, L___ literally laughed out loud.

On June 1, 2023, A___ replied to L___, thanking L___ for "being so willing to work with me." A___ explained that she was looking for training on "complex contracts, you know the one-off." A___ again thanked L___ for her time. A___ copied C___ and B___ on that e-mail.

L___ credibly testified that the training she had planned to provide to A___ was identical to the training she had previously delivered to A___. L___ credibly testified that she was not upset that A___ declined the training because "we were slammed," and she was "confused" why she was being asked to train A___ during such a busy time period.

On June 1, 2023, A___ e-mailed B___ concerning L___'s offer to train her. A___ copied C___ and others on the e-mail. The pertinent portion of A___'s e-mail to B___ states:

I received an email from L___ asking me about training.

Receiving this email makes me realize that we were not on the same page.

I am not asking for *simple help*.

During our meeting we discussed my wanting to trust and feel supported by my management staff. *I also feel that was not fully understood as well.* I will give you an example of what I feel support looks like.

This is what a supportive manager looks like to me: If you're approachable and empathetic. *You show concern for employees, and you treat them with dignity and respect.* Your employees, in turn, feel valued and cared for. In times of change (or, ahem, global pandemic), they trust you to help them manage uncertainty.¹⁸

Based on the above e-mail, more likely than not, A__ sought to clarify the reasoning behind her request for additional training and the specific type of instruction she requested. A__ was also attempting to communicate that she did not feel "supported" by B____[*11] as her supervisor, likely due to his communication style.

At the Hearing, B____ made it clear that he was offended that A__ stated, "I am not asking for simple help," testifying it is another example of micro-aggressive behavior. More likely than not, an employee's statement to her supervisor, "I am not asking for simple help" does not constitute offensive, demeaning or otherwise discriminatory behavior. There is no evidence that B____ or any other County personnel took any steps to address A__'s stated concerns about feeling unsupported by her supervisor.

On June 27, 2023, B____ issued a second verbal reprimand (the Second Verbal Reprimand) to A__. On cross-examination, B____ acknowledged that the phrase "in good faith for cause"¹⁹ means that a supervisor should discuss certain behavior before issuing discipline. B____ admittedly did not discuss A__'s alleged behavior with A__ before he issued the Second Verbal Reprimand.

B____ issued the Second Verbal Reprimand because A__ declined the training offered by L____ and because S____ (S____), a woman who identifies as Black/Ghanaian, complained to her supervisor, Q____, that A__ failed to create a "welcoming training environment." S____ did not testify at the Hearing so it is difficult to ascertain what she meant by a "welcoming training environment." According to B____'s testimony, S____'s main complaint was that A__ was difficult to work with. B____ was relying on hearsay that he received from S____'s supervisor in that testimony.

When B____ issued the Second Verbal Reprimand, A__ asked B____ if he wanted to hear her side of the situation with S____. A__ credibly testified that B____ told her that he "did not have to do that" (or words to that effect). A__ testified that she provided S____ all the training resources she had available. The undersigned has no reason to disbelieve that testimony.

B____ documented the Second Verbal Reprimand via an e-mail to A__ of the same date. B____ attached suggested trainings for A__ to take, including "A Guide to Effective Meeting," "Microaggressions: Building Awareness & Responsiveness for Health Department Staff," and "Compassionate Communication." A__ did not take any of the suggested trainings prior to her Suspension.

The Union Grieves the Second Verbal Reprimand

On July 27, 2023, the Union filed a grievance concerning the Second Verbal Reprimand. The Union alleged:

On 06/27/2023 A__ was administered a Verbal Reprimand without due process, stemming from alleged behavior during a meeting.

There was no investigatory meeting held and no opportunity for the grievant to exert Weingarten rights.

This illustrates a continuing pattern of harassment and unprofessional behavior from management towards the grievant.

The County denied the grievance and canceled the Step 1 meeting. There is no evidence that the County investigated the Union's allegation of "a continuing pattern of harassment and unprofessional behavior" toward A__.[*12] The County's failure to investigate that allegation suggests that the County did not take the allegation seriously.

C___ Files a CIU Complaint Against A__

In or about March 2023, C___ filed a CIU Complaint against A__, alleging that A__ "has demonstrated a pattern of racially discriminatory behavior towards [C___] and other Black employees."

The County assigned T___ (the Investigator) to investigate C___'s CIU Complaint. The Investigator issued a Final Investigative Report on July 24, 2023 (the Final Report). The County's decision to assign an investigator indicates that the County treated C___'s complaint of race discrimination as a serious matter. The Investigator looked into three allegations filed by C___, summarized below.

1. The First Allegation

The first allegation is that A__ made micro-aggressions and "harassed" C___ because she is a Black woman. Specifically, C___ alleged that A__ would "team up" with L___ during online meetings and would appear to be chatting and laughing during meetings. In essence, C___ repeated the same allegation for which she attempted to discipline A__ on February 6, 2023. The Investigator interviewed I___, Q___, B___, D___ (D___), G___ (G___) and S___ concerning the first allegation.

a. J___

J___ did not testify at the Hearing. According to the Final Report, J___ told the Investigator that C___ reported to J___ that A__ frequently complains about "BIPOC employees." As stated on the County's website, "BIPOC" is an acronym that stands for Black, Indigenous, and People of Color. The Final Report does not specify how "frequent" the complaints are, the dates of the complaints, the specificity of such complaints, and what, if anything, C___ did in response to these alleged complaints.

J___ also allegedly told the Investigator that she believes there is "tension" between C___ and A__ because A__ received positive reviews by R___, but was now receiving negative feedback from C___. J___ further allegedly told the Investigator that G___ had conflict with A__, but the conflict was not about race; it was about "professionalism."

b. Q___

Q___ allegedly stated she was not "sure" if A__ treated people differently due to race. Q___ denied that she witnessed micro-aggressions against C___ by A__, but also alleged that she has seen C___ "suffer" because of A__'s treatment of C___. The Final Report does not clarify what "treatment" Q___ was referencing. Q___ did not testify, so there is no way to know specifically what Q___ was talking about.

c. B ____

B ____ told the Investigator that he has observed A __ a "behaving in an unpleasant manner" and using a "disrespectful tone" toward C ____ in group meetings. B ____ allegedly stated that A __ frequently interrupts C ____ when speaking, claims she cannot hear C ____, and refers to C ____ as "C ____." At the Hearing, A __ admitted that she mispronounced C ____'s first name one time because[*13] she did not know the correct spelling and enunciation. find that testimony to be entirely credible. Based on A 's credible testimony, A __ did not deliberately mispronounce C ____s first name in an effort to undermine C ____ or to show disrespect toward her.

B ____ also alleged that A __ turns off her camera "whenever" C ____'s camera is on. The Final Report does not specify when and how many times B ____ observed A __ turning her camera off; for this reason, the undersigned finds that to be an overly broad statement. The only evidence in the record is the February 1, 2023 meeting where A __ admittedly turned her camera off and on because her dog was sick, and possibly a few more times *before* February 1, 2023.

B ____ stated that A __ is respectful to Caucasian managers "unless they confront her about her work or hold her accountable." The Final Report does not provide examples of this conclusory statement. B ____ further allegedly stated that A __ engages in "blatant disrespect" toward himself and C _____. The Final Report does not specify exactly what A __ did that constitutes "blatant disrespect." That said, as more fully addressed below, B ____ testified about what he deemed was "blatant disrespect" at the Hearing.

d. D ____.

D ____, a County manager who is African American, allegedly told the Investigator that he has witnessed A __ "acting rude and disrespectful" and "snarky and passive aggressive" toward C _____. D ____ credibly testified at the Hearing that he only attended two meetings with A __. The Final Report does not specify what exactly A __ allegedly did that was "rude and disrespectful" or "snarky and passive aggressive," and the Final Report does not specify when such alleged behavior occurred.

e. G __

G ____ allegedly told the Investigator that she has witnessed A __ and L ____ disrespect C ____ in meetings by laughing on camera. The Final Report does not specify how many times G ____ witnessed that behavior, and G ____ did not testify, so there is no way to know specifically how many times G ____ may have witnessed A __ and L ____ laughing on camera.

f. S ____

S ____ allegedly told the Investigator that she has not witnessed A __ engage in any "harassment" toward C ____, but that she did sense that there was "tension" between A __ and C _____. More likely than not, S ____'s observation of "tension" between A __ and C ____ was accurate.

g. A __

A __ told the Investigator that after R ____ left the County, she began reporting to C _____. A __ alleged that there had been a lot of turnover under C ____ and that she interacts with B ____ "very little."

A __ told the Investigator that in February 2023, during a meeting, C ____ was "agitated" with her. A __ alleged that C ____ was "combative," and that she felt "unsafe." A __ stated that she was "a woman of

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color" and therefore would not stereotype C____. A__ alleged that C____ falsely accused her of laughing during meetings. There is no evidence that the County investigated[*14] A__'s claim that she felt "unsafe" or that C____ was "combative" with her.

2. The Second Allegation

The second allegation is that A__ made micro-aggressions and harassed other Black employees besides C____. C____ reported that after becoming A__'s supervisor, she began receiving "numerous complaints" from Black staff regarding A__'s treatment of them. The Final Report does not specify how many complaints C____ allegedly receive, and does not specify what the nature of those complaints were. C____ also claimed that A "closely monitors" B____'s contracts. It is unclear exactly how A, as B____'s subordinate, would even have the capacity to "monitor" his work.

C____ further alleged that A__ rolled her eyes and turned off her camera while P____ was speaking during "team meetings." Emphasis on the word "*meetings*." There is no evidence that A__ engaged in that alleged conduct after February 1, 2023. C____ further claimed that A__ reports Black employees to HR to "tarnish their character and reputation" Without specifics, it is very difficult to assess the veracity of that statement. Lastly, C____ reported that A__ was discriminatory toward S____ by accusing S____ of being "aggressive and unkind." More likely than not, such a characterization does not, in itself, constitute discrimination.

The Investigator interviewed B____, S____, G____ and A concerning the second allegation.

a. B__

B____ alleged that A__ "monitored" his work, characterizing it as micro-aggressive. However, given that A__ was B____'s subordinate, it is unclear how she could have had the capacity to "monitor" his work. The Final Report does not provide any details regarding how this purported monitoring occurred.

B____ also told the Investigator that he witnessed A__ rolling her eyes at P____ during a meeting. More likely than not, B____ was referring to the February 1, 2023 meeting where P____ referred to himself as a "tyrant."

B____ told the Investigator: "[A]s a person of color, I feel that our concerns have not been handled in a substantial way." B____ also stated: "I am not the only person of color who has had to experience [A__'s] hostile attitude." There is no specifics in the Final Report that would allow the Arbitrator to understand what B____ was specifically talking about.

B____ told the Investigator that he believed A__ "weaponized the grievance process to deflect any allegations from leadership or peers, thus creating a fear of retaliation amongst those who take issue with her actions." The Final Report does not clarify what B____ intended by that statement; however, he provided testimony regarding it at the Hearing. Further details on this are discussed below.

b. S__

S____ stated that she was "not sure" whether A__ treated Black employees differently. She also claimed that A__ showed "preferential treatment" to L____. Given that L____ and A__ were work friends, that statement is likely true.

c. G__

G__ allegedly told the Investigator that A__ said to G__: "I don't like[*15] anybody when I first meet them ...I just like to be up front, I'm Puerto Rican." There is nothing in the record that would allow the Arbitrator to determine in what context A__ may have made that statement. Regardless, even if the alleged statement is accurate, it is unclear why the Investigator included that statement in the Final Report, as it does not seem to pertain to any of C__'s allegations, and there is no Personnel Rule that prohibits a person from disliking someone.

G__ also allegedly stated that she witnessed A__ acting "hostile" toward P__. Again, more likely than not, G__ was referring to the february 1, 2023 meeting when P__ referred to himself as a "tyrant."

d. A__

When the Investigator interviewed A__ concerning the second allegation, A__ admitted that she did not get along with several of her team members. A__ stated that B__ is "very condescending, rude and arrogant," and that her team "isolated her." Again, the Final Report does not specify what A__ was referring to. More likely than not, A__ was referring to B__'s military, clipped style of communication that was very different from her own communication style.

A__ denied that she treated anyone differently due to their race and stated she was "very shocked" to hear that someone made a complaint against her on that basis, particularly because she (A__) "is a woman of color" and she has a son who identifies as "Afro-Puerto Rican."²⁰ The undersigned finds the evidence that A__ has a son who is Afro-Puerto Rican to be very compelling.

According to the Final Report, A__ told the Investigator, "I am being bullied on a daily basis, anytime they have any type of interaction with me." More likely than not, when A__ used the pronoun "they," she was referring to C__ and B__. There is no indication that the County conducted an investigation into A__'s complaint of being "bullied on a daily basis."

3. The Third Allegation

The third allegation is that A__ engaged in unprofessional conduct, such as asking a coworker to sign a demand letter, rolling her eyes during meetings and making negative comments. Again, there is no temporal time and scope on these allegations. For example, the Investigator failed to note when or how often A__ is alleged to have rolled her eyes or make negative comments. Was it one time? Two times? Three times? The Final Report does not specify. According to the Final Report, "[a]ll witnesses confirmed A__ struggles with interpersonal communication and unprofessional conduct." The Investigator interviewed G__, Q__, I__, S__, D__, and A__ regarding the third allegation.

a. G__

According to the Final Report, G__ allegedly stated that A__ engaged in "constant unprofessionalism." It is difficult to understand what "constant unprofessionalism" even means. Was G__ alleging that A__ *never* behaved professionally in the workplace? If so, more likely than not, G__ was exaggerating, [*16] if not *over* exaggerating.

G__ also alleged that A__ would send her "side chats" that distracted her from her work. A__ testified that she would send side chats such as "good morning" to G__ before G__ became her supervisor. More likely than not, sending a "good morning" chat to a colleague is not unprofessional.

Finally, G___ allegedly told the Investigator that A___ sent a side chat that said: "I carry mace and I will just mace him, I don't care...even if I just feel threatened." At the Hearing, A___ denied that she would ever say that, particularly because the County serves marginalized communities. I find A___'s firsthand sworn testimony to be more credible than G___'s hearsay statement.

b. Q___

Q___ allegedly told the Investigator that A___ has "always" been "passive-aggressive," that she has "an accountability issue," and that A___ has a "pattern" of acting unprofessional. The Investigator did not provide specific examples or details regarding Q___'s claims, aside from noting that the alleged unprofessional behavior began after A___ received critical feedback.

c. I___

I___ alleged that A___ is "unprofessional" but did not provide any specifics as to what A___ is alleged to have done that is unprofessional, other than refuse to attend a mediation session.

d. S___

S___ told the Investigator that A___ was "unhelpful," "unfriendly," and not "team-oriented." More likely than not, S___ was referring to the training materials A___ provided.

e. D___

D___ told the Investigator, "I have to tune her out because I don't respect her." D___ said essentially the same thing during his testimony at the Hearing.

D___ also credibly testified that he only attended two meetings with A___, and that he found A___ to be "disrespectful" during the first meeting. When asked what A___ did that was disrespectful, D___ testified that she did not want to collaborate with others, including members of his team, none of whom are African American. D___ testified that during the second meeting he found A___ to be "overly nice" but not disrespectful. More likely than not, being "overly nice" does not equate to being unprofessional, and it certainly does not equate to being "micro-aggressive."

f. A___

A___ denied that she was "unprofessional," and told the Investigator that she was being "retaliated against" for utilizing the grievance process. There is no evidence that the County investigated A___'s claim of retaliation. A___ also stated that she tried to explain the training she needed to B___. Based on the record, A___ was likely referring to the training she requested on May 30, 2023.

The Investigator concluded that all three allegations were substantiated based on a preponderance of the evidence standard.

The August 30, 2023, Proposed Dismissal

On August 30, 2023, the County proposed to dismiss A___ based on the conclusions in the Final Report. The County placed A___ on paid administrative leave, effective August 31, 2023.

The Pre-Dismissal Hearing

The County held a pre-dismissal hearing on September 7, [*17] 2023. At the Hearing, A__ credibly testified that the County failed to provide A__ with an unredacted copy of the Final Report prior to the pre-dismissal hearing, and in fact, A__ did not even see an unredacted copy until "days" before the Hearing.

The Imposed Ten-Day Suspension

On October 12, 2023, the County reduced the proposed dismissal to a ten-day suspension. A__ served the suspension on October 16, 2023, through October 27, 2023. The Suspension alleges that A__ violated MCPR 3-40, § 3-10-020 Discrimination and Harassment-Free Workplace, and MCPR 3-47 Maintaining a Professional and Respectful Workplace. In relevant part, the Suspension states:

The Complaint Investigation Unit (CIU) received a complaint alleging that you demonstrated a pattern of racially discriminatory behavior towards Black employees including utilizing microaggressions and exhibiting overall disrespect. Additionally, the complaint alleged a pattern of unprofessional behavior with coworkers.

The CIU investigatory process relies upon an evidentiary standard based on the "preponderance of evidence." Under this standard, a claim is considered substantiated when the evidence shows there is a greater than 50% chance that a claim is true, and unsubstantiated when the evidence shows there is a less than 50% chance that the claim is true.

Following the complaint, the CIU conducted a complete and thorough investigation over the course of several months and substantiated the claims that you did 1) demonstrate a pattern of racially discriminatory behavior towards black employees including utilizing microaggressions, 2) harass black employees, and 3) engage in conduct with fellow employees that was deemed unprofessional.

The County warned A__: "Future violations of MCPR 3-40 and 3-47 may lead to further discipline, up to and including dismissal." The County listed trainings that A__ would be required to take upon her return from the Suspension.

Although B___ signed the Suspension, he credibly testified that he did not make the decision to issue the Suspension. B___'s testimony comports with former Interim Health Director F___ (F___'s) testimony that he made the decision to suspend A__, rather than dismiss her, based on past County practices to issue progressive discipline.

The Union Grieves the Suspension

On November 1, 2023, the Union filed a grievance concerning the Suspension. The Union alleged that the County failed to meet its burden of proof and that the level of discipline is not supported by the County's allegations. The Union's requested remedy was:

Remove the offending discipline from the grievant's personnel file

Reimburse all incorrectly withheld wages, seniority, vacation, and sick accruals

Make A__ whole in every way.

All other remedies as may be deemed appropriate

The Parties agreed to bypass Step 1 and meet at Step 2. Following the Step 2 meeting, the County denied the grievance. The Union[*18] advanced the grievance to Step 3, and the County denied the grievance at that third and final step. Having been unable to resolve the matter, the Union referred the grievance to arbitration on April 4, 2024.

A Returns to Work

A__ returned to work on October 30, 2023. A__ credibly testified that she "happily" participated in the following required trainings upon her return:

- Complete and acknowledge MCPR 3-40 and 3-47 (within 48 hours of your return to work)
- Complete the following training classes upon your return to work:
 - Microaggressions - Building Awareness and Responsiveness for Health Department Staff (November 16, 2023 9:00am-12:30pm)
 - Ouch! That Stereotype Hurts - Part 1 (November 28, 2023 9:00am - 12:30pm)
 - Ouch! That Silence Hurts - Part 2 (December 5, 2023 9:00am - 12:30pm)
 - Meet with the assigned Learning & Development professional to discuss each class including providing a list of key learnings and outstanding questions in advance of the meeting.

On November 16, 2023, the County provided feedback concerning A__'s progress at the required trainings:

Volunteered and was a spokesperson for their group

Had relative content to offer to the comments when asked for feedback on takeaways.

Engaged very respectfully

Participated and was very honest around her learning environment.

A__ credibly testified that although she was not "happy" about receiving the Suspension, she found the training courses to be valuable and believes that "everyone" should take the training courses.

On February 1, 2024, N____ (N____), a Human Resources educator, e-mailed Senior Human Resources Analyst O____ (O____ regarding A__'s completion of the required trainings. N____ provided the following overall assessment of A__'s participation in the required trainings:

A__ participated in post course evaluation/summary. A__ always turned the camera on as asked during small group discussions, and one on one with the facilitator. A__ participated in small group discussions, volunteered as spokesperson, and engaged in large group Q&A activities. A__ did not exhibit any disruptive behaviors or passive aggressive comments based on my observation.

From an WESP₂₁ Lens, A__ does not feel Safe, when bringing up concerns/issues with self/team, does not Trust mgmt. has best supportive interest during infrequent Check/ins.

There is no evidence that the County investigated A__'s concern that she did not feel "safe" bringing up concerns/issues. The County's failure to look into A__'s concern suggests that the County did not take A__'s concerns seriously.

C__'s January 12, 2024, E-mail to Human Resources

On January 12, 2024 at 8:41 a.m., C____ sent the following e-mail to former Human Resources Manager E____:

We do one on one's with each team member once a month to discuss how things are going. It is myself and their direct supervisor. They are scheduled with each team member. Am I to understand from Labor Relations that[*19] they would like A__ to be excluded from this process and to only meet with B____ or I alone? This would place B____ and I as complainants in a protected class action in a position that is different with A__ than any other employee. I am trying to understand if Kathy Short is aware of this new restriction on B____ and I and the shift in County Policy? This is not something unique to health. I also have to wonder why A__, who has complained in writing that both B____ and I are unsafe, would insist on being alone with us?

On January 16, 2024, E____ responded, advising C____ against conducting "2:1" meetings—where two managers meet with a single employee—with A__. E____'s e-mail establishes that the County took C____'s concerns about "safety" seriously.

The February 2024 E-mail Chain Between B____ and A____

On February 6, 2024, B____ sent an e-mail to A__ with the subject line: "Email Expectations/Union Time Notice." B____'s intent was to notify A__ of his expectations when A__ was out of the office. A__ credibly testified that she asked several clarifying questions about the e-mail because she was confused and wanted to understand what B____ expected as to when she should copy her supervisors and when she was not required to do so. Based on the overall record, more likely than not, A__ did not understand B____'s instructions due to his communication style, which again, was different than A__'s communication style. A__ ultimately concluded that she should e-mail all of her supervisors on all communications. At that point, A__ was reporting to B____, G____ and C____.

The "Work Style Preference" Form

On February 12, 2024, A__ met with C____ and B____ to further discuss B____'s communication expectations. The meeting was called, in part, because of A__'s multiple clarifying questions to B____ related to the February 6th e-mail.

During the meeting, C____ discussed a "Work Style Preference" Form (the Form) with A__. C____ told A__ that the Form is optional, but could be useful as a tool to understand an employee's preferred communication style. C____ advised that she provided the Form to "every member" on A__'s team and that A__'s "entire team" completed the Form. More likely than not, A__ understood that she was required to complete the Form so that she could participate with "the entire team." A__ received the Form via e-mail after the meeting concluded.

A__ Completes the Form

A__ completed the Form. the following day, February 13, 2024. The Form gives instruction at the top that says:

Review and discuss the completed document together with coworkers to better understand work style preferences. Be as specific as possible. Use examples to help clarify.

There are a total of ten questions on the Form. The first six questions concern A__'s communication preference for receiving requests or questions, assignments or instructions, difficult feedback, et cetera. [*20] A__ indicated that she preferred e-mail or detailed e-mail.

A__ did not answer the seventh question, which asked what her "top three hot buttons" are. A__ credibly testified that she wrote "N/A" because the question was not "trauma informed."

The last three questions appear to be more specific and asks the employee to reflect on aspects of the employee's work style, preferences, and communication habits that could enhance collaboration within a team. The last three questions and A__'s answers are listed below (A__'s answers are after the bullet points).

8. What do people need to know about me that would help them to work more effectively with me?

- Respecting me and not fabricating stories is the most effective way to work with me.

9. How will you know that I am angry, upset, or disappointed? What is the best way to approach me or the situation when I am angry, upset, or disappointed?

- Treat me with respect and refrained [sic] from retaliation.

10. One suggestion I have for enhancing team or work group communication is:

- Refrained [sic] from perpetuating white supremacy behavior. Realize that everyone comes from a different background and respect that. We don't all need to be the same person.

At the Hearing, A__ credibly testified she anticipated "open dialogue between myself and my peers" regarding her responses to the questions on the Form. A__'s testimony that she expected that the Form would be used for a team activity is appropriate, given the instruction at the top of the Form that states: "Review and discuss the completed document together with *coworkers* to better understand work style preferences."²² A__ further explained that she wrote her answers with the expectation that her answers would be understood as her "opinion."

When asked to explain what she meant when she answered question 8, A__ credibly testified: I personally think people would work best with me if they respect me. You know, respect is key when working with other people." A__ testified that her answer to number 8 is her opinion about herself; it was not her intent to direct the answer to somebody else.

As to question 9, A__ credibly testified:

I put myself in the mindset if I were angry or upset how would I want to be communicated with. I would want to be respected and not have any retaliation. An open conversation to say, "these are the issues" and have that conversation and then move past it.

A__ indicated that use of the word "refrained" in response to questions 9 and 10 were mistakes, and that she was not intending to discuss a matter that was in the past tense. Again, A__ credibly testified that she thought that her answers to questions 8 and 9 would be an "open dialogue between myself and my peers."

When asked on direct whether there had been "retaliation" at the time A__ provided her answers, A__ indicated that she believed retaliation had occurred; "however, it was in the grievance process so I believed it would be taken care of through the grievance, so this is just my[*21] view, my opinion." I found that testimony to be credible.

With regard to question 10, A__ credibly testified that she wrote "[refrain] from perpetuating White supremacy behavior" for the following reasons:

One is that it is actually in the mission statement of the County, two is that I had been learning about it in my classes I had taken for the 10-day suspension, and then the other reason is because I am a Union leader and I am also making sure that White supremacy for my social groups are not affected or that it is not being perpetuated.

I found A__'s above testimony to be credible, particularly because the OED website states, in relevant part:

White supremacy is a system of power that prioritizes the rights, privileges, and experiences of white people over others. It manifests through laws, policies and societal norms that reinforce racial inequality.

With regard to the remainder of her answer to question 10, A__ credibly testified that "not every person has the same experience, and everyone should respect that." As an example, As an example, A__ testified that M____'s experiences with her military background would be different than A____'s own experiences having been raised in Spanish Harlem.

A__ denied that she wrote the answer to question 10 with any specific person in mind. A__ credibly testified that again, her expectation was that she would have an open conversation with her peers and

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they could discuss their differences so that A__ could have a "better understanding of her peers." A__ e-mailed the completed Form to B___ and C___ with the expectation that the Form would be used in a team setting.

B___'s Reaction to A___'s Completed Form

At the Hearing, B___ credibly testified that he was "fine" with A___'s answers on the Form "until I got to questions 8 through 10." B___ testified that he interpreted A___'s answer to question number 8 to mean that A___ was accusing himself and C___ of fabricating the findings in the CIU investigation. B___ similarly testified that A___'s answer to question number 9 inferred that B___ and C___ were retaliating against A___.

B___ further testified that A___'s response to question 10 is "tone deaf." When the undersigned asked B___ to clarify what he meant by "tone deaf," B___ testified (words to the effect of):

When speaking to Black people and mentioning they may or may not be perpetuating White supremacy, you are missing—they may or may not be perpetuating White supremacy—like you have no sensitivity towards people who are of a protected class. That's what I mean.

I believed B___ was being truthful in that testimony.

Based on B___'s testimony, more likely than not, B___ failed to recognize that A___, like himself, is also a member of a protected class. Furthermore, his testimony suggests that he unreasonably assumed A___'s responses were specifically directed at him and C___. There is no evidence that B___ sought clarification from A___ regarding her answers to questions[*22] 8 through 10 before forwarding the completed Form to Human Resources C___'s Reaction to A___'s Completed Form

On February 24, 2024, O___ interviewed C___ concerning A___'s answers to questions 8 through 10 on the Form. O___'s notes are part of the record. During her interview, C___ stated that A___'s answers to questions 8, 9 and 10 are "aggressive and hostile," and an attack to me and anybody else that was involved in the CIU investigation." C___ also alleged that A___'s answers "were a direct attempt to intimidate us and make us feel threatened."

Based on C___'s statements in the February 24, 2024, interview, she—like B___—failed to recognize that A___ is also a member of a protected class. Furthermore, like B___, C___ *assumed* that A___'s responses were directed specifically at her and B___. There is no evidence that C___ sought clarification from A___ regarding her answers to questions 8 through 10 of the Form.

C___'s March 13, 2024, E-mail

On March 13, 2024, C___ forwarded an e-mail from A___ to Human Resources that allegedly established that A___ failed to include G___ on an e-mail. However, the original e-mail shows that A___ copied G___ on the original e-mail. The Dismissal letter accuses A___ of failing to copy her supervisors on e-mails. That said, F___ credibly testified that he made the decision to dismiss A based on her answers to the Form.

The April 2, 2024 Grievance

On April 2, 2024, the Union filed a grievance on A___'s behalf that alleges:

On an ongoing basis A___ has been harassed and retaliated against by her current Supervisors in connection with her Union activity. Events include an investigation and Pre-

Dismissal hearing based on comments related to her asking to be treated by respect and in a working environment free of white supremacy. Her supervisors began micromanaging A__'s work by making requirements on email different from other employees and refusing to offer training on skills and materials she was given an expectation to execute. A__ has been and dated to attend mandatory training and been repeatedly disciplined, talked to, and disparaged while acting in a leadership role with AFSCME 88. The message A__ has been given is clear, submit to management's hostile treatment or face termination. These events happened after A__ became actively involved in the Union, became more vocal about her rights, and successfully mitigated a discipline from her supervisor.

There is no written County response to the above grievance in the record.

A__'s April 12, 2024 Complaint Intake Form

On April 12, 2024, the County conducted an intake interview of A__ concerning the April 2, 2024 grievance. A__ provided information concerning claims of harassment and retaliation. A__ raised two new allegations, one that she was subjected to unwanted physical contact in February 2023, and second, that C___ questioned her Hispanic heritage because of the language she uses.

The person (whose name is unknown) who received A__'s information recommended that[*23] the County open either a Health Human Resources investigation or a CIU investigation. There is no evidence that the recommended investigation ever occurred. The County's failure to investigate A__'s complaints suggests that the County did not take A__'s complaints seriously.

The Dismissal

On May 9, 2024, the County dismissed A__ for violations of MCPR 3-40, § 3-10-020 Discrimination and Harassment-Free Workplace, MCPR 3-47 Maintaining a Professional and Respectful Workplace, and MCPR 3-10 - Employee Responsibilities.

Although P___ signed the Dismissal letter, F___ credibly testified that he was the one who made the final decision. F___ credibly testified that the County dismissed A__ primarily because of A__'s answers to the questions on the Form.

After viewing the completed Form, F___ credibly testified that he had "no problem" with A__'s answer to question 10 and actually agreed with A__'s statements in response to question 10. F___'s testimony confirms that the primary reason A__ was dismissed was because of her answers to questions number 8 and 9 on the Form.

The Union Grieves A__'s Dismissal

On May 24, 2024, the Union filed a grievance challenging A__'s dismissal. The grievance states:

On 5/09/2024, Multnomah County issued a dismissal to A__. The County has not fulfilled its burden of proof in this case, and the level of discipline is not supported by the allegations regardless. The County asked A__ to provide feedback on her communication style. A__ provided her honest feedback. The County cannot show that A__'s answers violate any county policy. Remaining allegations are too vague for the union to provide a response. Therefore County's termination of A__ was not In Good Faith For Cause.

The requested remedies were:

Remove the offending discipline from the grievant's personnel file.

Reimburse all incorrectly withheld wages, seniority, vacation, and sick accruals.

Make A__ whole in every way.

All other remedies as may be deemed appropriate.

On July 1, 2024, the County denied the grievance. The Union referred the matter to Step 2 on July 11, 2024. The County again denied the grievance at Step 2 on July 31, 2024, again denying the grievance. On August 27, 2024, the Union referred the grievance to Step 3. The County denied the grievance at Step 3. Having been unable to resolve the grievance, the Union referred the grievance to arbitration.

DECISION

The Just Cause Standard

Article 17, Section I of the Agreement provides: Employees may, in good faith for cause, be subject to disciplinary action by oral or written reprimand, demotion, reduction in pay, suspension, dismissal..." The Parties stipulated that the phrase "in good faith for cause" is equivalent to the "just cause" standard. The "just cause" standard is the standard in labor arbitrations for determining whether a particular disciplinary action was justified.²³

Few labor agreements provide an actual definition for "just cause," and most arbitrators[*24] no longer necessarily follow the rote "Seven Tests of Just Cause" formulated by Arbitrator Carroll Daugherty.²⁴ However, this Agreement is unusual, in that it specifically states what "in good faith for cause" means, in Article 17, Section II:

Cause shall include misconduct, inefficiency, incompetence, insubordination, indolence, malfeasance, or failing to fulfill responsibilities as an employee.

That said, it can also be reasonably implied that "just cause" has evolved in labor-management jurisprudence to mean that "just cause is a broad and elastic concept, involving a balance of interests and notions of fundamental fairness."²⁵ Described in very general terms, the just cause standard is one of reasonableness:

[W]hether a reasonable (person) taking into account all relevant circumstances would find sufficient justification in the conduct of the employee to warrant discharge (or discipline).²⁶

In this instance, there is no question that just cause exists for the County to discipline A__ if she engaged in the acts she is accused of. Indeed, if an employee willfully or wantonly disregards his or her employer's reasonable expectations and policies, the majority of arbitrators would hold that the employee should be subject to discipline.²⁷ Put simply, the determining factor in the just cause analysis is whether the discipline was *reasonable*, given all of the circumstances of each particular case.²⁸ I therefore apply that analysis to this case.

What is the County's Burden of Proof?

It is axiomatic that the burden of proof resides with the employer to determine just cause for disciplining an employee.²⁹ In the just cause analysis, an employer bears the burden of proving *both* the alleged violation and the appropriateness of the penalty.³⁰

Here, the Parties stipulated that the County has the burden of proof. Thus, the only real question is, what quantum of proof should be applied? Should the Arbitrator apply a preponderance of the evidence standard, or a clear and convincing evidence standard?

In this instance, the County applied the preponderance of the evidence standard when investigating C___'s CIU Complaint. If this were an *ordinary* discipline and discharge case, the undersigned would also apply the preponderance of evidence standard. That said:

....many, if not most arbitrators apply the "preponderance of the evidence" standard to *ordinary* discipline and discharge cases. However, in cases involving criminal conduct or stigmatizing behavior, many arbitrators apply a higher burden of proof, typically a "clear and convincing evidence" standard...³¹

Here, as the Union correctly pointed out, this is *not* an *ordinary* discipline and discharge case, as the County has accused A___ of *serious allegations* that, if proven, "are damaging to both her career and her reputation."³² For that reason, the undersigned applies the "clear and convincing" evidence standard to both the allegations in the Suspension, and in the Dismissal. [*25] "Clear and convincing evidence" is defined by the United States Supreme Court to mean::

evidence that is *highly* and *substantially* more likely to be true than untrue. In other words, the fact finder must be convinced that the contention *is highly probable*.³³

Did Multnomah County Violate Article 17, Section I, When it Issued the 10-day Suspension to A___?

Yes. In this instance, the record reflects that A___ was suspended based on the findings and conclusions in the Final Report issued on July 24, 2023. The County asserted in the Suspension that "[t]he CIU conducted a complete and thorough investigation over the course of several months and substantiated the claims..." With all due respect, the undersigned *strongly* disagrees with that characterization.

1. General Observations

There are several problems with the Final Report, starting with the fact that the County failed to provide an unredacted copy of the Final Report to A___ prior to her pre-dismissal hearing held on September 7, 2023.

It is also well-established that an accused employee is entitled to notice and an opportunity to be heard, safeguarding fair and equitable due process in disciplinary and discharge proceedings.³⁴ Here, the record establishes that A___ was denied her right to due process when the County failed to provide an unredacted copy of the Final Report until mere "days" before the Hearing was held. For this reason, the undersigned finds that A___ was not afforded basic due process before the County imposed the Suspension.

That said, there are other significant reasons why the Suspension was not issued in accordance with the Agreement at Article 17, Section I. We start with the fact that neither the Investigator, nor most of the

named witnesses, appeared at the Hearing to testify under oath about the allegations against A__ in the Final Report, leaving the undersigned without the ability to determine the veracity of most of the allegations.

Additionally, the only witness statement available in transcript form is S____'s interview, whereas the remainder of the Final Report appears to be the Investigator's interpretative summary of what the witnesses may have stated. Consequently, the Final Report relies primarily on hearsay, rendering it unreliable.

Simply put, the Arbitrator cannot rely on the Investigator's interpretative summary of witness statements, as the Arbitrator was not present, nor does she have access to transcripts—other than S____'s—that could aid in assessing what was actually said.

The Final Report also lacks specific dates, times, and locations regarding most of the allegations against A__. Further, the Final Report makes overbroad and sweeping statements that are not backed up by specific facts and/or evidence. In other words, the Investigator failed to provide a detailed account of the specific actions which are allegedly attributed to A__. As a result, again, the majority of the conclusions in the Final Report are vague, overly broad, and unreliable.

For instance, [*26] the Final Report states that I____ informed the Investigator that C____ reported to I____ that A__ "frequently complains about BIPOC employees." That allegation *alone* smacks of "double hearsay" or even "triple hearsay." While it is true that the rules of evidence are more relaxed in an arbitration, that does not mean that the Arbitrator is required to give any kind of substantial weight to such evidence. As stated by the Elkouris:

Whether evidence is admissible is a different question from what weight or probative value is to be given to it. For example, where a private investigator's report formed the sole basis for a termination decision, and the report contained unsworn hearsay evidence and lacked corroborative testimony, *it was admissible but entitled to little weight.*³⁵

Moreover, using that same hearsay allegation as an example, there is no specificity surrounding when the alleged complaints occurred, what the alleged complaints were about, and what, if anything, C— did in response to the alleged complaints. Put simply, the undersigned cannot assess the credibility of the allegation that A__ allegedly "frequently complained about BIPOC employees" without first establishing the fundamental details of what the undersigned refers to as the five W's: Who, What, Where, When, and Why.³⁶ And, this is true for nearly *every* allegation against A__ listed in the Final Report.

Lastly, the Arbitrator gives little weight, if any, to the Investigator's credibility findings for the same reasons set forth above. If the witnesses had appeared and testified under oath, the Arbitrator would have been able to make her own independent credibility determinations. Put simply, given the seriousness of the allegations against A__, the Arbitrator simply cannot rely on a document that fails to establish that the allegations against A__ are "*highly and substantially* more likely to be true than untrue."³⁷

2. The Unproven Allegations in the Final Report

While the Arbitrator rejects the findings and conclusions of the Final Report for the reasons previously outlined, it is also important to highlight certain unsubstantiated allegations against A__—particularly the claim that she "harassed" and exhibited "micro-aggressive" behavior toward C____, B____, and other employee based s—*solely on* their African American identity. Although the undersigned fully

recognizes and acknowledges the reality that nearly all African Americans experience racism, C___ and B___'s allegations against A___ demonstrate a tendency to perceive their interactions with A___ as racially biased, despite the absence of corroborating evidence.

For instance, B___ and C___ appear to have reached the conclusion that A___ was micro-aggressive toward themselves based on her behavior during the February 1, 2023 meeting. However, it appears that C___ and B___ arrived at this conclusion without conducting a thorough assessment of[*27] A___'s intent or actions, nor did they make any effort to understand her perspective. And, ironically, A___ was reprimanded for laughing at other times during the February 1, 2023 meeting, but then was reprimanded for *not* laughing at P___'s inappropriate joke that was clearly insensitive to A___.

Based on the record, the only documented discussion the County had with A___ regarding the allegations of laughing, chatting, and turning off her camera occurred during the meeting on February 6, 2023, between C___ and A___, with Q___ present. White A___ may have rolled her eyes, laughed at inappropriate moments, engaged in side conversations with colleagues, and turned her camera on and off, the fact that her manager and supervisor are Black/African American does not substantiate the claim that she intentionally directed these alleged "micro-aggressive" behaviors at B___ and C___ because of their race.

Ultimately, A___'s conduct (such as rolling her eyes and laughing at inappropriate moment) was undeniably unprofessional and inappropriate. However, the record indicates that A___ has already received counseling for that behavior.³⁸ Despite this, C___ and B___ continued to reiterate the same allegation during the CIU investigation and even *after* the Suspension, once again claiming that A___'s actions were "micro-aggressive" toward them, even though the record contains no substantiated evidence supporting this assertion.

More significantly, C___—who held a position of authority over A___—made remarks during the February 6, 2023, meeting that were both inappropriate and unprofessional. Specifically, C___ asserted that A___ is "not a woman of color" and mocked her using a "Valley Girl" voice. The assertion that A___ is "not a woman of color" approaches the threshold of *overt* racism. It is deeply concerning that C___—an intelligent and well-educated professional with extensive supervisory experience and a keen awareness of racial issues—would mock A___ in her capacity as her superior and make such remarks.

Second, for whatever reason, the County, through C___ and B___, did not seem to acknowledge that A___ *herself* is a in a protected class status. Why? The undersigned does not know. What the Arbitrator does know is that C___'s statement that A___ is "not a woman of color" along with her reprimand of A___ for failing to laugh at a "joke" that was clearly offensive to her as a Puerto Rican woman, constitutes *substantial evidence* that C___ failed to recognize A___'s protected class status.

B___ also testified that A___ should have extended "a little grace" to P___ for his so-called "tyranny" joke. Based on the record, like his manager, B___ made no apparent effort to clarify or understand why A___ reacted to P___'s remark as she did.

Rather than attempt to find out why A___ visibly reacted to P___'s so-called "joke," C___ reprimanded her for failing to laugh at it. C___ and B___ appear to have completely[*28] overlooked and/or underestimated how P___'s "joke" could affect someone from a country that has a history of tyranny and oppression. More likely than not, A___ attempted to address B___'s lack of compassion and support when she e-mailed:

This is what a supportive manager looks like to me: If you're approachable and empathetic.
You show concern for employees, and you treat them with dignity and respect. Your

employees, in turn, feel valued and cared for. In times of change (or, ahem, global pandemic), they trust you to help them manage uncertainty.³⁹

Next, the allegation that A__ "frequently" complains about BIPOC employees is not only unsubstantiated but is also paradoxical, as it suggests that the County has accused A__—an Indigenous Puerto Rican—of frequently complaining about a group of employees to which she herself belongs. This reflects the County's fundamental failure to acknowledge that A__ is a member of a protected class. Additionally, the fact that A__ has a son who identifies as Afro-Puerto Rican serves as *compelling evidence* that she does not harbor discriminatory attitudes toward individuals of African ancestry.

Moreover, B___'s statement to the Investigator—that A__ "weaponized the grievance process to deflect any allegations from leadership or peers, thereby creating a fear of retaliation among those who took issue with her actions"—strongly suggests that the County's treatment of A__, and potentially even the decision to file the CIU Complaint, was at least partially motivated by Union animus.

As another example, when asked about his "weaponizing" statement at the Hearing, B___ testified he was referring to "false claims." However, there is no direct, or even circumstantial evidence that any of A__'s grievances were based on "false claims." B___ was also asked whether filing a grievance constituted "retaliation" against him personally. B___ testified: "I believe that the fact that I am here shows that this is an act, this is what A__ wanted to happen." I have no doubt that B___ sincerely believes this; however, that testimony further demonstrates animus toward A__, merely for exercising her right to challenge her discipline through the grievance process.

B___ also credibly testified that another reason he believed A__ "weaponized the grievance process," is because he did not think it was "necessary" to have a Union representative "in every single meeting" he had with A__ (or words to that effect). That said, former Union President J___ (J___) provided credible testimony that she attended a *single* meeting with A__ and B___, during which B___ was highly agitated and raised his voice. J___'s testimony further supports evidence of B___'s apparent animosity toward A__ for exercising her Union rights. Additionally, J___'s account reinforces the testimonies of M___ and L___ regarding B___'s behavior in February 2020.

B___ allegedly told the Investigator that A__ engages in "blatant[*29] disrespect" toward himself and C___. However, the Final Report does not specify exactly what A__ did that constitutes "blatant disrespect."

That said, at the Hearing, B___ testified: "Every time C___ e-mailed A__ and copied myself, it turned into this big back and forth Union debate." Again, that is an overly broad statement. While the undersigned does not believe that B___'s testimony was intentionally misleading, more likely than not, A__ did not turn "every e-mail into a Union debate."

Further, B___ explained that the "big back and forth Union debate," consisted of e-mails that discussed logistics, such as when and where the Parties should meet online, and whether A__ would have Union representation at the meeting. Again, that testimony strongly infers that B___ resented the fact that A__ exercised her right to have Union representation in meetings with him. B___ further testified that when A__ turned an e-mail into a "big back and forth Union debate," "*it showed blatant disrespect for my manager, in my opinion. That's how I saw it.*" I believed B__ when he testified to that.

Based on B___'s credible testimony, more likely than not, B___ was referring to the "big back and forth Union debate" when he told the Investigator that A__ showed "blatant disrespect" to C___ and himself. However; put simply, exchanging e-mails to schedule meetings clearly is not discriminatory, nor is it blatantly disrespectful in any way.

Lastly, the County appears to have taken an exceptionally cautious and proactive approach when addressing B___ and C___'s complaints and/or legitimate concerns, but did not do the same for A___. By the undersigned's count, the County overlooked A___'s complaints and/or legitimate concerns on at least six occasions before the County suspended A___, as follows:

- When A___ reported C___'s comment that she is "not a woman of color" and mocked her, using a "Valley Girl" voice to Human Resources;
- When A___ expressed concerns about directly to B___ about his supervisory style;
- During the grievance process, when the Union alleged on behalf of A___ that the County engaged in "a continuing pattern of harassment and unprofessional behavior" toward A___;
- During the investigation, when A___ alleged C___ was "combative" and that A___ did not feel "safe;"
- During the investigation, when A___ alleged she was being retaliated against for engaging in the grievance process; and
- During the investigation, when A___ alleged she was being "bullied."

I also note that the County failed to follow-up or investigate A___'s complaints and concerns after she returned from Suspension. For example, N___ informed O___ by e-mail:

A___ does not feel Safe, when bringing up concerns/issues with self/team, does not Trust mgmt. has best supportive interest during infrequent Check/ins.

Nothing in the record establishes that the County acted on A___'s concerns/issues raised in that e-mail. Additionally, although Human Resources recommended[*30] that an investigation occur on April 12, 2024, there is no *evidence* that the County acted on that recommendation. Indeed, the undersigned agrees with K___ when she stated it's "hugely problematic that no one launched an investigation into A___'s concerns... "

Based on the overall evidence, the County's inconsistent response to ___A's complaints and concerns, as opposed to C___and B___'s complaints and concerns, are unjustifiable and violates the County's own rule:

§ 3-47-050 Retaliation

- A. The county will not tolerate retaliation against any employee who reports known or suspected violations of this policy or who participates in any investigation of a complaint.
- B. Employees who believe they are being retaliated against in violation of this policy should report the complaint as outlined in MCPR § 3-47-040.
- C. The county will investigate reports of retaliation. Any employee found to have engaged in retaliation may be subject to discipline, up to and including dismissal[.]

For all the above articulated reasons, the County failed to prove, by *clear and convincing evidence*, that A__ was suspended "in good faith for cause."

Did Multnomah County Violate Article 17, Section I, When it Dismissed A__?

Yes. The County asserts:

While the County fully understands and supports progressive discipline, there are circumstances that warrant a more serious corrective action. This is one of those cases. As discussed above, the County initially issued A__ a pre-termination notice. However, after meeting with A__ and her union representative, the County decided to reduce the level of discipline and give A__ an opportunity to correct her behavior. However, A__ returned from a 10-day suspension and began engaging in further disrespectful behavior towards her Black manager and Black supervisor. When B____ attempted to address the "communication misunderstandings," that A__ raised, A__ responded by essentially accusing them of lying about her, even though the independent Complaint Investigation Unit had found that A__ engaged in microaggressive conduct towards C____ and other Black employees.

The County was not obligated to proceed through every lesser step of the progressive discipline process for acts amounting to a violation not just of County policy, but potentially of federal and state employment laws. Rather, the contract states: "Employees may, in good faith for cause, be subject to disciplinary action by oral or written reprimand, demotion, reduction in pay, suspension, dismissal, or any combination of the above." By allowing A__ to continue to harass her Black managers by imposing a lesser discipline, the County would not meet its obligation to ensure that the workplace is free of harassment and discrimination *for all employees*. A__ had already shown that she was unwilling to engage in good faith with her manager and supervisor, and if a 10-day suspension did not change her behavior, then nothing short of termination[*31] was the appropriate corrective action.⁴⁰

The County makes an *excellent and meritorious* argument. Unfortunately, this Award cannot be decided based on the County's excellent and meritorious argument; this Award must be decided based on all of the credible *facts* and *evidence* established at the Hearing.

Based on F____'s credible testimony, the County dismissed A__ based on her answers to questions 8 and 9 on the Form. In this instance, the County made an unfounded *assumption*—without inquiry or clarification—that A__'s responses on the Form constituted retaliation and/or discrimination against her superiors. In other words, the County *assumed* A__'s comments were directed at B____ and C____, without even asking A for clarification of her answers.

While again, the undersigned is sensitive to the fact that B____ and C____ have experienced racism in their lifetime, B____ and C____ seemingly interpreted *all* of A__'s actions as racially motivated, despite the absence of *any corroborating evidence* indicating that her conduct was driven by race discrimination or retaliation.

Moreover, much like the County's failure to take A__'s concerns and complaint seriously, upon reviewing C__'s interview concerning A__'s answers to questions 8, 9 and 10, a troubling inconsistency emerges: C__ deemed it acceptable to characterize A__ as "aggressive and hostile," yet C__ alleged in the CIU complaint that A__ discriminated against S__ for describing S__ as "aggressive and unkind." This contradiction raises additional concerns regarding the standards applied to A__'s conduct versus that of others.

Further, the record demonstrates that the County yet again failed to acknowledge that A__ is a woman of color and a member of a protected class when considering A__'s answers on the Form. B__'s testimony at the Hearing reflects his lack of recognition regarding A__'s protected class status:

When speaking to Black people and mentioning they may or may not be perpetuating White supremacy, you are missing—they may or may not be perpetuating White supremacy—like *you have no sensitivity towards people who are of a protected class*.⁴¹ That's what I mean.

B__'s above testimony further demonstrates that the County does not apply consistent treatment to *all individuals* within a protected class.

At the Hearing, A__ credibly testified that her answers to questions 8 through 10 on the Form were her "opinion," and that she anticipated that the Form would be used for a team activity. A__ further credibly testified that she was hoping to have a conversation with her peers and they could discuss their differences so that A__ could have a "better understanding of her peers."

A__'s above testimony demonstrates her willingness to improve her working relationships with her colleagues. A__'s testimony is also consistent with the assessment and evaluation she received concerning the classes she took post-Suspension:

Volunteered and was a spokesperson for their group

Had relative content[*32] to offer to the comments when asked for feedback on takeaways.

*Engaged very respectful*⁴²

Participated and was very honest around her learning environment.

A__ did not exhibit any disruptive behaviors or passive aggressive comments based on my observation.

The bottom line is, had the County sought clarification from A__ regarding her responses on the Form, it would have gained a more accurate understanding of her perspective. Her testimony was particularly compelling when she stated:

I put myself in the mindset if I were angry or upset how would I want to be communicated with. I would want to be respected and not have any retaliation. An *open conversation* to say, "these are the issues" and have that conversation and then move past it.⁴³

Unfortunately, rather than fostering open communication, the County made assumptions about A__'s intent without seeking clarification.

To sum it up, dismissing A__ based on preconceived assumptions undermines a fair and objective assessment of her actions. For this reason, given all the facts and circumstances and the totality of the evidence discussed in detail above, the undersigned has *no choice* but to find that the County failed to meet its burden to prove, *by clear and convincing evidence*, that A__ was dismissed "in good faith for cause."

What is the Appropriate Remedy?

In its Brief, the Union requests:

.....an order removing both disciplines from A__'s record. The Union requests an order reinstating A__ with a make whole remedy. The Union requests a finding that the make whole remedy includes an award of 9% interest consistent with the practice of the Oregon Employment Relations Board

The undersigned agrees that the Union's requested remedy is the appropriate remedy.

CONCLUSION

This Award was particularly challenging to draft given the serious allegations made by individuals within a protected class against another member of a protected class. As a member of a protected class myself, I understood the necessity of setting aside any preconceived notions to ensure a fair and objective assessment.

Both Parties' counsel conducted themselves with the utmost professionalism, making it a privilege to observe them during the Hearing. I deeply appreciate the trust both Parties placed in me to render a fair and reasoned decision.

AWARD

The Grievances are sustained. A__'s Suspension and Dismissal shall be expunged from her personnel file within a reasonable timeframe.

Within fourteen (14) days from today's date, the Parties shall meet-and-confer to determine A__'s reinstatement date and an appropriate "make-whole" remedy, including back pay with 9% interest. As stipulated to by the Parties, the Arbitrator shall retain jurisdiction of this matter until all matters of remedy are resolved.

All fees and expenses charged by the Arbitrator shall be paid by the County, as provided for in Article 17, Section 3. D.7.

DATED this 21st day of May, 2025.

Shianne Scott, Arbitrator

Portland, Oregon

fn

1 With exceptions as outlined in Article[*33] 3 of the Agreement.

fn

2 See, e.g., *An Economic Snapshot of the East Harlem Neighborhood*, issued by the Office of the New York Comptroller in December 2017 (<https://www.osc.ny.gov/files/reports/osdc/pdf/report-9-2018.pdf>).

fn

3 *Merriam-Webster Dictionary* (New ed., 2022).

fn

4 https://en.wikipedia.org/wiki/Puerto_Ricans

fn

5 Theodore Hamilton, *Where do Puerto Ricans Come From? A Deep Dive into the Island's Rich Heritage*. <https://www.ncesc.com/geographic-faq/where-do-puerto-rican-ancestors-came-from-2/>

fn

6 <https://data.census.gov/table?q=Puerto+Rico+Race+and+Ethnicity> [Redacted text] Although L__ now goes by her married name, L__, I will refer to her as L__, as that is how she was known when she worked with A__.

fn

8 See, e.g., "*The 'Q' in LGBTQ: Queer Questioning*." *American Psychiatric Association* (December 11, 2019):

Queer, when applied in an affirming manner, is an umbrella term to describe sexual orientation or gender identity that does not conform to dominant societal norms (e.g., straight/heterosexual) and does not match conventional labels like gay, lesbian, or bisexual.

fn

9 M__ also testified that C__ told her at around that same time frame, "We need to get rid of these White women" (or words to that effect). Although the undersigned finds M__'s testimony to be credible, the Arbitrator has concluded that C__'s statement is not pertinent to this Award. This determination is primarily due to the ambiguous context in which C__'s words were spoken.

fn

10 <https://www.pewresearch.org/short-reads/2021/03/18/majorities-of-americans-see-at-least-some-discrimination-against-black-hispanic-and-asian-people-in-the-u-s>

fn

11 See <https://www.statista.com/topic/11335/race-relations-in-the-united-state>

fn

12 See, Shalin Hai-Jew, "*Navigating Inequitable (Mis) Treatment and Racist Harassment in Higher Education During the COVID-19 Pandemic: A Self-Decentered Autoethnographic Case*," *Handbook of Research on Revisioning and Reconstructing Higher Education After Global Crises* (January 2023).

fn

13 R___ no longer works for the County.

fn

14 There was also testimony by B___ that P___ used the word "dictator," rather than "tyrant." More likely than not, the words "dictator" and "tyrant" can be used interchangeably.

fn

15 See, e.g., <https://library.revcom.us/a/511/puerto-rico-120-years-of-imperialist-exploitation-and-oppressionen.html>

fn

16 According to *Wikipedia*:

A "valley girl" is a socioeconomic, linguistic, and youth subcultural stereotype and stock character originating during the 1980s: any materialistic upper-middle-class young woman, associated with unique vocal and California dialect features, from the Los Angeles commuter communities of the San Fernando Valley. In subsequent years, the term was broadly applied to any American woman who epitomized frivolity, ditziness, airheadedness, or who prioritizes superficial concerns such as personal appearance, physical attractiveness,[*34] and excessive materialism over intellectual or personal accomplishment.

See https://en.wikipedia.org/wiki/Valley_girl

fn

17 See, e.g., Ella F. Washington, *Recognizing and Responding to Microaggressions at Work* (Harvard Business Review (May 10, 2022)).

fn

18 All emphases added.

fn

19 See Article 17, Section I.

fn

20 Afro-Puerto Ricans are individuals of Puerto Rican heritage with full or partial ancestry from sub-Saharan Africa, primarily descended from enslaved people, freed individuals, and free Black communities originally from West and Central Africa. See, e.g., Via, Marc; Gignoux, Christopher R.; Roth, Lindsey A.; Fejerman, Laura; Galanter, Joshua; Choudhry, Shweta; Toro-Labrador, Gladys; Viera-Vera, Jorge; Oleksyk, Taras K.; Beckman, Kenneth; Ziv, Elad; Risch, Neil; Burchard, Esteban González; Martínez-Cruzado, Juan Carlos, *History Shaped the Geographic Distribution of Genomic Admixture on the Island of Puerto Rico* (January 31, 2011); see also, *Puerto Rico 2020 census* (<https://www.census.gov/library/stories/state-by-state/puerto-rico.html>).

fn

21 WESP is an acronym that stands for the County's Workplace Equity Strategic Plan. *See* <https://multco.us/programs/safety-trust-and-belonging-workforce-equity-initiative>

fn

22 Emphasis added.

fn

23 Richard Mittenthal, and M. David Vaughn, *Just Cause: An Evolving Concept*, Arbitration 2006, at page 32.

fn

24 Schwartz, R. M. (2019, January 15). *Using 'Just Cause' to Defend Against Unfair Discipline*, Labor Notes, citing *Enterprise Wire*, 46 LA 359 (Daugherty, 1966).

fn

25 *See, Clearwater Paper Corp.*, 132 LA 465 (Gaba, 2013).

fn

26 2017 WL 1536542 (AAA), 9, citing *RCA Communications. Inc.*, 29 LA 567, 571 (Harris, 1961). *See also Riley Stoker Corp.*, 7 LA 764, 767 (Platt, 1947).

fn

27 **See, e.g. Exel Logistics**, 1993 BNA LA Supp. 102441 (Richard, 1993).

fn

28 *State of Alaska*, 114 LA 1305 (Gaba, 2000).

fn

29 *State of Alaska*, 114 LA 1305 (Gaba, 2000).

fn

30 *Pepsi-Cola Co.*, 104 LA 1141 (Hockenberry, 1995).

fn

31 Elkouri & Elkouri, *How Arbitration Works*, Chapter 15, Section 15.3.D.II.A. page 11 (8th ed., 2020) (emphasis added).

fn

32 Union's Brief at page 11.

fn

33 *Colorado v New Mexico*, 467 U.S. 310 (1984) (emphasis added).

fn

34 **See e.g.**, Elkouri & Elkouri, *How Arbitration Works*, Chapter 8, Section 8.4.C., page 14 (8th ed., 2020)

fn

35 Elkouri & Elkouri, *How Arbitration Works*, Chapter 8, Section 8.3.A, page 5 (8th ed., 2020) (emphasis added).

fn

36 See Bleyer, Willard Grosvenor (1913). "IV. Structure and Style in News Stories." *Newspaper Writing and Editing*, Cambridge, Massachusetts: Houghton Mifflin, p. 66. Retrieved January 28, 2024.

fn

37 *Colorado v. New Mexico*, 467 U.S. 310 (1984) (emphasis added)

fn

38 Interestingly, L__ did not. C__ merely e-mailed L__ to inform her that laughing during meetings is "unprofessional."

fn

39 All emphases added.

fn

40 County's Brief at pages 16-17 (emphasis in the original).

fn

41 Emphasis added.

fn

42 Emphasis added.

fn

43 Emphasis added.

Hanford Mission Integration Solutions, 2025 BNA LA 46

BEFORE SHIANNE SCOTT, ARBITRATOR

IN THE MATTER OF THE ARBITRATION BETWEEN

HANFORD GUARDS UNION, LOCAL 21, on behalf of A__, Grievant,

Union

and

HANFORD MISSION INTEGRATION SOLUTIONS,

Employer

**OPINION AND ORDER DETERMINING THE SUBSTANTITVE ARBITRABILITY OF THE UNDERLYING
GRIEVANCE (GRIEVANCE NO. 24-004)**

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