

IN THE MATTER OF: An Arbitration

BETWEEN:

ST. JAMES-ASSINIBOIA SCHOOL DIVISION

and

The Manitoba Association of Non-Teaching Employees

Grievance of Cerys Hooper

Kris Gibson, on behalf of the Employer

Scott Hoepfner, on behalf of the Association

Diane E. Jones, Sole Arbitrator

This matter came before me pursuant to the terms and conditions of the Collective Agreement between the parties (Exhibit 1). At the outset of the hearing the parties confirmed that I was properly appointed and had the jurisdiction to determine the grievance before me. They also waived the applicability of any time limits with respect to the issuance of this Award to the extent necessary.

The grievance states:

STATEMENT OF GRIEVANCE: I am grieving my suspension without pay and other disciplinary action as set forth in a letter dated October 6, 2011 from the St. James-Assiniboia School Division to me. The suspension without pay and related disciplinary action is without just cause, and contrary to Articles 4 and 26 of the Collective Agreement and the Collective Agreement as a whole.

REMEDY SOUGHT: (1) Withdrawal of the October 6, 2011 letter and removal of all related documents from my personnel file; and (2) full redress, including but not limited to, payment for any lost wages or other losses resulting from the suspension without pay. (Exhibit 2)

The Employer has denied the grievance (Exhibit 3c).

The discipline was imposed by the Employer after it received a complaint about the grievor from another employee. The Employer conducted an investigation and advised the grievor by letter dated October 6, 2011, it had concluded the following:

The Division has completed its investigation of the recent information brought to our attention concerning your treatment of another MANTE member, as well as a review of your employment history and discipline record. While you attempted to explain away and deflect responsibility for this situation, it is our conclusion that your actions directly resulted in this employee bidding out of John Taylor after nearly 25 years of service.

This employee reports having felt humiliated, intimidated and distressed off and on for a period of two years by your conduct towards her, including comments and exclusionary behaviour that have made her feel unwanted.

This situation culminated when after hearing of her decision to apply for the position, Mr. Lockhart brought the two of you together, on September 21st, so she could share her feelings with you. Once you became aware of how she felt there was still no change in your behaviour toward her. Your position as Head Secretary in the office makes this situation even more concerning. As well, given our knowledge or previous situations including the discipline already on file, it is our opinion that your behaviour is intentional and repetitive and is well within the Division's definition of bullying.

Given your previous suspension for unacceptable conduct, we trust that you will see this consequence as very moderate. However, as we are discussing with you today, it is time for you to make a decision about your intention of continuing to work for us as we will no longer tolerate this behaviour. We expect that the balance of today and tomorrow will provide you ample time to make this decision. To be clear, an immediate and sustained change in your behaviour is required for continued employment with us. (Exhibit 4)

In addition to the unpaid suspension of 1½ days the Employer required the grievor to fulfill 6 other specific steps, as outlined in its October 6th letter, prior to her return to work.

It was the position of the Employer that the grievor's conduct was an insidious and subtle form of bullying that was worthy of discipline and that the discipline imposed was appropriate given what had occurred, coupled with the grievor's refusal to accept responsibility and her previous record for similar conduct.

The Association's position was that the Employer has failed to prove the events that it relies on for its discipline and that the grievor's rights were not respected under the Collective Agreement or the Harassment Policy and that any discipline is therefore void. Further, it was the Association's position that if some of the grievor's conduct is found to be worthy of discipline the penalty imposed is too severe.

The Employer called as its witnesses Marlene Vechina, Scott Lockhart and Carrol Harvey. The Association called as its witnesses Cerys Hooper and Kerry Fraser. It is not my intention to recite all of the evidence and argument that I have heard and considered but to comment on its most salient points when necessary.

Marlene Vechina has been an employee for over 26 years. She worked at John Taylor Collegiate for 25 years as a secretarial assistant prior to moving to St. James Collegiate on October 31, 2011. Ms. Vechina reported to the grievor who was the Head Administrative Assistant from 2008 until October 2011 although she had been a peer of the grievor for 8 years. Ms. Vechina said she sought to make a move to the same position she held at John Taylor that became available at St. James Collegiate. She said during the last school year 2010-2011 she was not happy at John Taylor, her opinion was not valued, she did not feel part of the team, that what she contributed wasn't heard and that she felt Ms. Hooper thought she was not pulling her weight. Ms. Vechina said she felt this was primarily from what Ms. Hooper did and said. Ms. Vechina cited as specific examples the grievor's refusal to accept what Ms. Vechina said the principal had told her to charge for student fees and yearbook fees; the grievor's repeated references to how busy other secretaries were and how hard they were working so that Ms. Vechina felt the grievor was implying she was not doing enough; the comment by another secretary who was close to Ms. Hooper that the principal should have Ms. Vechina send out an email instead of her without acknowledging Ms. Vechina was busy working on other matters.

Ms. Vechina testified on her return to work in August 2011 at a meeting with the two other secretaries the grievor told her she would be receiving work from the grievor, the

back desk and the desk beside her. Ms. Vechina said she was caught totally off guard by this reassignment of work. She said when Mr. Lockhart the principal came into the main area of the office she raised the changes with him. She said Mr. Lockhart said he knew nothing about them, that job duties were not changing and that he wanted to know when such meetings were occurring. Ms. Vechina noted that Ms. Hooper said nothing and when the grievor was mad usually she doesn't say anything, other than giving short answers and then it "blows over".

Ms. Vechina said Mr. Lockhart called her in to ask her about a casual bid for the desk beside her. She said at that time she told him she was going to apply for another job in the Division and when Mr. Lockhart asked her why she told him she had not been happy because her opinion was not valued. She said Mr. Lockhart asked her for examples and she said she told him she felt she was not treated as part of the team and the perception she was given was that she was not pulling her weight. Ms. Vechina said she had loved her job and thought she might be able to be happy in a new job. Ms. Vechina said Mr. Lockhart was surprised at what she told him and asked her permission to speak to Ms. Hooper and meet with him and Ms. Hooper.

At the subsequent meeting with Ms. Hooper, Ms. Vechina said Mr. Lockhart brought forward Ms. Vechina's feelings, the August meeting where work assignments had been discussed and that Ms. Vechina was thinking of leaving. Ms. Vechina testified that Ms. Hooper did not seem to think anything was wrong, did not apologize, did not ask Ms. Vechina to reconsider leaving and did not talk to her at all about the situation.

Ms. Vechina said when she went to apply for the change of position to St James Collegiate she told Carrol Harvey what she had told Mr. Lockhart and what she had testified about. She said she applied for the job transfer out of John Taylor in September and stayed until the end of October when she transferred.

It was Ms. Vechina's evidence that after the meeting with herself, Ms. Hooper and Mr. Lockhart, Ms. Hooper did not interact with her, did not say anything to her unless it was work related and she never expressed any regret about her leaving John Taylor.

Ms. Vechina said Ms. Hooper had read from a piece of paper an apology, in compliance with her disciplinary letter (Exhibit 4), but she did not feel Ms. Hooper was sincere.

Ms. Vechina testified that she had never complained to Mr. Lockhart or Human Resources about the situation or how she was feeling because she kept hoping it would get better. She also said she was already perceived to be Mr. Lockhart's favorite and Ms. Hooper and Ms. Fraser had made comments about this to her.

In cross examination Ms. Vechina confirmed she had not raised the issues until Mr. Lockhart had asked her in September, but that she had been feeling the way she did for the better part of a year and it was not a comfortable year. Ms. Vechina agreed Ms. Hooper was her supervisor and could assign her various tasks. She also agreed Ms. Hooper had never made specific accusations about her.

Ms. Vechina said she disagreed with Ms. Hooper's assessment that the use of Synervoice for callbacks would be beneficial and said her view was that the call backs which she did served a very important purpose.

Ms. Vechina said a number of things were brought up by Ms. Hooper at the August meeting, including Synervoice. Ms. Vechina said Ms. Hooper's changes meant all of a sudden there would be jobs coming her way. She said she had adapted to lots of changes but what was being announced by Ms. Hooper made her feel that what she was doing and how she was doing it, just wasn't enough.

Ms. Vechina also said that the comments made at the August meeting in front of everyone, including a new person, about her birthday and Mr. Lockhart made her feel embarrassed and humiliated. She said she did not say anything during the meeting as it was all she could do to sit through the meeting. Ms. Vechina questioned how she was supposed to react given that she was sitting at the meeting, she thought others thought she was not pulling her weight and that she was not good enough. She agreed that no comments were made that she was not doing enough.

Ms. Vechina said she was not aware of the Division's "Staff Harassment and Bullying" Policy (Exhibit 5).

Ms. Vechina said she did not recall Ms. Hooper apologizing or saying she was sorry for how she felt at or after the meeting with Mr. Lockhart.

Ms. Vechina said she never spoke to Ms. Hooper about how she was feeling but went on with her work because that was what teamwork was all about.

Scott Lockhart has been with the Division for 28 years in a variety of positions including teacher, vice-principal and principal. He has been the principal of John Taylor for 7 years. Mr. Lockhart said the three office staff report to Ms. Hooper and he gives direction to Ms. Hooper. Mr. Lockhart said he was not aware of the change in duties Ms. Hooper announced in August 2011 and that he normally would have expected to know about them ahead of time. He said he became aware of them when he heard Ms. Vechina and Ms. Hooper talking about the new Synervoice operating system. Mr. Lockhart said he told them he wasn't going to look at any changes in job duties until there was further discussion with staff as a team, if any changes were to be made at all.

Mr. Lockhart said he was meeting with Ms. Vechina about something else when she indicated she was looking at another job posting. He said he asked her why and Ms. Vechina told him she had several concerns and was not comfortable with things. He said she felt her job was devalued, her job description was to be altered and Ms. Hooper had not spoken to her for periods of time. Mr. Lockhart said he was surprised by this and wanted to mend the situation and not have Ms. Vechina apply for another job. He said he arranged for a meeting on September 21st with Ms. Hooper, Ms. Vechina and himself. At that meeting Mr. Lockhart said Ms. Vechina explained why she was applying to work elsewhere and said she was not being valued and Ms. Hooper had not spoken to her for periods of time.

Mr. Lockhart described Ms. Hooper's reaction as one of surprise and concern and she indicated it was not her intention to make Ms. Vechina feel this way. Mr. Lockhart said Ms. Hooper did not apologize.

Mr. Lockhart testified that he told Ms. Hooper that she was the office supervisor and he expected better teamwork than Ms. Vechina had been experiencing. He said he told Ms. Hooper he was expecting her to rectify the situation and to make Ms. Vechina feel more of a team member (Exhibit 9). Mr. Lockhart said he believed Ms. Hooper's response was positive. He said she didn't know how Ms. Vechina felt which was why he made the positive statement to her about fixing the situation.

Mr. Lockhart said he became aware Ms. Vechina had spoken to Carrol Harvey and he participated in the investigation. He said he attended a meeting with Ms. Harvey, Ms. Vechina and Joan McEachern from MANTE. At this meeting which was approximately 1 week after the September 21st meeting, Ms. Vechina said things had not changed, Ms. Hooper had not spoken to her, there was no discussion about job descriptions and gave examples of how Ms. Hooper said Ms. Vechina was Mr. Lockhart's "favourite".

Mr. Lockhart said he also attended a meeting on September 30th with Ms. Harvey, Ms. McEachern and Ms. Hooper. He noted that at that time Ms. Hooper had to be reminded that she previously had met with Ms. Vechina and Mr. Lockhart and what was said. Mr. Lockhart said Ms. Harvey specifically asked Ms. Hooper about not speaking to Ms. Vechina. He said Ms. Hooper said she had not been taking coffee breaks because

she was too busy and otherwise had not spoken directly to Ms. Vechina other than directly about the job. Mr. Lockhart said by way of explanation for this Ms. Hooper said she thought Ms. Vechina was transferring and didn't want to make matters worse.

Mr. Lockhart reviewed the conditions for Ms. Hooper's return to work as set out in the October 6, 2011 disciplinary letter (Exhibit 4). He said he believed Ms. Hooper met all the conditions, although he was not certain if she acknowledged her part in the situation immediately on her return to work.

In cross-examination Mr. Lockhart said it was within Ms. Hooper's authority to make suggestions about reassignment of duties but not to reassign. He said Ms. Hooper had said she was not going on breaks because she was busy but he did not think that this was a reasonable explanation. Mr. Lockhart said he had never observed breaks not being taken and rarely was there a break missed. Mr. Lockhart said although his notes (Exhibit 9) referred to Ms. Hooper as being apologetic, she did not apologize although she was surprised and showed concern. Mr. Lockhart said he recalled Ms. Hooper saying she didn't intend to be mean or hurt Ms. Vechina and he said on September 21st he made it clear to Ms. Hooper what his expectations were. Mr. Lockhart said he told Ms. Hooper this was not the way a good office functions and that Ms. Hooper had to take steps to make sure Ms. Vechina felt part of the team. Mr. Lockhart noted that Ms. Hooper did not deny she had not spoken to Ms. Vechina for periods of time.

Mr. Lockhart confirmed that at the September 30th meeting he had to review with Ms. Hooper what he had said to her on September 21st because she did not seem to recall

that. He said Ms. Harvey emphasized the need for inclusion of Ms. Vechina and to talk to Ms. Vechina, but he did not believe specific dates when Ms. Vechina was excluded were put to Ms. Hooper. Mr. Lockhart said he thought distribution of workload was also discussed on September 30th.

Mr. Lockhart said he strung the birthday banner on Ms. Vechina's desk as a joke because someone had put it on his desk. He said in the office people try to give a card and a treat to everyone on their birthday. Mr. Lockhart said Ms. Vechina had not told him she was uncomfortable with this.

Mr. Lockhart said Ms. Hooper did not meet with him about the change in job duties prior to the August meeting, nor did Kerry Fraser come to speak to him after the August meeting.

In redirect Mr. Lockhart confirmed as his notes reflected that he specifically told Ms. Hooper on September 21st that Ms. Vechina had spoken to him about Ms. Hooper not speaking to her, excluding her in conversations with Kerry Fraser and not taking a break with her. He said he kept notes of September 21st because he knew there would be an issue about staff transfer, or the office he was in charge of. He said he made the notes in the afternoon after the meeting.

Carrol Harvey has been Manager of Human Resources, St. James-Assiniboia School Division for 10 years and held a similar position in private industry for 15 years prior to this. Ms. Harvey said she was familiar with the Staff Harassment and Bullying Policy

(Exhibit 5) and updated it when the Workplace Safety and Health Act changed. She also said she has attended conferences with respect to bullying and harassment.

Ms. Harvey said Ms. Vechina asked for a meeting and came to see her. She said Ms. Vechina was very upset and had decided to apply for a change of position. Ms. Harvey said that Ms. Vechina was shaking and crying and kept repeating over and over that she did not want to leave John Taylor, but that she had no recourse. Ms. Harvey said Ms. Vechina told her she had been harassed by Ms. Hooper for a number of years and in particular spoke about the work reassignment, feeling unwanted by Ms. Hooper, gossiped about and not feeling part of the team. Ms. Harvey said she asked Ms. Vechina why she had not come forward before and Ms. Vechina said she hadn't because she knew what kind of person Ms. Hooper was, that Ms. Hooper was her supervisor and she didn't know where to go.

Ms. Harvey said Ms. Vechina agreed to meet with Mr. Lockhart, Ms. McEachern and herself. She said she spoke to Ms. McEachern who was upset because this was more conflict with Ms. Hooper, and, Mr. Lockhart, who was upset because despite his direction to Ms. Hooper at the September 21st meeting the matter had not been rectified. Ms. Harvey said Ms. McEachern also said that now the Division was aware of Ms. Vechina's complaint and it had an obligation to deal with it.

Ms. Harvey said she also checked Ms. Vechina's work record and found her 25 year record to be clear with average or above average performance appraisals.

At the meeting of September 26 with Mr. Lockhart and Ms. McEachern, Ms. Harvey said Ms. Vechina gave examples and talked about workload, her exclusion, such as everyone going to lunch except her, the birthday favorite comment and that Ms. Hooper was not talking to her. Ms. Harvey said she decided she needed to follow up with Ms. Hooper.

Ms. Harvey testified that Ms. McEachern never expressed any concern on September 26th or any other time in September or October 2011 that no written complaint was made by Ms. Vechina or that the complaints were older. Ms. Harvey said Ms. McEachern told her this was clear evidence of bullying and the Division had an obligation to investigate. She said Ms. McEachern also told her she had attended a course on bullying, which said that even one incident needs to be addressed.

Ms. Harvey described the meeting on September 30th with Ms. Lockhart, Ms. McEachern and Ms. Hooper. Ms. Harvey said she had prepared questions for Ms. Hooper. She said she began asking questions and Ms. Hooper immediately jumped up, put her hand on the door handle and said words to the effect of “ I don’t know what you are talking about. It’s news to me. Get Marlene in here right away so I can ask her.” Ms. Harvey said she told Ms. Hooper to sit down and to please discuss the matter. She said Mr. Lockhart said to Ms. Hooper she did know what this was about because they had met about it and he read out loud from his notes (Exhibit 9). Ms. Harvey said Ms. Hooper then said she remembered that.

Ms. Harvey said she specifically asked Ms. Hooper if she was speaking to Ms. Vechina and she said Ms. Hooper acknowledged she had not spoken to her, except for direct work

instructions since September 21st. She said Ms. Hooper also said she had not apologized to Ms. Vechina, except if a work assignment was unfair. Ms. Harvey said Ms. Hooper had said she had not spoken to Ms. Vechina because she was busy. Ms. Harvey said she told Ms. Hooper she did not accept this explanation and Ms. Hooper then said she did not want to be accused of harassment. Ms. Harvey said that Ms. Hooper said she could not accept any responsibility for the situation with Ms. Vechina.

Ms. Harvey said she discussed with Ms. Hooper her prior discipline (Exhibit 10, September 10, 2007 written warning and Exhibit 11, October 7, 2008 2 days suspension without pay) and noted these had not been grieved.

Ms. Harvey said after the September 30th meeting she took some time to determine what the consequences should be for Ms. Hooper's behaviour. She said she thought the consequences needed to be severe because there was a pattern of behaviour on Ms. Hooper's part that included difficulty with people, a discipline record, deflective behaviour and not taking responsibility. Ms. Harvey said she realized the discipline on Ms. Hooper's record was a little old and therefore termination was not appropriate. She said the principal was "keen" with respect to Ms. Hooper's job performance and she thought that rehabilitation was perhaps possible if Ms. Hooper could accept responsibility and improve her behaviour. Ms. Harvey said ultimately she decided that punitive time away, with the conditions set out in the discipline letter (Exhibit 4) fulfilled by Ms. Hooper, offered the most rehabilitative potential.

Ms. Harvey reviewed with Ms. Hooper the conditions imposed. She said she thought whether or not Ms. Hooper accepted them could go either way and she explained to her that she should take some time to think about her behaviour. Ms. Harvey said it was clear from September 21st that Ms. Hooper had engaged in shunning behavior towards Ms. Vechina and Ms. Hooper needed to really think about how to behave better. With respect to the specific conditions as set out, Ms. Harvey noted that Ms. Hooper had indicated to Mr. Lockhart that she was committed to building a cohesive team; had attended the October 28th training and had submitted a written synopsis of the training. Ms. Harvey commented that although she found the synopsis (Exhibit 7) to be very superficial, it met the minimum requirement of the condition imposed.

In cross-examination Ms. Harvey acknowledged these were serious allegations against Ms. Hooper and that the Employer also had obligations under the Workplace Safety and Health Act. She agreed there was a stigma attached to an accusation such as bullying and there was a need to exercise caution and to be fair to both sides. Ms. Harvey said she did not speak to other employees who attended the August meeting. She said she put to Ms. Hooper all the specific events she was aware of in order to get Ms. Hooper's side. Ms. Harvey said she did not need to speak to other employees because she believed what Ms. Vechina had told her was true and Ms. Hooper confirmed that she had not spoken to Ms. Vechina since September 21st. Ms. Harvey said she did not see how information from other people would change that. Further, Ms. Harvey said other people's opinion about the proposed job duties changes made at the August meeting did not change what Ms. Vechina's experience or reaction was.

Ms. Harvey acknowledged that Ms. Hooper had told her she was busy in September but said that she did not see it as a complete answer to not speaking to someone who she knew was upset and leaving. Ms. Harvey said it was clear that Ms. Hooper had not spoken to Ms. Vechina since September 21st and it didn't matter why. Ms. Harvey said she told Ms. Hooper she did not accept her explanation and saw it as deflection by Ms. Hooper of her responsibility.

Ms. Harvey acknowledged that it is difficult to respond to allegations from two years ago and that the Bullying and Harassment Policy (Exhibit 5) refers to the filing of a complaint within a month. Ms. Harvey said she did put some events from that 2 year time period to Ms. Hooper, including not inviting Ms. Vechina to lunch when all others were invited and conflict with other employees. Ms. Harvey said Ms. Hooper remembered the lunch incident and agreed initially it did not include Ms. Vechina, but said she eventually invited Ms. Vechina to lunch.

Ms. Harvey said although she was investigating all of Ms. Vechina's complaints and put to Ms. Hooper all the specific events she was aware of, she mostly limited her review to the 2010-2011 school year. She said she acted as promptly as she could as soon as Ms. Vechina brought the information to her. Ms. Harvey said at the September 30th meeting she told Ms. Hooper that Ms. Vechina felt unwanted, had not been spoken to since September 21st, had been excluded from lunch, had been retaliated against by Ms. Hooper because of the student fee/yearbook fee mix up by Ms. Hooper not speaking to her for a few days.

Ms. Harvey noted that the September 30th meeting Ms. Hooper spoke as long as she wanted to in response to the questions and discussion and explained as well her assignment of work duties in the office. Ms. Harvey said she told Ms. Hooper that the issue was not the reassignment of work but the treatment of Ms. Vechina in the assigning of work. Ms. Harvey said she knew Ms. Hooper had only one month of supervisory experience when she was hired as head secretary and that training was not offered on hiring.

The Employer closed its case.

Cerys Hooper has been head secretary at John Taylor since 2008 and has held various positions in the Division for 17 years, including Student Information Officer and Night Secretary Continuing Education. She said as head secretary she supervises two secretaries and the Information Officer.

Ms. Hooper said prior to September 21st she thought she had a good working relationship with Ms. Vechina and occasionally took morning breaks together. She said on September 21st Mr. Lockhart called her into the office and told her that Ms. Vechina had applied for another job and that she was part of the reason for this. Ms. Hooper said Ms. Vechina came into the office and said since the August meeting her perception was that Ms. Hooper felt she was not carrying her weight. Ms. Hooper said she was shocked at this and had no idea Ms. Vechina felt this way. She said she told Ms. Vechina that it was not her intention to have her feel this way and she wished Ms. Vechina had come to

her. Ms. Hooper said Ms. Vechina said she had a lot of thinking to do and that's how things were left.

Ms. Hooper said she had called a meeting in August to discuss front desk duties. She said she wanted to use Synervoice for grade 9 and 10 call backs which would give Ms. Vechina more time to help out in busy times. Ms. Hooper said there was discussion as well that included the movement of cumulative files from the front reception to Ms. Fraser at the back, sharing of transcripts and field trips between the 2 front receptionists. She said duties were not changed because she had to talk to Mr. Lockhart. Ms. Hooper said there was some discussion about birthdays and Ms. Fraser commented that Ms. Vechina was Mr. Lockhart's favorite. She said the meeting lasted 15-20 minutes. Ms. Gibson objected to the evidence on the basis that this specific and different evidence respecting change in job duties and birthdays was not put to Mr. Lockhart or Ms. Vechina.

With respect to the disagreement with Ms. Vechina about the correct amounts to be assigned for student fees and yearbook fees, Ms. Hooper said she checked with the vice principal to verify the correct amount after speaking to Ms. Vechina because Mr. Lockhart often changes his mind and doesn't communicate his decision to everyone. Ms. Gibson again objected and noted this evidence was not put to Mr. Lockhart.

Ms. Hooper testified that August and September are very busy and hectic with the start of the school year. She said in August/September of 2011 this was even more so since there was a new receptionist, Corinna, who was present for 3 weeks and then left and

was replaced with a casual. Ms. Hooper said this required her to take on more duties, especially with respect to the fall awards, and she accomplished these duties by working through her breaks.

Ms. Hooper said she was called in on September 30th by Mr. Lockhart to speak with Ms. Harvey about issues with Ms. Vechina. She said she did not remember everything about the meeting but said Ms. Harvey told her she was not doing anything to make Ms. Vechina feel better. Ms. Hooper said she was totally caught off guard and that she asked for Ms. Vechina to be brought in but Ms. Harvey told her what was done was done and there would be further disciplinary action. She said this meeting was not long.

With respect to the October 6th meeting, Ms. Hooper said she was given the disciplinary letter (Exhibit 4). She said she had complied with the conditions expected of her as set out in the letter.

Ms. Hooper said she had never made any comments to Ms. Vechina about not pulling her weight.

In cross-examination Ms. Hooper was asked if it was her position that she did not bully Ms. Vechina. She replied that “there is no evidence of that”. She agreed that from September 21-30 she did not speak to Ms. Vechina and that she was very busy and preoccupied with work. Ms. Hooper was asked if she did not have 5 minutes to speak to Ms. Vechina in the days after the September 21st meeting with Mr. Lockhart and

Ms. Vechina and she said she was preoccupied with work. Ms. Hooper said she had said she was sorry to Ms. Vechina on September 21st.

Ms. Hooper said Ms. Vechina seemed a little upset on September 21st but was not crying or shaking. She said Ms. Vechina said she felt Ms. Hooper thought she wasn't carrying her weight. Ms. Hooper said she could not remember Ms. Vechina's exact words but that she felt sorry Ms. Vechina felt that way.

Ms. Hooper said she did not recall Mr. Lockhart referring to a number of occasions in the previous school year that Ms. Hooper had not spoken to Ms. Vechina. Ms. Hooper also said that she did not recall Mr. Lockhart telling her to make Ms. Vechina feel better and feel part of the team. She said if Mr. Lockhart had said that she would have had a conversation with Ms. Vechina. Ms. Hooper agreed she did not speak to Ms. Vechina other than to give work directions until she left for her new position but that she was always cordial and said hello and goodbye. Ms. Hooper noted she did not take breaks.

Ms. Hooper said Mr. Lockhart was wrong when he said he had not seen staff not take their breaks.

Ms. Hooper said she had told Ms. Harvey on September 30th that she had not taken a break with Ms. Vechina since September 21st. Ms. Hooper said she did not talk to Ms. Vechina other than breaks and that since September 21st they had not had breaks together.

Ms. Hooper agreed Ms. Harvey had told her on September 30th that she had treated Ms. Vechina disrespectfully but did not recall Ms. Harvey saying she had excluded Ms. Vechina from the group. Ms. Hooper said she felt she was being attacked by Ms. Harvey and didn't know what she had done. Ms. Hooper denied she had told Ms. Harvey to bring Ms. Vechina in to the meeting right away on September 30th to say it to her face.

Ms. Hooper denied she said on September 30th that what Ms. Harvey said was "all news" to her. She said she did not recall Mr. Lockhart speaking and saying it was not "news" since he had outlined it all before on September 21st. Ms. Hooper said Ms. Harvey did most of the talking.

Ms. Hooper disagreed that the issue of not speaking to and not including Ms. Vechina was discussed on September 21st and September 30th. She said on September 21st the issue was Ms. Vechina's perception that Ms. Hooper thought she was not pulling her weight and on September 30th the issue was Ms. Harvey saying Ms. Hooper was not taking breaks with Ms. Vechina. Ms. Hooper denied Ms. Harvey said on September 30th she was shunning Ms. Vechina and said shunning was mentioned on October 6th.

Ms. Hooper said she wanted to redistribute the work duties because she felt the second receptionist had a heavier work load, especially during times like the fall awards. She said Corinna, the new second receptionist had raised this. Ms. Hooper said she had the meeting in August to discuss this and was feeling people out and doing her research. She said at the August meeting Ms. Vechina and Ms. Fraser discussed Ms. Vechina's

birthday and Ms. Fraser made a comment about Ms. Vechina being Mr. Lockhart's favorite. Ms. Hooper said both Ms. Vechina and Ms. Fraser laughed.

Ms. Hooper said Mr. Lockhart's recollection about the discussion about the change in office duties that occurred in the main office was different from hers. Ms. Hooper said she mentioned Synervoice to Mr. Lockhart and he was not sure he liked the idea and she and Mr. Lockhart went to the main office to speak to Ms. Vechina. Ms. Vechina said she did not like the idea either. Ms. Hooper said Mr. Lockhart then said that was it and nothing was going to change.

Ms. Hooper said she was not upset in any way with Ms. Vechina about the student fees/yearbook fees but was frustrated with Mr. Lockhart. She said at that time she did speak to Ms. Vechina and did take breaks.

Ms. Hooper said she complied with all of the conditions set out in the discipline letter. She said she did not believe she showed any social aggression towards Ms. Vechina, had spoken to her cordially, had apologized and had attended the seminar but felt the seminar was more suited to someone in Mr. Lockhart's position. Ms. Hooper said it was her view that no one had given her specifics as to what it was she had done to make Ms. Vechina feel the way she did.

There was no redirect.

Kerry Fraser has been at John Taylor Collegiate for 7 years. She is currently the Student Information Officer but has previously been the secretarial assistant.

Ms. Fraser said she attended the August 2011 meeting where workloads were discussed, moving certain tasks from one desk to another and the use of Synervoice to free up the front end.

Ms. Fraser said in September 2011 the office was very busy and made even more so because a casual person, without experience, was filling in at second reception. She said she helped the casual person and shared fall award duties with Ms. Hooper. Ms. Fraser said she thought Ms. Hooper was a little busier because of the casual person filling in.

Ms. Fraser said she absolutely did not make a statement at the August meeting that Ms. Vechina was Mr. Lockhart's favorite.

In cross-examination Ms. Fraser agreed that to have made such a statement about being Mr. Lockhart's favourite would be inappropriate. She said she would be surprised to learn Ms. Hooper had attributed that statement to her.

Ms. Fraser said she had not known in advance what would be discussed at the August meeting. She said she understood from the meeting that certain duties were going to be reassigned. She said Synervoice was discussed but that Ms. Hooper was also going to discuss it with Mr. Lockhart.

Ms. Fraser agreed that small talk occurred in her workplace and it was an important part of a collegial workplace.

MANTE closed its case.

Ms. Gibson began the argument on behalf of the Employer noting that there was not a lot of case law that dealt with this type of conduct given that it is subtle and difficult to prove. Ms. Gibson filed and reviewed the authorities set out at the end of this Award. Ms. Gibson referred to the “Dealing with Workplace Harassment and Bullying” article. She said this article, which predated the Workplace Safety and Health Regulation changes which incorporated the concept of personal harassment and bullying into the Workplace Health and Safety scheme, used a definition of personal harassment similar to that of the Regulations. Ms. Gibson said personal exclusion was cited as an example of workplace bullying (page 2) and that research has shown that 25% of targets of bullying will leave the job (page 3).

Ms. Gibson said on the facts of this matter Ms. Vechina did not file a complaint and intended to leave quietly, and it was only when Mr. Lockhart and Ms. Harvey probed that the story came out. Ms. Gibson said that this illustrated the insidious nature of bullying – people are minimized, they question what is happening and don’t understand what they have done and question themselves, and that bullies believe they can get away with their behaviour without penalty (page 5). Ms. Gibson said with respect to Ms. Vechina’s situation the Employer, once aware, properly addressed the bullying behaviour.

Ms. Gibson referred to the Canada Safety Council article which stated:

...the target chosen by an adult bully will very often be a capable, dedicated staff member, well liked by co-workers. Bullies are most likely to pick on people with an ability to co-operate and a non-confrontative interpersonal style. The bully considers their capability a threat, and determines to cut them down...

In addition he or she humiliates the target, especially in front of others, and ignores, overrules, isolates and excludes the target. (page 2)

She said this, as described in the article is what had occurred with Ms. Vechina.

Ms. Gibson said the Workplace Safety and Health Act defined harassment as including severe conduct that adversely affects a worker's psychological or physical well-being and its Regulations required employers to develop and implement a written policy to prevent harassment and ensure compliance with the policy. She said that regardless of whether or not a complaint is made, the Employer has an obligation to investigate and in this case Mr. Lockhart and Ms. Harvey did so once information about the situation became known.

Ms. Gibson noted that Mr. Hoepfner had argued that the Employer had not proven its case and that it appeared that the grievor had taken this assertion to heart. She said when the grievor was asked if she had bullied Ms. Vechina, the grievor did not say "no" but instead said no one had proven that she did.

Ms. Gibson argued that credibility was at issue in this case and that there were serious differences in the evidence. She said where there was a difference in evidence between the grievor and others, the evidence of others should be believed and accepted.

Ms. Gibson reviewed the following:

- the rule in Browne v. Dunne, is in essence about fairness and where witnesses given testimony about crucial matters not put to the preceding witness, generally the subsequent witness is telling a different story, perhaps even different from what the lawyer was told in preparing the case;
- Ms. Hooper has positioned her testimony (that Mr. Lockhart changes his mind frequently), that she intended to talk to Mr. Lockhart about changing job duties) after she heard the evidence of the Employer's witnesses;
- the June student/yearbook fees incident was said by the grievor to be the result of Mr. Lockhart's forgetfulness; she said she had previously spoken to Mr. Lockhart and was told something different than he told Ms. Vechina but this evidence was not put to Mr. Lockhart at all;
- the grievor said she intended to talk to Mr. Lockhart about the reassignment of job duties in August and that she was talking to him in his office and that conversation moved to the front desk where Ms. Vechina was spoken to, but this evidence was not put to Mr. Lockhart and yet contradicts the evidence of Ms. Vechina and Mr. Lockhart that they first were discussing the job reassignments;
- Ms. Hooper changed her story from her evidence as given in direct when cross examined; this included Ms. Hooper's denial of statements made by her, pretending not to understand and expanding and adding elaborate details (heavy workload became very detailed information about awards, posting etc)
- Ms. Hooper minimized serious aspects of the evidence (her meeting with Ms. Harvey was short, she felt attacked, she didn't understand what was said);
- Ms. Hooper claimed Ms. Vechina brought up her birthday at the August meeting; this was neither reasonable or logical that Ms. Vechina would raise this given that Ms. Vechina was not comfortable with the August meeting at all;

- collateral issues that aid in assessing credibility include Ms. Hooper’s description of the August meeting as a discussion in contrast with Ms. Fraser’s evidence that specific work duties were changed and moved from one desk to another and that it was a “done deal”;
- another example of a collateral issue is Ms. Hooper’s assertion that she was “swamped” and training the new “casual” person, while Ms. Fraser said she trained the new casual person and Ms. Hooper was a “little bit busy”.
- Motive is an important component in assessing credibility:
 - Ms. Gibson argued that Ms. Vechina did not have any motive to alter her testimony – she is no longer working at John Taylor, she has a new job
 - further, no ulterior motive was suggested to Ms. Vechina;
 - in contrast, the grievor does have motive given that she already has a disciplinary record.

Turning to the particulars of Ms. Vechina’s evidence, Ms. Gibson noted that the older conduct of the previous school year was generally referred to by Ms. Vechina. This included her feeling of being excluded, ganged up on and comments made by the grievor in her presence about the other receptionists having heavier workloads. Ms. Gibson said although the grievor denies these comments they are consistent with what the grievor described in her direct evidence, particularly.

With respect to Ms. Hooper not talking to Ms. Vechina, Ms. Vechina said if Ms. Hooper was mad she would not talk for a period time and that this happened repeatedly. Ms. Gibson said Ms. Vechina was clear and unshaken in her testimony about this and offered these specific examples:

- June 2011 when Ms. Hooper went out of her way to challenge Ms. Vechina about yearbook/student fees allocation; when Ms. Vechina proved to be correct, Ms. Hooper did not talk to her and shunned her;
- August 2011 after the August meeting when Ms. Hooper and Ms. Vechina were talking about Synervoice and callbacks Mr. Lockhart intervened in the and said

there would be no change in duties; Ms. Vechina said after this Ms. Hooper would not talk to her because Mr. Lockhart had taken Ms. Vechina's side;

- September 21, 2011 meeting, Ms. Vechina was upset but Mr. Lockhart directed Ms. Hooper to make an effort to include Ms. Vechina and rectify the situation so that Ms. Vechina would consider staying; from that point on Ms. Hooper does not speak to Ms. Vechina, other than to give work directions, and completely shuns her.

With respect to teasing and feeling belittled, Ms. Vechina's evidence was that when she arrived at the August meeting Ms. Hooper and Ms. Fraser were already joking around about Ms. Vechina being Mr. Lockhart's favorite. Ms. Hooper says Ms. Vechina started the talking about birthdays and Ms. Fraser said Ms. Vechina was the favorite. Ms. Fraser adamantly denies saying this. Ms. Gibson argued that taken as a whole and juxtaposed with the change in job duties announced by Ms. Hooper it was sly joking at Ms. Vechina's expense that made her feel belittled.

Ms. Gibson argued that the grievor would have it be believed that at the September 21st meeting Ms. Vechina only said it was her perception that Ms. Hooper thought she was not pulling her weight. Ms. Gibson said the grievor completely ignored or minimized what Ms. Vechina had said about not feeling part of the team, being excluded and not being talked to. Ms. Gibson argued that the evidence about September 21st from Mr. Lockhart and Ms. Vechina and what was reviewed as being said about September 21st on September 30th when the matter was discussed with Ms. Harvey was that Ms. Vechina had said she felt excluded and was not being spoken to by Ms. Hooper. Ms. Gibson pointed out that Mr. Lockhart's notes (Exhibit 9) confirm what was said on September 21st and the direction he offered was logical and made sense, yet Ms. Hooper continues to deny this was addressed.

Further, Ms. Gibson referred to Ms. Harvey's evidence that Ms. Hooper admitted on September 30th that she had not talked to Ms. Vechina since September 21st. She said in her evidence Ms. Hooper had tried to tie not talking to Ms. Vechina and not taking breaks because she was too busy. Ms. Gibson said this explanation was not acceptable and ignored the specific instruction given by Mr. Lockhart to rectify the situation and ensure Ms. Vechina felt part of the team. Ms. Gibson argued that no matter how busy Ms. Hooper was, she had worked with the grievor for a number of years, had been instructed by her principal to rectify the situation which had been discussed on September 21st so that Ms. Vechina would feel part of the team and yet Ms. Hooper claimed she didn't have any time to talk to her. Ms. Gibson said Ms. Hooper's behaviour was unacceptable and was purposeful in her treatment of Ms. Vechina, the very exact thing the discipline was about.

Ms. Gibson addressed the MANTE's position that the discipline imposed should be found to be void since the Employer did not follow its internal policy. Ms. Gibson rejected this position and referred to Bethany Care Society where the arbitrator refused to allow a procedural irregularity relieve the grievor of her responsibility (page 18).

It was the position of the Employer that having proved discipline was warranted, there was no valid argument to reduce the penalty. She noted the grievor did not have a clean disciplinary record (Exhibit 10, 11) but even if she did the suspension was well deserved.

In summary Ms. Gibson said from the evidence it was abundantly clear that the grievor “does not get it”. She said the grievor is minimizing her conduct, and blaming others and her attitude is exemplified by her statement at the hearing not that she did not do it but that it hasn’t been proved.

Mr. Hoepfner began the argument on behalf of MANTE by saying that the Employer had failed to properly investigate this matter and had accepted Ms. Vechina’s complaint at face value without giving the grievor a true chance to explain. He said this was not a case about Ms. Vechina’s feelings but what the Employer can prove. Mr. Hoepfner said it was the position of MANTE that the Employer had not proven conduct worthy of discipline, that the discipline imposed was void *ab initio* because it was unfair and prejudiced the grievor and if disciplinable conduct was found then the penalty should be reduced. Mr. Hoepfner further said the events do not constitute bullying and/or harassment under the Employer’s policy.

Mr. Hoepfner said the Employee must prove on the balance of probabilities that there is just cause for discipline and that the onus lies with the Employer to prove the conduct (New Flyer paragraph 21). He also said that just accepting Ms. Vechina’s complaint does not establish proof and cited Arbitrator Hamilton in Health Sciences Centre in support of this assertion:

That management chose to believe the version of one witness over another does not answer the issue nor can the acceptance of one version, in and of itself, be taken as corroborative of the version accepted. The assessment of management must not only be bona fide (which I accept here) but it must also be tested against the evidence as a whole and, of course, the burden of proof. (page 23)

Turning to the evidence of Ms. Vechina and Ms. Hooper, Mr. Hoepfner said that Ms. Vechina described her feelings, which the Employer relied on, but that is not enough. He said Ms. Hooper was surprised when confronted on September 21st by Ms. Vechina's perception that she felt Ms. Hooper didn't think she was pulling her weight. Mr. Hoepfner said no specific comments or times were given by Ms. Vechina and argued essentially what was described was a feeling which in and of itself was not proof.

Mr. Hoepfner said Ms. Vechina's testimony about the yearbook/student fees incident was that it was reasonable to confirm the specific amounts with Mr. Lockhart. He said that although Ms. Vechina was upset about the rearranging of duties, she agreed in her testimony that other employees' duties were also rearranged. Mr. Hoepfner said while Ms. Vechina described herself as being humiliated by the birthday discussion and being characterized as being Mr. Lockhart's favorite, she was not sure whether it was Ms. Hooper or Ms. Fraser who initiated the discussion. Mr. Hoepfner said the examples of Ms. Vechina's own evidence established that the Employer has not proven the events and disciplinable conduct.

Further, Mr. Hoepfner argued, the Employer in its discipline letter said the grievor's behaviour was "...intentional and repetitive and is well within the Division's definition of bullying" yet the Employer's evidence does not bear this out.

Mr. Hoepfner urged caution in applying the label of "harasser". He referred to Arbitrator Greyall's admonition in Eurocan "Whatever the motivation or reason for such

a charge, it must be treated gravely, with careful, indeed scrupulous, fairness given both to the person raising the allegation of harassment and those against whom it is made” (page 8). Mr. Hoepfner argued that in this matter the Employer had proven very little and that the events relied on were vague, not date specific and consisted largely of feelings perhaps felt by someone who is too sensitive. He said the Employer has failed to meet the burden it must discharge.

Mr. Hoepfner said even if it were to be found that the events were proven and constituted bullying the discipline ought to be overturned and found to be void because the Employer failed to deal with it promptly and failed to follow policy. In this respect Mr. Hoepfner noted that the discipline letter refers to events over a two year period and Ms. Harvey’s testimony included her reliance on a situation as forming part of the discipline but not referred to in the discipline letter.

Mr. Hoepfner said the Employer’s policy contemplates reporting harassment or bullying promptly and that complaints must be filed within one month (Exhibit 5). Mr. Hoepfner argued that this was not done in these circumstances and as a result there is an inherent prejudice to the grievor.

Mr. Hoepfner also took issue with the Employer’s investigation. He said Ms. Harvey should have interviewed third party witnesses, including Ms. Fraser and other secretaries. He said her assertion that she did not need to speak to any others since she believed Ms. Vechina and thought that Ms. Fraser would side with Ms. Hooper showed that the investigation was flawed and prejudicial.

Mr. Hoepfner said Article 4.01(iv), which required the Employer act reasonably, fairly, and in good faith and in a manner consistent with the Collective Agreement, and, Article 26.01(a), which required reasons in writing promptly for the suspension be given had been violated.

Mr. Hoepfner reviewed Arbitrator Jamieson's decision in City of Ottawa where the grievance was upheld having found the investigation to be "superficial" falling short of what is required to meet the standard of fairness" and "arbitrarily accepting" the version of the facts and shifting the burden to the grievor to disprove allegations had tainted the process (paragraphs 32, 34, 37, 41). He also reviewed Arbitrator McKenzie's decision in Phil Mar where it was found the grievor had not been given adequate opportunity to clarify or address certain issues and the grievance was allowed (page 4). Mr. Hoepfner urged that a similar conclusion be reached here given that only vague notions of improper behaviour were put to Ms. Hooper, the investigation was not fair given that witnesses were not interviewed and the grievor was not given the opportunity to respond.

Turning to the timeliness argument Mr. Hoepfner said the Employer's policy required that complaints be filed within a month, which he said avoids stale allegations. He reviewed the Aluminum Brick case where Arbitrator Herlich held that "...the inherent unfairness and prejudice associated with allowing the tardy imposition of discipline in relation to the kind of allegation involved in this case ...that to allow this case to proceed would be unjust (paragraph 34) and Farwest Transit where Arbitrator McEwan accepted the union's argument that "Only by providing an employee with the particulars of his/her

alleged wrongdoing in a timely way can one ensure that the employee is afforded a fair opportunity to respond to them” (paragraph 28). Mr. Hoepfner said it was clear that delay equaled prejudice and Ms. Hooper had been prejudiced by the delay respecting Ms. Vechina’s allegations which the discipline letter referred to a two year period of conduct. Consequently the discipline should be found to be void *ab initio*, he said.

Mr. Hoepfner argued the discipline letter failed to adequately disclose the reasons for discipline. He referred to the Nova Scotia case where Arbitrator Venoit held that notice of discipline must be sufficiently detailed so that each of the transactions underlying the discipline is identified and the Employer bears the burden to do so (paragraph 19). Mr. Hoepfner urged me to find that the Employer’s discipline letter failed to discharge this burden.

Given the Employer’s failure to investigate this matter fully, its failure to follow timelines and its failure to provide adequate reasons, Mr. Hoepfner said the discipline should be overturned and the grievance sustained.

Mr. Hoepfner said in the event that it is held there is found to be conduct worthy of discipline, MANTE’s position was that the discipline imposed was too harsh and that mitigating factors should be considered. He said these include the grievor’s 17 years of service and clear disciplinary record for the last 3 years; the inconsistent application of the Employer’s Harassment and Bullying Policy to the grievor; that the grievor is a first time manager with no experience and has not received training. He said as well the delay and insufficient reasons provided could be considered as other mitigating

circumstances. At best, if disciplinable conduct is found, any discipline should be relatively minor, no more than a warning. He asked that the grievance be sustained.

In reply, Ms. Gibson objected strongly to the characterization that only Ms. Vechina's feelings were described. She said Ms. Vechina described the grievor's conduct including comments made in her presence, how she was questioned about yearbook/student fee apportionment, the complete absence of social interaction, the laughing and joking at Ms. Vechina's expense with respect to the birthday comment.

Ms. Gibson said specifics were repeatedly put to Ms. Hooper on September 21, 30, and October 6 when the discipline letter was given. She argued that for MANTE's procedural unfairness objection to succeed would require the acceptance of Ms. Hooper's evidence that she had not been given specifics. Ms. Gibson said the evidence was clear that Ms. Hooper had been given specifics.

Turning to the discipline letter, Ms. Gibson said the whole of the letter must be read and it was clear that its primary focus was what had happened when Ms. Hooper was made aware of Ms. Vechina's complaints on September 21st and the shunning of Ms. Vechina that took place after September 21st. Ms. Gibson said this clearly met any test with respect to specificity.

Ms. Gibson disputed that Ms. Harvey had referred to any other situation, involving another employee, as forming part of the discipline.

Ms. Gibson argued that MANTE's assertion that the policy was not followed was without merit. She said the definition of harassment included in the policy was very broad and there was no doubt that making snide comments, not talking to someone and shunning was social aggression.

Ms. Gibson argued that there was no complaint made under the policy, but the situation came to Ms. Harvey's attention when Ms. Vechina sought to transfer. She said once Ms. Harvey became aware of the situation, there was an obligation under the Workplace Safety and Health Act to investigate, which Ms. Harvey promptly did. Ms. Gibson argued that given these circumstances it is not clear that the steps of the policy must be followed.

Ms. Gibson agreed that generally an obligation exists to treat a grievor fairly. She said that the argument that the situation has not been properly investigated is if Ms. Hooper's evidence is accepted that she was not told specifics. Ms. Gibson said this was not the case. She also argued that delay is a relevant consideration from the time the employer knows of the situation and on these facts, there is no delay.

Ms. Gibson said reference to years of conduct has been taken out of context. She said it was clear to all concerned that events in June, August and September, 2011 are what were put to the grievor. Ms. Gibson said the disciplinary letter clearly met the requirement of Article 26.01.

Ms. Gibson distinguished the case law reviewed by MANTE, in particular the factual distinctions in Phil Mar and City of Ottawa.

Ms. Gibson commented on the mitigating factor of training raised by Mr. Hoepfner. She said that this would only be relevant if Ms. Hooper had said she was inexperienced and was sorry. Instead, Ms. Gibson said, the grievor's response is to say that there was no proof. She asked that the grievance be dismissed.

I have carefully reviewed and considered the material filed, evidence and argument presented. To be determined first is whether the Employer had just cause to discipline the grievor. In coming to my decision I have made the following determinations:

- a) the Employer became aware of difficulties that Ms. Vechina was having with the grievor when Ms. Vechina advised her principal she wanted to leave her position at John Taylor. Mr. Lockhart was told by Ms. Vechina that she felt uncomfortable, she felt her job was devalued and her job duties were to be altered by Ms. Hooper, and Ms. Hooper had not spoken to her for periods of time;
- b) as detailed in the evidence, on September 21, Mr. Lockhart spoke with Ms. Hooper in the presence of Ms. Vechina. Ms. Hooper was told by Mr. Lockhart about Ms. Vechina's concerns including Ms. Hooper not speaking to her and excluding her, and was told to rectify the situation and ensure that Ms. Vechina felt better about working on the office team. Mr. Lockhart's evidence including his notes confirms this, as does Ms. Vechina's evidence;
- c) I have no doubt that while Ms. Hooper may have been caught by surprise by what Ms. Vechina had been feeling, she knew as of September 21st that there was a problem of Ms. Vechina feeling devalued and excluded and specifically that there were periods of time when Ms. Hooper was not speaking to her. By her own admission Ms. Hooper said in her direct evidence that she didn't intend to have Ms. Vechina feel this way and wished she had come to her;

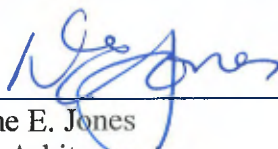
- d) I do not accept Ms. Hooper's evidence that not speaking to Ms. Vechina was not addressed on September 21st. Mr. Lockhart testified that it was and Mr. Lockhart's notes refer to it having been raised. Further, Mr. Lockhart's evidence was that when reminded on September 30th of the September 21st meeting Ms. Hooper acknowledged in the presence of Mr. Lockhart and Ms. Harvey that she did remember the issues referred to in Mr. Lockhart's notes had been discussed; Ms. Harvey specifically remembered Mr. Lockhart reading his notes to refresh Ms. Hooper's memory.
- e) Further, in her evidence Ms. Hooper made great efforts to explain that she had not talked to Ms. Vechina from September 21 to 30 other than to give work instructions, because she was very busy and did not take breaks. Her explanations as offered seemed to me to be an attempt to excuse behaviour that she well knew was wrong, particularly having been spoken to about it on September 21st.
- f) Having met with Mr. Lockhart on September 21st and Ms. Harvey on September 30th, I am satisfied that the grievor was given the opportunity to address the specific concerns that had been brought to her attention. While every date, time and place may not have been cited there is no doubt that Ms. Hooper knew at the very least that the student/yearbook fee disagreement in June, the job duties reassignment of August, the feeling of not being valued and not speaking to or including Ms. Vechina were real and immediate concerns with respect to her relationship with Ms. Vechina;
- g) the grievor's response to being told of Ms. Vechina's concerns was to not speak to her, other than for work instructions, from September 21st-30th. This response was purposeful on the grievor's part and contrary to what Mr. Lockhart had told her were his expectations and contrary to common sense on Ms. Hooper's part. This is a relatively small office and not to be spoken to would be noticed by anyone. Ms. Hooper knew she should be including Ms. Vechina and making her feel part of the team. At a bare minimum speaking to Ms. Vechina would have gone a long way to accomplish this. By deliberately choosing not to Ms. Hooper belied her expressed intention on September 21st that she had not meant to be mean to Ms. Vechina or to exclude her;
- h) I have considered MANTE's arguments that the investigation was flawed by Ms. Harvey's decision not to speak to other employees. Having had Ms. Hooper herself confirm that she had not spoken to Ms. Vechina since September 21st, coupled with Ms. Harvey's consideration of the instructions Mr. Lockhart had given to Ms. Hooper on September 21st and the grievor's prior disciplinary record, it is not unreasonable that Ms. Harvey would conclude that there was not much to be gained in canvassing other employees. In these circumstances I do not consider the investigation to have been flawed. I am also satisfied that the Employer acted promptly in investigating the matters that Ms. Vechina disclosed when she came to

speak to Ms. Harvey about a transfer out of John Taylor. Ms. Vechina did not come to file a complaint and I am not convinced that the process as outlined in the Employer's Policy even applies in this situation. In any event the Employer was timely in its response

- i) the Employer has a statutory obligation under the Workplace Safety and Health Act and pursuant to its Staff Harassment and Bullying Policy (Exhibit 5) to maintain a working environment that is free from harassment. The Employer properly took into account these obligations and other relevant factors, including those referenced in the discipline letter, and concluded that the grievor's conduct came within the Division's definition of bullying. I find this to be a reasonable conclusion particularly given the broad definition of bullying set out in the Policy and the purposeful conduct of the grievor described above. Such conduct is worthy of discipline.

Having found the grievor's conduct to be worthy of discipline, I have considered whether there are mitigating factors, including those suggested by MANTE, to reduce the one and one-half day unpaid suspension. Given the grievor's continued refusal to acknowledge or accept responsibility for her behavior and her previous suspension for unacceptable conduct, I am not persuaded that the penalty should be reduced. The grievance is therefore dismissed.

Dated this 28th day of February, 2014.



Diane E. Jones
Sole Arbitrator

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