

IN THE MATTER OF AN ARBITRATION

BETWEEN:

CHILDREN'S HOSPITAL OF EASTERN ONTARIO

("Hospital")

- and -

ONTARIO PUBLIC SERVICE EMPLOYEES' UNION

("Union")

ARBITRATOR: Jasbir Parmar

On Behalf of the Hospital:

Raquel Chisholm, Counsel
Erica Bennett, Articling Student
Heather Rose, Director, Human Resources
Tammy Degiovanni, Director, Ambulatory Care

On Behalf of the Union:

Peggy Smith, Counsel
Denise Labrecque, Grievor
Steve Nield, OPSEU Representative.

This matter was heard on October 29, October 30, November 18, November 19, and November 20, 2014, and January 15, February 26, and May 21, 2015, in Ottawa, Ontario.

I. INTRODUCTION

1. On July 3, 2014, the Grievor, Denise Labrecque, was terminated by the Hospital for engaging in harassing conduct of her coworkers. The Grievor grieved, alleging the termination was without just cause. While I am seized of some other grievances also filed by the Grievor, on agreement of the parties this decision addresses only the termination grievance.

II. SUMMARY OF EVIDENCE

This hearing took place over eight days, with ten witnesses. The witnesses were as follows: Marilyn Cassidy and Isabelle Schoberg (interlink nurses who filed formal complaints about the Grievor), Wendy Appleby and Sebastian Pangallo (two social workers on the hematology/oncology unit who were summoned as witnesses), Julie Milks (Manager of the Hematology/Oncology Unit), Heather Rose (Director of Labour Relations), Josee Blackburn (the Social Work Professional Practice Leader), Bruce Squires (Vice President - People, Strategies and Performance), Roger Beaudry (the external investigator), and the Grievor.

2. In addition to the oral evidence of the witnesses at the hearing, each of the witnesses also adopted their lengthy statements made during the harassment investigation, totaling hundreds of pages, as part of their evidence.

3. The following is a summary of the evidence.

A. General Facts

4. The Grievor is a social worker. She has been employed by the Hospital since 1999, and worked in the hematology/oncology unit. The hematology/oncology unit has a number of multidisciplinary professionals, including doctors, bedside nurses, case managers, interlink nurses, social workers, dieticians, and pharmacists. Patient care is delivered through a team-based multidisciplinary process, and thus effective communication and positive work relationships are essential for effective delivery of patient care.

5. The significant players in this story are social workers and interlink nurses (who do not play a bedside nursing role) on the hematology/oncology unit. There are four social workers, and two interlink nurses. Social workers and interlink nurses work with the same patients, and are supposed to work together as a team in providing patient care within their respective roles. By all accounts, the roles of interlink nurses and social workers are intertwined and to some extent overlapping. For this reason, effective working relationships are even more important between these two specific professions.
6. In and around February 2013, the Hospital received two formal complaints of workplace harassment from the interlink nurses about the Grievor.
7. The Grievor was placed on an administrative leave, and the manager of the unit, Julie Milks, undertook an investigation into the complaints. Upon completion of the investigation, in March 2013, Ms. Milks, along with Sheila Taylor, the former Director of Labour Relations, met with the Grievor. They advised her they were going to consider their options and there may be discipline. The following day, the Grievor went off on sick leave. She later filed a grievance alleging harassment by Ms. Milks. She also filed other grievances, relating to her sick leave and return to work.
8. The Hospital retained an external investigator, Roger Beaudry, to look into both the complaints against the Grievor and the Grievor's complaint against Ms. Milks.
9. The investigation report was completed on June 20, 2014. It concluded the Grievor's complaint against Ms. Milks was unfounded. It also concluded that the Grievor harassed the interlink nurses and other social workers using a pattern of passive-aggressive behaviours, resulting in a poisoned work environment.
10. On July 3, 2014, the Hospital terminated the Grievor's employment. The termination letter relies on the findings of the investigation, that the Grievor had engaged in an abusive pattern of significant harassing and ostracizing conduct toward her colleagues, resulting in a complete breakdown and poisoning of work relationships, and negatively impacting patient care.

B. Evidence of Ms. Cassidy and Ms. Schoberg

11. Ms. Cassidy and Ms. Schoberg are both nurses in the interlink nurse position, and have both worked with the Grievor for many years on this unit. They are the ones who filed formal harassment complaints in respect of the Grievor.

12. Ms. Cassidy acknowledged that she and the Grievor have worked together for many years and their relationship was not always difficult. She acknowledged she used to talk with her and confide in her, and was not intimidated by her. However, she stated that around 2007, this changed after Ms. Cassidy and the Grievor had some disagreements in respect of some patients.

13. Ms. Schoberg also stated that the Grievor's behavior has been going on for many years.

14. In general, Ms. Cassidy's and Ms. Schoberg's complaints are similar and consistent. They both state that the Grievor engaged in sustained non-verbal passive harassing behavior.

15. Ms. Cassidy stated that the Grievor's behavior was unpredictable. At times, she would be friendly. However, other times "you were the subject of her disapproval". In the latter case, Ms. Cassidy stated the Grievor would give disapproving looks, not acknowledge or look at her, and ignore her in the hall. Ms. Cassidy stated the Grievor used body language that was unwelcoming, such as turning away when Ms. Cassidy would be speaking to her or responding to her comments with a smug smile. Ms. Cassidy stated this behaviour was often triggered if she disagreed with the Grievor on an issue. However, she never really knew which behavior she would receive from the Grievor. She stated she felt she had to be careful of what she said. She also felt she would be tripped up and made to look as if she did not know what she was speaking about. She stated that when she would say something, the Grievor would look away, and put her eyes down, very subtly, and Ms. Cassidy would be left with doubts about whether Ms. Cassidy even knew what she herself was talking about.

16. Ms. Schoberg's evidence was similar. Ms. Schoberg also stated the Grievor used these types of non-verbal behaviours. While no one would think the Grievor's words constituted anything

inappropriate, both Ms. Cassidy and Ms. Schoberg were clear that the Grievor's message was that she was displeased with them and that she delivered this message through tone and body language.

17. They both stated they felt demeaned and intimidated. However, neither raised it directly with the Grievor. Ms. Cassidy stated when the Grievor's inappropriate conduct first began, it was fairly minor. She stated it wasn't like that all the time, and she observed the Grievor being moody with others. Ms. Cassidy thought she would just try to get along. However, it continued and became worse. Eventually, Ms. Cassidy stated, it just became the norm. She stated she never discussed her behavior with the Grievor, because she felt intimidated by her. Ms. Schoberg also stated she did not raise it with the Grievor, and tried to cope by just avoiding the Grievor.

18. In terms of specific examples of when and where this behaviour would occur, they both pointed to meetings with the Grievor to discuss patients and families. They both stated the Grievor acted uncollaboratively during these meetings. The Grievor would ask numerous questions of them, but would be reluctant to share her information. Ms. Cassidy stated she would ask the Grievor questions but receive minimal responses and the Grievor would sit turned away from her.

19. Ms. Schoberg referenced a meeting in 2010, when she was asked by H.P, another nurse, to attend a meeting to discuss a patient they shared. She stated Ms. Milks and the Grievor were also at the meeting. She stated the Grievor took the lead and aggressively questioned Ms. Schoberg about why the patient had declined to receive social work services. Ms. Schoberg felt like she was being attacked and held responsible for the patient's choice. She also felt like H.P. and the Grievor had colluded and planned this attack, because there was no reason for the Grievor to be there as she had no responsibility for the patient.

20. Ms. Cassidy also referenced an incident of attending a funeral of a patient. She stated that staff usually sit together at these events. Ms. Cassidy stated that when she arrived, she sat with the mother of the patient. The Grievor came in later, and sat elsewhere. Ms. Cassidy was quite sure the Grievor had seen her because there were only a few people in the room. However, the Grievor made no eye

contact with Ms. Cassidy. Ms. Cassidy felt this was another instance of ignoring and not acknowledging her.

21. Ms. Cassidy and Ms. Schoberg both also referred to psychosocial rounds, a weekly meeting where allied health professionals would meet to discuss patients and other issues. They were not mandatory meetings, but a means for the staff to share information about patients.

22. Ms. Cassidy testified she stopped attending these meetings after an incident where the Grievor would ask probing questions “like an inquisition”. The Grievor would ask questions in an aggressive tone that made Ms. Cassidy feel like she had to justify her actions. For example, she asked “why would you think that needed to be done”. Ms. Cassidy stated she decided not to attend and shared any relevant information through other means, such as emails or telephone. Ms. Schoberg also stated that if she did attend she kept her participation in these meetings to a minimum because she had seen the Grievor “verbally attack” another staff member.

23. In 2012, the Hospital engaged in a “moving forward” process, a series of meetings directed at improving communication and clarifying roles on the unit. Ms. Schoberg stated that at one meeting, before November 9, 2012, she was paired with the Grievor for an exercise. She stated the Grievor flung the interlink nurse job description onto the table, and said in an aggressive tone “who came up with this anyway”. She stated the Grievor’s comments all focused on pinpointing where the interlink nurse role, or their conduct, was overstepping bounds. It made Ms. Schoberg feel like her work was being scrutinized and its value questioned.

24. Ms. Cassidy and Ms. Schoberg both also referenced a meeting on November 9, 2012, which was part of the “moving forward” process. Ms. Milks was present and facilitating the meeting. However, she was paged and left for about ten minutes. Their evidence about what happened in Ms. Milks’ absence is consistent. After Ms. Milks went out, the Grievor and H.P. began to ask Ms. Cassidy and Ms. Schoberg questions about why they do certain things, and in particular why they go to the ICU or visit Rogers’ House. They noted that they had been questioned about this by the Grievor previously

and had explained their work. They felt the fact it was being raised again in such an aggressive fashion was an attack on how they do their work. Ms. Schoberg indicated the Grievor used an accusatory tone. Ms. Cassidy said she felt like it was a “witch hunt” and she felt absolutely demeaned.

25. Ms. Cassidy stated that the rest of the room went quiet. Ms. Schoberg stated that everyone was “looking stressed” and nobody except one nurse case manager said something in their defense. Ms. Cassidy stated she was so upset that after the meeting she met another nurse who was not at the meeting that asked her “what happened; you look so upset”. The meeting ended shortly after Ms. Milks’ return.

26. Ms. Schoberg and Ms. Cassidy were very upset about this meeting, and advised Li Peckan, the facilitator for the “moving forward” process, that they would not attend these meetings because of the Grievor’s behavior. The Hospital then decided to have another meeting focusing on communication, shortly after the November 9th meeting. They agreed to attend this meeting.

27. Ms. Schoberg stated Ms. Milks asked in that meeting what had happened after she left the room during the November 9th meeting. Ms. Schoberg stated she decided to speak up, and said that the Grievor’s behavior was unprofessional and unacceptable, and that she felt harassed. Ms. Schoberg stated that the Grievor did not say anything in response, but just sat with her back turned towards the room.

28. Ms. Cassidy stated that after the November 9 meeting, the Grievor’s lack of acknowledgement towards her increased. By way of example, she stated on one occasion she was walking by a patient’s room when the Grievor was in the room with the patient and the patient’s mother. The patient’s mother called Ms. Cassidy into the room, so she went in. The Grievor kept her back to Ms. Cassidy and did not acknowledge her. Ms. Cassidy felt extremely unwelcome and left shortly after.

29. After the 2012 meetings, Ms. Cassidy and Ms. Schoberg filed formal complaints against the Grievor. They both stated that being in the Grievor’s presence made them uncomfortable, and when

they saw her they found themselves feeling very tense and their hearts would be racing fast. Ms. Cassidy stated that the Grievor “makes me feel insecure in what I do”, and so she avoids her as much as possible. She noted that this could impact patient care, because there can’t be coordinated care if there is not strong collaboration amongst staff.

30. Ms. Cassidy and Ms. Schoberg did not file a complaint against H.P., even though both indicated she had participated in some of this conduct. Ms. Schoberg stated she felt that the Grievor was the instigator, while H.P. just went along with it. Similarly, Ms. Cassidy stated she felt the Grievor was the “ringleader”, and H.P. was the “puppet”.

C. Evidence of Sebastian Pangallo

31. Mr. Pangallo was a social worker on the unit for a six month period from May to October 2012, and now works elsewhere in the Hospital. He stated that there were some positive elements to his relationship with the Grievor. However, he noted the Grievor would regularly, as in daily, make negative comments about co-workers in their absence. Most of these negative comments were about the interlink nurses. Two specific examples were that the Grievor referred to Ms. Cassidy as the “antichrist” after Ms. Cassidy had passed them in the hallway and that the Grievor referred to working in the unit as a “war zone”. However, Mr. Pangallo noted the negative comments were also made about others. He noted she often made comments about others “trying to steal” the social worker job.

32. He stated that he got along well with the Interlink Nurses. However, if he talked to them, the Grievor would ignore him after that. He described this ignoring behavior as passing him in the hall and not saying good morning. He also said she would not speak to him directly in meetings but would ask questions generally of the group even though were clearly directed at him. He viewed this as the Grievor making it clear she was ignoring him. He said this behavior made him question whether he should be speaking to the interlink nurses, because he knew that there would be repercussions from the Grievor if he did that.

33. He also stated that the Grievor regularly made critical comments to him, such as “you’re not working too hard” or “you don’t look too busy”. He stated these were not jokes, but rather one-sided comments that he saw as her passing judgment on his conduct. On one occasion one of his patient’s families told him that the Grievor had asked them if they were satisfied with his services. He felt that was demeaning to him, making him feel like his work was being scrutinized by her.

34. He stated that he never raised his discomfort with the Grievor directly, because he knew he was in that position on a short-term basis. However, he described working with the Grievor as being in an abusive relationship, with moments of kindness being followed by being ignored.

35. While he is no longer working on the hematology/oncology unit, he noted that if the Grievor returned to the Hospital, he would always be thinking about running into her because he would rather avoid her.

D. Evidence of Wendy Appleby

36. Ms. Appleby was a social worker on the unit from 2002 to November 2014. She was absent as a result of parental leaves from January 2009 to October 2010, and March 2012 to September 2013.

37. Ms. Appleby also stated the Grievor exhibited oddly inconsistent behavior, in terms of being friendly at times but on other occasions not even acknowledging her. Ms. Appleby’s evidence addressed the Grievor’s treatment of another social worker who no longer is at the Hospital. Ms. Appleby stated that that person was often upset by her interactions with the Grievor, and so Ms. Appleby raised it with Rita Blair, who was the Professional Practice Leader at the time (around 2003/04). Ms. Appleby stated Ms. Blair advised her that she had spoken with the Grievor, and that Ms. Appleby was mortified that she had done that. Ms. Appleby then went and spoke to the Grievor, and apologized that “it had happened that way”, rather than Ms. Appleby speaking directly to the Grievor first. She stated the Grievor did not say much in response, and just nodded.

38. Ms. Appleby stated the Grievor was often negative about proposals, and the Grievor would often avoid discussing such issues by not attending meetings or not answering emails about such matters. Ms. Appleby stated it was difficult to address anything because of the Grievor's avoidant behavior, but noted that because the Grievor was a senior social worker, her participation was essential to the discussion. Ms. Appleby stated that in this manner the Grievor acted as a barrier to moving forward on those issues.

39. She also stated that after a discussion about something the Grievor did not support, the Grievor would then not say hello the next morning, or even avoid eye contact if passing in the hallway. Sometimes the Grievor would not even respond if Ms. Appleby said hello to her. She stated this happened as often as once a month, and it was not always clear what the trigger for this type of ignoring behavior would be. She stated this ignoring behaviour would last sometimes for a day or sometimes for a week, and she would feel a sense of anger coming from the Grievor.

40. Ms. Appleby acknowledged that Grievor had on occasion demonstrated kindness towards her, but noted it was stressful to work with her because of her inconsistent behavior and how she treated both Ms. Appleby and other staff. Ms. Appleby stated the Grievor's behavior had a significant impact on the staff, and Ms. Appleby spent a lot of time speaking with co-workers about how they should manage their relationship with the Grievor. She found the whole experience emotionally exhausting. She noted how disappointing it was that rather than the work itself being challenging, the Grievor's behavior was what made the workplace a challenging environment for her. She noted she had no reason to think it would be any different if the Grievor returned.

E. Evidence of Julie Milks

41. Ms. Milks has been the manager of ambulatory care unit, which includes the hematology/oncology unit, since 2008. She acknowledged there were a lot of different health professionals on the team and that because of overlap in duties of social workers, interlink nurses, and case managers, communication was essential for patient care.

42. She stated that she first noticed the Grievor's interaction with others during a meeting about assignment of brain tumor patients. She stated that some meetings were held on this topic while the Grievor was absent. However, the others wanted to wait until the Grievor could be part of the discussion before finalizing the issue. When the Grievor returned, they addressed the topic again. Ms. Milks stated the mood at this meeting was distinctly different, noting it was tense. She stated the Grievor was not in favour of this, and stated the Grievor said if those patients were going to be shared, then she wanted her hematology patients also to be shared. She stated she noticed that when someone else spoke, the Grievor stared with a look of anger and objected. Ms. Milks noted this behavior shut down any discussion by the others. She stated the Grievor grabbed the table and turned her body to the side during the discussion.

43. Ms. Milks said she also noticed that the Grievor's behavior during morning rounds. She stated the Grievor would roll her eyes or sigh when people were speaking. Ms. Milks was of the view this made others uncomfortable.

44. Ms. Milks stated she did not raise this with the Grievor. Rather, she decided she would "keep my eyes open", because she was relatively new to the unit and still trying to put her finger on what was going on. She stated a number of individuals did come and speak to her about issues with the Grievor, including the interlink nurses. She stated they rejected her advice that they speak directly to the Grievor and declined her offer to assist them.

45. Ms. Milks did not recall the meeting in 2010 in which Ms. Schoberg stated the Grievor aggressively questioned her about a patient's decision to decline social work services.

46. Ms. Milks stated that in 2011 she approached the interlink nurses about psychosocial rounds because the Grievor had expressed concerns to Ms. Milks about their non-attendance. Ms. Milks stated Ms. Cassidy and Ms. Schoberg advised her that they avoided the psychosocial rounds because of the Grievor's behaviour at these meetings. She stated they told her the Grievor would make them uncomfortable by rolling her eyes and making them feel like their comments were not valuable. Ms.

Milks stated they advised her they found alternate means to share patient information, such as email or voicemail. Ms. Milks stated that though she offered to assist, the interlink nurses declined her offer to become involved or raise the issue with the Grievor.

47. Ms. Milks stated the Grievor once exhibited this behavior towards her. In 2012, at a meeting to discuss a POGO funding/staffing issue, the Grievor was not happy about Ms. Milks' proposal. She said the Grievor stared at her, raised her voice when speaking, and picked up her chair and turned away from her while she was speaking. She said she told the Grievor to let her finish. Afterwards, she went to the Grievor's office and told her she wouldn't tolerate this behaviour. She said the Grievor apologized but didn't look at her. She acknowledged she did not discipline the Grievor at this time. She noted the Grievor did not engage in that behavior with Ms. Milks again.

48. Ms. Milks acknowledged the Grievor raised a number of issues with her about various processes and roles on the unit. She indicated that part of the reason for initiating the "moving forward" process was an effort to address such concerns. Ms. Milks acknowledged that something happened in the meeting on November 9, 2012 during her absence of a few minutes. She stated that when she returned she could feel the tension in the room. She stated that Ms. Schoberg had tears in her eyes. She stated following this meeting, Lee Peckin advised her that the interlink nurses had indicated they would not participate in these meeting again because they did not feel safe.

49. She stated the interlink nurses then came to talk to her about their concerns. After a few discussions, they filed a formal complaint.

50. Ms. Milks engaged in an investigation of the complaints. Before she took any action, the Grievor went off sick. Ms. Milks stopped dealing with the Grievor's situation once the Grievor filed a harassment complaint against her.

51. Ms. Milks stated she was concerned about the impact of the Grievor's behavior on patient care. She noted that communication and effective interaction between staff was important for patient care.

She stated that a lack of communication, or even a slowdown in efficient communication could affect care. Furthermore, she added it concerned her that staff was focusing on how to address issues with the Grievor, rather than focusing on the patient's issues and needs. In her view, that took away from the best possible patient care.

52. She opined that she would be concerned about staff being absent on sick leave if the Grievor returned because of the level of concern that had been expressed to her by staff about the possibility of the Grievor returning, but acknowledged there were no significant absenteeism issues while the Grievor was there.

F. Evidence of Josee Blackburn

53. Ms. Blackburn was the Professional Practice Leader for social workers at the relevant time.

54. She noted that resolving issues around roles and responsibilities was quite a common occurrence, because social workers regularly work as part of an interdisciplinary team throughout the hospital. She stated that these were typically resolved through discussions. However, she stated that the Grievor often came to her with concerns about the interlink nurses. She noted that other social workers on the unit did not raise those concerns with her in the same manner.

55. Ms. Blackburn stated she noted that the Grievor was a leader in the social work group as senior social worker. She noted that after the Grievor would express disagreement with an idea, the other staff would disengage and no longer pursue that issue. She stated they "shut down".

56. Ms. Blackburn was present during the meeting in September 2012 when the POGO funding/staffing was discussed. She stated the Grievor opposed the proposal, and raised her voice and was "being aggressive to [Ms. Milks]". She also stated the Grievor turned her chair away from the group. Ms. Blackburn stated that Ms. Milks subsequently told her that she had spoken to the Grievor about her behavior.

57. Ms. Blackburn was present during Ms. Milks' interviews of the social workers during Ms. Milks' investigation into the interlink nurses' complaints. She stated she was struck by how upset they were about the Grievor's behavior, and stated that she didn't realize the impact of the Grievor's behavior until those meetings. She noted that over the years, she had had social workers from that unit come to her with questions/concerns about their own cases. She had noted they were questioning their own competency and didn't really understand at the time why there was that lack of confidence. She stated that sitting in on these interviews, she learned they were being questioned about their work by the Grievor.

58. Ms. Blackburn noted that a lack of communication affected the efficiency of the team in providing patient care. By way of example, she noted that families/patients would run the risk of going through different assessment by different team members, having to repeat themselves at a vulnerable time. She expressed a concern about the Grievor returning, in term of the impact on other staff and the fact that it would not be possible to isolate her from any of the complainants/witnesses.

G. Evidence of Heather Rose

59. Ms. Rose took over as Director of Labour Relations in 2013. She became aware of the issues relating to the Grievor in late May 2013. In July 2013, the Grievor filed a grievance alleging harassment by Ms. Milks. At the request of Mr. Squires, Ms. Rose made arrangements for an external investigator, who was retained in September 2013, to consider both the harassment complaints against the Grievor and the Grievor's harassment complaint against Ms. Milks.

60. Ms. Rose noted that while the Grievor's sick leave pay was discontinued after it was determined she did not have sufficient medical to support the claim, the Hospital gave the Grievor the option to return to work or continue on an unpaid leave if she was not yet prepared to return to work.

61. When the Grievor decided she would like to return to work, Ms. Rose was involved in the discussions with the Grievor and the Union to try and return her to the workplace in 2013. She noted

that when staff from the hematology/oncology unit learned the Grievor would be returning to work, some of them asked to meet with Ms. Milks and Ms. Rose and expressed concerns about the return, indicating they felt “unsafe”. She stated that at that time the Hospital thought they would be able to provide support to facilitate a smooth return.

62. Ms. Rose noted she was not informed of any medical restrictions necessary for the return, and stated at no time did the Grievor raise any such issue during the discussions. She stated that the Hospital did not want to return the Grievor to her regular unit while the investigation was ongoing, and had made arrangements for her to be placed in another inpatient area on a temporary basis where she would not be reporting to Ms. Milks. She stated that they were not able to reach an agreement on the return to work because the Grievor insisted she be able to have lunch on her regular unit with her friends from that unit. She stated that at no time during these discussions did the Grievor express any acknowledgement of the impact that her conduct had on her colleagues. She also stated she expressly said to the Grievor “you realize we will not continue with the meeting [regarding the return to work] because you are adamant about having lunch in that area”.

63. Ms. Rose did not make the ultimate decision about termination. However, she read the final investigation report, and stated she supports the decision. She stated that having read about the breadth of the complaints not just from the interlink nurses but also other social workers, and about the scope of the Grievor’s inappropriate conduct and its impact, she no longer considered a return to work, even to another unit, to be feasible. She noted that employees would still cross paths, and social workers across the hospital still have meetings and interact with each other.

H. Evidence of Bruce Squires

64. As Vice-President, Mr. Squires made the decision to terminate the Grievor’s employment.

65. He noted that in December 2013 and January 2014, the Grievor communicated with him. She expressed a number of concerns about the unit and its processes, and also the investigation process.

She focused on options available to her to bring forward concerns about the Hospital and inquired about how her rights would be protected in those processes. He stated she never mentioned her colleagues or the impact of her behavior on them.

66. He stated that once he received the investigation report, he felt the impact of her behavior on the workplace had led to a poisoned work environment that affected her colleagues' feelings of safety in the workplace and communication amongst staff, which is key to patient care. He stated there was no indication that the behavior would cease, noting her opportunity to transition back into the workplace in 2013 had been frustrated by her own conduct and lack of understanding of the impact of her behavior.

I. Evidence of The Grievor

67. The Grievor was 57 years old at the time of her termination. She has never been disciplined during her time at the Hospital, and in fact has received positive performance appraisals. There have been no specific complaints about her patient care.

68. The Grievor acknowledged that she had a number of concerns about workplace processes followed on the unit. These included concerns about communications between professions, such as charting for example. Her concerns were about the responsibilities and practices of the interlink nurses but she noted they were not limited to those individuals. She stated repeatedly these were concerns shared by other social workers. She also noted that she raised these concerns with management on numerous occasions, and felt she did not get the help she was looking for. In her view, there was a lack of respect for the social work profession, and an attitude amongst other professionals that social work services were not important. On cross-examination, she acknowledged that those concerns were not a justification for inappropriate conduct towards her colleagues.

69. As a broad statement, the Grievor states she did not know her colleagues perceived her behavior as being inappropriate and that no one has ever told her that. She stated she had no idea she was being perceived this way and it was never her intent to make her colleagues feel this way. According to

her, she had positive working relationships, and that included a good working relationship with the interlink nurses. She points to positive performance appraisals as evidence of her appropriate behavior. She acknowledged that the relationships on the unit had become more tense in the past few years, but framed this in the context of the “dysfunction on the unit” amongst all the staff and did not see her relationships as any different from the general tension on the unit.

70. She acknowledged that in a meeting she does sometimes shift her seating position, but explained that this was due to arthritic pain. She acknowledged that sometimes she passes people in the hall with no acknowledgement. She also acknowledged that she may raise her voice and rolls her eyes during discussions, but stated that was not uncommon amongst the staff generally and her behavior in this respect was no different from the others.

71. She acknowledged that she may have said negative comments about the interlink nurses, but stated that these were comments made amongst social workers when they were all expressing frustrations about the impact of the interlink nurses on their practices. As an example, she stated they would all discuss their difficulties about trying to get information about patient care.

72. With respect to specific instances, the Grievor often said she could not recall. For example, she stated she could not recall using the term “anti-Christ”, and stated she couldn’t imagine in what context she would use that term. However, she acknowledged it was possible she said that, just like it was possible she said the workplace was a “war zone”.

73. She did not recall any meeting in 2010 with Julie Milks and H.P. where she questioned Ms. Schoberg inappropriately about a specific patient declining social work services

74. With respect to Ms. Cassidy’s evidence about ignoring her when she entered a patient’s room at the request of the mother, the Grievor specifically recalled the patient and the mother. She also stated she was sitting on the bed with her back to the door. However, she did not recall Ms. Cassidy entering the room.

75. With respect to the funeral of the patient, the Grievor recalls the incident described by Ms. Cassidy but stated that she sat separately because she needed some space at the time.

76. With respect to the evidence about the meeting where the POGO funding/staffing issue was discussed, she stated she did not think she raised her voice. However, she admitted that Ms. Milks stated to her in the meeting that she had raised her voice. The Grievor stated she does not recall Ms. Milks coming to speak with her about this issue after this meeting.

77. With respect to the “moving forward” process, and the meeting before the November 9th meeting where Ms. Schoberg stated she aggressively questioned Ms. Schoberg about tasks on the job description, the Grievor stated she was merely asking questions to try and understand the work.

78. With respect to the November 9th meeting, the Grievor stated that after Ms. Milks left, she was focused on the task at hand, reading slips of paper in a bucket or on the table and having their content written on a flipchart by another staff member. The Grievor stated she does not recall “any particular conversation” about the interlink nurses in the absence of Ms. Milks, and at times she had her back to most of the room, which was loud with various conversations going on. The Grievor did acknowledge that “something changed in the room” by the time Ms. Milks returned, but stated “I don’t believe I was part of any conversation about the interlink nurse role”.

79. With respect to the December 2012 meeting, where Ms. Schoberg stated she felt she was demeaned in the November 9th meeting, the Grievor stated she did not know Ms. Schoberg was speaking about her.

80. The Grievor acknowledged that after the November/December 2012 meetings, the tension in her relationship with the interlink nurses increased. She admitted not acknowledging Ms. Cassidy in the hall on a single occasion, but stated both of them did not acknowledge each other. According to the Grievor, this is because the process of the meetings had increased the tension in the workplace. The

Grievor stated she reached out to Ms. Blackburn and Ms. Peckin to seek assistance to address these issues.

III. Summary of the Parties' Submissions

81. The Hospital submits the Grievor's conduct constituted harassment because it was a course of conduct that was known or ought to have been known to be unwelcome. The Hospital states that intention does not matter, and so it is irrelevant that the Grievor did not intend to harass her colleagues.

82. While acknowledging the conduct is difficult to identify because of its insidious passive nature, the Hospital asserts there is clear, convincing and cogent evidence that the Grievor engaged in the alleged misconduct. It asserts that to accept the Grievor's evidence, it would require rejecting evidence that was consistent across multiple witnesses. The Hospital also questions the Grievor's assertion that she didn't know she was having this effect, because no one ever raised this issue with her. First, the Hospital notes it was raised by Ms. Appleby and Ms. Milks. Second, the Hospital notes that the Grievor's profession as a social worker requires her to be an effective communicator, suggesting it is improbable she was unaware of the response she was creating in her colleagues.

83. The Hospital submits there is no justification for the Grievor's behavior and the Grievor has shown little recognition of the significance and impact of her conduct. The Hospital asserts that returning her to the workplace would have a negative impact on the workplace, including patient care as staff is required to be able to work together collaboratively and the Grievor's conduct has made that unlikely. For this reason, the Hospital submits that just cause for discharge is appropriate.

84. Alternatively, if they are unsuccessful in establishing just cause, the Hospital submits that the Grievor continues to exhibit a lack of acknowledgement of her own role in this situation. Furthermore, the Hospital notes that all the witnesses who were co-workers indicated they would not feel comfortable working with the Grievor and it would cause them a great deal of stress if they were required to do so.

For these reasons, the Hospital submits that reinstatement is not appropriate if they are unsuccessful on their case for just cause.

85. The Union begins by noting that is difficult when a person is alleged to have harassed someone simply by engaging in who they are in the workplace. In this respect, the Union submits that while intention is not required to establish harassment, it is still relevant in determining how an employer should respond to conduct it wishes to change.

86. The Union notes the Hospital took no action to advise the Grievor her conduct was inappropriate, which would have given her an opportunity to modify her behavior. The Union notes that the evidence suggests another staff member also engaged in inappropriate behavior but no action was taken by the Hospital in respect of that staff member. The Union submits this disparate treatment of the Grievor is inappropriate and unacceptable.

87. The Union notes the Grievor repeatedly raised her issues about the workplace conflicts to management and found little action was taken. The Union submits that in raising issues with her colleagues, she was simply attempting to address the issues the Hospital was not addressing.

88. The Union submits what is at issue is the Grievor's personality, and the Hospital failed to bring that to her attention. The Union submits it is inappropriate to jump to discharge without any attempt to modify that behavior through progressive discipline. The Union submits that the Grievor's evidence at the hearing about how she feels about her colleague's evidence is a credible statement that should be used to conclude she is capable of modifying her behaviour. The Union notes that the Grievor has a long record of being a good employee, and she should be reinstated.

IV. ANALYSIS

89. As in all discharge cases, there are three main issues that must be addressed: 1) whether the Grievor engaged in the alleged misconduct; 2) whether the misconduct justified dismissal; and 3) whether, in all the circumstances, an alternative response is appropriate

90. The nature of the allegations are broad, as they speak to numerous daily interactions and the cumulative effect of these interactions. They allege the Grievor would ignore co-workers and ostracize them, making them feel like they couldn't voice their views, were not working properly, or their work was of no value.

91. It is useful to begin by addressing the most specific of the allegations first. As such, I begin with the November 9, 2012 meeting. The thrust of the Grievor's response to this allegation is: I don't know anything about this; I was so busy doing the task I had been assigned that I wasn't paying attention to the room, and I didn't hear anything specific.

92. I find the Grievor's evidence about this meeting lacking in credibility. First, the work in the meeting was for the group to make collective decisions. The Grievor was not engaged in an individual responsibility. If there were conversations going on, there is no reason why the Grievor would not have been listening to see whether someone was commenting on the task that was about to be written onto the flip chart.

93. Second, the room by all accounts was not very large, and the group was seated around one table. Even though the Grievor was not sitting near the interlink nurses, Ms. Cassidy and Ms. Schoberg were clear and consistent that when the questioning about their roles began, the room went quiet. Thus, I do not accept the Grievor's evidence the room was so loud with a number of different conversations that she did not make out any of the conversations.

94. Third, the Grievor's evidence of the meeting makes no sense given her acknowledgement that "something changed in the room" by the time Ms. Milks returned a few minutes later. Clearly something

significant happened, and the notion that the Grievor had no idea about what it was even though she was in the room is not in accordance with what is probable and reasonable in the circumstances.

95. Given the lack of credibility of the Grievor's evidence, I accept the consistent evidence of Ms. Cassidy and Ms. Schoberg. I find that the Grievor, along with H.P., questioned them about their role in an aggressive, demeaning manner. I also find that the Grievor was aware of the impact of her conduct. The evidence is clear that there was tension in the room after that conversation, and so any reasonable person would have been able to conclude the discomfort was a result of the conversation that just happened.

96. With respect to the POGO funding/staffing meeting, the Grievor disputed she raised her voice, saying "I don't think I was", suggesting she was speaking just a bit louder than the quiet voice she was using during her testimony. Again, I find the Grievor's evidence in this regard at best lacking in reliability, and more likely lacking credibility. Both Ms. Milks and Ms. Blackburn testified the Grievor raised her voice when speaking with Ms. Milks. The Grievor even acknowledged that Ms. Milks brought this to her attention in the meeting. If the Grievor could not recognize she was raising her voice in that meeting in the face of it being brought to her attention, I question her ability to be able to reliably recall the nature of her own behavior. I also do not accept the Grievor's version of the discussion which is that she was just expressing her concern about the proposal because of concerns about workload. The evidence of Ms. Milks and Ms. Blackburn is consistent that the Grievor's response was aggressive and rude in tone. While the Grievor stated she did not recall having a further discussion about this behaviour with Ms. Milks, Ms. Milks was clear that she spoke with the Grievor in her office about this incident and described the discussion in some detail. Ms. Blackburn confirmed this evidence, when she stated that Ms. Milks told her after the meeting she had spoken to the Grievor about her behavior. I conclude that Ms. Milks did have the discussion in the Grievor's office as she described. Furthermore, I do not accept that that the Grievor actually "doesn't recall" that Ms. Milks spoke with her in her office. Your manager telling you your behaviour is inappropriate and must stop is significant and something a

person remembers. While it may not have been discipline, it was clearly a reprimand. In my view, the Grievor is not being honest when she says she doesn't recall this.

97. The Grievor's responses to the rest of the allegations which have any level of specificity are a passive version of a denial. That is, she does not actually deny most of the allegations. In fact, she recalls most of the incidents. However, she states she doesn't recall any inappropriate conduct or even acknowledge that she noticed anything unusual.

98. For example, with respect to ignoring Ms. Cassidy when Ms. Cassidy entered a patient's room in which the Grievor was already present, the Grievor recalls being in the room with a patient and the mother. She recalls she was sitting on the bed and her back was to the door. She just does not recall Ms. Cassidy entering. This explanation makes no sense, because it does not address Ms. Cassidy's specific evidence that the mother called Ms. Cassidy into the patient's room. Even if the Grievor was sitting with her back to the door, she would have heard the mother call Ms. Cassidy who was in the hall. Furthermore, even if she didn't hear that, there is no explanation of how the Grievor did not hear Ms. Cassidy come in and speak to the mother in the room. Again, the "I didn't see anything" response makes no sense.

99. With respect to Mr. Pangallo's evidence that she referred to Ms. Cassidy as the "anti-Christ", the Grievor stated she finds that word horrific and can't imagine she would use the term. Yet, she doesn't actually deny she said it, saying "it's possible I said it" but just doesn't know in what circumstance she would have said it. I accept Mr. Pangallo's evidence that she did use that term. His evidence about this was clear and specific, and given his evidence about how the Grievor's negative comments made him feel, I am of the view it is likely he correctly recollects hearing this term from her in the context of describing the interlink nurse. Furthermore, the Grievor doesn't dispute his evidence that she used the word "war zone". She only suggests it was to describe the chaos of the workplace generally. I accept Mr. Pangallo's evidence, which was again clear and specific, that the comment was about the

relationship between interlink nurses and social workers, invoking the 'us-and-them' culture the Grievor cultivated.

100. With respect to the 2010 meeting where Ms. Schoberg says the Grievor colluded with H.P. and planned to "attack" her about a patient declining social services, neither the Grievor nor Ms. Milks could recall this conversation. However, there is no basis to reject Ms. Schoberg's evidence that such a meeting did occur just because they don't recall it. That said, if the Grievor's conduct during this meeting was inappropriately aggressive, I am of the view that Ms. Milks would likely have recalled such inappropriate behavior. For this reason, I find that on this occasion, the Grievor did not likely engage in inappropriate behavior.

101. Broadly speaking, the Grievor does not actually deny the allegations about how she engaged with her colleagues. She acknowledges that she raises her voice and rolls her eyes during discussions, but suggested that was the common behavior in the workplace. I do not accept that the manner in which she engaged in this behavior was the common behavior in the workplace. The evidence of the other witnesses is consistent that the Grievor's behavior in this respect was unusual to the point that they noticed it and it impacted their own behavior and sense of self.

102. The Grievor also acknowledges that "it could be true" that on some days she would say hello to people in the hallway but then ignore them on others. She stated this was not on purpose. However, she made no attempt to explain why she was ignoring people. She did suggest at a later point that she was struggling with her workload, and that this caused her to behave this way. However, there was nothing to explain why the high workload would cause her to be inconsistent in acknowledging people, or how that explanation addressed the fact the behavior was linked to having disagreements with people. I also note this behaviour has been going on for years.

103. The only specific non-verbal behaviours the Grievor explains is that she sometimes turns away when she is sitting because of arthritic pain. I note, however, this explanation does not accord with her

colleagues' evidence that she did this when she disagreed with what they were saying, rather than this occurring randomly.

104. The Grievor did not address the allegations that she smiles smugly and gives angry looks. Given that these were just two of the many behaviours the Grievor is alleged to have engaged in, and given the Grievor has acknowledged most of the other behaviours, I accept the evidence of the multiple Hospital witnesses that the Grievor also engaged in these behaviours when communicating with them.

105. I turn now to the issue of whether this behavior constitutes harassment.

106. Article 4.01 of the collective agreement between the parties prohibits harassment:

4.01 The parties agree that a safe workplace, free of violence and harassment, is a fundamental principle of a healthy workplace. Commitment to a healthy workplace requires a high degree of cooperation between members of the healthcare community. Employees are empowered to report incidents of disruptive behaviour or domestic violence without fear of retaliation. The parties are committed to a harassment and violence free workplace and recognize the importance of addressing discrimination and harassment issues in a timely and effective manner.

107. The collective agreement does not provide a definition of harassment. There is, however, a definition of personal harassment in the Hospital's Workplace Harassment Policy:

Personal Harassment: includes engaging in any course of comment or conduct that is hostile, demeaning, belittling or causes personal humiliation or embarrassment which ought reasonably to have been known by the harasser to be hostile, demeaning, belittling or the cause of personal humiliation or embarrassment to another. Personal harassment is targeted at a person or a group of persons on the basis of the personal values of the harasser and may not be grounded in an enumerated, prohibited ground.

Personal harassment may include but is not limited to:

- Serious or repeated rude, degrading, or offensive remarks such as teasing about a person's physical characteristics or appearance;
- Threats, intimidation, ridiculing and insulting comments, acts or gestures;
- Screaming, shouting and name calling in the workplace;
- Disrespectful behaviours such as engaging in repeated and persistent gossiping, rudeness and repeatedly interrupting another individual's speech;
- Inappropriate inquiries or comments about a person's private life when the individual has indicated that he/she does not wish to discuss the same;
- Repeated and unwarranted, non-constructive criticism of an employee

108. It is useful also to consider the definitions provided in legislation:

Human Rights Code

Section 10(1) In Part I and in this Part,

“harassment” means engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome

Occupational Health and Safety Act

Definitions

Section 1(1) In this Act,

“workplace harassment” means engaging in a course of vexatious comment or conduct against a worker in a workplace that is known or ought reasonably to be known to be unwelcome

109. The conduct the Grievor engaged in this case is not the usual sort of yelling or name calling that is commonly recognized as personal harassment. However, the subtle nature of the conduct does not militate against a finding of harassment. Whether the comments or conduct are overt, or whether it is passive non-verbal behavior, a finding of harassment is only dependent on whether the conduct is vexatious and was known or ought to have been known to be unwelcome.

110. In the present case, I find the Grievor’s conduct was vexatious. I see the logic of the Union’s suggestion that one should be cautious in making a finding of harassment on the basis of an individual’s personality, because it is inevitable that there will be a multitude of personalities in the workplace. However, personality is not a defense to harassment. People are expected to behave in accordance with the workplace rules of conduct, not their own preferred way of dealing with people. In the present case, the Grievor clearly knew how to behave in a manner that was supportive and respectful. Most of the witnesses testified they had seen her behave in a positive fashion towards certain people at certain time.

111. The evidence is also clear that if anyone took a position or view that the Grievor did not support, or even was collegial with such a person, her response to that was to act in an intimidating, ostracizing manner. While the Grievor gave an inordinate amount of evidence about the reasons for all her workplace concerns, addressing workplace disagreements in that manner is simply inappropriate. The issue is not that she had concerns, but rather how she treated her colleagues. Having workplace

concerns, whether or not she viewed management's response to those concerns as effective, is no justification for intimidating or ostracizing co-workers. There is no evidence that any of her co-workers provoked this behavior.

112. Nor is it a defense that she was not consistently behaving in this inappropriate way with everyone. I am referring to the Grievor's acknowledgment that "there may be days" where the non-verbal behavior described by the witnesses was in fact what they experienced, and then attempting to buttress that by saying but there were times she was collaborative. The fact that she did not harass everyone, or that not all her interactions with certain people were inappropriate, does not negate a finding of harassment. Her pattern of conduct as a whole is what matters, and it is clear that the pattern as a whole was vexatious.

113. The inappropriate behavior was present in a sustained, ongoing manner in respect of a number of her colleagues. To be clear, this went beyond just a workplace conflict or a difficult interpersonal relationship. Her behavior demeaned their presence in the workplace as a whole, not just their relationship with the Grievor. Being ignored or having your comments/role belittled through passive non-verbal behavior strikes at the heart of a person's sense of self as an employee and as an individual. Her colleagues made numerous references about how they felt dealing with the Grievor, and also how those dealings affected their confidence in their own work generally.

114. With respect to the assertion that the Grievor did not intend to engage in this conduct, or that she was unaware she was being perceived this way, intention is not required. The issue is only whether the behavior was known or ought to have been known to be unwelcome.

115. Having considered the evidence, I am of the view that the Grievor, at the very least, ought to have known that this type of behaviour, of constantly intimidating others, by doing things like rolling her eyes, giving angry looks, raising her voice, ignoring people if they disagreed with her or spoke to someone who disagreed with her, and questioning them in an aggressive manner, was unwelcome.

116. In fact, I am of the view it is likely that the Grievor knew it was unwelcome. In reaching this conclusion, I note that the evidence does not suggest the Grievor does not have an awareness of when people are uncomfortable. To the contrary, she was well aware that there were relationship difficulties on the unit. She acknowledged her relationship with the interlink nurses had become progressively more tense over the past few years. She repeatedly made reference to how everyone was “struggling”. She acknowledged that there was tension in the “moving forward” meetings, and identified that her colleagues were reluctant to speak in these meetings, suggesting this was because they had a fear of reprisal.

117. Her explanations of this situation, however, focused on the conduct of others and the failings of management, and were inconsistent with the evidence. Her suggestion that the tension was because of the difficulties of the different professions working together is belied by the evidence of the interlink nurses, who stated they were not experiencing this tension with the other social workers, and the evidence of the social workers, who stated they did not have difficult relationships with the interlink nurses. Her suggestion that her colleagues were silent during the “moving forward” meetings because of a fear of reprisal from management made no sense given management had specially arranged these meetings for people to express their views. In my view, it is somewhat incredulous that someone knows people around them are uncomfortable, but somehow doesn’t know their own behavior may be contributing to it.

118. While the Grievor repeatedly asserted “I never knew”/“nobody told me”, I find that difficult to accept in the face of the evidence about some of the incidents. For example, the Grievor’s behaviour silenced the room on November 9th, and Ms. Schoberg was visibly upset. Similarly, at the December 2012 meeting, Ms. Schoberg explicitly stated that she was felt disrespected in the November 9th meeting. Given the Grievor was an active participant in the November 9th meeting, the Grievor’s assertion that she didn’t know Ms. Schoberg was talking about her lacks credibility. At the very least, one would think she would have considered whether she had done anything to lead Ms. Schoberg to

feel that way. After all, the Grievor did not identify any alternative explanation as to who she thought Ms. Schoberg was talking about.

119. Also, the fact that the Grievor is a social worker cannot be ignored. The Grievor acknowledged she has been trained in the skills of counselling and communication, and it is an essential component of her job. She is fully aware, as she acknowledged, that people communicate not just by the words they say but through non-verbal means, such as silence or their actions. Given these skills, it is disingenuous on her part to say “no one ever told me”. Of all people, a social worker would be expected to understand that if there is tension between staff (which she acknowledged there was), ignoring people or using non-verbal behavior such as rolling eyes or angry looks would negatively impact those relationships. This is particularly the case where the structure of the workplace requires collaboration and communication in order for all the staff to properly do their jobs.

120. Furthermore, the evidence is the impact of the Grievor’s behavior has been brought to her attention in the past. Ms. Appleby and Ms. Milks both indicated they had spoken to her about it. While it was not formal discipline, this evidence undermines the Grievor’s position that she never knew there was any issue about how she behaved.

121. Having found the Grievor engaged in the misconduct alleged, specifically harassment and creating a poisoned work environment, I turn to the issue of whether there is just cause for dismissal. This is really the most difficult component of this case.

122. This is not because there is any question about the significance of the misconduct. On the spectrum of harassment, the Grievor’s conduct only appears to fall at the lower end if each incident is considered on its own. However, the significance and the impact of the Grievor’s misconduct was magnified by its insidious and sustained nature. The cumulative impact of her behavior was so significant that it created a situation where people began to doubt their own abilities and worth, and were uncomfortable expressing their own views for fear of her reaction or some sort of reprisal behavior from her. They described it as “walking on eggshells” or being “in an abusive relationship”.

Furthermore, this was not one or two incidents of ill-advised behavior, but rather a pattern of conduct over a number of years towards a group of people with the “target” changing and growing. The impact of the Grievor’s behavior is best illustrated by the fact the concerns of her colleagues extended to their physical safety. While I find that there is absolutely no evidentiary basis for such concerns, I accept that these concerns were honestly held by her colleagues. It speaks to how profoundly they were impacted by the Grievor’s behavior and the magnitude of the sense of fear and uncertainty her conduct instilled in them.

123. The cumulative effect of this sustained pattern of behavior was the creation of a poisoned work environment where staff either avoided her completely or felt they could not express their views on the very issues they were supposed to be discussing – patient care and workplace processes. This conduct went beyond impacting her co-workers sense of self, and impacted the way they carried out their work duties. The importance of communication amongst health professionals that work as a team cannot be underscored. This is a core component of her job, but her conduct served as a barrier to staff being able to do their best job in providing patient care.

124. I do not accept the Union’s argument that the Hospital’s decision to terminate the Grievor when compared to the Hospital’s treatment of H.P is evidence of disparate treatment of the Grievor. While there is evidence that H.P. also engaged in inappropriate behavior, no complaint was filed against her by staff. Furthermore, the evidence is H.P. was a follower of the culture created by the Grievor and was not viewed by her co-workers as being responsible for the same level and quality of inappropriate behaviour.

125. Every instance of misconduct is to be judged on the basis of the specific circumstances. The principle of consistent enforcement is that like circumstances should be responded to by an employer in a like manner. Since the circumstances of the Grievor’s situation are distinctly different from that of H.P., I do not find the fact that the Hospital did not terminate H.P. as indicating the Grievor has been subject to disparate treatment.

126. However, the Grievor is an employee of over fourteen years, and not only has a clean disciplinary record but a history of positive performance appraisals. I do note that this latter factor is tempered by the fact that the evidence is clear she has engaged in inappropriate behavior for years, and so those positive performance appraisals do not tell the complete picture of what sort of employee she has been.

127. Yet, this is the first time the Hospital has formally brought this issue to the Grievor's attention. This is despite the fact that even Ms. Milks manager was aware the Grievor's behavior was causing discomfort amongst the staff for some time.

128. Having considered this evidence, I find that there is just cause for discipline, but not discharge.

129. That said, having considered all the circumstances of this case, I find that reinstatement is not an appropriate remedy in this case. I appreciate that damages in lieu of reinstatement is an extraordinary remedy, but find that the facts of this particular case warrant such a conclusion.

130. I note the delivery of patient care is founded upon effective collaboration and communication between staff. Staff must be able to work closely and have collegial and collaborative relationships in order to properly do their jobs. The impact of the Grievor's conduct on her colleagues, which included creating a deep fear of reprisal, militates against the conclusion that she could be successfully integrated back into the workplace. This is particularly the case where the inappropriate behavior is subtle and insidious. This was the consistent evidence of the staff and management witnesses.

131. Furthermore, there is evidence that the Grievor does not actually accept responsibility for the situation she has created in the workplace, but rather views this whole situation as a result of a failure of management. This is quite evident from the Hospital's attempt to return the Grievor to the workplace in Fall 2013 and place her temporarily in a different unit until the external investigation was completed. I accept Ms. Rose's evidence that the return to work plan was never finalized because the Grievor insisted she be able to have lunch on her old unit.

132. While the Grievor suggested that wasn't the reason, I found her explanation lacking in credibility. Her reasons for refusing to sign the plan changed continuously under cross-examination. First, she stated she didn't sign the plan because she was waiting for documentation relating to the harassment complaint, explaining at length how the Hospital didn't follow its own policies and pointing out how Ms. Milks made mistakes during her investigation in complying with the Hospital's policies. Then, the Grievor suggested that she didn't sign because the Union didn't support the return to work plan, but did not identify any specific concern (other than same vague criticism of Ms. Rose not being very experienced). Next, she stated the issue was not where she had lunch but access to the hallway and corridors in her old unit like her other colleagues were. She then reverted back to saying it was because she was still waiting for documents relating to the harassment complaint to which she felt entitled, suggesting not returning her to her unit was discipline. When it was pointed out to her she had already been given a summary of the complaint, she then stated that she was being "given many mixed messages" at the time and was told by the Union she would not be able to pursue her grievances if she signed the agreement.

133. None of these explanations make any sense. There was no reason that any documentation about the complaint should be a pre-requisite to returning to work. With respect to the Union's support, she never identified any specific objection and acknowledged the Hospital made adjustments to the plan when specific concerns were identified. Furthermore, the fact is that the Union did ultimately sign the plan. With respect to the suggestion she didn't sign the plan in order to preserve her ability to pursue her other grievances, this explanation lacks credibility when it was offered up after all these explanations were questioned. When each of her changing explanations were deftly pulled apart by the Hospital's counsel, she ultimately resorted to stating "I was struggling...I was not feeling safe".

134. The Grievor's failure to be able to negotiate a return to work speaks volumes about her ability to be able to work with the Hospital in a manner that recognizes the interests of others. She knew she was not being returned to her regular unit because the complainants, and the manager the Grievor

herself was complaining about, worked there. She knew this was a temporary measure until the matter was investigated. Nonetheless, she insisted on having lunch on the unit and refused to return in the absence of that demand being satisfied. Her inability to bend on that issue is very telling about her ability to understand the needs of others and accommodate those needs, even when it would require very little on her part and is essential to achieving a resolution. Rather, she continued to be driven by her own sense of entitlement with no regard for her colleagues' concerns.

135. The Union suggested she shouldn't be judged on her behavior after the complaints were filed (because she was feeling harassed by the Hospital at that time). However, I am concerned about her lack of honesty in explaining months later why the return to work never materialized. Even at this point, she is focused on the failings of management in respect of its processes. There continues to be a complete refusal to acknowledge she is an active contributor to the conflict around her, but a clear lack of regard or trust in how management is conducting itself. This was essentially the same behavior that underlies the harassment complaints, whereby in a passive-aggressive manner she would act as a barrier to resolution if she was unhappy about something.

136. The Grievor took a similar approach during the formal investigation, which occurred many months after she laid off work. The theme of her responses to the investigator over the 30-plus hour interview was that the complaints against her were a result of her "being targeted" for speaking up about issues in the workplace, with the focus on the fact that the real problem was management, and in particular Ms. Milks, not doing its job properly to deal with the workplace. The Grievor even suggested that many of the people interviewed may have lied because of fear of reprisal from Ms. Milks.

137. At the hearing, she no longer explicitly stated she was "a scapegoat" like she did during the investigation. However, she continued, quietly but persistently, to paint a picture of herself as the one being mistreated by the Hospital. Most of her evidence focused on her concerns about workplace processes, the Hospital's failure to respond adequately to those concerns, and her view that others exhibited a lack of respect for the social worker role. She described her attempts to raise these issues

with management as her “fighting for respect for my profession”. From her perspective, the difficulty with the “moving forward” meetings was that her point of view and role as a social worker “was not being heard”. She again suggested that the concern of staff at these meetings was fear of reprisal from management. She never once acknowledged that she actually did anything to cause her colleagues to be upset. Rather, as noted above, she attempted to minimize the extent of her misconduct, and in fact I find that she was untruthful in many respects.

138. In response to a question about addressing her colleagues’ concerns, she stated “I know there is support to address them”. Yet, moments later, she made it clear that she has little confidence in the Hospital and still lays the full blame for this situation at the Hospital’s door. I am referring to the Grievor’s comment, speaking about the state the hematology/oncology unit was in, that she was angry “with the [Hospital’s] processes that I thought were there to help and I struggled through”.

139. She stated she was “saddened” that her colleagues “perceived” her behavior that way, and that she wouldn’t want to feel the way they said they felt. However, she never once acknowledged she may have done something to cause that feeling. When asked whether she thought she could work collaboratively as a team member if she was reinstated, she stated “I believe I have; my performance appraisals said I have”. There is still no recognition that she has not been behaving in a collaborative, respectful manner for a long time. There is no recognition that she needs to examine her behavior to figure out what is causing others to feel disrespected.

140. In all these circumstances, there is no reasonable expectation that a viable employment relationship between the Hospital and the Grievor could be re-established.

V. DISPOSITION

141. The grievance is upheld, in that I find there is no just cause for discharge. I have determined damages in lieu of reinstatement is the appropriate remedy.

142. The parties are directed to have discussions in respect of quantum, but I remain seized with respect to any issues relating to implementation of this Award.

Dated this 31th day of July, 2015.

A handwritten signature in black ink, appearing to read "Jasbir Parmar". The signature is fluid and cursive, with a large initial 'J' and 'P'.

JASBIR PARMAR