

and September 22-24, 2010, at the School District Administration Building, 160 Colborne Street, St. Paul, Minnesota. The hearing was tape recorded with the Arbitrator retaining the tapes for his personal records. The Parties were afforded full and ample opportunity to present evidence and arguments in support of their respective positions.

The Parties elected to file post hearing briefs with an agreed-upon submission date of November 5, 2010. The post hearing briefs were submitted in accordance with those timelines and received by the Arbitrator by e-mail attachment. The Arbitrator then exchanged the briefs by e-mail attachment on November 9, 2010, after which the record was considered closed.

The Parties agreed that the grievance is a decorous matter within the purview of the Arbitrator, and made no procedural or substantive arbitrability claims.

ISSUES AS DETERMINED BY THE ARBITRATOR

1. Did the School District have just cause to terminate the Grievant?
2. If not, what is the appropriate remedy?

STATEMENT OF THE FACTS

The Grievant, Nhailee Vang, is a first-generation Hmong American who came to the United States as a refugee in 1980, at the age of three. The Grievant has lived in the St. Paul

metropolitan area most of her life and has strong, active ties - civic, familial, and social - to the St. Paul's Hmong community, one of the largest cultural groups in the United States.

Hmong cultural norms with respect to family and community differ from those held by most contemporary Western cultures. While the St. Paul's Hmong community is large it is exceptionally close-knit. Family units extend to supportive networks encompassing great-aunts and uncles, second and third cousins, and beyond. In the Hmong community, these extended family networks are referred to as "clans."

The Grievant belongs to the Vang family clan, one of the largest clans in St. Paul. Many local members of the Vang clan send their children to the St. Paul Public Schools. It is inevitable that the Grievant would have personal and professional clan-based relationships with school-aged children. In fact, the Grievant attended the St. Paul Public Schools.

The Grievant was first employed by the School District as an Educational Assistant ("EA") in 1995. (Union Exhibit #14). The Grievant has worked as an Educational Assistant in a variety of settings in the School District; in an afterschool program for elementary-age students, at an Alternative Learning Center for teen mothers, at a high school designed to support and prepare recent immigrants and refugees for transition to mainstream

schools, and, most recently since the fall of 2006, as a Standardized Testing Coordinator at Harding High School ("Harding"). As the Testing Coordinator she was responsible for coordinating the testing process for standardized tests administered at Harding. (School District #13).

Before working for the School District, the Grievant volunteered for several years with the St. Paul Parks and Recreation Department which is not overseen by the School District. She worked with refugees at a housing project's community center.

The Grievant was considered to be a good, valued employee. Her written performance assessments reflect that she was competent, reliable, and committed to the students with whom she worked. (Union Exhibits #11, 14, 15). These evaluations, as well as the testimony of the Grievant's previous supervisor, Jeff Dufresne, also reflect that the Grievant was particularly skilled in building cooperative cross-cultural relationships between school staff and immigrant students and their families.

As a Hmong the Grievant had an interest in Korean popular culture since she was in high school. This is common among the Hmong culture especially with first and second generation Hmong Americans. Vibrant and highly visible within various Asian ethnic communities, Korean popular culture presents young Hmong

Americans with images of Asian artists and role models with whom they can identify. The Grievant made her cultural interest known to Harding students and staff by decorating her testing room with Asian media posters.

School Board Policy 507.00 allows schools to have clubs as school-sponsored activities. (School District Exhibit #31). School-sponsored clubs are organizations of students, recognized by the school, that operate under the direction and supervision of school personnel with "their activities in accordance with the laws of the state, the policies of the Board and administrative regulations." Id.

In 2007, a few Harding students wanted to start a Korean Club. They first asked one teacher to be the advisor but he was not available. According to the Grievant, that teacher referred the students to the Grievant because he knew she had an interest in Korean popular culture. The students seeking to organize the Korean Club then asked the Grievant if she would be the Korean Club advisor. She agreed.

The Grievant was the advisor for Harding Korean Club during the 2007-2008 and 2008-2009 school years. The Korean Club became an official, school-recognized club, allowed for by School Board Policy 507.00. The Korean Club's focus is on learning about Korean popular culture. Korean Club members learn about Korean

pop music, dance, food, language, entertainment, etc. The Korean Club met two to three times per week after school. Students in the Korean Club would also meet during their lunch times in the Grievant's room while the Grievant was there.

As an official, school-sponsored club, the Korean Club was permitted to use space in the building for meetings and events without charge. The Korean Club also had its picture taken for the yearbook. (School District Exhibit #32). There were about 30 members.

The Korean Club was also permitted to do fundraising. Korean Club fundraising allows participants to raise money for club activities. According to Harding's Administrative Manual, fundraising requires the school principal's approval. (School District Exhibit #30, p. 61). Club funds are to be handled in a business like-manner by the club's advisor. Id. "It is the responsibility of the Advisor to each day deposit with the bursar all money collected, and to obtain a receipt (Form 13R4) from the bursar. Advisors shall never leave money in their desks." Id. Club funds are to be maintained in an intra-school bursar account. Id., at 61, 92.

The Korean Club did fundraising while the Grievant was its advisor. The students sold pop at dances. The Grievant kept the money earned by the Korean Club in a locked box in her room.

When there was enough money, the Korean Club members would celebrate a student's birthday or to buy food and cook a Korean dish. While the handling of the Korean Club's funds in this manner violated Harding's Administrative Procedures regarding club funds, there is no evidence that funds were misappropriated by the Grievant or the leadership members of the Korean Club.

While the Grievant was the Korean Club advisor, some members of the Club learned about the Korean Music Festival ("KMF"). The KMF is an annual music festival held at an outdoor amphitheater, the Hollywood Bowl in Los Angeles, California. It has been held there every year since 2000. It is a one-day festival that is usually held on a Saturday night. In 2009, the KMF was scheduled to be held on Saturday, May 9, 2009. The Grievant had attended this festival in Los Angeles for many years; it was an annual tradition for her.

While the Grievant was the Korean Club advisor, several members of the Club discussed going to the May 9, 2009 KMF based upon their conversations with the Grievant. The Grievant agreed they could go to the KMF with her if they saved their money and their parents said it was okay. (School District Exhibit #26).

Ultimately a group of five Korean Club members/Harding students received permission from their parents and earned enough money to go on the trip to Los Angeles, California to, among

other things, attend the KMF. The students were scheduled to leave during late evening on Wednesday, May 6, 2009, miss the next two school days (Thursday, May 7 and Friday, May 8, 2009), attend the KMF on Saturday, May 9, 2009, and then leave late at night on Sunday and return to the Twin Cities at about 5:00 a.m. on Monday morning, May 11, 2009, a school day. The students ranged in age from sixteen to eighteen and were in grades ten through twelve at the time of the trip. (School District Exhibits #5-7, 10, 11).

The Grievant arranged and coordinated the trip for herself and the five students. The Grievant made the travel arrangements on-line at school using school computers. Several of the students sat with the Grievant in the school's computer lab while the arrangements were being made and decided upon by the group. The Grievant searched for and booked airline tickets on-line at school, using school computers. She searched for and booked a hotel room at the Grand Wilshire for three nights on-line at school, using school computers. She searched for and booked a rental van on-line at school, using school computers. The Grievant searched for and reserved the KMF tickets on-line at school, using school computers.

At least two of the students transferred money from their bank accounts into the Grievant's account to pay for their

expenses. They did this on-line at school. The trip cost each Harding student between \$800 and \$1,000, including airfare, hotel, van rental, food, and other expenses. (School District Exhibits #10, 11).

From all appearances, the Grievant acted as the tour organizer, tour guide, chauffeur, and adult chaperone on the trip. The parents let their minor children go with the Grievant to California for several reasons, including their children knew her, they considered her to be part of the extended family Vang clan, looked up to her, and because she was their Harding Korean Club advisor.

The Grievant received permission to use two days of personal leave (May 7 and 8, 2009) to go on the trip. The Grievant, however, did not inform anyone at Harding that she was going to take this trip with the students. Nor did she ask any Harding school administrator whether she would be permitted to take the students on this trip.

None of the students or their parents informed the school that the students were going with the Grievant or that they were simply going to Los Angeles on a pleasure trip. While some of the parents provided excuses for their students, not one of them mentioned that their students were going with the Grievant. All the excuses provided for the students were false or misleading.

The group of five students went with the Grievant and a freshman college student to Los Angeles on May 6, 2009. The college student was a former student at Arlington High School, a School District school. The group flew out on a red-eye flight arriving sometime after midnight.

The Grievant rented a mini-van and drove all seven of them around Los Angeles. For the first night, the group had not made any hotel arrangements. They drove around Hollywood in the early a.m. hours. They arrived at a rest stop parking lot on the beach about 4 a.m. and spent the night there, with all seven of them sleeping in the mini-van.

The Grievant gave varying reasons for the decision to spend the night in a van on the beach, including the avoiding of a night's lodging charge when they would not be arriving until very early in the morning, the students wanted to see Hollywood at night and to see the sunrise on the beach, and the parents asked her to make the arrangements this way. (School District Exhibit #26; Union Exhibit #4). One of the students testified that she thought it was "kind of dangerous" and that she was "a little scared" spending the night at the beach.

The group had very little sleep that night. On Thursday and Friday May 7th and 8th, the Grievant drove the group around Los Angeles sightseeing. They went to Korea Town, China Town, the

Hollywood stars, and went shopping during their time in Los Angeles. The KMF was on Saturday night, May 9, 2009. It was not an all day-event. The entire group went to this concert.

The group spent Thursday, Friday and Saturday nights at the Grand Wilshire hotel in one room. This room had two double beds and a couch. There were not enough sleeping accommodations for everyone. Four people slept in beds, one person slept on a sofa, and two people slept on the floor. (School District Exhibit #10). The number of people in the room certainly exceeded the room's legal occupancy limits.

The group left on Sunday night, May 10th, on another red-eye flight, and arrived back in Minneapolis on Monday, May 11, 2009, about 5:30 a.m. This was a school day.

The Grievant drove four of the students to their homes. The Grievant worked that day. One of the students stayed home from school because she was too tired. Another student went to school that day and take her IB English test. She failed it.

After the group left on the trip, staff at Harding became suspicious. Tracy Hrouda, Harding's Attendance Liaison and Badminton Coach, realized that two of the students were absent from a badminton tournament. She asked the other badminton players where they were and someone said they were in California. That surprised her because she had expected them to be at the

tournament. She asked what they were doing in California and someone told her they were at a music festival.

Ms. Hrouda then spoke to staff in the school office. She learned from Lea Kammerer, Clerical Services Supervisor, that the Grievant had taken personal leave to go to California. The two of them began to suspect that they were all together. They then discussed their concerns with Harding Principal, Doug Revsbeck, about what they suspected. He consulted with the School District's Human Resource Office and asked Harding Social Workers, Beth Breen and Brien Giesen, to get involved.

Through a course of conversations between Joyce Victor, School District Assistant Manager of Negotiations/Employee Relations, and Principal Revsbeck, an investigation plan was developed. The school Social Workers started calling home contact numbers to find out what the parents knew and started reviewing the notes parents had allegedly written as excuses for their children. They learned that at least two of the students were in California. (School District Exhibit #5).

The school continued its investigation on Monday, May 11 and Tuesday, May 12, 2009. Both of these days were scheduled classroom days. They decided not to interview the students until the ones they knew had gone on the trip had returned to school. This was to avoid collaboration of their stories. One of the

students did not return to school on Monday, and the school had been informed that she was on the California trip.

On Tuesday, May 12, 2009, the Social Workers began interviewing the students. In a nutshell, some of the students lied about going on the California trip, some admitted going on the trip but were in California with relatives and were visiting a sick friend. One of the students even denied that the Grievant was on the trip. (School District Exhibits #5, 6, 8, 10, 11).

At the end of the day on May 12, 2009, after the students had been interviewed by the Social Workers, Principal Revsbeck interviewed the Grievant. The Grievant admitted to taking the students on a trip to California. Principal Revsbeck then placed the Grievant on administrative leave with pay and directed her to an investigative meeting. (School District Exhibit #25).

The Grievant attended an investigative meeting with her Union Representative, Paul Rohlfing, on May 19, 2009, a week after she had been placed on paid administrative leave. Ms. Victor led the questioning with the school principal assisting as well. At that meeting, the Grievant admitted that she took five Harding students and a college student to Los Angeles, California. The Grievant said the purpose was to attend the KMF and to see another culture. The Grievant reported that the Korean Club members had heard about the KMF and asked her about

it. Since the Grievant had attended this event in the past, she told the students about it.

At the investigative interview, when asked about parental permission to take the students on the trip, the interviewers testified that the Grievant told them that they had given her oral permission only. The Grievant refutes this statement. The Grievant claims that she told the parents that she would "keep an eye on them, but would not be responsible for them." The Grievant said she had spoken to the parents of all of the Harding students except one. She said she took that student on the trip, although she had not spoken to her parent, because the student "had her own money" for the trip and the Grievant trusted that the student had her parent's permission. The Grievant said the students' parents asked her to watch the girls in Los Angeles because the girls knew her and she was their Korean Club advisor.

The Grievant admitted at the investigative interview that she was familiar with the school's and School District's field trip procedures, including the requirements that she submit a proposal, have an adequate number of licensed staff, and that the principal approve it. She claimed she did not have to get school approval for the trip because she did not consider this to be a school trip, and she was related to two of the students. (School District Exhibits #24, 33; Union Exhibit #12).

At this investigative meeting, the Grievant reported that when she returned from the trip on early Monday morning, she drove one student home. She denied driving any other students home. The Grievant testified at the arbitration hearing that she actually had driven four students to their homes before the start of the school day on Monday, May 11, 2009. The Grievant claimed she forgot about driving the other students because when she returned she was tired after being on the red-eye flight. However, the Grievant's explanation at the arbitration hearing fails to recognize that the investigative interview was over a week after she had returned.

At the investigative interview, the Grievant was asked if it was appropriate for the students to miss school to attend the KMF. She said "yes, because they were going to see another culture" and that the "students' absence was on them and their parents, not on me."

Ms. Victor told the Grievant at this meeting that this was a serious situation. Ms. Victor told the Grievant that there would have been liability issues for the School District had anything happened to the students. Ms. Victor also told her that the School District was concerned about the students missing school and that the school did not know why the students were gone. The Grievant reiterated her claim that it was not a school function

and the parents were aware that it was not a school function but never claimed that she had any written communication with parents that might address liability concerns. (Union Exhibit #12).

However, two days after the investigative meeting, the School District received a fax from the Grievant. This fax was a signed waiver prepared by the Grievant and purportedly signed by the students' parents on or about April 30, 2009, acknowledging that the Grievant "is not liable or responsible for any incidents that might occur during the trip" and "I also understand that this is not a school related activity and each child is solely responsible for themselves." (Union Exhibit #1).

After the investigative interview of the Grievant and receiving the parental permission slip, representatives from the Human Resources and Employee Relations Departments concluded that Grievant's discharge was the appropriate consequence, regardless whether the Grievant had alleged oral and/or written parental permission to take the students on the trip to Los Angeles.

Peter Christensen, Executive Director High School Education, sent the Grievant a letter dated May 29, 2009, noting that she had been recommended for discharge for the reasons recited in the letter, including the Grievant's involvement in planning and attending the KMF with the Harding students without permission from the School District. (Joint Exhibit #4).

Of particular note is the following from this proposed discharge letter:

Your conduct described above, if true, is completely unacceptable for an employee of the Saint Paul Public Schools and it cannot be tolerated. As an employee working with students, you are expected to model honesty, integrity and responsible behavior, and to reinforce the importance of good attendance at school. Your conduct described above, if true, contributed to false statements being given to school officials about why the students needed to be excused from school; and the arrangements you made took students out of school unnecessarily because, even if the trip had been authorized, the festival was held on a Saturday and it would not have required students to miss any school time.

Your conduct described above, if true, subjected students to potentially extreme danger in sleeping in a vehicle on a beach, and, by your own acknowledgment, you only reserved one hotel room for the other nights to be occupied by you, a college student, and our five students. Your conduct, if true, subjected the school district and yourself to significant potential liability for the safety and well-being of the students.

The conduct described above, if true, was an abuse of your contact with students and of the trust placed in you by virtue of your employment with the Saint Paul Public Schools. You have been warned in the past for problems with inappropriate contacts with students and you were given directives about personal and professional boundaries with students, both on duty and off duty. The conduct described above, if true, demonstrates a disregard for prior directives, expectations and requirements that were discussed with you, and a very serious escalation of unacceptable conduct on your part.

(Joint Exhibit #4).

The Grievant was notified in this letter that she had the right to attend a Loudermill meeting to state her side of the story on June 4, 2009. (Joint Exhibit #4).

On June 4, 2009, the Grievant told her side of the story to Mr. Christensen and read a prepared statement explaining her conduct before, during and after the trip. (Union Exhibit #4). The Grievant said her conduct was an error in judgment and that she did not see this as a school field trip. She said if she had to do it again, it would not happen again the same way. She also apologized for her actions and sought to be returned to her position with the School District. Id.

Thereafter, Mr. Christensen determined that the Grievant should be discharged from employment with the School District. At the end of the day on June 8, 2009, the School District discharged the Grievant from employment with the District. (Joint Exhibit #1).

The Union filed a written grievance by e-mail on July 2, 2009, protesting the Grievant's discharge. (Joint Exhibit #3). The grievance was denied by the School District on April 19, 2010. Id. The grievance was ultimately advanced to arbitration by the Union. Id.

UNION POSITION

The Grievant has consistently maintained throughout her discharge proceedings that she believed the trip to be personal; she never intended it to be a field trip. The fact that many of the students who accompanied her on this trip also attended the

school where she worked seemed incidental to the Grievant at the time, since she had personal family and community connections with these young women and their parents independent of her work at Harding.

The Grievant was aware that the School District had field trip policies but she did not know that they applied to personal trips when staff and students were related and, therefore, she did not consult these policies prior to the trip or follow their protocols. That said, she now recognizes that it is the School District's perception of her actions, and not just her intentions, that matter.

In hindsight, although her intentions were always good, the Grievant deeply regrets the choices she made with respect to this trip. She now recognizes and understands the serious concerns raised by the School District about student safety, District liability, and maintaining appropriate personal/professional boundaries.

The School District wants to convince the Arbitrator that the Grievant did not just make a one-time mistake that was so serious it warranted the termination of her employment but rather that, despite its numerous attempts to work with the Grievant on performance and boundary issues, this last incident simply proved that she was, once and for all, irremediable. The School

District has not shown that the Grievant's actions are not remediable.

For all of the reasons stated above, the Union respectfully asks that the Arbitrator direct the School District to reinstate the Grievant's employment as an Educational Assistant and to impose a lesser disciplinary penalty as the Arbitrator deems appropriate.

SCHOOL DISTRICT POSITION

Just cause exists to discharge the Grievant. The School District has demonstrated by a preponderance of the evidence that the Grievant engaged in conduct warranting discharge. The School District was not required to use progressive discipline given the seriousness of the Grievant's conduct leading to her discharge from employment.

The Grievant violated state law regarding compulsory attendance. She violated multiple School Board and Harding school policies and procedures regarding her conduct while planning and going on the field trip with the Harding students. The Grievant exposed the students to potential extreme danger and the School District to significant legal liability.

Although none of the students were injured on the trip, the School District is not required to wait until its students suffer serious physical or emotional harm before discharging an

employee. Subjecting students to significant potential harm is sufficient grounds for discharge.

While serious physical harm did not occur to the students on the trip, there was actual harm. Students missed school and important IB tests that could have earned them college credit. Two students missed the badminton tournament and let their coach and teammates down. Families were encouraged to provide false and misleading excuses to the school for their students' unlawful absences. At least one student went on the trip under deceptive pretenses. She gave misinformation to her mother about how long the KMF lasted and whether she had completed all her school work before the trip. The Grievant similarly misinformed parents about how long the KMF lasted in duration. When the students returned from the trip, they were compelled to lie to school administrators to avoid getting the Grievant into trouble.

The Grievant also failed to heed earlier directives and warnings about appropriate relationships with students. In 2006, the Grievant's school principal, Rose Santos, warned and directed her not to fraternize with students and not to put herself in a compromising situation. Ms. Santos cautioned the Grievant about appropriate boundaries with students, yet the Grievant failed to heed those warnings. The Grievant's conduct in taking the students to California for a five-day vacation was a gross

escalation of unacceptable conduct and violated all sense of reasonable boundaries.

There are no extenuating or mitigating circumstances that warrant discipline less than discharge. This was not a personal trip. This was not a trip among friends and family members. The Grievant knew the students from the Korean Club and Harding, not from social gatherings in the Hmong community.

The fact that the Grievant and the students were Hmong does not excuse the Grievant's conduct. To allow the Grievant's argument to prevail, would open up the School District to having to apply two standards--one applicable to Hmong and staff and another to everyone else. This would be illegal under state law.

Notwithstanding the Grievant's apology, the School District properly discharged her. The Grievant willfully violated the law, and several policies and procedures. She did so despite earlier warnings about appropriate interactions and relationships with students. Furthermore, during the course of planning the trip, going on the trip, responding to the School District's investigation, and grieving the discipline, the Grievant repeatedly tried to mislead the District or outright lied to it. She has violated the basic trust and integrity that the School District has a right to expect. In the end, the School District simply cannot trust her to not to repeat her

mistakes and expose its students to harm and the District to liability.

The School District requests that the Arbitrator uphold the discharge and deny the grievance. If the Arbitrator, on the other hand, agrees with the Union that discipline short of discharge is appropriate, the School District requests (1) that the Arbitrator impose substantial discipline, (2) that any reinstatement be to a vacant position only, and (3) that no back pay be awarded.

ANALYSIS OF THE EVIDENCE

Article 17, Discipline and Discharge, Section 17.1 of the Collective Bargaining Agreement affirms the Employer's "right to impose disciplinary actions on employees including dismissal for unsatisfactory work or other just cause." It is generally the function of an arbitrator in interpreting a contract provision which requires "just cause" as a condition precedent to discipline, not only to determine whether the involved employee is guilty of the wrongdoing as charged by the employer but also to safeguard the interests of the disciplined employee by making reasonably sure that the cause for discipline was just and equitable. The term "just cause" implies a standard of reasonableness under the unique circumstances of each case. An employee will not be disciplined by action which is deemed by an

arbitrator to be arbitrary, capricious, discriminatory, unduly harsh, or disproportionate to the proven offense committed by that employee.

Section 17.2 of the Collective Bargaining Agreement provides for the principle of progressive discipline (oral reprimand, written reprimand, suspension without pay, and discharge) "except in cases of serious magnitude." In other words, the School District has the contractual right to deviate from the prescribed course of progressive discipline in cases of a particularly serious magnitude. The School District alleges that the Grievant's actions with regard to the planning and taking the students on the trip to Los Angeles beginning the late evening on May 6, 2009, and ending in the early morning on May 11, 2009, was of "serious magnitude" which justifies her termination.

There are generally two areas of proof in an arbitration of an employee's discipline case. The first involves proof of actual wrongdoing, the burden of which is always placed upon an employer when the contract requires just cause for discipline. The second area of proof, once actual wrongdoing is established, is the propriety of the penalty assessed by an employer.

As to the first area of proof, the Grievant has admitted to some actual wrongdoing with regard to the planning and the taking of the students on the trip and, where the Grievant's admission

is lacking, the evidence adduced at the arbitration hearing has established other actual wrongdoing by the Grievant with regard to the planning and the taking of the students on the trip.

There are certain facts that the Grievant does not dispute. The Grievant admits that she arranged and coordinated the trip for herself and the five Harding students after the students and their parents initiated discussions about the trip and asked the Grievant to travel with them. The Grievant admits making the travel arrangements on-line at school using school computers, and the evidence adduced at the arbitration hearing, establishes that these arrangements were made during the school day. The Grievant admits that she accompanied the five Harding students and another college student who had attended the St. Paul Public Schools to Los Angeles beginning the evening of May 6, 2009, and returning to the Twin Cities in the early morning hours on May 11, 2009. The Grievant admits that while in Los Angeles she drove the group in a mini-van rented by her around Los Angeles sightseeing and shopping. She admits that the group attended the KMF on the evening of May 9, 2009, which was the main purpose of the trip. She admits the group slept in their rental van at a Santa Monica rest stop upon arriving in Los Angeles in the wee hours of the morning in order to avoid incurring hotel costs for a partial night's stay. The Grievant admits that she spent the next three

nights at the Grand Wilshire Hotel in one room in order to lessen the expenses associated with staying at a nice hotel suite in a safe neighborhood. This room had two double beds and a couch. There were not enough sleeping accommodations for everyone to have a bed. The Grievant also admits that even though she had permission from the School District to be absent during the school days while on the trip, she did not receive permission from the District to take the students on the trip.

While there was debate between the Parties over some of the facts, the evidence is conclusive that the students' parents agreed to allow the Grievant to take their children on the trip and keep a watchful eye on them while in Los Angeles. This arrangement, however, was conditioned on obtaining parental consent before going on the trip. This parental written consent was achieved on April 30, 2009, with the parental understanding that the Grievant "is not liable or responsible for any incidents that might occur during the trip" and the trip "was not a school related activity and each child is solely responsible for themselves." (Union Exhibit #1).

Based upon the Grievant's foregoing admissions and facts established in the hearing record, the Grievant is guilty of the following. The trip had all the indicia of a field trip or a school-sponsored vacation trip even though the Grievant deemed

this trip to be personal in nature. All of the Harding students were in the Korean Club. The Grievant was the Korean Club advisor. The students asked the Grievant about the KMF and she enumerated her vast experiences about this event. The Grievant encouraged the students to save their money so they could go on the trip. Their advisor, with input from the group, planned and booked the entire trip at school, on school computers and during school hours. The group went on the trip during the school year, over some school days. Their advisor rented a mini-van and drove them to the places they visited and home after the flight back.

The Grievant is also guilty of not following any of the School District or Harding policies or procedures for a field trip. (School District Exhibits #34-36). She did not follow any of the School District policies or procedures for transporting students in a private passenger vehicle. (School District Exhibits #30, (V) (B), 37). The Grievant exposed the students to extreme danger by allowing students to sleep in a van on the beach. The Grievant exposed the students to extreme danger by driving the students around Los Angeles in a rental mini-van and driving them home from the airport in her own vehicle. These vehicles did not meet School District requirements for safe, acceptable transportation of students. The hotel accommodations were inappropriate and unsafe. Seven people shared a room

designed for four (or at most six if the couch folded into a bed) people. Certainly, safe and legal hotel occupancy limits were exceeded. The Grievant shared a bedroom for three nights with the students. The School District would never allow students and a staff person to share the same bedroom because of liability, security concerns, and boundaries between an adult and the minor students. She abused her contacts with students and her role as a staff member and as the Korean Club advisor by arranging the trip for Club members without communicating her plans to the school or asking for permission. The Grievant subjected the School District to significant potential liability for the safety and well-being of the students.

The Grievant, however, is not guilty of violating compulsory attendance laws since the students' parents approved of their children going on the trip and missing school days. In addition, the Grievant's actions did not encourage deceitful communications between the students, families, and school. The parents acted on their own volition in allowing their children to go with the Grievant on the trip. While some of the parents and students lied about the trip, they were not encouraged by the Grievant to do so. While it is undisputed that some of the students missed taking IB tests and some missed a badminton tournament while being absent from school on the trip, the students and some

parents were aware of the consequences in advance of the trip. The students were not allowed to take the IB tests since they are only offered once during the academic year and the testing period fell on the school days missed by the students. Finally, the Grievant did not deceitfully secure permission to take personal leave days to go on the trip. The leave was approved by a guidance counselor which is proper procedure.

Since the evidence has established that the Grievant committed actual wrongdoing with regard to the trip, the lingering question is the propriety of the penalty assessed by the Employer. As to whether the Grievant's actions justify some discipline, it has never been the Grievant's or the Union's position that she should not have received any discipline for her conduct with regard to the trip with the students.

The record establishes that the Grievant did not use the best judgment in how she planned this trip. The Grievant regrets some of the choices she made with respect to the trip. However, her intentions behind the trip to provide the students with a cultural experience that cannot be found at Harding, along with seeing the sights and shopping in Los Angeles, cannot be simply dismissed. To the Grievant's credit, her conduct while on the trip was professional and appropriate. She never abused the students in any way. In fact, from the testimony of the students

they all had a great time and want to experience this trip again in the near future.

Once the Grievant learned of the School District's concerns about the trip, she never denied accountability for her conduct. The Grievant has been fully cooperative with School District officials, has apologized and expressed remorse for her actions, and has expressed her new understanding that any trip involving Harding students, regardless of whether the trip was intended to be personal or whether it involved members of her extended clan would have to comply with the District's field trip policies and procedures and be approved in advance by the District. She now recognizes and fully understands the valid concerns raised by the School District about student safety, District potential liability, and maintaining appropriate personal/professional boundaries with students.

It is proper to give some consideration to the past record of any disciplined employee, especially one like the Grievant who had thirteen years of service with the School District. An offense might be partly mitigated by a good past record and it might be aggravated by a poor one. The employee's past record may be a major factor in the determination of an appropriate penalty for the proven offense. This is not to say that an employee can never be disciplined with a long and good work

record. It is simply to indicate that in those cases the scale must be balanced very carefully and the quantum of proof necessary is more than for a newer employee or one with an already poor record.

The record clearly establishes that the Grievant had no prior discipline in her thirteen years of employment with the School District. The termination letter, however, indicates that the Grievant had boundary issues with students in the past.

The School District alluded to two incidents in 2006 dealing with allegations that the Grievant had inappropriate contact with students. One allegation had to do with the Grievant being present with underage students at a party where there was alcohol. The other allegation was that the Grievant had some underage students spend the night at her house. While Ms. Santos, the Grievant's former supervisor, spoke to the Grievant about professional boundaries with students, the Grievant was not disciplined for either of these instances because the School District was "unable to substantiate" the allegations. (School District Exhibit #27).

Prior to her termination, the Grievant was considered to be a good, valued employee by her supervisors. The Grievant's written performance assessments prepared by her supervisors over the years reflect that she was competent, reliable, and committed

to the students with whom she worked. (Union Exhibits #11, 14, 15).

The Grievant's supervisors noted that the Grievant was particularly skilled in building cooperative cross-cultural relationships between school staff and immigrant students and their families. (Union Exhibits #11, p. 2, 15, p. 4). The Grievant is considered to be a prominent member of her family clan in the Hmong community, while providing many good opportunities for her to mentor young Hmong women. The Grievant thus has a dual roles as both a clan member and a professional educator outside of the Hmong community.

There was no indication in these evaluations that the Grievant's supervisors, including Ms. Santos, ever had concerns about the Grievant's ability to maintain professional boundaries with students. In fact, Ms. Santos noted in her evaluation of the Grievant that the Grievant "maintain[ed] appropriate professional boundaries with students. (Union Exhibit #15, p. 5).

The School District also inferred at the hearing that the Grievant is guilty of poor work performance and financial improprieties related to her handling of the Korean Club funds. The record is devoid of any evidence to support these undocumented performance concerns about which the Grievant had

never received prior notice and with unsubstantiated innuendo of financial improprieties.

The School District spent a considerable amount of time discussing the fact that during their investigation of the trip some of the students and their parents lied about details of the trip and the reasons for the students being absent from school for two days. Two of the students testified that they lied during the investigation because they were scared and unsettled by the School District's investigative interviews and they were worried that they and/or the Grievant would get into trouble for going on the trip.

Clearly, the School District had the right to be angry about being lied to by some of the students and their parents.

However, both students testified, and the record establishes, that the Grievant had never suggested that the students or their parents be dishonest with the School District about the trip.

The School District should not be allowed to penalize the Grievant with termination for something that the Grievant had no control over with some of the students and their parents. The Grievant did not partake in any of these lies. The Grievant was honest throughout the investigation and at the arbitration hearing about her involvement in the trip unlike some of the students and their parents.

The School District argues that the Grievant should be discharged for her conduct with regard to the trip, while the Union avers that the Arbitrator should fashion a fair intermediate discipline short of termination. Clearly, the Grievant's conduct with regard to the trip cannot be condoned by the Arbitrator but, at the same time, the School District's punishment of discharging the Grievant from employment with the District is unwarranted. To discharge the Grievant in light of the unique facts and circumstances surrounding this case would be excessive.

The appropriate remedy is that proposed by the School District since the Arbitrator agrees with the Union that discipline short of discharge is appropriate in this case. The School District requests (1) that the Arbitrator impose substantial discipline, (2) that any reinstatement be to a vacant position only, and (3) that no back pay be awarded.

This remedy places accountability on the Grievant, sending a clear and strong message to both her and to other School District employees that professional boundaries with students are of utmost importance to the District, while allowing this dedicated, long-term employee to return to school and continue to be a professional employee and a positive role model for all students, especially Hmong students.

AWARD

Based upon the foregoing and the entire record, the School District shall reinstate the Grievant to a vacant Educational Assistant position with no back pay. The effective date of her termination to her date of reinstatement shall be construed as a disciplinary suspension without any back pay. The School District shall credit the Grievant with all contractual benefits that are accorded an employee, if any, who has served a disciplinary suspension without pay.



Richard J. Miller

Dated December 7, 2010, at Maple Grove, Minnesota.