

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

NORTHEAST WISCONSIN TECHNICAL COLLEGE, Complainant,

vs.

**NORTHEAST WISCONSIN TEHCNICAL COLLEGE
FACULTY ASSOCIATION**, Respondent.

Case 88
No. 53540
MP-3155

Decision No. 28954-C

**NORTHEAST WISCONSIN TECHNICAL COLLEGE FACULTY
ASSOCIATION AND AIMEE VAN GOETHEM**, Complainants,

vs.

**NORTHEAST WISCONSIN TECHNICAL COLLEGE
AND WILLIAM EVANS**, Respondents.

Case 92
No. 54372
MP-3205

Decision No. 28909-D

Appearances:

Godfrey & Kahn, S.C., by **Attorney Robert W. Burns**, 333 Main Street, P.O. Box 13067, Green Bay, Wisconsin 54307-3067, appearing on behalf of Northeast Wisconsin Technical College and William Evans.

Attorney Stephen Pieroni, Staff Counsel, Wisconsin Education Association Council, 33 Nob Hill Drive, P.O. Box 8003, Madison, Wisconsin 53708-8003, joined on the brief by **Attorney Laura Amundson**, Associate Counsel, appearing on behalf of the Northeast Wisconsin Technical College Faculty Association and Aimee VanGoethem.

No. 28954-C
No. 28909-D

**CORRECTED ORDER AFFIRMING IN PART AND REVERSING IN PART
EXAMINER'S FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER**

On August 26, 1998, Examiner Daniel J. Nielsen issued Findings of Fact, Conclusions of Law and Order with Accompanying Memorandum in the above matters wherein he concluded: (1) Respondent Northeast Wisconsin Technical College violated Secs. 111.70(3)(a)3 and 1, Stats., when it laid off Complainant Aimee VanGoethem; and (2) Respondent Northeast Wisconsin Technical College Faculty Association did not refuse to bargain in good faith and thereby violate Sec. 111.70(3)(b)3, Stats. To remedy the violations found, the Examiner ordered Respondent Technical College to: (1) cease and desist from committing such violations; (2) reinstate VanGoethem and make her whole; and (3) post a notice.

On September 15, 1998, Respondent Northeast Wisconsin Technical College filed a petition with the Wisconsin Employment Relations Commission seeking review of Cases 88 and 92 pursuant to Secs. 111.70(4)(a) and 111.07(5), Stats.

The parties thereafter filed written argument, the last of which was received December 22, 1998.

Having considered the matter and being fully advised in the premises, the Commission makes and issues the following

ORDER

- A. Examiner Findings of Fact 1-5(l) are affirmed.
- B. Examiner Finding of Fact 5(m) is modified to read:
 - m. On November 24, 1997, the parties finalized their offers for interest arbitration over the nurse's position. By that point, the parties had agreed to also include the AODA Specialist in the Association's bargaining unit. The parties' final offers are attached to this decision as Appendix C.
- C. Examiner Findings of Fact 6-17 are affirmed.
- D. Examiner Finding of Fact 18 is reversed and set aside.
- E. Examiner Finding of Fact 19 is renumbered Finding 18 and affirmed.
- F. Examiner Conclusions of Law 1-8 are affirmed.
- G. Examiner Conclusion of Law 9 is reversed and the following Conclusion of Law is made:
 - 9. Respondent Northeast Wisconsin Technical College Faculty Association committed a prohibited practice within the meaning of

Sec. 111.70(3)(b)3, Stats., when it initially refused to bargain with Complainant Northeast Wisconsin Technical College over anything other than VanGoethem's placement on the existing salary schedule.

- H. Examiner's Order dismissing the complaint in Case 88 is reversed and set aside and the following Order is made:

ORDER

Respondent Northeast Wisconsin Technical College Faculty Association shall cease and desist from refusing to bargain with the Northeast Wisconsin Technical College over the wages, hours and conditions of employment applicable to employes/positions added to the Association's bargaining unit.

Respondent Northeast Wisconsin Technical College Faculty Association shall take the following affirmative action:

1. Notify all employes in the bargaining unit by having the College post in conspicuous places on its premises where employes are employed copies of the Notice attached hereto and marked Appendix B. This Notice shall be signed by the Respondent Association, and shall remain posted for a period of 30 days. Reasonable steps shall be taken to insure that this Notice is not altered, defaced or covered by other material.
 2. Notify the Wisconsin Employment Relations Commission within 20 days of the date of this Order of the steps taken to comply herewith.
- I. Examiner Order in Case 92 is affirmed as modified to reflect that Respondent Northeast Wisconsin Technical College is ordered to make VanGoethem whole **with interest at a rate of 12% per annum.**

Given under our hands and seal at the City of Madison, Wisconsin this 23rd day of March, 1999.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Meier /s/

James R. Meier, Chairperson

A. Henry Hempe /s/

A. Henry Hempe, Commissioner

Paul A. Hahn /s/

Paul A. Hahn, Commissioner

MEMORANDUM ACCOMPANYING
ORDER AFFIRMING IN PART AND REVERSING IN PART
EXAMINER'S FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

The Pleadings

In its complaint (Case 88), Complainant Northeast Wisconsin Technical College alleges that Respondent Northeast Wisconsin Technical College Faculty Association violated Sec. 111.70(3)(b)3, Stats., by refusing to bargain in good faith with Complainant College as to the wages, hours and conditions of employment applicable to Aimee VanGoethem following her placement in the bargaining unit.

In their complaint as amended (Case 92), Complainants Northeast Wisconsin Technical College Faculty Association and Aimee VanGoethem allege that Respondents Northeast Wisconsin Technical College and William Evans violated Secs. 111.70(3)(a)1 and 3, Stats., by laying off VanGoethem in retaliation for Complainants' protected concerted activity.

The Examiner's Decision

In Case 88, the Examiner concluded that the Respondent Association did not bargain in bad faith by: (1) initially asserting that the existing contract automatically applied to VanGoethem and therefore refusing to bargain over her wages, hours and conditions of employment; and (2) subsequently filing a petition for interest arbitration before the parties had engaged in any face-to-face bargaining sessions.

As to the Respondent Association's initial refusal to bargain with Complainant College, the Examiner determined that because the Respondent's position was based on a good faith albeit erroneous view of applicable law, no violation of Sec. 111.70(3)(b)3, Stats., occurred.

As to Respondent Association's subsequent filing of an interest arbitration petition, the Examiner concluded that: (1) the premature filing of an interest arbitration petition is not in and of itself a violation of the duty to bargain; and (2) the Respondent Association subsequently engaged in bargaining with an intent to reach an agreement. Therefore, the Examiner determined that there was no violation of Sec. 111.70(3)(b)3, Stats.

In Case 92, the Examiner determined that Respondent College laid off VanGoethem in retaliation for Complainants' protected concerted activity and thereby violated Secs. 111.70(3)(a)3 and 1, Stats. In making that determination, he concluded that the reason offered by Respondent for the layoff was pretextual.

POSITIONS OF THE PARTIES ON REVIEW

The College

In Case 88, Complainant College asserts the Examiner erred by failing to conclude that Respondent Association violated its duty to bargain in good faith.

The College argues that the Association bargained in bad faith by initially refusing to bargain at all and by thereafter maintaining the same bargaining position. The College also faults the Examiner for finding that the Respondent's chief spokesperson had a good faith misunderstanding regarding applicable law even though the spokesperson did not testify.

Given the foregoing, the College asks that the Examiner be reversed and that a violation of Sec. 111.70(3)(b)3, Stats., be found by the Commission.

In Case 90, the College contends the Examiner erred by finding that the College acted out of hostility toward protected concerted activity when it laid off VanGoethem.

The College argues that it acted in good faith when it made the decision to lay off VanGoethem. It contends that the decision was based on budgetary concerns -- prompted in part by the Association's bargaining position at that time. The College asserts that the timing of the layoff and cost of subcontracting for nursing services do not demonstrate illicit motivation. To the extent the College underestimated the cost of subcontracting or failed to closely monitor the subcontracted services, the College alleges that such mistakes do not establish hostility.

The College further alleges that it is inappropriate to even consider evidence as to what happened after VanGoethem was laid off. It argues that the inquiry should be limited to the period of time between January 1996 (when VanGoethem was placed in the unit and the College began its budgetary process) and June 1996 when VanGoethem was actually laid off. If it acted in good faith based upon what it knew at that time, the College asserts that evidence of events from outside that time frame cannot be the basis for a statutory violation.

The College also questions the Examiner's view that if the College agents who recommended the layoff had illicit motivation, then the College Board is necessarily tainted by that same hostility. The College notes that the College Board conducted budget hearings as to the proposed layoff and that the Association and VanGoethem both made presentations urging the Board to reject the layoff recommendation. In such circumstances, the College contends that the Board should not be found tainted by the hostility of its agents.

In summary, the College argues that it acted in response to the result of the unit clarification proceeding -- not out of hostility toward the proceeding or the Association's bargaining position. Citing GREEN LAKE COUNTY, DEC. NO. 28792-B (WERC, 12/97), the College asserts that it did not violate Secs. 111.70(3)(a)1 or 3, Stats., by its conduct. Therefore, the College asks that the Examiner be reversed and the complaint dismissed.

The Association

As to Case 88, the Association urges affirmance of the Examiner. It argues that there is evidence in the record to support the Examiner's conclusion that the Association spokesperson was proceeding in good faith and that the Association's overall conduct did not constitute bad faith bargaining.

As to Case 92, the Association contends the Examiner properly found violations of Secs. 111.70(3)(a) 3 and 1, Stats.

The Association asserts that the College's alleged reasons for the layoff are unsupported by the record and thus were properly found to be pretextual by the Examiner. It argues that the College's shifting justifications for its action provide further support for the pretextual nature of the alleged rationale. Ultimately, the Association argues that the absence of any financial need to layoff VanGoethem establishes the illicit nature of the College's actions.

The Association urges rejection of the College argument that the illicit motive of College agents should not be imputed to the College itself. The Association argues that the Examiner properly noted that citizen boards customarily defer to the judgement of staff and that if the Board's ultimate approval of a budget could cleanse the illicit acts of agents, then "all but the clumsiest acts of discrimination" would be "immune from review."

The Association contends that evidence as to the College's illicit motive is legitimately provided by the cost of the subcontracting arrangement entered into by the College following VanGoethem's layoff. Thus, the Association urges rejection of the College's contrary contention.

The Association argues that GREEN LAKE COUNTY does not provide support for the College's position in this case. The evidence clearly establishes that the College acted out of hostility to the protected use of the unit clarification process and subsequent attempts to bargain an acceptable contract. Under GREEN LAKE, the College thereby violated Secs. 111.70 (3)(a)3 and 1, Stats.

Given the foregoing, the Association urges affirmance of the Examiner.

DISCUSSION

Case 88

We look first at Case 88 and conclude that the Association did violate Sec. 111.70(3)(b)3, Stats., when it initially refused to bargain with the College over anything other than VanGoethem's placement on the existing salary schedule. The Examiner determined that the Association's refusal was excused because the Association spokesperson had a good faith misunderstanding of the applicable law. We find the spokesperson's good faith (or lack thereof) irrelevant to the question of whether a violation of law occurred. If a party refuses to bargain based on an erroneous understanding of the law, a violation of the duty to bargain has occurred. For instance, if a party refuses to bargain with another because of an erroneous belief that the disputed matter is a permissive instead of a mandatory subject of bargaining, that party is not insulated from liability for its conduct if it is proceeding in good faith. In a prohibited practice proceeding, such a party will be found to have violated its duty to bargain whether or not it was acting in good faith.

Here, the Association spokesperson incorrectly concluded that the existing contract automatically applied in all respects to VanGoethem and thus that he had no obligation to bargain over her wages, hours and conditions of employment. While we have no reason to doubt the good faith nature of his belief, the fact that he was wrong requires a conclusion that the Association's resultant refusal to bargain violated Sec. 111.70(3)(b) 3, Stats.

We concur with the Examiner's conclusion that the premature filing of the interest arbitration petition is not in and of itself violative of the duty to bargain.

Given the foregoing, we have reversed the Examiner's dismissal of the College's complaint. Inasmuch as the parties have subsequently bargained over the matter and proceeded to interest arbitration, our remedy is limited to a cease and desist order and the posting of a notice.

Case 92

In Case 92, we affirm the Examiner's determination that Respondent College violated Secs. 111.70(3)(a) 3 and 1, Stats., by laying off VanGoethem.

Section 111.70(3)(a)3, Stats., is violated where a municipal employer takes action toward a municipal employe which is motivated at least in part by hostility toward the exercise of rights protected by the Municipal Employment Relations Act. MUSKEGO-NORWAY C.S.J.S.D. NO. 9 v. WERB, 35 WIS.2D 540 (1967); see also STATE v. WERC, 122 WIS. 2D 132 (1985).

As our Supreme Court noted in *STATE V. WERC*, the determination of motive can be a difficult process typically requiring the decision-maker to draw inferences from the record which make illicit motivation more or less likely. The Court stated at pages 142-143:

First, the “in part” test recognizes the practical difficulty that a discharged employee may have in proving a violation of SELRA and refuting an allegation of misconduct. The discharged employee and the employer do not stand on equal footing in cases alleging unfair labor practice, because of the employer’s advantage of being able to monitor the employee’s work performance and document any *bona fide* basis for discipline. The Wisconsin Education Association Council convincingly argues in its *amicus curiae* brief,

“However, an employe has no comparable ability to monitor the employer’s behavior. An employe will not be privy to various management discussions regarding the employe’s work performance, attitude, or perhaps even his union activities. Thus, an employe usually is placed at a distinct disadvantage in challenging the employment actions of a discreet and purposeful employer.”

Second, the State is concerned that use of the “in part” test necessarily excludes an employer’s affirmative proof that the employee was fired for legitimate reasons. This is not true. A violation of SELRA is not established by merely proving the presence of protected concerted activity. The employee must show that the employer was motivated, at least in part, by anti-union hostility. Therefore, proof that the employee was discharged for legitimate reasons is relevant in determining the employer’s motive. The WERC in this case explains,

“As the key element of proof involves the motivation of [the employer] and as, absent an admission, motive cannot be definitively demonstrated given the impossibility of placing oneself inside the mind of the decisionmaker, [the employer] must of necessity rely in part upon the inferences which can reasonably be drawn from facts or testimony. On the other hand, it is worth noting that [the employer] need not demonstrate ‘just cause’ for its action. However, to the extent that [the employer] can establish reasons for its action which do not relate to hostility toward an employe’s [employee’s] protected concerted activity, it weakens the strength of the inferences which [the employee] asks the [WERC] to draw.”

Here, the Examiner concluded that the College laid off VanGoethem out of hostility toward VanGoethem's and the Association's use of a unit clarification to have VanGoethem placed in the Association's bargaining unit and the Association's efforts to obtain improvements in her wages, hours and conditions of employment. The Examiner reached this conclusion because of the timing of the College's actions and his view that the stated reasons for laying off VanGoethem were not supported by the record.

We conclude the record supports the Examiner's fact finding as to motivation. While the College correctly argues that bad business decisions or poorly monitored business decisions do not violate the law, business decisions which are not objectively supported by the record clearly create an inference which the decision-maker must consider when assessing motivation. Like the Examiner, we are persuaded that the layoff of VanGoethem was not a bad or poorly monitored decision but instead was retaliation against VanGoethem and the Association for protected concerted activity.

In affirming the Examiner, we necessarily reject the College's contention that when assessing motivation, we are limited to the time period prior to the layoff. Clearly the events that followed the layoff are probative of the actual motivation for the layoff decision itself. Consideration of subsequent events is not only probative but fair to both sides. Subsequent events can either support or undermine the legitimacy of the reasons proffered by an employer. Here, as found by the Examiner, subsequent events clearly undermine the College's claims as to its motivation. The subsequent cost of subcontracted nursing services and the College's seeming lack of concern as to same clearly undermine the College's claim that budgetary considerations motivated the layoff of VanGoethem.

We also reject the College's view that it is insulated from liability for the acts of its agents because the ultimate decision-makers were Board members. The Board's agents set the layoff in motion. Without their layoff recommendation, the record gives us no substantial basis for concluding the layoff would still have occurred. Under such circumstances, the College is culpable as a municipal employer based on the acts of its agents.

Given all of the foregoing, we have affirmed the Examiner's Conclusions of Law that the College violated Secs. 111.70(3)(a)3 and derivatively (3)(a)1, Stats., by laying off VanGoethem. We have modified his Order to add the standard requirement that the make whole obligation is subject to interest at the 12% per annum rate specified in Sec. 814.04(4), Stats. See generally WILMOT UNION HIGH SCHOOL DISTRICT, DEC. NO. 18820-B (WERC, 12/83) citing ANDERSON V. LIRC, 111 WIS.2D 245 (1983) and MTI V. WERC, 115 WIS.2D 623 (CTAPP. 1983).

In closing, we note that AFSCME Council 40 sought permission to file an amicus brief in this matter and that the College opposed the request. We denied the AFSCME request because we view this case as no more and no less than a standard straight forward discrimination case in which we have applied long established Wisconsin Supreme Court precedent to the facts in the record.

Dated at Madison, Wisconsin this 23rd day of March, 1999.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Meier /s/

James R. Meier, Chairperson

A. Henry Hempe /s/

A. Henry Hempe, Commissioner

Paul A. Hahn /s/

Paul A. Hahn, Commissioner

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APPENDIX B

**NOTICE TO ALL
NORTHEAST WISCONSIN TECHNICAL COLLEGE EMPLOYEES**

Pursuant to an order of the Wisconsin Employment Relations Commission, and in order to effectuate the purposes of the Municipal Employment Relations Act, we hereby notify the employees who we represent for the purposes of collective bargaining that:

1. WE WILL NOT refuse to bargain with the Northeast Wisconsin Technical College over the wages, hours and conditions of employment of employees/positions added to the bargaining unit.

NORTHEAST WISCONSIN TECHNICAL COLLEGE FACULTY ASSOCIATION

By _____

Title _____

**THIS NOTICE MUST BE POSTED FOR THIRTY (30) DAYS FROM THE DATE
HEREOF AND MUST NOT BE ALTERED, DEFACED OR COVERED BY ANY OTHER
MATERIAL**

APPENDIX C

**FINAL OFFER OF
NORTHEAST WISCONSIN TECHNICAL COLLEGE
TO NWTC FACULTY ASSOCIATION**

**NORTHEAST WISCONSIN VOCATIONAL, TECHNICAL
AND ADULT EDUCATION DISTRICT**

CASE 91 NO. 54153, INT/ARB-7976

**Article XII Other Related Professional Personnel:
Student Health Nurse, AODA Specialist**

October 21, 1997

Pursuant to a decision rendered by the Wisconsin Employment Relations Commission (11/95) the term "Other Related Professional Personnel" has been added to the Recognition clause (Article I) of this agreement. The following is an exclusive delineation of the wages, hours and working conditions negotiated for the two positions identified as being included within that group (the Student Health Nurse and AODA Specialist).

The College and the Faculty Association recognize that the Master Working Agreement was designed with certified teaching faculty and guidance counselors in mind. If questions of contract application or intent occur, the conceptual intent of this separate Article shall govern.

1. General Application

The following specified Articles, Sections and points of the first eleven Articles of this agreement shall apply to "Other Related Professional Personnel." It is understood that where teacher, faculty, faculty member, teaching, or like terms are used the term "Other Related Professional Personnel" shall be substituted. Other Related Professional Personnel shall be covered by the following:

Article I	Section: all	Subpoint: All
Article II	Section: all	Subpoint: All
Article III	Section: A	Subpoint: 3
Article III	Section: B,C,D	Subpoint: All
Article IV	Section: A,K,N,Q,R	Subpoint: All
Article V	Section: B	Subpoint: All
Article VI	Section: A	Subpoint: All Except 6 as Noted
Article VI	Section: B,C,D,E,F	Subpoint: All
Article VII	Section: A,B,C,D,E,F	Subpoint: All

Article VIII	Section: All	Subpoint: All
Article IX	Section: All	Subpoint: All
Article X	Section: All	Subpoint: All
Article XI	Section: All	Subpoint: All

Appendices shall be included only if and as referenced in the above.

Note: Article VI, Section A sub (6) deduction rate shall be “at the hourly rate for each hour of unapproved absence.”

2. Probation, Discipline, Cause

No employee covered by this Article shall be dismissed, suspended or otherwise disciplined without just cause, but this shall not abridge the normal management rights as regards probationary employees. All employees covered by this section shall serve a one year probationary period except that those filling positions new to the College shall serve an eighteen month probationary period.

Other Related Professional Personnel shall have the right to grieve any disciplinary action in accordance with the grievance procedure (Article VII).

3. Vacancies and Transfers

a. In the filling of vacancies which may occur in any of the positions covered by this Article to the agreement, the Employer will post such vacancies for a period of five (5) working days for employees covered by this Article to sign as to their intent to bid for such vacancies. For the purpose of bid or transfer if two or more employees have equal qualifications, then the employee having greater seniority shall be given preference. Bids and transfers shall occur before implementing recall.

b. Other Related Professional Personnel shall not have transfer or bidding rights to positions outside of those positions covered by this Article (XII).

4. Reassignment, Layoff, Recall

Where the Board has determined that positions are to be reduced in hours below half time or eliminated the following shall be followed:

A. REASSIGNMENT

i. Staff shall be reassigned to that position held by the least senior individual with the same job title; if none less senior within the same title than the least senior within each subsequent lower paid position title.

ii. Reassignment shall only be available to a position having a comparable number of hours per pay period for pay periods worked without regard to the number of months of annual assignment. For the purpose of determining comparable hours, all staff shall be divided into two groups, those assigned less than 75% of a full work week and those assigned 75% or more of a full work week;

iii. Reassignment shall not be made unless the employees remaining are qualified to perform the remaining work.

iv. Other Related Professional Personnel shall not have Reassignment rights to positions outside of those positions covered by this Article (XII).

B. LAYOFF

Staff remaining unassigned or who are unable to be assigned within the constraints above shall be laid off.

i. At least two weeks notice of layoff shall be provided the employee or two weeks pay in lieu of notice;

ii. Employees noticed of layoff may request payment of any and all accrued vacation pay at anytime during the period of their layoff. Said notice shall not extend the effective date of layoff nor extend recall rights.

C. RECALL

i. Recall rights shall continue for a period of two years from the effective date of layoff.

ii. Recall shall be by certified or registered mail sent to the last known address of the employee. It is the responsibility of the employee to notify the College of any change in address.

iii. Employees who are recalled shall have ten (10) calendar days from the postmark of the recall notice to report for work, or until the date indicated in the letter of recall if longer. Failure to report pursuant to a recall notice shall result in the employee's termination, and any and all rights under this agreement shall cease.

iv. Employees shall be recalled within the following restrictions:

- a. The most senior individual shall be the first considered for recall;
- b. Recall shall be to the most highly compensated posted vacancy;

c. Employees shall only be recalled for posted vacant positions for which they are qualified as determined from material and information provided the college as of the date of Recall.

v. Other Related Professional Personnel shall not have Recall rights to positions outside of those positions covered by this Article (XII).

5. Wages and hours

a. A full work week shall be 40 hours per week. A regular work day shall be 8 hours, including a paid one hour lunch period. It is understood that emergency situations may occur during the lunch period. Staff shall be available to respond to such emergencies during said paid lunch period. Lunch period time lost by such emergencies shall be compensated by the addition of lunch period or break time equal to one and one half the time lost to the emergency situation.

b. a full work week shall consist of 5 assigned days. A full work year shall consist of 260 work days less holidays and vacation days.

Holidays Schedule:*

- Two days at Thanksgiving
- Four Days during the Winter academic break
- One and one half day during the spring academic break
- Memorial Day, Labor Day, Designated Independence Day

Vacation Schedule:*

6 months – 1 year	5 days
earned during 2 year	10 days
earned during 3 through year 4	12 days
earned during 5 through year 6	15 days
earned during 7 through year 10	18 days
earned during 11 and thereafter	20 days

*No individual employed 1/1/96 or before shall suffer a reduction in holiday or vacation time nor an increase in the days of obligation (e.g. 188 days) as a result of the above. Those employed prior to 1/1/96 are recognized as having a 9 month schedule of 188 days of obligation.

c. All benefits shall be prorated for less than full-time 40 hour per week assignments.

d. Wages for listed positions are stated on an annual basis and apply to the 12 months following the effective date unless otherwise stated. Wages shall be prorated for less than full year assignments. During the first year after initial employment in a covered position the individual will receive 90 percent of the listed rate and 95% during the second year, 100 percent beginning in the third year. No individual employed 1/1/96 or before shall suffer a reduction in pay as a result of the rates show.

<u>Position Title</u>	<u>Effective Date</u>	<u>Annual Rate</u>
AODA Specialist	Nov. 8, 1995	\$45,732
AODA Specialist	Aug. 14, 1996	\$47,214
Student Health Nurse	Nov. 8, 1995	\$36,228
Student Health Nurse	Aug. 14, 1996	\$37,404

**PRELIMINARY FINAL OFFER
OF THE
NWTC – FACULTY ASSOCIATION
TO THE
NORTHEAST WICONSIN TECHNICAL COLLEGE
NOVEMBER 24, 1997
CASE 91 No. 54153, INT/ARB-7976**

Article XII Other Professionals: AODA Specialist And Student Health Nurse

Pursuant to a decision rendered by the Wisconsin Employment Relations Commission (11/6/95) the term “other professionals” has been added to the Recognition Clause (Article I) of this Agreement. The following is a delineation of the wages, hours and working conditions negotiated for the AODA Specialist and the Student Health Nurse for the period of November 6, 1995, through August 15, 1999.

1. The following specified Articles, Sections and points of the first eleven Articles of this Agreement shall apply to “other professionals”. It is understood that were teacher, faculty, faculty member, or like terms are used the term “other professional(s)” shall be substituted.

Other Professional shall be covered by the following:

Article I	Section All	Subpoint All
Article II	Section All	Subpoint All
Article III	Section A, B,C,C	Subpoint All
Article IV	Section A,K,N,Q,R	Subpoint All
Article V	Section B	Subpoint All
Article VI	Section A,B,C,D,E,F,G,H	Subpoint All
Article VII	Section A,B,C	Subpoint All
Article VIII	Section All	Subpoint All
Article IX	Section All	Subpoint All
Article X	Section All	Subpoint All
Article XI	Section All	Subpoint All

Appendices shall be included only if and as referenced in the above. Note: Article VI, Section A sub (6) change “1/1260 of annual salary” to “1/1491 of annual salary”.

2. Probation, Discipline, Cause

No employee covered by this article shall be dismissed, suspended or otherwise disciplined without cause, but this shall not abridge the normal management rights as regards probationary employees. The employee involved shall have the right to grieve any disciplinary action in accordance with the grievance procedure (Article VII). All new hires covered by this section, nor including incumbents, shall serve an eighteen month probationary period. Should the College decide to recall the student Health Nurse, currently on lay-off, no probationary period will be required.

3. Vacancies and Transfers

- a. In the filling of vacancies which may occur in Student Services or Health Occupations, the Employer will post such vacancies for a period of five (5) working days for employees covered by this Article to sign as to their intent to bid for such vacancies. Employees covered by this Article shall only have rights to bid for positions covered by the Master Contract both with regard to bids, transfers, or layoff/reassignment. If two or more employees have equal qualifications, then the employee having greater seniority shall be given preference.
- b. The employer retains the right to determine qualifications and shall advance only those deemed qualified by the employer.
- c. If the bargaining unit member becomes an instructor or guidance counselor, all applicable sections of the Master Agreement shall then apply.

4. Reassignment, Layoff, Recall

Where the Board has determined that positions are to be reduced in hours below half time or eliminated the following shall be followed:

A. REASSIGNMENT

- I. Staff shall be reassigned to available work in the areas for which they are qualified but limited to positions within Student Services and Health Occupations.
- ii. Reassignment shall only be available to a position having a comparable number of hours per pay period. No distinction shall be made for work schedules of 12 or less months. For the purpose of determining comparable hours, all staff shall be divided into two groups, those assigned less than 85% of a full work week and those assigned 85% or more of a full work week.

- iii. Reassignment shall not be made unless the employees remaining are qualified to perform the remaining work.

B. LAYOFF

Staff remaining unassigned or who are unable to be assigned within the constraints above shall be laid off.

- I. At least two weeks notice of layoff shall be provided the employee or two weeks pay in lieu of notice;
- ii. Employees noticed of layoff may request payment of any and all accrued vacation pay at anytime during the period of their layoff. Said notice shall not extend the effective date or layoff nor extend recall rights.

C. RECALL

- i. Recall rights shall continue for a period of two years (24 months) from the effective date of layoff.
- ii. Recall shall be by certified or registered mail sent to the last known address of the employee. It is the responsibility of the employee to notify the College of any change in address.
- iii. Employees who are recalled shall have ten (10) calendar days from the postmark of the recall notice to report for work, or until the date indicated in the letter of recall if longer. Failure to report pursuant to a recall notice shall result in the employee's termination, and any and all rights under this agreement shall cease.
- iv. Staff on layoff status shall be allowed to continue health insurance within he District's group plan, as allowed by the carrier, for a period of 24 months from the date of layoff at the employee's expense, inclusive of the statutory requirements.
- v. No staff member shall be prevented from securing other employment during the period of layoff.
- vi. Employees shall be recalled within the following restrictions:
 - a. Employees shall only be recalled for posted vacant position for which they are qualified within Student Services and Health Occupations.
 - b. Recall consideration shall be in the standard, traditional, most senior first to least senior last, order.

5. Compensation, Work Hours, and Calendar

A. COMPENSATION

<u>Position Title</u>	<u>Effective Date</u>	<u>Annual Rate</u>
AODA Specialist	November 6, 1995	\$38,430
AODA Specialist	August 14, 1996	\$39,665
Student Health Nurse	November 6, 1995	\$39,070
Student Health Nurse	August 14, 1996	\$41,665

No individual employed 1/1/96 or before shall suffer a reduction in pay as a result of the rates shown. The salary for these positions are based upon the salary schedule as set forth in Exhibits 1-* through A-III of the 1994-97 Master Contract. Future salary increases and schedule advancements will be consistent with the employee's education and years of service for both positions as determined by the Master Agreement between the Faculty Association and the College for the period of August 16, 1997 through August 15, 1999.

B. WORK HOURS AND CALENDAR

1. The Student Health Nurse and the AODA Specialist shall have the following calendar:

- 170 Standard Instructional Days
- 39 Summer Instructional Days
- 2 Divisional Meetings – Preparation Days
- 2 Record Days
- 4 Professional Development Days
- 2 All College Inservice Days

Total = 213 Work Days +2 Inservice Days +4 Professional Days

The work week shall be 35 hours with an hour of duty free lunch. Vacation/holidays will coincide with the standard instructional calendar and the summer instructional calendar. No individual employees 1/1/96 or before shall suffer a reduction in holiday or vacation time nor an increase in the days of obligation as a result of the above.