

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

NORTHCENTRAL TECHNICAL COLLEGE FACULTY ASSOCIATION, Complainant,

vs.

NORTHCENTRAL TECHNICAL COLLEGE, Respondent.

Case 59
No. 58072
MP-3562

Decision No. 29999-A

Appearances:

Ms. Melissa A. Cherney, Staff Counsel, Wisconsin Education Association Council, P.O. Box 8003, Madison, WI 53708-8003, appearing on behalf of Complainant.

Ruder, Ware & Michler, S.C., by **Attorney Dean R. Dietrich**, 500 Third Street, P.O. Box 8050, Wausau, WI 54402-8050, appearing on behalf of Respondent.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Northcentral Technical College Faculty Association (NTCFA or Association) filed a complaint on October 13, 1999, with the Wisconsin Employment Relations Commission, alleging that the Northcentral Technical College (NTC or College) had committed prohibited practices within the meaning of Sec. 111.70(3)(a)1, 2, 3 and 4, Stats., by various conduct affecting the Association and its President, Hal Ehrenreich. On September 18, 2000, the Complainant amended its complaint alleging that the Respondents had engaged in further conduct in violation of Sec. 111.70(3)(a)1, 2, 3 and 4, Stats. On November 1, 2000, the Commission appointed Sharon A. Gallagher to act as Examiner and to make and issue Findings of Fact, Conclusions of Law and Order as provided in Sec. 111.07(5), Stats. On November 14, 2000, Respondent filed an answer to the amended complaint. Hearing was held

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on December 11, 2000, January 11, 2001, and February 12, 2001, at Wausau, Wisconsin. The parties completed filing briefs and submission of all documents by July 9, 2001. The Examiner, having considered the evidence and arguments, makes the following Findings of Fact, Conclusions of Law and Order.

To maximize the ability of the parties we serve to utilize the Internet and computer software to research decisions and arbitration awards issued by the Commission and its staff, footnote text is found in the body of this decision.

FINDINGS OF FACT

1. Northcentral Technical College Faculty Association (NTCFA or Association) is a labor organization within the meaning of Sec. 111.70(1)(h), Stats., with its offices located c/o Leigh Barker, WTCS Consultant, WEAC, P.O. Box 8003, Madison, Wisconsin 53708-8003.

2. Northcentral Technical College (College or NTC) is municipal employer within the meaning of Sec. 111.70(1)(j), Stats., with its offices located at 1000 Campus Drive, Wausau, Wisconsin, 54401. At all times material herein, the following persons occupied the positions set forth opposite their respective names and each of them is and has been an agent of NTC acting on its behalf:

President	Robert Ernst
Vice-President of Academic Affairs	Joseph Hegge
Assistant to the President	Bettyann Battist
Director of Human Resources	Chad Bastable

3. NTCFA is the exclusive collective bargaining representative of all certified personnel employed by the Northcentral Technical College District Board, excluding confidential, managerial and supervisory employees, pursuant to a resolution adopted by the Board on June 12, 1973. The following positions are specifically included in the unit:

...

- a. Counselors
- b. Regular part-time faculty (Appendix A)
- c. Project instructors/counselors shall be those persons employed with a letter of appointment, instead of an instructor's contract, wherein any portion of their salary is paid under a special grant to the District by a federal, state, or private agency/organization.

...

d. Regular part-time project faculty (Appendix C)

The following positions are specifically excluded from the bargaining unit:

- a. List of positions in Appendix D.
- b. Substitute and nonregular part-time faculty including Community Representatives.
- c. Professional (nonfaculty) and paraprofessional support personnel including technicians, teaching assistants, secretarial, clerical and office personnel.
- d. Maintenance and operating personnel.

4. The employees employed by NTC in the bargaining unit described above in Finding 3, are municipal employees within the meaning of Sec. 111.70(1)(i), Stats. At all times material herein, Harold (Hal) Ehrenreich has been an employee of NTC employed in the bargaining unit described above and is and has been an employee within the meaning of Sec. 111.70(1)(i), Stats. At all times relevant, Ehrenreich has been the President of NTCFA.

5. The Association alleged in its complaint and amended complaint that since approximately May, 1998, NTC had engaged in a “pattern of retaliation and intimidation against Harold Ehrenreich and has attempted to influence the manner in which Ehrenreich fulfills his role as Association President.” The Association specifically alleged that at a meeting on October 13, 1998, Ehrenreich was criticized by NTC agents for being a “watchdog” in his role as Association President; that Ehrenreich was advised at this meeting that the manner in which he performed his duties as Association President was the reason that he would not receive a 25% payment for release time to serve on “President’s Staff”; that since on or about January 4, 1999, NTC agents had refused to grant Ehrenreich’s request for educational experience approval which would go toward newly established credentialing requirements for the General Education courses he teaches, despite approval of similar requests by similarly situated faculty members; that on or about April 20, 1999, NTC and Hegge denied Ehrenreich’s request for a transfer to an open GOAL teaching assignment which did not require additional educational experience credits; and that on or about July 23, 1999, NTC agent Hegge demanded that Ehrenreich modify communications sent by Ehrenreich as Association President to association members (described in Finding 15), all in violation of Ehrenreich’s rights under MERA.

6. In its answer to the amended complaint, NTC asserted that as a municipal employer, it has the right to communicate directly with employees, especially in the event of an impasse between the Association and the NTC in negotiations for a successor labor

agreement and that, therefore, no violation of law occurred by Hegge's direct communication with NTC association members. In addition, NTC asserted that it has a right to communicate directly with its employees regarding the operations of the College, that is has a past practice of doing so regarding the status of negotiations as well as other matters. Hence, NTC asserted no violation of law occurred regarding its direct communication in this case. Finally, in its answer to the amended complaint, NTC contended that current WERC decisions require that NTC maintain the *status quo* during the expiration of an existing labor agreement and after impasse in negotiations. NTC asserted that its actions were consistent with WERC case law on this point.

7. Dr. Robert Ernst was hired by the NTC Board of Trustees to serve as President of NTC in 1994 following the termination of his predecessor (and a series of acting/interim Presidents). In 1996-97, NTC performed a self-study designed, in part, to prepare it for a Northcentral Accreditation Association (NCAA) visit set for the Fall of 1998, in which the NCAA would consider whether and under what circumstances NCAA would continue accreditation of NTC as a technical college. This self-study summarized the restructuring of NTC which had occurred since Ernst's arrival, in relevant part as follows:

...

Shared Leadership System

Shortly after assuming office in February 1994, President Ernst inaugurated the Shared Leadership System in an effort to move the College from a top-down, centralized management style to one that was more decentralized and participative.

Shared Leadership, as defined in the 1994 *Shared Leadership System* document, is a *process which enables participants most informed and closest to the issue to make decisions. Individuals volunteer their time and contribute to decision making for mutually attainable goals. Teamwork is encouraged in an environment of trust.*

Self-directed teams play an essential role in the Shared Leadership System. A team is defined as *a group of employees who have identified themselves as having a common vision. They are responsible for the "whole" work process that delivers a product or service to the customer.* Decisions will be made by consensus ("All can live with it"). Self-directed teams will include faculty, middle leadership, and support staff, as applicable.

Training has been offered on a volunteer basis to all employees throughout the College since 1994 in the areas of team building, conflict management, consensus building, trust, etc. This training has been provided through the

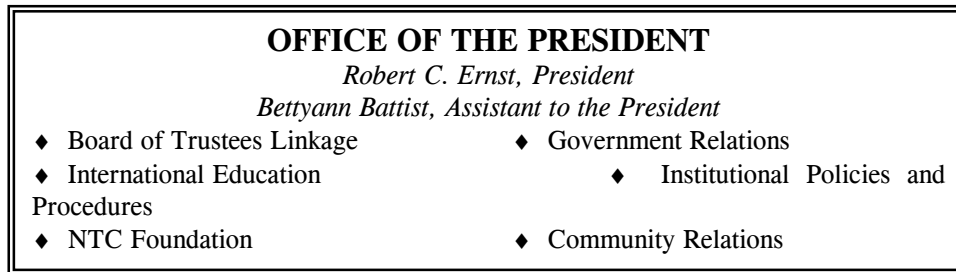
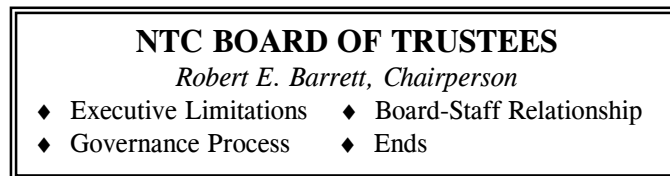
College's Center for Business and Industry. While this effort provided a thorough orientation, additional training in team development continues to be a need.

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Organizational Structure

NTC's present organizational structure looks very different from the late 1980s when the College had four administrative units—Instruction (instructional divisions, instructional resources, and student services); Marketing, Research and Planning; Administrative Services (buildings and grounds, information systems, and business office); and Grants and Foundation (all external funding sources).

Figure 5-1 depicts the organizational structure of the College by function and describes the areas of responsibility under each of the functional teams.



LEARNING SUPPORT

Joe Hegge, VP – Academic Affairs

LEARNING RESOURCES

*Barb Cummings,
Team Leader*

- ◆ Regional Campuses
- ◆ Faculty/Staff Development
- ◆ Library
- ◆ Instructional Technology and Delivery Systems
- ◆ Emerging Technology Center
 - Word Processing
 - Design Graphics
 - Software Training

INSTITUTIONAL ADVANCEMENT

Tom Goltz, Team Leader

- ◆ Institutional Effectiveness
- ◆ Institutional Research
- ◆ Needs Assessment
- ◆ Student Assessment
- ◆ Budget Planning Process
- ◆ Strategic Planning Process
- ◆ Grants Coordination
- ◆ Job Center Workforce Development
- ◆ Institutional Data

INSTRUCTION

Lois Gilliland, Team Leader

- ◆ Advising
- ◆ Apprenticeship
- ◆ Continuing Education
- ◆ Course/Program Management
- ◆ Curriculum
- ◆ Faculty E-Units
- ◆ Faculty Evaluation/Hiring
- ◆ Scheduling
- ◆ School to Work
- ◆ Secondary, Basic Skills, ESL, & Special Needs Education

CENTER FOR BUSINESS AND INDUSTRY

*Bill Sonnenberg,
Team Leader*

- ◆ Business and Industry Contracts
 - Customized Training
- ◆ Technical Assistance
- ◆ Testing/Assessment
- ◆ Economic Development
- ◆ NWMOC (Northwest Wisconsin Manufacturing Outreach Center)

MARKETING SERVICES

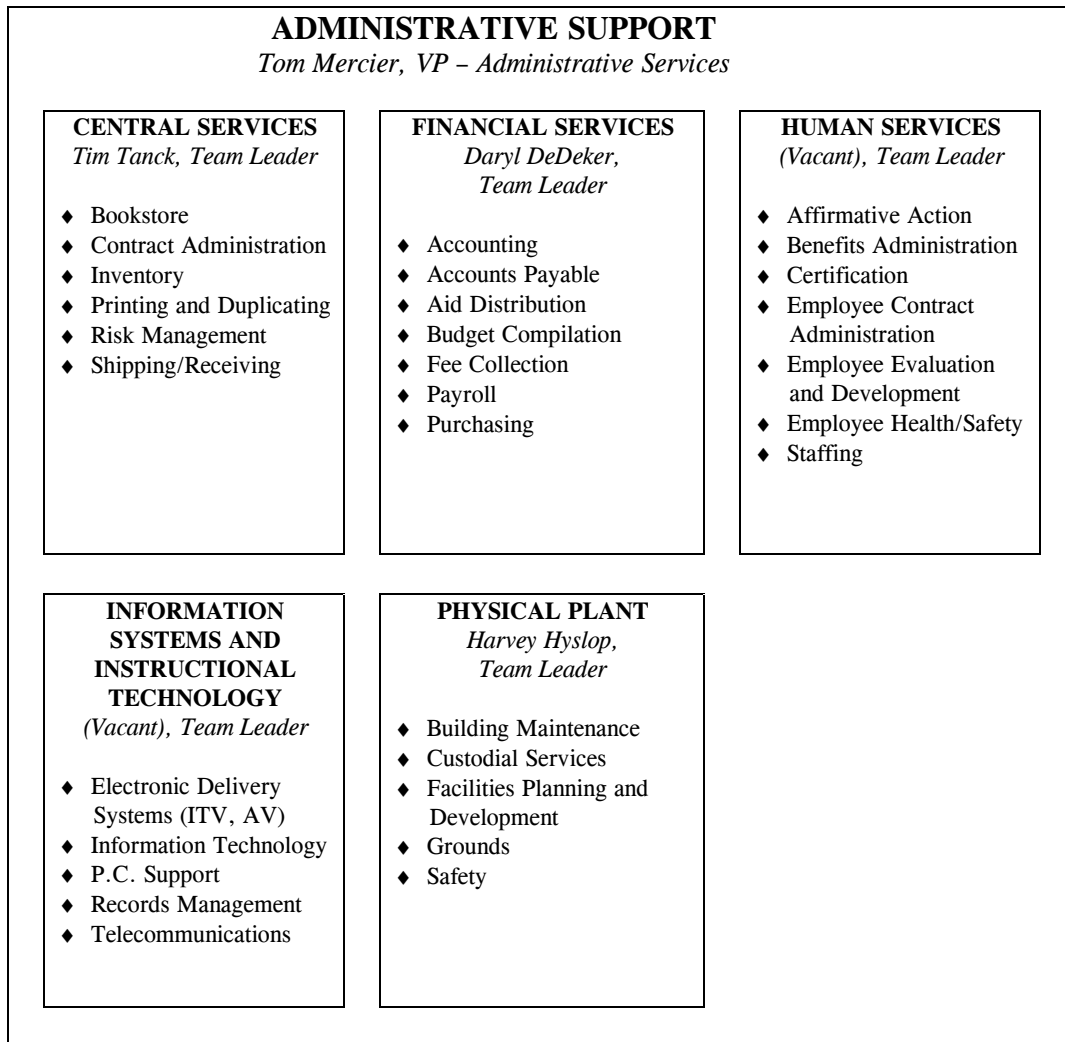
*June Fredericksen,
Team Leader*

- ◆ Advertising
- ◆ Customer Relations
- ◆ Enrollment Management
- ◆ High School Relations
- ◆ Marketing
- ◆ Promotional Material
- ◆ Public Relations
- ◆ Recruitment

STUDENT SERVICES

Jim Bliese, Team Leader

- ◆ Admissions
- ◆ Counseling
- ◆ Financial Aid
- ◆ Placement
- ◆ Records & Registration
- ◆ Student Life
- ◆ Student Issues



Under NTC's new structure, the two major administrative functions of the College, *Learning Support* and *Administrative Support*, provide the framework for eleven *functional teams*. These teams provide centralized, responsive, accessible services in support of the faculty units, as well as one another. A Vice President serves as a liaison to each of the functional teams and as a link to the President and Board of Trustees.

The four former educational divisions—Health and Human Services, Business, General Education, and Technical/Industrial—were eliminated and were reformed into one educational entity. The deans and associate deans of the former educational divisions were given responsibility for broad areas (new program development, faculty professional development, etc.) and now support faculty across the College rather than within a previously defined division.

Former educational departments and programs were re-formed into Entrepreneurial Units (E-Units). Faculty E-Units were developed from one program (Nursing) or from a combination of programs (computer-related programs). This was a decision made by faculty.

...

Middle Leadership (Former Management/Professional Nonfaculty Positions)

The 59 middle leadership positions include former management and professional nonfaculty classifications. The two Vice Presidents and Assistant to the President are also included in this classification.

Middle leadership staff provide centralized services in support of faculty E-Units, as well as one another and are accountable to one of the eleven functional teams. A team leader provides leadership and accountability for each functional team.

In order to help prepare them for their new role as *leaders* rather than *managers* in a shared decision-making team environment, the President met weekly with the middle leadership staff beginning in the summer of 1995 through fall of that year. The College enlisted the services of a faculty member from the Center for Business and Industry to facilitate the meetings and provide training in team building, consensus building, conflict management, and change theory. Since that time, regular meetings have been held with the middle leadership staff to keep them updated on the reorganization and to continue to clarify their roles.

The middle leadership staff play a crucial role in the success of the College's recent restructuring. Many are still developing the skills needed to assist others in a team environment. The 1996-97 transition year under the new structure was a frustrating one for many staff. Many faculty, as well as clerical support staff, felt that responsibilities formerly handled by deans and associate deans were left to them with no additional training, compensation, or time.

This situation should be clarified with a pending agreement between the College and the Faculty Association that defines the roles and responsibilities for middle leadership and faculty.

Associations

The College has four bargaining units, each with separate contract agreements: Northcentral Technical College Faculty Association (NTCFA), Northcentral Educational Support Personnel Association (NESPA), Northcentral Paraprofessional/Technical Association (Paratech), and Teamsters Local 662.

The only groups not represented by collective bargaining units are middle leadership staff, adjunct faculty, work-study staff, student employees, and seven clerical support staff designated as *confidential* support staff. This last group provides clerical support to the Human Resources and Administrative functions of the College.

Faculty representation is sought in strategic as well as operational decisions of the College. The Faculty Association President has release time of 25 percent of teaching load, compensated by the College, to devote to collegewide committees and other Association duties. The Faculty Association President currently serves as a member of the President's Staff, the Team Leadership Council, and the Operations Council.

A representative from each of the associations is a member of the Operations Council. The Team Leadership Council has a total of two representatives from NESPA, Teamsters, Paratech, or nonrepresented support staff. Currently, a confidential support staff and a Teamsters member sit on the Team Leadership Council.

It becomes a delicate balance to achieve adequate, meaningful representation by all the bargaining units on collegewide committees and still maintain the level of productivity necessary for smooth operation of the College. Some bargaining unit members have indicated that their representation on the Operations Council has improved communication but that they have little to add to many of the items discussed.

In an effort to continue communication between the College and the individual bargaining units between official negotiations time frames, Contract Maintenance Teams have been formed for each unit, with the exception of the Teamsters. These Contract Maintenance Teams include representatives from the association and from middle leadership. In most cases they include members of the negotiations teams.

The Contract Maintenance Team concept has been in effect since the last formal negotiations in 1995. The faculty and support staff associations have seen some successes through their contract maintenance efforts. However, there is some concern that these more informal sessions might be construed as *negotiating* sessions outside of the officially designated times.

Entrepreneurial Units (E-Units)

Faculty Entrepreneurial Units are the cornerstone of NTC's reengineered structure. Replacing former divisions and departments, E-Units focus educational decision making at the level closest to the customer. The majority

of faculty E-Units were developed from a program area or from of combination of programs; others were formed around skill and knowledge areas. This decision was left to the faculty. E-Units are responsible for FTE generation, instructional design, delivery, budgets, retention, etc., within their knowledge and skill area. The formation of smaller units that are closely aligned with the marketplace allows the College to be more responsive and flexible to both present and emerging customer needs.

Within this framework, faculty E-Units receive resources and centralized support from middle leadership within the Learning and Administrative functions of the College. Instead of the old structure where deans and associate deans had broad responsibilities for one division or department, this support will be centralized and provided to E-Units throughout the College. Individuals within the Instruction Team have been identified to provide support in areas such as new program development, curriculum, and staff development across the College. Other staff provide assistance to faculty units in areas including budgeting, hiring, and facilities.

As the concept of faculty E-Unit development unfolded in August 1996, specific guidelines and parameters were not fully formulated. In addition, the support promised to E-Units did not materialize as rapidly as was visualized. Despite this ambiguity, the majority of faculty within the College re-formed as E-Units and developed mission and vision statements consistent with that of the College. They also developed budgets and goals for their units.

As a result of the 1997 negotiations process that began in March 1997, the Faculty Association has reached tentative agreement on a document that delineates responsibilities of faculty and middle leadership within an E-Unit. Faculty team leaders assume coordination and leadership functions on behalf of the E-Unit in addition to teaching. Faculty who assume the role of faculty team leader are compensated in the form of release time or additional dollars. An instructional *liaison* middle leadership staff will be a member of the E-Units, as well as perform other managerial and supervisory functions. Final vote on this tentative agreement is expected in fall 1997.

Implementation of this contract will assist both faculty and middle leaders to understand their respective roles and responsibilities in a shared leadership environment. The Faculty Association, by ratification of this document, will endorse the concept of shared decision making in a self-directed team environment. This will go a long way toward implementing self-directed teams across the College.

The new contractual agreement also addresses the controversial issue of bargaining unit members who may temporarily assume certain coordination or managerial duties. However, the degree to which shared governance practices can be fully implemented in a collective bargaining environment is still evolving.

Service Units

Service Units provide service, rather than instruction, to other units within the College or directly to the customer. They normally do not produce enrollments or FTEs. Like E-Units, Service Units function as self-directed teams and are accountable to one of the functional teams. Members may include support as well as middle leadership staff. Examples of Service Units include Financial Services Unit and Student Services Unit. Operating within the Service Units may be one or more natural work groups that perform specific functions, such as payroll, accounts payable, admissions, or registration.

College Decision-Making Structure

President's Staff

The role of the President's Staff is one of liaison between the Board of Trustees (and the President as its designee) and the rest of the College. The focus of their weekly meetings is strategic versus operational decision making. Their role is one of continuously monitoring the College's progress toward accomplishment of the College mission and Ends through the annual productivity goals and providing leadership to staff who are charged with implementation.

Members of the President's Staff include the President; Vice President, Academic Affairs; Vice President, Administrative Services; Vice President, Business and Industry; Executive Director, Institutional Advancement; Assistant to the President; Human Resources Team Leader; Financial Services Team Leader; Administrative Assistant to the President and the Board; and Faculty Association President.

Having the Faculty Association President on the President's Staff has been invaluable as a means of connecting the faculty to the President and the Board. Other staff members may rotate in and out of the President's Staff as different perspectives are needed or as a means to in-service key staff to the more strategic thinking of the College.

The current configuration of the President's Staff has been in place since fall 1994. As in the case of most groups on campus, it continues to evolve its role. Retreats are held frequently, both on and off campus, and have focused on team building, leading the change process, assisting with monitoring criteria for Ends policies, and other strategic issues of the College.

One of the ongoing challenges has been to convince other middle leaders and staff that the role of the President's Staff is not to make day-to-day operational decisions as in the past, but rather to provide strategic direction to the College.

Team Leadership Council (TLC)

The Team Leadership Council was established as part of the Shared Decision-Making System in spring 1994. The TLC, as originally organized, dealt with collegewide issues that went to the Board of Trustees or issues that could not be resolved elsewhere in the organization. After the reorganization of the College in summer 1996, the role of the TLC under the new College structure was reexamined. New roles identified for the NTC Team Leadership Council include the following:

- ◆ Approval of parameters or guidelines on collegewide issues that will eventually go before the District Board (e.g., new program development, program discontinuance, capital equipment).
- ◆ A communications link between the President and the Board of Trustees and the rest of the College. Members serve as an *early warning system* of issue and concern identification.

The membership was reduced and currently includes the President; Assistant to the President; Vice President, Academic Affairs; Vice President, Administrative Services; two members of middle leadership; seven faculty, including the President of the Faculty Association; and two members-at-large who will be rotated among the other employee groups. Meetings are held biweekly and minutes are distributed to the College via the internal College newsletter, *TARGET*.

The group continues to define its role. Questions still remain, including the linkage between the TLC, collegewide committees, and other groups, such as the Operations Council.

Operations Council

The Operations Council was established by the President in fall 1994 to improve communication among the various units in the College that support the

instructional process. This group has the role of identifying gaps in process and determining the means to ensure the smooth operational flow within the College.

The Operations Council originally included only middle leadership staff. The membership has changed considerably since 1994 and now includes the team leaders from each of the eleven teams that make up the Learning and Administrative Support functions of the College. In addition to the functional team leaders, members of the President's Staff (excluding the President) and representatives from the four associations within the College are also members. The Vice President, Academic Affairs, and Vice President, Administrative Services, facilitate the meetings.

...

8. In April, 1998, Harold (Hal) Ehrenreich was elected President of NTCFA. Shortly thereafter, NTC President Ernst sent Ehrenreich a memo regarding his election, as follows:

...

Congratulations upon your election to the presidency of the NTCFA. Your election allows continued opportunity for the NTCFA and the College to move forward together in meeting customer needs. The College truly benefited from the leadership of Marge Larson, Steve Hommerding and Dan Krcma. I look for continuing benefits under your leadership.

As you may be aware, I have had a very informal understanding with the Association whereby release time has been granted to the President of the NTCFA in return for the attendance at various staff/committee meetings as well as the establishment of a mutually agreed upon Program of Work for the President and the NTCFA.

For your consideration, I have enclosed a proposed agenda for a meeting between you, Bettyann Battist and myself. You are welcome to add to the agenda as you see fit.

...

The attached agenda Ernst suggested for the meeting read as follows:

Proposed Agenda

NTCFA President Orientation to Role and Responsibilities

Ernst/Battist	Role of the Board and Policy Governance
Ernst/Battist	Team Leadership Council
Ernst/Battist	Participation
	<ul style="list-style-type: none">• (1) Board of Trustees• (2) President's staff• (3) Team Leadership• (4) Operation's Council
	NTCFA Goals and Objectives
	Personal Goals and Objectives
Ernst/Battist	NTC Foundation
Hegge/Liaisons	Learning Centeredness/Paradigm
Hegge/Battist/Gould/Kanz	NTCFA Contract Maintenance
Bob Martin	Educational/Facilities Planning Update (next 3 years)

Several meetings were held to determine Ehrenreich's willingness to serve on these committees. Ehrenreich took the position that he would have to either recuse himself or communicate with the Association's Executive Committee regarding matters raised in meetings he attended if discussions might affect terms and conditions of employment of Association members.

9. On or about August 11, 1998, Ernst drafted a memo entitled "Districtwide Role of NTCFA President" which read as follows:

. . .

In recent years the College has made a significant shift from a top-down, hierarchical structure to a team based structure. Within this structure, the function of faculty also shifted. As team leaders and members of E-units, faculty have greater responsibility for their programs and are assuming greater accountability for the outcomes of those programs.

Out of this shift from a management-directed organization to a more decentralized, team-oriented structure, a new, expanded role for the NTCFA President emerged. During my presidency, the NTCFA president has played a key leadership role in the College. While the role has varied based on individual schedules, many have participated in board and President's Staff meetings, districtwide level strategic planning and other top issues facing the College.

The NTCFA President role has been one of faculty advocacy and district leadership. Within this expanded role, the NTCFA President became a full

participating member of the President's staff. Other members of President's Staff include the president, assistant to the president, vice-presidents of academic affairs, team leaders of institutional advancement, financial services, and human resources, and administrative assistant to the president.

Members of President's Staff often interface with the NTC Board of Trustees, community, business and industry leaders and other stakeholders throughout the district, in addition to the rest of the College. They understand and advocate for the direction provided by the Board of Trustees and provide leadership to staff who are charged with implementation.

The NTCFA president has specific responsibility for in aligning faculty with the overall direction of the College, as defined by the board. In turn, the NTCFA president provides a broad faculty perspective to the other members of the President's staff and the Board of Trustees. This two-way feedback function requires the following: active participation coupled with a great deal of listening, support of the College's mission, vision, and goals, fostering and creating an environment which strives to anticipate and meet customer needs, a proactive approach in identifying and removing barriers, and the ability to accurately communicate the various views of all stakeholders.

To carry out this important and often time-consuming capacity, the NTCFA president has been offered up to 25 percent release time for those services. This release time is intended to be used for those activities of a districtwide nature, not for faculty association business.

Some of the specific districtwide responsibilities of the NTCFA President are outlined on the following page. They are categorized as *essential* and *important* responsibilities. Both categories are felt to be integral to the ultimate success of the College. We realize that varying factors, including teaching assignment, do play a role in determining the full scope of responsibilities.

Essential responsibilities

- ◆ Consistent application of NTC's Operating Principles and advocacy of the College's Mission and Vision statements.
- ◆ Participation as a member of President's Staff and attending meetings of that group. Note: The NTCFA President will be excused from participating in those discussion and decisions that are in conflict with the role of faculty as defined within the bargaining contract.
- ◆ Attendance at and participation in NTC Board of Trustees meetings as a member of President's Staff.

- ◆ Advocating on behalf of the College throughout the district as appropriate (welcoming students, faculty and/or community groups, attending Board of Trustee and Foundation Board functions, meeting with business and industry groups).

Important responsibilities

- ◆ Active participation and visibility in community and throughout the district.
- ◆ Participation in employee teams, committees, task forces (e.g., Instruction Team, Team Leadership Council, Capital Equipment Team, etc.), as appropriate.

It is difficult for faculty and others in the organization to “step out” and assume new leadership roles. There are good reasons for this: Everyone is being asked to take on more and more responsibility— within the College, at home and in the community. I believe that this expanded leadership opportunity for the NTCFA President continues to ensure that quality faculty will continue to come forward to make a positive difference on behalf of the College and their faculty peers. This involvement remains vital to NTC as we move into the future.

. . .

10. On August 13, 1998, V.P. Hegge and Ehrenreich met to discuss Ehrenreich’s role on the President’s Staff and NTC’s offer of 25% release time pay therefor. Hegge memorialized their discussions in a memo as follows:

On Thursday, August 13, 1998, I met with Hal Ehrenreich to discuss his participation in College leadership as a member of the President’s Staff. We discussed the purpose of the offer of up to 25 percent load for this activity and the previous definition of how that load was applied. The following table represents the application of time and load when Dan Krcma was NTCFA President.

Activity	Hours/week	Percentage
President’s Staff	3	9
Board Meetings	1	3
Operations	2.5	7
Instruction Team	<u>2</u>	<u>6</u>
Totals	8.5	25%

Proposed changes to this list would include operations moving to an every other week format and the addition of Learning Support Team Leader meetings during the off week. This would represent a change for Hal, but would closely represent the same amount of time. My proposal to Hal required that he consider which of the items above would fit into his present schedule and would be of interest to him. The minimum requirement would be that he at least participate in President's Staff and Board activities. Anything less would not give us the leadership involvement that is necessary to fully participate.

Four questions emerged from our conversation that required further consideration:

1. The Instruction Team meets on Thursdays for 8:00 AM to 10:00 [sic] and would require Hal to move a 9:00 AM class or only attend for one hour.
2. An evening assignment on Wednesdays at the Wittenberg Campus would require Hal to leave prior to the end of most Board meetings. We recognize that this is a time when most of the Board's closed sessions occur.
3. We would need to move President's Staff to either Monday mornings or Wednesday mornings to accommodate Hal's schedule.
4. A reasonable solution would be needed to increase Hal's load from 88% to something in the full load range or overload.

It is my understanding that Hal and I would work on these issues to work out details and determine how much load would be applied up to 25%.

Since that time Hal has indicated (voice mail) that he prefers not to take an overload under the conditions I have proposed. His response is to eliminate the Wednesday night Wittenberg assignment and add the full 25% to his remaining teaching load. This would approximate to 68% teaching plus 25% President's Staff, equaling 93%. To me this represents an unwillingness to meet us halfway and assumes that we agree that he is able to do all we are asking, warranting the full 25% offered. I am concerned that by waiting for the proverbial eleventh hour, Hal has put us in a position that is not in the best interest of students and other staff that have worked very hard to put together schedules that will work for all.

Hal further indicated that the Executive Committee wants to know how I came up with the hours and load. This might indicate that they are more interested in counting hours and minutes rather than our real offer of a chance to help share in the leadership of the College.

11. On September 3, 1998, Dr. Ernst issued a memo to NTC Faculty on the subject of NTC's withdrawal of its offer to Ehrenreich to serve on President's Staff, as follows:

As many of you are aware, I have always believed that faculty should have a voice on the President's Staff, and as a member of President's Staff, a monthly presence with the Board of Trustees. In addition, I feel it is valuable to have faculty input on other select districtwide committees, such as Operations and the Instruction Team. In order to accomplish this, for the past two years the NTCFA President has been offered 25 percent release time to serve as the faculty representative in the leadership of the College.

My support for this leadership role has been framed around several expectations: open and honest communication, a collaborative and supportive atmosphere focused on moving the College forward, and a futuristic approach to the challenges before us. This leadership role must be aligned with the principles of shared leadership and team development, with a focus on meeting the mission and Ends of the College, as defined by the NTC Board of Trustees.

At this point, we have not been able to reach agreement on the role of the NTCFA president with these designated groups, or on what constitutes 25 percent of [sic] release time. A considerable amount of time has been spent throughout the summer and into the fall on this issue. Regretfully, we have made the decision to withdraw this offer for the fall semester and will be asking the faculty representatives on the Team Leadership Council to provide an expanded leadership role in the interim. My staff and I will continue to work toward filling this void with the faculty association leadership prior to the start of the second semester.

12. A final meeting on this subject occurred on or about October 13, 1998. On that date, Association Representative Jack Klein, Ralph Andren and Association President Ehrenreich met with NTC Representative Bettyann Battist, Joe Hegge and Dr. Ernst. The meeting was intended to discuss Ehrenreich's role as Association President and his potential role on the NTC President's Staff, as well as to clear the air between Ehrenreich and Dr. Ernst. The meeting began with Hegge and Battist leading discussions to open the lines of communication between Ehrenreich and Ernst. At some point during the meeting, a comment was made that perhaps the others should leave Ehrenreich and Ernst in the room and let them "fight it out." Andren admitted that during this meeting he asked Dr. Ernst how he felt about Ehrenreich. Ernst responded that Ehrenreich had been a "thorn in his side;" that it had been difficult to work with Ehrenreich; that Ehrenreich did things that kept him (Ernst) from getting things done for the Board of Trustees; that Ehrenreich interrupted meetings and asked questions in a belligerent manner and refused to discuss items; that Ehrenreich had nothing constructive to contribute in discussions; that Ehrenreich pointed out everything that was

wrong with the College and told Ernst to fix the problems. Dr. Ernst also stated that he was frustrated with Union rules and restrictions. At some point during this meeting, Hegge called Ehrenreich a “watchdog for the Union.” Hegge also told Ehrenreich what he did not like about Ehrenreich as a leader and Hegge criticized Ehrenreich for having looked like he was asleep at a Fall in-service meeting where the College had had an outside speaker. As the College wanted someone on the NTC President’s Staff who could brainstorm and keep management confidences from the Association Executive Committee, the College continued to refuse to grant Ehrenreich 25% release time and give him duties on the NTC President’s Staff (as NTC had done with Ehrenreich’s predecessors) because Ehrenreich sought either to recuse himself or he refused to keep information confidential from the Association Executive Committee whenever wages, hours or working conditions were to be impacted. NTC also failed and refused to excuse Ehrenreich (as stated in Ernst’s August 11 memo) when discussions on President’s Staff conflicted with his NTCFA President role. The criticism of Ehrenreich at the October 13, 1998 meeting was degrading and intended to criticize Ehrenreich’s activities as Association President, and constituted an attempt to chill Ehrenreich’s concerted protected activities.

13. NTCFA and NTC were parties to a collective bargaining agreement covering the period July 1, 1997 through June 30, 1999. As part of the 1997-99 collective bargaining agreement, NTC and NTCFA entered into side letter agreements modifying the collective bargaining agreement, known as the “pink pages” which were pink in color and were appended to the 1997-99 collective bargaining agreement. By entering into the agreement regarding the “pink pages,” the parties specifically agreed that the side letter amendments to the previous collective bargaining agreement would sunset at the end of the 1997-99 labor agreement. The agreement regarding sunset of the “pink pages” reads in relevant part as follows:

BARGAINING HISTORY AND PREVIOUS PRACTICES

MEMORANDUM OF AGREEMENT

IT IS HEREBY AGREED by and between Northcentral Technical College and Northcentral Technical College Faculty Association that the following shall constitute the understandings between the parties regarding changes to the language of the Master Contract Supplement between the College and the Association and the intent of the parties regarding use of prior contract language for the interpretation of bargaining history and previous practices of the College, as follows:

1. The College and the Association have entered into collaborative discussions which have resulted in significant changes to the language relating to workload and assignment of work responsibilities for

members of the Association. As part of these discussions, the College and the Association have modified contract language or agreed that previously existing contract language shall not be applicable to the College and the Association while operating under the new agreements and memorandums [sic] reached between the College and the Association regarding workload and assignment of work responsibilities.

2. That in the event the changes to workload and assignment of responsibilities as agreed to by the parties is not continued as a result of future contract negotiations, the parties agree that contract language and methods and procedures for determining workload and assignment of work responsibilities as existed prior to the 1997-98 school year shall be the starting point for further discussions between the College and the Association and may be relied upon by the Association as the existing practices and procedures that Association members were assigned to or worked under before the change in contract language implemented as part of the 1997-98 contract settlement.
3. That the purpose of this Memorandum is to provide assurances to the Association that the prior contract language and workloads of Association members that existed prior to the change in contract language resulting from the 1997-99 contract settlement shall become the starting point or *status quo* that was in existence prior to the 1997-99 negotiations and may be relied upon as the basis for workload or assignment of responsibilities in the event it is necessary to return to the previously existing workloads or assignments.

. . .

14. The “pink pages” substantively changed several portions of the collective bargaining agreement. The parties, in agreeing to the “pink pages,” indicated in the labor agreement’s Table of Contents that the “shaded language is superceded” by the “pink pages.” The shaded areas included Instructional Responsibilities, Faculty Responsibility Table of Percentages, Extended Day/Open Campus, Telecourses, Faculty Pay Worksheet for Telecourses, Farm Business and Productive Management Program.

15. The “pink pages” agreed to in the 1997-99 collective bargaining agreement contained their own Table of Contents, which along with the substantive portions of the “pink pages” reads as follows:

Sunset Items

1. Center for Business and Industry

2. Telecourses, Appendix L
3. Technical College of the Air –
Pay Worksheet, Appendix M

Side Letters of Agreement

1. Farm Business and Production Management
2. Employee Working Conditions
3. Contract Maintenance Team

Other Memorandums of Agreement

For your information.

1. Self-Directed Teams (E-Units) With Existing
Release Time
 2. Early Retirement Benefits – Transition to New
Contract
 3. Self Funding of Health Care Benefits
 4. Bargaining History and Previous Practices
16. The substantive portion of the “pink pages” which is in dispute herein read as follows:

EMPLOYEE WORKING CONDITIONS

MEMORANDUM OF AGREEMENT

Preamble – Changing the Way We Do Business

Background—Why the change?

As the Faculty and College Negotiation Team began their work in Spring, 1997, it soon became evident that several “forces” were at work that necessitated a change in the process for the development of student and faculty schedules and the calendar around which they would work.

A basic premise of the college’s recent re-engineering effort is that

mode and make decisions for the unit on behalf of the constituents of that unit and of the college. All management members will provide support to those efforts; instructional liaison managers will be members of those teams.

One size does not fit all –Over the past several years, increasing numbers of faculty units have emerged that do not fit within the currently constructed “calendar” and “workload” formula. Customer needs have driven many of these changes. For example, Alternative High School faculty work within the calendar of the public school system. Visually Impaired faculty work with small groups of students, vs. large classes. Area employers may have a need for training provided by the Center for Business and Industry faculty during the summer and traditionally scheduled Christmas and Spring breaks. Agriculture faculty have little need for office hours as currently defined in the contract. The popularity and accessibility of weekend courses prompted Psychology faculty to move to more non-traditional formats for some of their courses. And the list continues.

NTC’s non-instructional faculty members also have calendar and work hours that may be different from other faculty, by nature of their unique role within the college. Counselors do not follow the traditional calendar because of the needs of our students.

It became evident that *exceptions* to the traditional workload/calendar formula are becoming the *rule*. NTC faculty no longer teach under a “one size fits all” formula. The intent of the Negotiations Team was to develop a system that would encompass **all** faculty, both instructional and non-instructional, a system that would encourage the flexibility and development of **more** nontraditional class offerings and services than the current formula may allow, a system that would stimulate change without demanding drastic change from everyone.

Redefining roles – It was also the team’s intent to develop an equitable way to acknowledge and compensate the different responsibilities assumed by faculty members in this new environment and to better define the roles of faculty and management in the educational process.

How does the System Work?

Acknowledging individual differences – Basically the system acknowledges and validates the unique but essential differences in workload and calendar of the many instructional units across the college. These individual

management liaison from the Instructional Team, will develop appropriate student and faculty schedules based on defined Basic Principles and Unit Guidelines (see definitions on pages 4 and 8). All self-directed teams will work within Basic Principles, or parameters that have been defined. In addition, Union Guidelines will be developed by each team, taking into consideration their unique set of circumstances.

Using the past to redefine the future – Essentially, each unit will look at how schedules were developed in the past years, utilizing the workload formula that has been used in the past. With that information as a base, the self-directed team members will take into consideration types of classes involved, numbers of students in each class, number of preparations, background and teaching experience of faculty, cost effectiveness, etc. Faculty and management will then develop appropriate schedules for students and faculty by consensus (“all can live with it”).

In certain instances, the team may decide to make exceptions to the Basic Principles and Unit Guidelines in order to meet the needs of the student, other customers or the priorities of the team. In those instances, waivers will be used as a means to keep a record of those exceptions.

For example, members of the Agriculture faculty may agree to temporarily assume additional students from one of its faculty who, in turn, will develop a software package that will be used by all. Or a member of the Communications faculty may agree to temporarily assume the responsibility of an extra class to allow a new faculty member time to learn the curriculum and the college. These exceptions will be recorded as waivers and will be non-precedent setting.

If all else fails – If members of a team cannot come to consensus on developing schedules, a Workload/Scheduling Resolution Panel (see page 10), comprised of equal number of faculty and management, will be convened. Faculty still have the right to the traditional grievance process if this solution is unsatisfactory to them.

“All can live with it” concept – The cornerstone of this new process is the self-directed team and the roles and responsibilities of individuals, as well as the group. While the group operates on consensus (“all can live with it”), individuals within the group have varying roles from *assisting* to being *responsible*. Whether *assisting* or *responsible*, individuals will be empowered to make independent decisions within parameters set by the team.

A faculty team leader role has emerged that assumes coordination and leadership functions on behalf of the team, in addition to teaching. Individual faculty may *assist* or assume *responsibility* for various functions. The management liaison is a member of the team and fully participates in decisions of the team. In addition, the liaison supports the team by taking responsibility and assisting in other duties, as well as assuming a supervisory role. Other management persons provide leadership and support within their areas of expertise.

An evolving process – It is recognized that for some, this process may be a departure from how faculty and management have worked together and made decisions on behalf of individual units in the past. For others, this is *business as usual*. These guidelines are a starting point and will be refined or modified through the Contract Maintenance Team or future negotiations, as the need arises.

Shared Decision-Making/Self-Directed Teams

The College and Association jointly endorse the concept of shared decision-making/self-directed teams and shall work to implement it as fully as possible. All bargaining unit members will be members of self-directed teams.

A. Self-Directed Teams – Definition

“Self-directed teams” is a generic term used to describe a group of faculty members, faculty team leader, and management liaison who have identified themselves as having a common vision and purpose. Other staff members, such as support staff, may also be a part of the team. Examples (although not exclusive) of self-directed teams are E-Units, A-Units, program unit, department, etc.

B. Bargaining Unit Members as Members of Self-Directed Teams

When dealing with personnel issues, decisions must be made according to the provisions of NTC’s collective bargaining agreements and appropriate state and federal laws.

When implementing the concept of shared decision-making/self-directed teams, bargaining unit members may at times temporarily assume certain coordination/managerial duties. The assumption of such duties shall be voluntary. The College agrees that it will not take any action to exclude bargaining unit members or reclassify them as supervisory, managerial, or

The College also agrees that the input/recommendations/decisions made by bargaining unit members in the performance of such duties shall not be introduced or cited in any litigation, have no precedent setting value, and are not to be used in any adverse way when communicating with a bargaining unit member (e.g., correspondence, observations, evaluations) It is not the intent that bargaining unit members should be responsible for dealing with another member's discipline situation.

C. Role of the Self-Directed Team

The self-directed team, as defined above, will work together to construct student and faculty schedules within a calendar framework that meets the needs of their individual customers. Each team will make decisions using defined Basic Principles. They will also develop individual Unit Guidelines, based on previous years' history, student needs, etc. In order to meet the needs of the student or the priorities of the team, the team may choose to temporarily [sic] step outside of the Basic Principles and Unit Guidelines. In those instances, waivers will be used as a means to keep a record of those exceptions. These exceptions will not be precedent setting.

Decisions will be made by consensus ("all can live with it"). If the members of the team cannot reach consensus, a Workload/Scheduling Resolution Panel will be convened. Faculty still have the right to the traditional grievance process if this solution is unsatisfactory to them.

Basic Principles Governing Development of Schedules

Introduction

Basic Principles have been developed and will be used by self-directed instructional teams as they develop student and faculty schedules based on the needs of their constituents. For non-instructional faculty, many of these Basic Principles do not apply; however Unit Guidelines need to be established by those teams to determine an appropriate workday, workweek, and workload for faculty.

Self-directed teams shall use these Basic Principles so that work assignments given to faculty are, to the extent possible, equitable, fair and reasonable. Given the same set of circumstances, the intent of the parties is that these Principles are applied uniformly across the College. These Principles also permit teams to exercise flexibility within certain defined parameters.

The Principles shall be applied in a uniform fashion to faculty who are full-time (35 hours/week [individual contract/letter of appointment]) and to regular part-time bargaining unit members.

The Basic Principles will continue in effect unless mutually agreed through negotiations by both parties. It is recognized that these principles are a starting point and may be refined or modified at any time through the negotiations process by mutual agreement of the parties. The Basic Principles include the following:

- ◆ A. Staff Utilization
- ◆ B. Waivers
- ◆ C. Governance Guidelines
- ◆ D. Operating and Contract Calendars
- ◆ E. Workweek
- ◆ F. Workday
- ◆ G. Professional Hours
- ◆ H. Office Hours
- ◆ I. Instruction Hours
- ◆ J. Class Size

A. Staff Utilization

The College and the Association have a number of shared interests with respect to staff utilization. They include:

- ◆ Providing the flexibility to meet customer needs and insuring the health of the College.
- ◆ Efficiency and cost effectiveness in the use of resources.
- ◆ Adequately defining and recognizing all work assignments, instructional and non-instructional, in a work load formula appropriate for that unit.
- ◆ Providing all faculty with work assignments that allow them time to adequately meet the responsibilities of their position and customer needs.

B. Waivers

Waivers will be used to record any exceptions from stated Basic Principles and Unit Guidelines. They provide the means for units to provide flexibility as the situation occurs, while still operating under defined parameters. Waivers are not to be considered “good” or “bad,” but rather a means of keeping a record of those exceptions from defined parameters. Waivers require agreement from the faculty member and instructional liaison manager. They are non-precedent

setting, and are for a length of one term or year. The waiver will be on file in the Human Resources office with copies to the Faculty Association President and Director of Instruction.

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C. Governance Guidelines

As they apply the Basic Principles to the development of student and faculty schedules, self-directed teams will comply with all institutional policies and legal state mandates that pertain to them. They will deal with one another in a respectful, professional manner, respecting confidentiality and privacy as appropriate. They will be budget responsible; no self-directed team may expend more than their allotted budget without prior authorization from management. They will utilize district resources in a manner that maximizes effectiveness.

D. Operating and Contract Calendars

- ◆ Self-directed teams will structure professional staff operating calendars to meet the needs of clients served as defined by the team. The length of any individual contract shall be the equivalent of 38 weeks or 190 contract days. If an employee is hired after the 38-week contract calendar has commenced, the employee's contract will be prorated accordingly for that initial year. The intent is to increase options for teams to consider, rather than to mandate change. Some units may find it necessary to adjust their operating calendar to meet customer needs.

For those employees with work schedules which are not designed to fit the standard individual contract period(s), the following applies:

- ◆ If a paid holiday to which they are entitled occurs during their "off" period they shall be entitled to another day off. All 38-week (190 day) contracts shall include seven (7) paid holidays.
- ◆ If inservice days or scheduled convention days, etc., occur during the employee's "off" period and are contiguous to their work schedules, they shall become a part of the work schedule. If they are not contiguous, employees have an option to make them a part of their work schedule. If they choose not to make these days a part of their work schedule, they shall be provided with equal time for corresponding or other activities during the term of their individual contract.

E. Workweek

Faculty will have a workweek consisting of four (4) or five (5) consecutive workdays, Monday through Saturday. Other workweek configurations are permitted with a waiver. Work schedules will be for consecutive weeks, exclusive of shutdown periods. Other configurations are permitted with a

F. Workday

Faculty will have a minimum of ten (10) consecutive clock hours between the end of the last class of one day and the start of the first class on the next consecutive day. Other configurations are permitted with a waiver.

Faculty will be scheduled within a period of nine (9) consecutive hours (including one hour for lunch/dinner) with a total of no more than forty (40) hours per week (including five lunch/dinner hours). Other configurations are permitted with a waiver.

G. Professional Hours

Instructional Faculty- Instructional faculty will have professional hours. Having professional hours means that preparation time and ongoing curriculum development may be performed when and where a faculty member wishes, provided that these responsibilities are completed in a timely fashion. Professional hours also apply to Grading Days, provided that a faculty member's grades are completed and handed in on time.

As professionals, faculty members will meet all of their assigned responsibilities including classes and office hours; attend team, department, general school meetings held within the workday; and attend professional development/in-service day activities.

Non-Instructional Faculty- Non-instructional faculty members (e.g., counselors, curriculum specialist, School-to-Work Coordinator, temporary project assignments, etc.) will also have professional hours. For those faculty whose primary assignment is outside the instructional area, professional hours will be determined by the team and may vary according to the nature of the assignment.

H. Office Hours

Office hours are defined as time available for students to schedule appointments with faculty for guidance and assistance. Since traditional office hours may not be appropriate for all situations, self-directed teams will develop Unit Guidelines for office hours, based on past history. Where appropriate, office hours will be scheduled at a time convenient for students outside of the regularly scheduled class hours and within the instructor's normal workday. Each faculty member is expected to establish and maintain regular posted office hours throughout the work week, as well as to notify students on the first day of class as to their

I. Instructional Hours

The number of hours of instruction will be determined by using the same work formula that has been used in the past for that unit. Other configurations require a waiver.

J. Class Size

The parties recognize that the amount of student contact (i.e., individual class sizes, total student load) which a faculty member has impacts the overall workload and the quality of instruction, as well as cost of instruction. The minimum, optimum, and maximum class size used in developing past schedules will be used as a guideline for developing current faculty schedules. These class sizes will be included as part of Unit Guidelines. It is expected that there will be uniform application of the student class size policies within similar instructional areas.

It is also understood that exceptions to these guidelines will occur and be permitted with the consensus of the self-directed team members. Waivers will be used to record those exceptions. Examples of exceptions may include:

- ◆ Accepting an additional student in a program over the maximum, especially when history has shown that some will leave the program early in the semester.
- ◆ Course is being offered for the first time.
- ◆ Course is being taught by a faculty for the first time (includes new faculty).
- ◆ Total amount of student contact hours.

Unit Guidelines Governing Development of Schedules

As each department operates under a unique set of circumstances, each self-directed team shall, by consensus (“all can live with it”), develop unit-specific guidelines in writing, considering customer requirements, which shall be considered in determining each individual faculty member’s work load. Unit Guidelines cannot contradict any of the Basic Principles without approved waivers. Criteria for developing Unit Guidelines may include (but are not limited to):

- ◆ Teaching experience of faculty
- ◆ New course/program
- ◆ Class size

- ◆ Changes in equipment/technology
- ◆ Travel time needed

- ◆ Number of preparations
- ◆ Types of classes (lecture, lab, self-paced, stacked)
- ◆ Composition of students in class (special needs, international, etc.)
- ◆ Amount of written work to be evaluated
- ◆ Availability of teaching assistants
- ◆ Appropriateness of office hours
- ◆ Method of delivery (ITV, compressed class, workshop format)
- ◆ Time of delivery (evenings, weekends, summers, unique calendars)

Construction of Daily/Weekly Schedules

A. Conditions

Schedules will be constructed by self-directed teams within the Basic Principles and Unit Guidelines. They will determine these schedules by consensus (“all can live with it”). These schedules shall be consistent across similar units within the college and subject to limited, periodic revision. Full-time bargaining unit members will be given first preference and part-time bargaining unit members will be given second preference.

B. Standards

Standards to be used for constructing schedules are certification and other licenses needed, qualifications as mutually agreed upon (consensus) by the members of the team, and stated preferences of faculty members.

Additional criteria established by the Wisconsin Technical College System Board and the North Central Association of Colleges and Secondary Schools, Commission on Higher Education, the Wisconsin State Board of Nursing, and other accrediting agencies deemed necessary for the successful operation of the programs must be complied with, and will take precedence over other standards.

C. Procedure for Development of Daily/Weekly Schedules

Step One – Understanding of Basic Principles

Members of a self-directed team shall become thoroughly familiar with the Basic Principles for establishing student and faculty schedules and the calendar around which they will work.

Step Two – Creation of Unit Guidelines

The members of the self-directed team will develop written guidelines specific to their unit, based on the criteria. Copies will be given to the Instructional Liaison Manager, Faculty Team Leader and Faculty Association President.

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Step Three – Identification of Work and Establishment of Priorities

Self-directed team members will identify the work that needs to be done for the coming term(s) (creation of new class, new technology, number and type of classes to be offered, etc.) and establish priorities based upon need, customer requirements, and budgetary considerations.

Step Four – Development of Student and Faculty Schedules

Self-directed team members will make decisions on student schedules and staff assignments based on consensus (“all can live with it”), utilizing the Basic Principles, Unit Guidelines, and the priorities that have been established. Faculty within the same unit may vary in workload due to experience, course changes, skills, types of assignments, etc. Workload determinations at this level do not set precedence for the College.

If an entire unit, or an individual faculty within that unit determines that they do not wish to take responsibility for determining their own workload, they may request that the Instructional Liaison Manager make the workload determination. If the manager determines the workload and the faculty member has a concern about that workload determination, the appeal will go directly to grievance and not to the Workload/Scheduling Resolution Panel.

Workload/Scheduling Resolution Panel (WRP)

A. Makeup of Panel

The Panel will be coordinated and facilitated by the NTCFA President and Director of Instruction. The panel will consist of three faculty and three managers, including the NTCFA President and Director of Instruction, or their designee. The team makeup will be drawn from a pre-determined list of volunteers and will have broad representation from throughout the college (gender, area of college, etc.) Panel members will not include members of the self-directed team in dispute. A representative from the scheduling office may serve as a resource person. Training will be provided for all potential members of the panel.

B. Faculty Work Load / Schedules

1. Condition

If consensus (“all can live with it”) regarding the determination of faculty workload/schedules cannot be reached by the self-directed team and an impasse

results, then the issue shall be forwarded to the WRP via the Director of Instruction.

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2. Procedure

- a. The self-directed team will first consider the problem and work to resolve any workload/ scheduling dispute. All information forwarded to the WRP must first have been presented to and considered by the self-directed team.
- b. Within five working days of failure by the self-directed team to reach a consensus, a written appeal will be sent to the WRP via the Director of Instruction by the faculty member who has the dispute.
- c. The WRP will be convened within five working days of the appeal. The faculty member or representative of choice will be able to elaborate on the appeal and provide suggested solutions.
- d. The WRP will evaluate the situation and present a decision to the faculty member no later than 3 working days after the meeting has been held. The decision will include the reason(s) for the outcome and shall be binding for the period of time in question. If the vote of the WRP is 3-3, the self-directed team decision carries and is binding for the period of time in question.
- e. Within 15 working days of the decision of the WRP, the faculty member may initiate the grievance procedure. The WRP is a required step prior to a grievance for workload/scheduling issues.

C. % Release of Faculty Team Leader and EU Budget Replacement Dollars

1. Condition

If consensus (“all can live with it”) regarding the determination of Faculty Team Leader % release and EU budget replacement dollars cannot be reached by the self-directed team and an impasse results, then the issue shall be forwarded to the WRP via the Director of Instruction.

2. Procedure

- a. The WRP will be convened within five working days of the appeal. The Faculty Team Leader or representative of the E-Unit will be able to elaborate on the appeal and provide suggested solutions.
- b. The WRP will evaluate the situation and present a decision to the Faculty Team Leader no later than 3 working days after the meeting has been held.

The decision will include the reason(s) for the outcome and shall be binding for the period of time in question. If the vote of the WRP is 3-3, the original determination is binding for the period of time in question.

- c. Within 15 working days of the decision of the WRP, the Faculty Team Leader may initiate the grievance procedure. The WRP is a required step prior to a grievance for % release time and EU budget replacement dollar issues.

Team Tasks/Duties

A. Introduction

The following section attempts to list the various tasks or duties that are needed to carry out the instructional process and to define the roles and responsibilities of individuals in the College as it pertains to those roles.

The list is not intended to be all-inclusive. **Individual tasks or duties may not apply to all teams at all times.** In fact, some of the tasks may apply more specifically to some teams than to others. The list was designed with the teaching faculty in mind. Non-instructional faculty will have job descriptions that define their role.

While there are roles assigned to individual members of the team (Assist, Responsible), all members are expected to participate in developing guidelines under which these individuals will operate. The operating principle is consensus (“all can live with it”).

It is assumed that the majority of the tasks listed are professional responsibilities and within the role of the faculty member. However, there may be additional compensation for some of the tasks listed (example: major modification of curriculum, new program design, etc.)

B. Definitions of Individuals

- | | |
|--|---|
| ◆ <i>Faculty Member</i> | Member of the self-directed team |
| ◆ <i>Faculty Team Leader</i> | Member of the self-directed team |
| ◆ <i>Instructional Liaison Manager</i> | Member of the self-directed team |
| ◆ <i>Other Management</i> | Not a member of the self-directed team |

1. *Faculty Member* – Individual faculty member(s). **Is** a member of the self-directed team and a member of NTCFA.

2. *Faculty Team Leader* – Individual faculty member who has assumed certain leadership and coordination tasks for the team. **Is** a member of the self-directed

team and a member of NTCFA. Additional compensation will be provided to the teams for these tasks.

It is our intention to make the process of selection of Faculty Team Leaders as streamlined as possible, while establishing accountability for certain conditions in implementation. After unit formation, and establishment of Unit Guidelines, self-directed teams will decide which team member(s) will become the Faculty Team Leader(s). This should be done through consensus (“all can live with it”) within the team. The schedule for the Faculty Team Leader can then be adjusted to accommodate additional responsibilities. Changes in Faculty Team Leader(s) should be made in October for the next fiscal year to allow for changes in schedules and a smooth transition.

A special account will be established with adequate dollars to support college wide Faculty Team Leader needs for the year. This account will be maintained by the Instructional Team and dollars will be transferred to the appropriate accounts upon formation of the team/unit. Once the actual dollars needed by a unit for the year, and excess dollars will be transferred back to the college wide [sic] account to be used for other Faculty Team Leaders, or the appropriate time, for other needs.

The maximum amount any team may receive for the Faculty Team Leader initiative is based on the following parameters:

a. Faculty Team Leader loading will be established according to the following table. Allowances may be made due to extenuating circumstances and changes in team size. Issues should be referred to the WRP (Workload Resolution Panel).

FT & Regular Part-Time Faculty in Team	Number of Programs (Skill— Knowledge Area)	Number of Call Staff	# of Regional Campuses or Continuously Staffed Sites
1-5 = 10%	1 = 0%	1-5 = 5%	1-2 = 10%
6-10 = 15%	2-3 = 5%	6-10 = 8%	3 or more = 15%
11-15 = 20%	4-5 = 8%	11-15 = 11%	
16-20 = 25%	6-7 = 11%	16-20 = 14%	
*	*	*	
Always use past history to determine load.			
* NOTE: Columns may be extrapolated.			

b. Faculty Team Leader(s) load needing replacement will then be equated to call staff load according to the current Call Staff salary schedule.

- c. Total dollars available will be determined using call staff rate 3 plus FICA.

- d. Teams may apply dollars (up to the maximum amount) in different ways as agreed upon by the team as long as defined responsibilities are accomplished.
- e. Annually teams may budget Faculty Team Leader activities based on the maximum amount of current call staff rate plus FICA, with hours established in the same manner as described in B above.
- f. Minimum release time will be 18%.

3. *Instructional Liaison Manager* – Individual management person who has leadership and coordination tasks for the team, in addition to other management and supervisory duties. **Is** a member of the self-directed team.

4. *Other Management* – Member of other functional teams supporting the instructional process in specific ways through leadership and coordination tasks (example: curriculum, recruitment, grants). **Is not** a member of the self-directed team, but rather a supportive resource to that team.

C. Definition of Roles

1. “Responsible” – This individual is the contact person for the task and is accountable for coordination and completion of the process and/or activity. The “responsible” person functions in a leadership role within the framework of a team and is empowered to make decisions within parameters set by that team. For example, an individual “responsible” for managing budgets can make individual purchasing decisions based on team parameters.

This individual is not expected to do all of the work involved. They will be assisted to varying degrees by other members of the team or by support from other teams. In fact, the success of the “responsible” person is dependent on the assistance of others to a great degree.

2. “Assist” – This individual or group will help, or support, the “responsible” person, as appropriate. For example, the Director of Marketing may be responsible for all high school recruitment activities. However, the assistance of the individual faculty member in Preview Days, high school visits, career fairs, etc., is crucial to the success of the effort.

Part of the role of assisting includes participating in the shared decision making

of the team and helping to set parameters around which individuals can function. The person who is “assisting” in the task is empowered to make decisions within parameters set by the team.

LIST OF TEAM TASK/DUTIES

Team Task/Duties This list is not all inclusive. All items are not expected of all members every time.	Faculty	Faculty Team Leader	Instr. Liaison Manager	Other Functional Team
Instructional Delivery (includes but not limited to: continued ed, technical assistance and customized training)	Responsible		Assist	Assist
Coordination of continuing ed, technical assistance and customized training	Assist	Assist	Assist	Responsible
Coordination of Scheduling (including processing written waivers)	Assist	Responsible	Assist	Assist
Unit Guideline Formation	Assist	Responsible	Assist	
Program Effectiveness	Responsible	Assist	Assist	Assist
Advisory Committees	Assist	Responsible	Assist	
New Program Activities (investigation, implementation, curriculum development, advisory committee)	Assist	Assist	Responsible	Assist
Short Term Training Development	Responsible	Assist	Assist	Assist
Program certificate review and development	Assist	Responsible	Assist	Assist
Major Program Modification/Improvement	Responsible	Assist	Assist	Assist
Student Recruitment Activities Coordination	Assist	Assist	Assist	Responsible
Customer calls about programs	Assist	Responsible	Assist	Assist
High School Relations Coordination	Assist	Assist	Assist	Responsible
Program Marketing Coordination (skills contests, preview days, college camp, expos, high school visits, brochures)	Assist	Assist	Assist	Responsible
Admissions	Assist	Assist	Assist	Responsible
Registration	Assist	Assist	Assist	Responsible
Placement	Assist	Assist	Assist	Responsible
Coordination of Business/Industry Relationships (visits, shadowing, tours, internships, professional dev.)	Assist	Responsible	Assist	Assist
Coordination of Boards/Agency's Relationship	Assist	Responsible	Assist	Assist
Office Hours	Responsible			
Prep Time	Responsible			
Advising	Responsible	Assist	Assist	Assist
Student Concerns	Assist		Responsible	Assist
Inter-program Coordination	Assist	Assist	Responsible	Assist
Order textbooks	Responsible	Assist		Assist
Curriculum Development	Responsible	Assist	Assist	Assist

	e			
Student Assessment/Evaluation/Grading	Responsible	Assist	Assist	Assist
Course Waivers, Challenge Tests, Advanced Standing, etc.	Assist	Responsible	Assist	Assist
International Student Admissions & Recruitment	Assist	Assist	Assist	Responsible
Equipment Maintenance	Assist	Responsible	Assist	Assist
Team Budget Development and Maintenance	Assist	Responsible	Assist	Assist
Team Activities (meetings, agendas, etc.)	Assist	Responsible	Assist	Assist
Unit Staffing Hiring of Full Time and Reg. PT Faculty	Assist	Assist	Responsible	Assist
Unit Staffing Coordination of Call Staff	Assist	Responsible	Assist	Assist
Direct Activities of Support Staff	Assist	Assist	Responsible	Assist

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Evaluation of Staffing of Support Staff	Assist	Assist	Responsible	Assist
New Staff Orientation	Assist	Assist	Responsible	Assist
Staff Training	Assist	Assist	Responsible	Assist
Individual Professional Development	Responsible	Assist	Assist	Assist
Faculty Peer Mentoring	Responsible	Assist	Assist	Assist
Peer Review	Responsible		Assist	
Faculty Evaluation	Assist		Responsible	Assist
Faculty Discipline			Responsible	Assist
Faculty Concerns	Assist	Responsible	Assist	Assist
Coordination of Instructional Support Resources (special needs, library, student services, etc.)	Responsible	Assist	Assist	Assist
Articulation Coordination (secondary and post secondary)	Assist	Assist	Assist	Responsible
Youth Apprenticeship Coordination	Assist	Assist	Assist	Responsible
Coordination of Grant Development & Management	Assist	Assist	Assist	Responsible
Major Equipment/Minor Equipment Coordination	Assist	Responsible	Assist	Assist
Program Evaluation (State/5 Year)	Assist	Assist	Responsible	Assist
Accreditation/External Program Evaluation	Assist	Responsible	Assist	Assist
State Called Meetings: Program Specific or General Education Disciplines	Assist	Responsible	Assist	
State Called Meetings: Broad Areas (T&I, Health Occupations, General Ed, Business) or non-instructional	Assist	Assist	Responsible	Assist

This agreement shall be in effect for the 1997-98 and 1998-99 years, and will expire on June 30, 1999 unless agreed to by the parties.

. . .

17. There were four memoranda of agreement also made a part of the “pink pages.” These memoranda concerned Contract Maintenance Team, Retirement Benefits, Self-Directed Teams (E-Units), and Self-Funding of Health Care Benefits. Each of the memoranda of agreement contained in the “pink pages” was dated and signed by the Faculty Association President and the NTC President on September 24, 1997.

18. The parties met for negotiations on the following dates and (pursuant to agreed-upon ground rules), the minutes from each of those meetings were agreed upon by both NTC and the Association representatives and distributed electronically to all Association members, middle leaders and other union members at the College:

. . .

2-3-99 session
2-10-99 session

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2-17-99 session
2-24-99 session
3-3-99 session
3-10-99 session
3-24-99 session
3-31-99 session
4-7-99 session
4-14-99 session
4-21-99 session
4-28-99 session
5-5-99 session
5-12-99 session
8-16-99 session
8-24-99 session
10-19-99 session
11-9-99 session

Also, on October 28, December 21, 1998 and January 20, and March 31, 1999, the Board met with the NTCFA to discuss the issues. From August 16 to September 17, 1999, the parties attempted to reach an interim agreement covering the 1999-2000 school year. The parties were unable to do so, the Association Executive Committee having, on September 17, 1999, rejected NTC’s proposal for an interim agreement maintaining the “pink pages” and NTC having rejected the Association’s counter proposals that included an improvement in the dental plan and increase compensation for Faculty Team Leaders.

19. Sometime in May, 1999, the NTCFA voted to file a request for WERC municipal mediation. Thereafter, on June 9, 1999, Vice-President of Academic Affairs Joe Hegge notified members of the Association that NTC intended to utilize the “pink pages” as the *status quo* following the expiration of the 1997-99 collective bargaining agreement. That

memorandum read in relevant part as follows:

. . .

I know that all of us want to minimize the amount of disruption to students, staff, and other NTC customers while this process [mediation or mediation/arbitration] is under way. With this in mind, it is our intent to maintain a status quo approach during this interim. This includes maintaining and continuing the following: all sunset items and side letters of agreement included in the 1997-99 contract, faculty team leaders, open campus, and increased loading for faculty teaching net meeting and on-line delivery courses.

In the interest of reaching an amicable settlement in a timely fashion the administrative negotiation team is also willing to continue to negotiate with the faculty association at any time.

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Also, in this memo, Hegge explained NTC's intent to file for mediation/arbitration and compared it to the Association's mediation request as follows:

. . .

A new development has occurred in the faculty negotiations process that I felt was important enough to interrupt your summer break. As we entered into our negotiations process, both negotiation teams were hopeful that the faculty contract would be settled by the end of May. Because of a variety of circumstances, unfortunately this was not the case.

As most of you know, the faculty association has filed an official request for mediation as a means to resolve this impasse. I believe we are all interested in reaching a settlement as soon as possible; however, the district believes that the **mediation/arbitration** process will move us along faster for the following reasons.

In the NTCFA's **mediation** request, an individual assigned by the state will come to NTC (most likely in August or September) as an intermediary to work with both negotiation teams to reach consensus and identify a mutually agreeable contract. If this mediation effort is unsuccessful, the process ends and either the district or NTCFA would then file for arbitration. In essence, we would be back to ground zero. By filing for the combined mediation/arbitration process up front, we expedite the process; fewer meetings with the intermediary would be needed. Should mediation fail, we would automatically proceed into arbitration.

During the **arbitration** process, each side presents a series of proposals ending with a final offer which is submitted to the arbitrator. After study and

consideration of each side's final offer, the arbitrator selects one as the NTCFA contract for 1999-2001. In a best case scenario, the contract would be settled with mediation in early fall; arbitration would take much longer.

. . .

20. At the end of the 1998-99 school year, Association representatives requested that the Association's negotiation team cease meeting with the Board's negotiation team during the Summer and resume negotiations in the Fall of 1999. The NTC Board of Trustees agreed to this scenario. As of June 9, 1999, when Vice-President Hegge sent his memo to the NTC Association members regarding mediation/arbitration requests made by NTC as well as NTC's decision to maintain the "pink pages" as the *status quo* during the hiatus in bargaining for the Summer was in effect (Finding No. 19), Hegge had not presented his June 9, 1999 memo to the Association negotiation team members prior to submitting it to all NTCFA members. On June 10, 1999, NTC filed for interest arbitration with WERC.

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21. Ehrenreich responded to Hegge's June 9, 1999 memo on behalf of the Association by memo dated July 19, 1999, which read in relevant part as follows:

. . .

NTCFA filed for mediation as a result of the membership vote taken at our May meeting. In response, the College immediately filed to go directly to arbitration. The mediation process, which we preferred, would have provided for continued negotiating with the help of a third-party mediator. Filing directly for arbitration, on the other hand, could circumvent continued discussion and force us directly into the final offer process.

We are, naturally, disappointed that the College rejected mediation.

What does this mean for the Fall semester?

. . .

Also, in this memo from Association President Ehrenreich, Ehrenreich stated that the Association had sent Hegge a response to his June 9 memo to the faculty and stated "it is our view, based on our contract language and WEAC legal advice, that the College must revert to the previous contract language for this coming fall semester" In support of this assertion, WEAC Consultant Leigh Barker, in a letter dated July 19, 1999 wrote to Joseph Hegge in relevant part as follows:

. . .

I am writing on behalf of the NTC Faculty Association. The Collective

Bargaining Agreement between NTCFA and Northcentral Technical College states that the Memo of Agreement contained in the parties' 1997-99 Master Agreement (page 94-109) expires on June 30, 1999 unless agreed to by the parties.

It is my understanding that the parties have not agreed to continue this Memo. Consequently, the "status quo" for the upcoming school year reverts to the language that existed prior to the 1997-98 school year. This is clearly stated on page 117, in numbers 2 and 3 of your Agreement. In addition, please refer to the Wisconsin Employment Relations Commission (WERC) decision in the City of Brookfield (No. 19822-C, 1984), where this same issue was decided.

I urge you to rescind your June 9 memo and abide by your agreement regarding the "status quo" for the Fall semester. I hope to hear from you soon in this

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regard. Should I or NTCFA President Hal Ehrenreich not hear from you within the next ten (10) days that you have rescinded the June 9 memo, we will have not recourse but to file a prohibited practice in this matter.

...

NTC took the position that it did not have to bargain regarding the "pink pages," because these were permissive subjects of bargaining and that in any event the language of the "pink pages" had not sunset as the Association asserted.

22. In October, 1999, the WERC Investigator met with the parties and reviewed their preliminary final offers. As a last ditch effort, NTC offered to extend the collective bargaining agreement for one year and to pay Association members 3.8% total package increase for that year.

23. By a July 23, 1999 memorandum to Association President Ehrenreich Hegge protested Ehrenreich's July 19th characterization of the College's request for mediation/arbitration, as follows:

...

I am writing regarding your July 19 memo to NTCFA members. I was surprised to find that you have once again blatantly misrepresented me to our faculty. In your memo you stated that "the College rejected mediation." This is absolutely untrue; both mediation and arbitration are important to us and are part of our request. This has been our position ever since the faculty association filed for mediation only.

. . .

Additionally, I am also enclosing a copy of my June 9 letter to James Meier, Chairman of the Wisconsin Employment Relations Commission. In this letter I have again expressed the college's interest in mediation.

It is important that the faculty be given accurate information as they form their conclusions on the activities of the past few months. Your statement in your July 19 memo, "the College rejected mediation" is inaccurate. It clouds the issue, creates miscommunication, undermines the organization, and can result in inaccurate conclusions.

Failure to act on this would certainly be in conflict with our *integrity* and *respect* operating principles. I expect you will rectify this situation prior to August 2, 1999. Please let me know how this is corrected. Thank you.

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Ehrenreich never retracted or corrected his July 19th memo and NTC took no action against Ehrenreich for failing to do so. Hegge's memo of July 23, 1999, constituted a difference of opinion with Ehrenreich regarding the relative value of interest arbitration *visa vis* municipal mediation. Hegge's memo did not contain any threat of reprisal or promise of benefit and it had no reasonable tendency to interfere with Ehrenreich's protected concerted activity. NTC's decision to "petition for mediation/arbitration" (now known as interest arbitration under MERA) did not, in itself, evidence an intention to avoid mediation of the parties' dispute over the 1999-01 labor agreement.

24. In preparation for Northcentral Association (NCAA) accreditation visit, NTC went through all of NCA's general institutional guidelines to determine if there were any gaps in NTC's requirements so that improvements could be made before NCAA's visit to ensure that NTC would receive the best accreditation rating — a ten year accreditation certificate with no need for interim NCAA focus visits or periodic reports. Regarding one of these general institutional requirements, NTC found that its General Education (Gen. Ed.) educational faculty requirement was less than what NCAA optimally looked for: only 60% of Gen. Ed. Faculty at NTC met the NCAA Masters requirement. In NTC's view, 80% would be needed to pass muster on this point. NTC then issued the following memo dated November 17, 1997 to all Gen. Ed. Faculty:

. . .

Many of you are aware that NTC credentialing standards for general education faculty hired after March 11, 1997 have been revised in response to North Central Association guidelines. The credentialing standard for *new* faculty requires that *all full and regular part-time faculty have an earned master's degree in the appropriate content area at the time of hire.*

NCA also requires that NTC develop a plan to bring existing general education faculty to a similar standard. We have established the standard for *existing* general education faculty at *a master's degree appropriate to the academic field in which you are teaching, or a minimum of 18 graduate credit hours in the academic field in which you are teaching.*

A preliminary review of your academic credentials in the NTC certification file indicates that you do not currently meet the new standard for existing general education faculty. Based on our review of your file we have attached a summary of your credits that are applicable toward the 18 graduate credit minimum. You may have earned additional credits for which there is no transcript on file. In that case, will you please provide that information to your Instructional Liaison.

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You may feel that there are courses currently in your file that are not on the summary of approved courses, but should count toward the 18 graduate credit minimum for your discipline. In that case, we suggest you obtain a written statement from the Department Chair in your academic field at any university stating that *they* would accept the course as discipline credits (not elective) toward a graduate degree in your content area. We will then apply these credits toward the 18 graduate credit requirement for existing general education faculty.

As part of the NTC plan, the timeframe established is the completion of a *minimum of three credits per year, with a maximum of five years to complete all credits* by the new credentialing standard. The initial three credits are due by May 31, 1999.

If you have questions, would like further information, or need assistance as you work to meet this requirement, please work directly with your Instructional Liaison, who will help coordinate these efforts.

25. On November 10, 1998, all Gen. Ed. Faculty, including Ehrenreich, received the following memo concerning graduate credits requirements imposed by NTC in its original (November 17, 1997) memo. The November 10, 1998 memo read as follows:

. . .

The purpose of this memo is to clarify NTC's position regarding the revised credentialing requirements for General Education faculty and to answer questions that have been posed to me.

As you are well aware, in response to NCA credentialing standards, NTC has

established a requirement that all existing full and regular part-time general education faculty obtain a minimum of 18 graduate credit hours in the academic field in which they are teaching. The time frame for completion of this requirement includes a minimum of three graduate credits being earned each year, with the initial three credits earned as of May 31, 1999.

I am writing this memo under the premise that, as a faculty member affected by this requirement, you already are moving ahead or have plans to meet the initial three-credit requirement by May 31, 1999. However, in order to eliminate any confusion regarding this expectation and to answer questions I have been receiving, the following describes the process NTC will follow for those faculty who do *not* successfully meet this initial requirement:

Faculty who do not provide verification of having earned a minimum of three graduate credit hours by May 31, 1999, will be considered to be non-

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compliant with the credential standards required of general education faculty members at NTC and will be relieved of teaching duties and responsibilities for the 1999-2000 academic year. These faculty will be placed on leave without pay until they obtain the appropriate graduate credits (three graduate credits per year), which would then allow them to return to a teaching position at NTC.

As I mentioned above, the intent of this letter is only to clear up any potential misunderstandings that may still exist and respond to questions I have received. I assume that you have already taken the steps to keep yourself in good standing as a faculty member at NTC. I wanted to provide this information well before May to help in your planning and to avoid any surprises. If I can help to clarify this further, please give me a call.

...

Approximately 10 of 40 NTC Gen. Ed. faculty were subject to the 18-credit requirement imposed by NTC, although at the time this memo was issued, 1 faculty member later retired, leaving 9 Gen. Ed. faculty, (including Ehrenreich) at risk of their jobs if they did not get 3 credits toward a Masters in their content area each year starting in 1999.

26. On March 10, 1999, Ehrenreich and other NTC faculty subject to the 18-credit Gen. Ed. requirement imposed by NTC, received the following letter from NTC:

...

The purpose of this letter is to notify you pursuant to Section 118.22(2) of the

Wisconsin Statutes that the Northcentral Technical College District Board is renewing your individual teaching contract or letter of appointment for the 1999-2000 school year. Pursuant to Section 118.22(2), you have until April 15, 1999 to accept or reject this offer of employment. Your acceptance should be indicated below your signature. Please return the original copy to the Human Resources Office. If you are planning to retire, or to terminate employment for some other reason, the District would appreciate notification as soon as possible.

We are not issuing individual contracts or letters of appointment at this time since negotiations are not concluded between the Board and Northcentral Technical College Faculty Association. Once those negotiations are completed, individual instructor contracts or letters of appointment for the 1999-2000 school year will be issued.

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As communicated to you in earlier correspondence [sic], your continued employment under this contract is contingent upon successful completion of a minimum of three credits of a graduate level course appropriate to the academic field in which you are teaching by May 31, 1999.

Your receipt of this letter does not preclude the District Board from issuing a layoff notice, if necessary, pursuant to the 1997-1999 Professional Contract Supplement with the Northcentral Technical College Faculty Association, Article III, Paragraph G – Layoff, or Article XII, Appendix “B”, Paragraph C – Layoff Notification.

...

27. In an effort to comply with NTC’s 18-credit Gen. Ed. rule, Ehrenreich requested educational experience approval for a geometry course, entitled “Geometer’s Sketchpad” covering “the use of geometry software for geometric insights and conjectures” offered by the University of Wisconsin-Stevens Point beginning January 20, 1999 and ending March 5, 1999. Ehrenreich made his request for course approval on December 3, 1998. By a memo dated December 10, 1998, Vice-President of Academic Affairs Hegge made the following response to Ehrenreich’s request for credit approval for the Geometer’s Sketchpad course, approving the course for salary movement but requesting further information before approving the course under the 18-credit requirement:

...

I have received your “Request for Educational Experience Approval” for the UWSP course M ED 790 Special Topics: Geometer’s Sketchpad to Teach Geometry. The course is appropriate and approved for the Step 14 bonus. I understand from Mary Herzog that you are in the process of obtaining additional

information which would confirm that this course is appropriate to use toward the revised credentialing requirements for general education faculty. I will complete and return the green request form upon receipt of that additional information.

. . .

As I am sure you are aware, the credentialing standard for *current* General Education faculty is slightly different than for new hires. That standard is outlined in my November 17, 1997 memo to current General Education faculty, which is also attached. It states that *a minimum of 18 graduate credit hours in the academic field in which you are teaching* is required. That memo also outlines the process to follow in the event that it is unclear whether a particular course is considered *discipline-centered* and appropriate to use toward this requirement.

. . .

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28. On December 21, 1998, Ehrenreich submitted an e-mail from the Chair of the Department of Mathematics at UW-Oshkosh indicating that the course he wished to take in Geometer's Sketchpad "would apply to the MS degree" in mathematics as a workshop. On December 22, 1998, Hegge denied Ehrenreich's request for credit for course as it was not a Masters level content-based course in mathematics. Hegge's December 22nd memo read in relevant part as follows:

. . .

The purpose of this memo is to further clarify the questions raised subsequent to your "Request for Educational Experience Approval" for the UWSP course M ED 790 Special Topics: Geometer's Sketchpad to Teach Geometry.

Regardless of the title of a master's degree program, we are making a distinction between *content based* vs. *education based* courses. The title of a graduate degree may vary among universities; e.g. M.S. in Mathematics and an M.S. or M.Ed. in Mathematics Education.

The credentialing standard for **CURRENT** general education faculty is a minimum of 18 graduate credits in the academic field in which you are teaching. The 18 credits need to be *content based* in the *discipline*.

. . .

In his memo, Hegge also offered to listen to "an alternate plan" if Ehrenreich would bring one forward regarding how he could meet the College's 18-credit requirement.

29. On January 4, 1999, Hegge sent Ehrenreich another response to his request for Gen. Ed. credit approval for the Geometer's Sketchpad course, which read as follows:

In response to your request course [sic] approval regarding the course MED 790 Special Topics; Using the Geometer's Sketchpad, I have reached the following conclusion: Although UW – Oshkosh has agreed to accept the course into the MS in Mathematics Education program, they have accepted it as a “workshop course,” not as a mathematics course. It has been our intention from the beginning to satisfy the NCA General Institutional Requirement by having our General Education faculty have at least 18 credits in their content area (in your case Mathematics) or a Masters Degree in the content area with approximately 18 credits in the content area.

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In view of this information, and since you have provided no documentation that you are accepted in the Mathematics Masters Degree program at UW – Oshkosh, my only option is to deny approval of course MED 790 for the NTC Requirement for Current General Education Faculty. The course would, however, be acceptable for horizontal advancement or Step 14 Bonus.

In response to your question about my reference to “other options” and my intentions when using this terminology, it has not been with a plan in mind, but to recognize that each general education faculty is unique. If any of you are having difficulty achieving the new requirement, I would be interested in your providing an alternative plan that would lead eventually to achieving the requirement. If you recall, we discussed briefly what this could mean in my office prior to the holiday break.

30. As a result of the March 10, 1999 letter to affected Gen. Ed. faculty, the Association filed a grievance regarding the matter which the College refused to arbitrate. The Association then went to Marathon County Circuit Court and sought and won an order that the College arbitrate the issue whether the time table related to the 18-credit Gen. Ed. requirement instituted by NTC violated Article 2, Section B1, of the parties' collective bargaining agreement. The Court issued an order that until the matter was resolved in arbitration, NTC would be “enjoined from taking any adverse employment action against any faculty member for failure to comply with the 18-credit requirement.” This injunction has remained in effect through the last date of hearing herein after having been appealed by NTC to the Wisconsin Court of Appeals.

31. By denying Ehrenreich approval of credits toward the 18-credit rule, Hegge treated Ehrenreich differently from Gen. Ed. Math teacher Wissen. Wissen requested and quickly received credit for a Bachelor's level statistics course which was acceptable to

UW-Oshkosh in its Math Education Masters Program, but which was also a workshop course. Ehrenreich's proposed course was a Masters level course which UW-Oshkosh would have accepted in its Math Ed. Masters program, probably as a workshop course. Hegge's reasons herein for initially denying Ehrenreich's request for credit were shifting and pretextual. Hegge's actions were based at least in part on the animus he harbored toward Ehrenreich's lawful protected activity as NTCFA President.

32. In approximately 1995-96, laser instructor, Max Teisinger, requested to receive a position in the Communications Department after his instructor job in the laser area was slated for reduction. Teisinger's request was made under the bumping rights section of the labor agreement and was not technically a transfer. Teisinger had to apply for the Communication's position along with other outside applicants. In approximately 1997, Instructor Kathy Kanz was slated for a partial reduction in her work hours. As a result, she applied for and was given a position as an AODA Counselor to cover part of her workload so

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that she would not suffer a partial layoff. Again, Kanz applied for this position and was granted it over other outside applicants. In 1998-99, Dan Krcma was assigned as an instructor in the Small Business Management area. Thereafter, Krcma's position was slated to be eliminated and he applied for and received a new position in the Marketing area. Finally, Union Representative Ralph Andren applied for a Math position and received it after he submitted an application, as did other applicants. Article 3 — Conditions of Employment in the 1997-99 labor agreement concerns layoffs and bumping rights of Association members. The contract does not specifically provide for transfer rights

33. After having received Hegge's letter of November 10, 1998 and his follow-up letter of March 10, 1999, (Finding Nos. 25 through 26). Ehrenreich had two conversations with NTC Manager Bastable regarding the fact that Ehrenreich did not believe he would be able to get three graduate math credits in time to meet NTC's new requirement for Gen. Ed. Faculty by May 31, 1999. At this time, Bastable and Ehrenreich discussed other areas that Ehrenreich would be certified and qualified to teach which would not require additional graduate level course work. One of these was the Goal Oriented Adult Learning (GOAL) math classes, (which Ehrenreich had previously taught) formerly held by Cathy Vollstedt. Ms. Vollstedt had been on an extended leave of absence due to illness but the College had posted Vollstedt's GOAL position. The application deadline for the opening created by Vollstedt's absence was March 4, 1999. When Ehrenreich spoke to Bastable, Bastable said the position was open and Bastable did not think there would be a problem with Ehrenreich receiving the position. When Ehrenreich left Bastable's office, he believed he would see this transfer to GOAL Math on his next class schedule. However, on April 6, 1999, Ehrenreich asked Hegge why he had not been transferred to GOAL math per his conversation with Bastable. Hegge then told Ehrenreich that the Vollstedt GOAL Math position had been put on hold. Following this conversation, Ehrenreich formally requested that NTC "reassign me to the GOAL Math position, currently held by Cathy Vollstedt. I would appreciate your response to this request by April 15, if possible, otherwise I request an extension to the deadline for letter of intent to match the date of your decision."

34. In the Spring of 1999, Bettyann Battist, Assistant to NTC President, was assigned to study the GOAL area with an eye to possibly reorganizing the area. As part of this effort, Battist had been requested to analyze not only the GOAL Math position but also the Basic Skills Reading/Writing and English as a Second Language positions in the GOAL area. On April 19, 1999, Battist stated she decided to put filling Vollstedt's position on hold, as Vollstedt had expressed a desire to return to NTC should she recover from her illness.

35. On April 20, 1999, Bastable sent Ehrenreich the following e-mail regarding his reassignment request:

. . .

This letter is in response to your request to be reassigned to the Learning Center Math position presently held by Cathy Vollstedt. For the reasons cited below, we have decided not to reassign you at this time:

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1. Cathy Vollstedt's medical leave is tentative at this time and we feel that making the proposed change is not in Cathy's best interests or in the best interests of the long-term direction of the Learning Center.

2. It is not in the College's best interest to make a move such as you have suggested, while at the same time we are working through the litigation process that is presently underway.

3. We will continue to analyze available options which include reassignment to a new position, continuation of your present assignment and suspension.

Prior to the end of the semester, we will work through our options and communicate our decision as soon as possible. I would encourage you to sign and return your letter of intent by the end of the day today (4-20-99) to the Human Resources Department.

36. The Association proved by a clear and satisfactory preponderance of the evidence that Ehrenreich engaged in lawful and concerted activities, that NTC knew of Ehrenreich's interest in Vollstedt's position and knew of his activities on behalf of NTCFA and that by Bastable's e-mail of April 20, 1999, NTC demonstrated that its denial of Ehrenreich's transfer request was based, at least in part, on NTC's hostility toward NTCFA (and Ehrenreich as President) for filing the injunction action against NTC to halt the application of NTC's 18 credit rule to Gen. Ed. faculty. This is so despite NTC's apparently valid (yet belated) motive to hold Vollstedt's position open for her during her illness.

37. On June 16, 2000, NTC Manager Bastable sent the following memo regarding NTC's Gain Sharing Plan, instituted previously for non-represented groups, to all Association members without first making a proposal thereon to the NTCFA negotiating team:

. . .

We want all employees to know of a new initiative rolled out this year by NTC's Board of Trustees in case represented employee groups are interested in discussing this concept.

The NTC Board of Trustees has had a long-standing interest in motivating increased productivity by establishing a "gain sharing" plan for the college. For a number of years, the board has encouraged the President through board established presidential goals. In 1999, the board's interest in "growing" productivity resulted in the adoption of President's Staff and Middle Leader/Confidential Support Staff gain sharing plans.

The 1999-00 gain sharing plan for President's Staff was based on NTC's productivity and quality measures (PQM's) and President's goals. The basic concepts of the Middle Leader/Confidential Support Staff plan focused on growing FTEs, which in turn generates greater revenue for the District. Both

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plans allocate growth revenues back to the college, while sharing a portion with gain sharing plan participants. These gain sharing plans are being implemented for two years, 1999-00 and 2000-01. While the incentive for the President's Staff plan may change in 2000-01, the board has tied Middle Leader/Confidential Support Staff to FTE growth for both years.

The board determines whom [sic] and what it will encourage. Incentives could vary from year to year and differ between employee groups depending upon board direction. NTC's effectiveness is a result of the collective efforts of every one of us. We should be proud of our accomplishments. If your employee group is not already participating in gain sharing, we wanted you to know about this opportunity.

NTC Gain Sharing Plan

Middle Leaders

1999-2000

(Revised 09/14/99)

- To promote student enrollment growth.
- To increase revenue for NTC.
- To motivate Middle Leader and Confidential Staff to be accountable for FTE growth.

A. Incentive is based on:

1. Growing enrollment.
2. The Board is willing to share growth revenues.
3. Payment administration of incentive would start at 2,320 FTE and greater.*

B. Payment Schedule:

<u>FTE Generation</u>	<u>Revenue Generated at 2,320 and Above</u>	<u>50/50 Split to Share</u>	<u>Actual Payment to Employee (Payment will vary based on number of Employees.)**</u>
2,290	\$0	\$0	\$0
2,320	\$55,500	\$27,750	\$400
2,330	\$74,000	\$37,000	\$525
2,340	\$92,500	\$46,250	\$650
2,350	\$111,000	\$55,500	\$775
2,360	\$129,500	\$64,750	\$900
2,370	\$148,000	\$74,000	(max) \$1,025

*Productivity Measure #4 (Operational Cost) indicates a goal of 2,320 for 1999-2000.

**Payment amounts are based on a full-time employee. Part-time employees would receive a prorated benefit based on their number of hours per week. New hires will receive a prorated amount based on their number of weeks employed. An employee must be employed on the last day of the plan year. (6/30/00)

38. On July 28, 2000, NTC President Ernst sent the following memo to all Association members without first negotiating regarding the contents thereof with the Union's negotiating team or offering same to the Association:

...

I have spent a great deal of time reflecting on our negotiation process. It is a heavy responsibility to create a contract that blends the needs of our customers with the needs of the Association. Two years ago we began, with the best of intentions, to create a contract for all concerned. The college brought in a consultant to train *all* our negotiators in the RESOLVE process, which focuses on finding solutions mutually agreeable to both parties. College and faculty negotiating teams spent a great deal of time identifying issues and searching for successful solutions. Unfortunately, the process broke down. Both groups agreed they had unresolved issues and entered into the mediation/arbitration process. While progress has been made on some of these issues, others still remain.

Some have said I am out to eliminate the NTC Faculty Association. This is not the case. I know unions have a role in our organization. I admit that I do not look fondly on *any* rules or regulations that restrict the college's efforts to meet customer needs. I know my frustration is often apparent when these barriers present themselves. I continue to challenge the state and others in many of their policies that hamper our efforts to successfully position NTC for the twenty-first

century. None of this means that I have set out to abolish unions.

In the interest of all concerned, I would like to resolve this matter and ask for your support. I have gone to the board to ask for their reconsideration of a 3.8 percent total package cap. We offer you a 4.2 percent total compensation package for each year, with the 1997-99 contract language folded in, i.e., the language that we are currently working under. I believe this is a win-win solution that provides us with several benefits. It . . .

- Puts well-deserved and hard-earned dollars in the pockets of faculty
- Grants compensation for faculty at a level comparable with other faculty associations in the Wisconsin Technical College System

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- Brings closure to the contract for the start of the 2000-2001 school year, thus ending a difficult and divisive negotiations process
- Sets the stage for the 2001-03 contract negotiations, scheduled to begin in January 2001

Attached is a table showing the salary impact of the 4.2 percent total package offer for 1999-00 and 2000-01. I hope that together we can resolve this situation.

(Salary schedules were attached to the original document.)

39. On August 2, 2000, Ernst updated the Board of Trustees as follows regarding Faculty Association negotiations:

. . .

4. NTCFA Negotiations –After consultation with Dean Dietrich, NTC Legal Council, I mailed a letter to the faculty negotiations team and to each member of the faculty association asking them to give serious consideration to settling this contract. Our offer was to propose the continuation of existing contract language with an increase in wage [sic] and benefits. My strategy is to extend the olive branch, get a settled contract at a fair and reasonable cost, and prepare for our next round of negotiations set to begin in January 2001.

. . .

- The Faculty Association's Executive Committee served notice that they have/are filing a Prohibitive Practices claim against our intent to give the faculty a 4.2% total package increase, which begins with the insurance of

pay checks on September 22. Dean Dietrich estimates that the hearing on their claim is a year and half to the future, if not longer. Perhaps we'll be settled with them by then.

. . .

On August 28, 2000, Ernst sent the following memo to all Association members (including the Faculty Association negotiation team members) without previously making an offer on this subject to the Association in bargaining, indicating that the Board of Trustees had approved a 4.2% total package increase for Association members as follows:

. . .

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This summer I sent a memo to you (see attached) proposing a 4.2 percent total package increase for each year, 1999 and 2000. I made this offer in good faith to do what I thought was best for all. We have passed the first year of what should have been your 1999-2001 contract and it is likely that arbitration will take us through most of the second year. This timeline would cause the 2001-03 contract negotiation cycle to be delayed, a scenario I'm sure we all would like to avoid.

Some faculty have said that wages are not the issue, others have indicated they are, and they would like to receive their due compensation. I have not received an answer to my earlier memo and I am told that some are upset that this was sent out to all.

Since it is now clear that negotiations will not be resolved soon, I am authorizing the implementation of a 4.2 percent total compensation package each year increase retroactive to August 16, 1999. This increase will be reflected in the September 22, 2000 paycheck.

I understand that some faculty have concerns relating to the role and responsibilities of Faculty Team Leaders. The organizational structure, which includes Faculty Team Leaders and their roles and responsibilities, is a permissive subject and therefore not a part of bargaining. However, I am interested in reassessing the parameters surrounding this role. To assist in this process, I am establishing a Task Force. Mary Kay Rudolph, Vice President of Learning, and Janet Newman, Team Leader for the Learning Leadership Team, will spearhead the Task Force which is to present its findings to me by November 1, 2000.

. . .

40. In none of these situations did NTC offer the Association bargaining team these wage and gain sharing proposals prior to directly communicating them to Association members. Nor did NTC attempt to negotiate regarding these matters with the Association bargaining team. At the time these communications were made with Association members, the parties had been one year without a contract, they were in the process of exchanging preliminary final offers and they had not reached deadlock at the time Bastable's June 16, 2000 memo and Ernst's July 28 and August 28, 2000 memos were issued.

41. Ernst and Hegge's comments to Ehrenreich on October 13, 1998 that he was a "watchdog for the union" and a "thorn" in Ernst's side had a reasonable tendency to interfere with, restrain or coerce employees in the exercise of their rights guaranteed by Sec. 111.70(2), Stats., and demonstrated that Ernst and Hegge were hostile to Ehrenreich for his having engaged in protected concerted activities.

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42. NTC agent Hegge's July 23, 1999 memo to Ehrenreich regarding the relative value of an INT/ARB petition versus an MM request constituted protected free speech and did not contain a threat of reprisal or promise of benefits. Therefore, it did not have a reasonable tendency to interfere with restrain or coerce Ehrenreich or employees in the exercise of their rights guaranteed by Sec. 111.70(2), Stats.

43. As Ehrenreich was unable to take the "Geometer's Sketchpad" course and because Hegge eventually granted him credit therefor, no Sec. 111.70(3)(a)3, Stats., remedy is ordered regarding this allegation.

44. On February 9, 1999, the parties commenced bargaining for a successor to the 1997-99 labor agreement. No agreement or a successor contract had been reached when the 1997-99 contract expired on June 30, 1999. In May, 1999, the Association filed a petition for Municipal Mediation pursuant to Sec. 111.70(4)(c)1, Stats., and in early June, 1999, NTC filed a petition for interest-arbitration pursuant to Sec. 111.4(cm)6, Stats. The *status quo* which existed at the expiration of the 1997-99 collective bargaining agreement included the sunseting of the "pink pages" (Employee Working Conditions memo) and the utilization of the regular provisions of the 1997-99 collective bargaining agreement as the *status quo*, following the contract expiration.

45. NTC and NTCFA never addressed either the gain sharing plan or a 4.2% compensation package for bargaining unit employees with the NTCFA and NTC never made any proposals thereon in bargaining. As of June 9, 1999, and July 28 and August 28, 2000, the parties had not reached impasse in their negotiations for a 1999-01 labor agreement.

Upon the basis of the above and foregoing Findings of Fact, the Examiner makes and issues the following

CONCLUSIONS OF LAW

1. NTC, by its agents Ernst and Hegge's statements to Ehrenreich at the October 13, 1998 meeting interfered with, restrained and coerced Ehrenreich in the exercise of his rights guaranteed in Sec. 111.70(2), of the Municipal Employment Relations Act and therefore violated Sec. 111.70(3)(a)1, of the Municipal Employment Relations Act.

2. NTC, by refusing to grant Ehrenreich the 25% release time for service on President's Staff (as it had for prior NTCFA Presidents) was motivated, in part, by its hostility toward Ehrenreich's concerted protected activity as NTCFA President. Therefore, NTC's refusal to grant 25% release time to Ehrenreich is a violation of Sec. 111.70(3)(a)3, Stats., and derivatively of Sec. 111.70(3)(a)1, Stats.

3. NTC, by its agent Bastable's decision on April 20, 1999, to deny Ehrenreich's request for a reassignment to an open GOAL math position was motivated, in part, by its

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hostility toward Ehrenreich's concerted protected activities as NTCFA President because the NTCFA had pending litigation against NTC and NTC's April 20, 1999 decision is a violation of Sec. 111.70(3)(a)3, Stats., and derivatively of Sec. 111.70(3)(a)1, Stats.

4. NTC by its agent Hegge's decision on January 4, 1999, to refuse Ehrenreich's request for credit for the "Geometer's Sketchpad" course for use toward the 18 graduate credit rule for General Education faculty was motivated, in part, by hostility toward Ehrenreich's concerted protected activities as NTCFA President and is therefore violative of Sec. 111.70(3)(a)3, Stats., and derivatively of Sec. 111.70(3)(a)1, Stats.

5. The Association has failed to establish by a clear and satisfactory preponderance of the evidence that NTC agent Hegge's July 23, 1999 memo to Ehrenreich violated Sec. 111.70(3)(a)1, Stats.

6. NTC, by its agent Bastable's June 16, 2000 e-mail to NTCFA members offering the gain sharing plan and agent Ernst's July 28 and August 28, 2000 memos to all NTCFA members offering and then granting bargaining unit employees a 4.2% total compensation increase constituted individual bargaining by NTC in violation of Sec. 111.70(3)(a)4, Stats., and derivatively of Sec. 111.70(3)(a)1, Stats.

7. NTC, by unilaterally granting bargaining unit members represented by NTCFA a 4.2% total compensation package retroactive to August 16, 1999, without first offering same to the NTCFA in bargaining, refused to bargain collectively with a representative of a majority of its employees in an appropriate collective bargaining unit and, therefore, violated Sec. 111.70(3)(a)4, Stats and derivatively violated Sec. 111.70(3)(a)1, Stats.

8. NTC, by its refusal to sunset the "Employee Working Conditions" Memorandum of Understanding contrary to the empres agreement thereto, unilaterally violated the *status quo* and committed a refusal to bargain in violation of Sec. 111.70(3)(a)4, Stats., and derivatively interfered with the Sec. 111.70(2) rights of bargaining unit employees

in violation of Sec. 111.70(3)(a)1, Stats.

On the basis of the above and foregoing Findings of Fact and Conclusions of Law, the Examiner makes and issues the following

ORDER

1. The alleged violation of Sec. 111.70(3)(a)1, Stats., regarding NTC agent Hegge's July 23, 1999 memo to Ehrenreich is dismissed in its entirety.

2. To remedy the Sec. 111.70(3)(a)1, Stats., violation of Respondent Northcentral Technical College (NTC), its offices and agents shall immediately cease and desist from

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engaging in conduct which interferes with, restrains or coerces its employees in the exercise of their rights protected by Sec. 111.70(2), Stats., specifically by calling Hal Ehrenreich a watchdog for the union and a thorn in the side of Dr. Ernst.

3. To remedy the Sec. 111.70(3)(a)3, Stats., violations, Respondent NTC, its officers and agents, shall immediately cease and desist from:

a. Failing and refusing to grant Hal Ehrenreich 25% release time payment to serve on "President's Staff" on the same basis as it granted such release time for prior NTCFA Presidents, because he engaged in protected concerted activities;

b. Failing and refusing to grant Hal Ehrenreich's request for reassignment to a GOAL math teaching assignment;

c. Failing and refusing to grant Hal Ehrenreich educational experience credit approval toward the 18-credit rule for General Education faculty on the same basis as it granted other General Education faculty such credits.

4. To remedy the Sec. 111.70(3)(a)4, Stats., violations of *status quo*, Respondent NTC, its officers and agents, shall immediately:

a. Cease and desist from:

1. unilaterally violating the *status quo* by refusing to sunset the "Employee Working Conditions" Memorandum of Understanding and refusing to return to the shaded (or regular) portions of the 1997-99 collective bargaining agreement as required therein;

2. bargaining individually with bargaining unit employees with respect to wages, hours and working conditions, specifically

by issuing memos directly to bargaining unit employees proposing a gain sharing plan and proposing and unilaterally granting such employees a 4.2% total compensation package wage increase, all without first offering same to Northcentral Technical College Faculty Association (NTCFA) in negotiations or first reaching an impasse in negotiations.

5. NTC, its officers and agents, shall immediately take the following affirmative action which the Examiner finds will effectuate the policies of Municipal Employment Relations Act:

a. Immediately offer Hal Ehrenreich the GOAL math position formerly held by Cathy Vollstedt and make him whole for any loss of pay and/or benefits he may have suffered by not being given that position effective April 20, 1999;

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b. Immediately offer Hal Ehrenreich a 25% release time payment (prospectively only) and immediately place him on President's Staff if he is still NTCFA President;

c. Immediately restore the *status quo* by sunseting the "Employee Working Conditions" Memorandum and reinstating the shaded (regular) contractual provisions of the 1997-99 collective bargaining agreement until the parties reach an agreement on a 1999-01 contract;

d. Upon request, bargain in good faith with the NTCFA over wages, hours and working conditions of bargaining unit employees;

e. Notify all employees by posting in conspicuous places where bargaining unit employees are employed copies of the Notice attached hereto and marked "Appendix A." Such copies shall be signed by the NTC President and shall be posted immediately upon receipt of a copy of this Order for thirty (30) days. Reasonable steps shall be taken to insure that said Notice is not altered, defaced or covered by other material;

f. Notify the Wisconsin Employment Relations Commission, in writing in twenty (20) days following the date of this Order, as to what steps have been taken to comply here with.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Dated at Oshkosh, Wisconsin, this 6th day of November, 2001.

Sharon A. Gallagher /s/

Sharon A. Gallagher, Examiner

Appendix "A"
NOTICE

Pursuant to an Order of the Wisconsin Employment Relations Commission and in order to effectuate the policies of the Municipal Employment Relations Act, we hereby notify our employees that:

1. WE WILL NOT interfere with, restrain or coerce employees in the exercise of their rights guaranteed by Sec. 111.70(2), Stats.

2. WE WILL NOT make any change in the *status quo* by unilaterally maintaining in effect the "Employee Working Conditions" Memorandum contained in the 1997-99 collective bargaining agreement which should have expired by its terms on June 30, 1999.

3. WE WILL NOT bargain individually with employees represented by Northcentral Technical College Faculty Association (NTCFA) and WE WILL bargain in good faith only with the exclusive certified or recognized collective bargaining representative of our employees.

4. WE WILL NOT discriminate against our employees in regard to reassignments requests, approval of educational experience credits or refuse to grant a 25% release time to NTCFA Presidents for service on "President's Staff" because they engage in protected concerted activities.

5. WE WILL restore the *status quo* by reinstating the shaded regular contract provisions of the 1997-99 collective bargaining agreement and maintain these provisions until we reach agreement on a new labor agreement with NTCFA.

6. WE WILL immediately offer Hal Ehrenreich 25% release time (as payment for his work on President's Staff) and WE WILL place him on the President's Staff" so long as he continues to serve as NTCFA President.

7. WE WILL immediately offer Hal Ehrenreich the GOAL math course previously taught by Ms. Cathy Vollstedt.

8. WE WILL grant approval of educational experience credits to our General Education faculty who apply therefor in a fair and even-handed manner.

Dated

Dr. Robert Ernst, President

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

NORTHCENTRAL TECHNICAL COLLEGE

**MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER**

In its original complaint, filed October 13, 1999, the Association alleged that NTC had violated Secs. 111.70(3)(a)1, 2, 3 and 4, Stats., by failing to maintain the *status quo*; by unilaterally imposing a wage increase; by direct dealing with unit employees; and by engaging in a pattern of retaliation and intimidation against Union President Hal Ehrenreich by its treatment of him at an October 13, 1998 meeting, by refusing to transfer Ehrenreich to GOAL position, by refusing to grant Ehrenreich a 25% overload as NTC had done with the prior Association president and by refusing to grant Ehrenreich's original request for educational experience approval credits. In its amended complaint, filed September 18, 2000, the Association further alleged that NTC has violated Secs. 111.70(3)(a)1, 2, 3 and 4, Stats., by direct dealing with unit members in offering faculty a "gain sharing plan" on June 16, 2000, and by proposing a 4.2% compensation package directly to faculty on July 28, 2000 and then on August 28, 2000, advising unit members that said 4.2% compensation package would be retroactive to August 16, 1999.

NTC answered the amended prohibited practice complaint on November 14, 2000, citing the following affirmative defenses. 1) NTC, as a municipal employer has the right to communicate directly with its employees in the event of an impasse between it and the Association regarding a successor labor agreement and regarding the operation of the College according to its past practice. 2) Current WERC decisions require that NTC maintain the *status quo* in effect at the expiration of the existing labor agreement and after an impasse in negotiations. As NTC's actions were consistent with the law on all points, NTC urged that the complaint be dismissed.

POSITIONS OF THE PARTIES

The Association

The Association contended that the NTC took a series of illegal unilateral actions designed to undermine the Union. First, in regard to the 4.2% compensation package increase, the Association noted that the contract expired June 30, 1999; that the parties bargained for a successor contract and were unsuccessful in reaching same; that on July 28, 2000, Dr. Ernst sent a memo to bargaining unit employees that Dr. Ernst was "able to offer" members a 4.2% compensation package if the "pink pages" were continued. This proposal was never offered to the Association. Thereafter, on August 28, 2000, Ernst authorized the implementation of the 4.2% package, retroactively to August 16, 1999, in a memo sent directly to unit members, which had not been proposed to or submitted to the Association in advance. This action, the Association urged, was a calculated decision to violate MERA and undermine the Union.

In regard to the “gain sharing” memo issued by Chad Bastable on June 16, 2000, the Association again noted that this proposal had never been made to the Union which showed that NTC had thereby attempted to undermine the Association. In addition, the Association contended that NTC violated the *status quo* by maintaining the “pink pages” which the parties had expressly agreed would sunset on the expiration date of the 1997-99 labor agreement. In this regard, the Union noted that the “pink pages” were experimental and intended to be continued only through the 1997-99 contract; that they clearly expired by their own terms (upon the expiration of the 1997-99 contract); and that the shaded areas of the prior labor agreement were then intended to become effective. The Association noted that the shaded areas were left in tact in the 1997-99 agreement and that all of the NTC witnesses herein who were involved in bargaining essentially admitted that the “pink pages” were intended to sunset upon the expiration of the 1997-99 agreement.

The Association contended that during a contract hiatus, an employer violates the *status quo* under Sec. 111.70(3)(a)4, if it makes a unilateral change regarding mandatory subjects of bargaining in a manner inconsistent with a union’s right under the dynamic *status quo* theory. TAYLOR COUNTY, DEC. NO. 29647-C (WERC, 6/00). Although the College argued that it was impossible to go back to the old provisions in existence prior to the “pink pages,” the Association noted that NTC submitted no evidence to support this claim; that NTC admitted that it had the same number of liaisons as it had managers before the “pink pages” were put in effect and that there was no evidence that the number of managers decreased after the “pink pages” became effective.

The Association argued that the NTC interfered with the Union by trying to mold the Association into its vision of how a union should function and it took action against Association President Ehrenreich in order to accomplish this goal. On this point, the Association noted that the proper question to begin with should be whether the NTC’s conduct had a reasonable tendency to interfere with protected employee rights, not whether the conduct actually interfered with such rights, BROWN COUNTY, DEC. NO. 17258-A (HOULIHAN, 8/80). The interference and coercion cited by the Association, which violated Sec. 111.70(3)(a)1, Stats., was as follows: Hegge’s demand that Ehrenreich change a communication with bargaining unit employees; the refusal to pay Ehrenreich a 25% overload payment; and an attack on Ehrenreich at a meeting on October 13, 1998. In regard to the demand by Hegge that Ehrenreich change his communication to unit employees, the Association argued that Ehrenreich had not blatantly misrepresented Hegge’s stance regarding the use of mediation. The Association urged that Hegge’s demand interfered with Ehrenreich’s right as Association President to communicate with NTCFA members and that such demand chills the exercise of Ehrenreich’s Association rights under Sec. 111.70(3)(a)2, Stats., and constitutes a veiled threat against Ehrenreich in violation of Sec. 111.70(3)(a), Stats.

In regard to the 25% overload payment, the Association urged that prior Association President Krcma had a 100% teaching load and that NTC gave him a 25% overload payment because Krcma was essentially a “company man.” As Ehrenreich had insisted that he maintain the lines of communication between himself and the Association Executive Committee

regarding subjects covered by the President's Staff which would affect wages, hours and working conditions, Ehrenreich was never given the 25% overload payment. This demonstrated that NTC was essentially unhappy with Ehrenreich's performance as Association President because he would not abandon his proper duties as President. The Union noted that Ehrenreich had the full support of Association members as demonstrated by the standing ovation he received in August, 2000, at an in-service meeting and his re-election several times to the position of President.

In regard to the allegation that the College has retaliated against Ehrenreich because it disliked his actions as Association President, the Association urged that NTC's treatment of Ehrenreich at the October 13, 1998 meeting demonstrated its hostility toward Ehrenreich as NTCFA President. The Association noted that comments regarding Ehrenreich at the October 13th meeting included that Ehrenreich had some but not much value at the College, that he was a "watch dog" for the Association and that his character and leadership were lacking. The fact that the people who criticized Ehrenreich were three powerful administrators, attacking a teacher further demonstrated that the criticism of Ehrenreich at the October 13, 1998 meeting violated the statute.

In addition, the Association urged that there were several instances of direct retaliation against Ehrenreich because he was a more traditional union leader than Dr. Ernst preferred. In this regard, the Association urged that NTC attempted to terminate Ehrenreich because of his activities as Association President by refusing to transfer Ehrenreich to Cathy Vollstedt's GOAL position which was vacant in the Spring of 1999, and by its refusal to approve Ehrenreich's request for credits he needed to remain employed under NTC's 18 masters credit rule.

In regard to the latter, the Association noted that Gen. Ed. teacher Wissen received immediate approval of a Bachelors' level math education course towards this 18-credit rule. Whether the course was a workshop or not was not truly important until after the fact when Hegge tried to justify his denial of Ehrenreich's request in this case. Both Ehrenreich and Wissen followed the same procedure, yet Ehrenreich was denied credit approval and his denial took a great deal of time while Wissen breezed through the process. Thus, the Association urged that Hegge's self-serving testimony herein was not credible.

In addition, Ehrenreich asked Bastable for a transfer to the Vollstedt position because he thought his job was in jeopardy in March of 1999 and he knew that by switching to a GOAL course, he could avoid getting the 18 credits toward a masters necessary to teach Gen. Ed. courses. The Association noted that on January 17, 1999, the Basic Skills Math course (Vollstedt's GOAL math course) was posted; that on February 1, 1999, Vollstedt went on a disability leave; that on April 6, 1999, Ehrenreich requested to be transferred to the math course in writing; and that on April 19, 1999, NTC put the Vollstedt position on hold. The Association urged that NTC maneuvered to prevent Ehrenreich from getting the GOAL position and protecting his job. In any event, on June 10, 1999, an injunction was issued against NTC's affecting General Education teachers' employment by its 18-credit rule. The Association found it interesting that four days later, Vollstedt's position was re-posted and later filled.

The Association argued that NTC's evidence that it was holding the position open for Vollstedt should she return from her medical disability leave was not credible. In this regard, the Association noted that Vollstedt's position was posted while she was on medical leave but before she went on disability and that NTC recruited and took resumes without being concerned at that time about Vollstedt's mental state. It was only after Ehrenreich applied for the position that it was placed on hold. The Association also noted that Vollstedt had a Masters in Mathematics and could have taught Ehrenreich's General Education math courses. In addition, the Association noted that in his memo, Hegge denied Ehrenreich's request for a transfer based on the fact that litigation was pending. Thus, the refusal to transfer Ehrenreich and the refusal to grant him credits was motivated by hostility because of Ehrenreich's activities as Association President. The Association argued that anti-union animus need not be the primary motive for an employer's actions found to violate MERA: If animus forms any part of the decision to deny a benefit or impose a sanction, the employer violates the statute even if the employer had other legitimate business reasons for its actions. *MUSKEGO-NORWAY SCHOOL DISTRICT V. WERB*, 35 Wis. 2d 540, 562, 151 N.W.2d 617 (1967).

As Dr. Ernst's testimony demonstrated that he was hostile toward Ehrenreich as NTCFA President and as Hegge's e-mail admits that the transfer was denied based in part on litigation regarding the implementation of the 18-credit rule by NTC (which constituted protected activity), the Association urged that NTC be found to have violated the statute as alleged and that the Examiner issue a cease and desist order returning the parties to the *status quo* and requiring NTC to bargain in good faith over changes made in terms in conditions and employment and that it make Ehrenreich whole and post an appropriate notice.

NTC

NTC argued that the Association failed to prove it had violated MERA in any respect. In regard the allegations of direct dealing, NTC asserted that it was exercising its protected right to free speech by communicating with its employees; and that the parties have a past practice of sharing information regarding labor negotiations and other mandatory subjects of bargaining. In this regard, the NTC noted that the Union must show a threat of reprisal or promise of benefit which would reasonably tend to interfere with, restrain or coerce employees in the exercise of their MERA rights. *BEAVER DAM SCHOOL DISTRICT*, DEC. NO. 20283-B (WERC, 5/84). An employer can have a valid business reason as an affirmative defense against a charge of illegal interference pursuant to WERC case law. *CEDAR GROVE-BELGIUM SCHOOL DISTRICT*, DEC. NO. 53849-A (BURNS, 12/89); *CITY OF BROOKFIELD*, DEC. NO. 20691-A (WERC, 2/84). In addition, public sector employers can reveal to their employees what they offered the union in collective bargaining. *ASHWAUBENON SCHOOL DISTRICT*, DEC. NO. 14774-A (WERC, 10/77). In the instant case, the parties agreed to post all negotiation minutes on e-mail or by memo at the College and health insurance information has been regularly sent to employees in memo form. Also, the College has a regular newsletter, which issues every Friday, in which it reveals up-to-date news for employees

including collective bargaining news. Finally, the College noted that it regularly holds open forums for live information sharing with its employees. In these circumstances, the College urged that its revelation of information to employees either through e-mail or memo merely followed its practice and constituted protected free speech. ST. CROIX COUNTY, DEC. NO. 28791-A (CROWLEY, 5/97) and DEC. NO. 28791-B (WERC, 7/97).

Regarding the issuance of the gain sharing information, NTC noted that this information did not contain a threat of reprisal or promise of benefits that would reasonably tend to interfere with employees' rights under MERA. Indeed, Association representative Ralph Andren said he did not perceive a threat in the information and did not feel threatened thereby. No bargaining unit members testified that the e-mail coerced them or encouraged them to abandon the NTCFA. In any event, according to Andren's testimony, employees already knew about this information.

The College urged that no individual bargaining occurred by the issuance of the memos regarding the 4.2% total package compensation. In this regard, the College noted that it was exercising its free speech rights to tell bargaining unit employees of its intention to propose and its ability to gain the 4.2% increase for bargaining unit employees. NTC argued that it could have legally offered the 4.2% to the NTCFA bargaining team and one second later it could have informed bargaining unit employees of its proposal. Therefore, the fact that the memo issued to both Association bargaining team members as well as all other NTC faculty is not relevant. Regarding the implementation of the compensation package and the memo thereon, NTC noted that the memo was not distributed until after the Board had approved the increase and that the College newsletter would have told employees of the implementation if the memo had not done so, so that employees would have learned of implementation without any memo issuing and the Union cannot now argue a violation of law based upon the newsletter as its publication has been a practice between the parties. Again, the Association offered no evidence to show that employees felt they had been threatened or promised a benefit by the issuance of the 4.2% compensation implementation information. Furthermore, in the memo, Dr. Ernst stated that he was not attempting to discredit, eliminate or abolish the Union. Dr. Ernst testified herein that the memo did not prohibit the NTCFA from later asking for more or less compensation than the College had implemented.

NTC argued that it did not discriminate against Hal Ehrenreich as alleged in the complaint. NTC noted that the Union is required to prove that the employer's conduct is motivated, at least in part, by the protected concerted activity of the alleged discriminatee. CITY OF NEW LISBON, DEC. NO. 28935-A (CROWLEY, 7/97). Thus, in this case, the Association was required to prove that Ehrenreich was engaged in protected concerted activity of which NTC was aware, that NTC was hostile to Ehrenreich's protected concerted activity and that NTC's conduct toward Ehrenreich was motivated in whole or in part by hostility toward his protected concerted activity. NTC noted that an employer's legitimate reasons may rebut pretext or animus. The totality of the record is important: There must be more than coincidence in the decision to adversely affect the employment of someone who has engaged in

protected concerted activity. VILLAGE OF UNION GROVE, DEC. NO. 15541-A (DAVIS, 2/78). In addition, personality conflicts standing alone do not constitute illegal hostility. MILWAUKEE BOARD OF SCHOOL DIRECTORS, DEC. NO. 27685-A (McLAUGHLIN, 8/94).

In this case, NTC urged that it was not hostile toward Ehrenreich and did not base its decisions on Ehrenreich's protected concerted activity. Thus, NTC urged that the manner in which Ehrenreich performed his duties as NTCFA President played no role in NTC's decision not to give him the 25% overload for President's Staff Committee. NTC argued that the 25% overload for President's Staff was for non-association work and was not a payment to perform NTCFA business. As Ehrenreich stated he could not keep discussions of President's Staff confidential, NTC reasonably decided not offer Ehrenreich the 25% overload as he would not be performing the work necessary to gain faculty feedback and perspective in a confidential setting which NTC envisioned and wished to receive for its payment.

In regard to the October 13th meeting, NTC noted that this meeting was designed to open the lines of communication between Ernst and Ehrenreich; that Association representative Andren brought up Ehrenreich's leadership style and asked Dr. Ernst about his reaction thereto; and that Dr. Ernst responded truthfully without swearing or engaging in any name calling. Hegge's criticism of Ehrenreich for sleeping through an in-service meeting was legitimate. The fact that Ehrenreich was called a "watch dog" referred only to Ehrenreich's reluctance to fully participate in the President's Staff work and "his insistence on publicizing all matters discussed during meetings of the President's Staff — a committee totally unrelated to association business." In regard to the October 13, 1998 meeting, NTC denied that any inappropriate conduct occurred at the meeting and denied discriminating against Ehrenreich during or as a result of that meeting.

Thus, the College urged that the Association failed to prove all of the elements of illegal discrimination regarding both the October 13th meeting and the denial of the 25% overload payment to Ehrenreich. In this regard, the College noted that the Association failed to show that the College was hostile toward Ehrenreich's activities. In fact, NTC noted that even after the October 13th meeting, Dr. Ernst continued to try to include Ehrenreich in the President's Staff and invited both Ehrenreich and the NTCFA Executive Committee to meet with the Board during the Fall of that year. In addition, Ernst invited Ehrenreich to one-to-one meetings to improve relations and to discuss issues also in the Fall of 1999.

Regarding NTC's refusal to transfer Ehrenreich into Vollstedt's GOAL math position, NTC argued this was done for reasons unrelated to Ehrenreich's protected concerted activity and therefore NTC's actions were not discriminatory. In this regard, the College noted that the decision to refuse to transfer Ehrenreich was reached by Battist and was based on Vollstedt's needs for the most part and a desire to reorganize that teaching area. NTC also noted that the Association failed to prove the elements of a past practice that transfers have been allowed as alleged. In this regard, NTC noted that in the Krcma and Teisinger cases, those employees exercised contractual bumping rights and were not transferred; that Kanz

accepted additional responsibilities as part of her E-Unit when an AODA counselor left and Kanz's position would have been decreased. In regard to Ralph Andren's Math position, NTC noted that he applied for the math position and was not transferred into that position. In these circumstances, NTC urged that the allegation that it had discriminated against Ehrenreich by refusing to transfer him was meritless.

The allegation that NTC discriminated against Ehrenreich in refusing to timely grant him credits toward his Gen. Ed. faculty requirement, was also without merit. In this regard, NTC noted that no allegation has been made herein that the implementation of the 18-credit rule violates MERA. In addition, NTC urged that Gen. Ed. teacher Wissen's evidence herein failed to show that the College had discriminated against Ehrenreich in any way. Indeed, Wissen's course was a statistics course that was content-based and Wissen had provided NTC with a letter from the Chair of the math department at UW-Oshkosh saying that the course would be acceptable in a masters program at that institution. NTC urged it held Ehrenreich to the same standard on this point and that once Ehrenreich submitted evidence to show that his Geometer's Sketchpad course was content-based, the College approved it. As Wissen and Ehrenreich were treated in the same fashion and the Association failed to provide any evidence of hostility toward Ehrenreich, no discrimination was proven herein and this allegation should be dismissed.

NTC argued that it never demanded that Ehrenreich modify his communication to Association members by Hegge's July 23, 1999 memo. In this regard, NTC noted that it was merely exercising its free speech rights under the law and that no adverse action was taken against Ehrenreich by Hegge despite Ehrenreich's failure to correct his blatant misstatements in his memo to NTCFA members regarding mediation and the College's position thereon. Therefore, no violation of the law occurred in this instance and this allegation should also be dismissed. ASHWAUBENON SCHOOL DISTRICT, SUPRA; CEDAR GROVE SCHOOL DISTRICT, SUPRA.

The College noted that the Association argued that the "pink pages" were illegally continued by the College in violation of the College's requirement to maintain the *status quo*. NTC urged that this allegation was also meritless. In this regard, the College noted that the law requires the College to maintain the *status quo* regarding wages, hours and working conditions which are in effect when the contract expires. ST. CROIX FALLS SCHOOL DISTRICT, DEC. NO. 27215-D (WERC, 7/93); SCHOOL DISTRICT OF WISCONSIN RAPIDS, DEC. NO. 19084-C (WERC, 3/85). Furthermore, NTC noted that the WERC recognizes necessity and waiver as valid defenses to these allegations. The College argued that by continuing the "Employee Working Conditions" of the "pink pages" it was in fact maintaining the *status quo*. In this regard, NTC noted that it was required to maintain the "pink pages" as these contained mandatory subjects of bargaining which were in effect when the contract expired on June 30, 1999. The fact that the "pink pages" expired at the expiration date of the contract meant that NTC was required to continue the "pink pages" as a part of the *status quo* under CITY OF BROOKFIELD, SUPRA. NTC argued that the contingency never occurred that future contract

negotiations discontinued “pink pages.” As negotiations were ongoing and at all times relevant and no agreement had been reached to discontinue the “pink pages,” the College was required to continue the provisions of the “pink pages.”

In any event, NTC urged that it had a defense of business necessity for maintaining the “pink pages” after the expiration of the 1997-99 labor agreement. In this regard, NTC noted that it could not go back to the old contract because the Association had postponed negotiations for the entire Summer of 1999; and that NTC no longer had the structure and personnel of Deans and Associate Deans, etc., to go back to in such a short time between the Summer and the Fall of 1999. Also, to change back would have affected class schedules and faculty workloads as well as student schedules, possibly requiring that students be denied certain courses which might have become unavailable due to the rearranging of NTC’s course list. Therefore, NTC urged it had a business necessity defense to this charge and that the complaint allegation thereon should be dismissed.

Reply Brief’s

The Association

The Association argued that the College’s unilateral wage increase was illegal and a *per se* violation of the duty to bargain. CITY OF MADISON, DEC. NO. 15079-D and DEC. NO. 15171-C (YAEGER, 1/78). In this regard, the NTCFA noted that no requirement of coercion or threat need be proved in order to show a unilateral change occurred and that such unilateral changes cannot constitute employer free speech rights. In addition, the bargaining proposals which were made directly to individual bargaining unit employees violated of the law. In the Association’s view, this conduct is a *per se* violation of Sec. 111.70(3)(a)4, Stats., because it constitutes a refusal to bargain on its own. CITY OF NEW LISBON, DEC. NO. 28935-A (McLAUGHLIN, 6/01); AMERY SCHOOL DISTRICT, DEC. NO. 26138-A (McLAUGHLIN, 2/90) and AMERY SCHOOL DISTRICT, DEC. NO. 26138-B (WERC, 3/90).

The Association further noted that the cases cited by NTC regarding these points involve proposals that had previously been made to the union by the employer involved, and that the employer in those cases was merely informing employees of its proposals to the union so that such information would not violate the statute unless it contained threats or coercion under the Commission case law. Thus, the cases cited by NTC involved both individual bargaining and interference charges and proposals that had previously been made to the union, unlike the instant case. Furthermore, the Association urged that the VILLAGE OF ASHWAUBENON, DEC. NO. 14774-A (WERC, 10/77) supports its claims herein, as that case stands for the proposition that employer statements which constitute bargaining directly with employees, rather than with their employees’ representatives, violate MERA.

The unilateral determination to continue the “pink pages” violated the NTC’s duty to maintain the *status quo* under WERC law. The Association urged that NTC’s arguments of necessity and its arguments that the “pink pages” constituted permissive subjects of bargaining were both without merit. Here, it is clear that the “pink pages” concerned mandatory subjects of bargaining — the determination of workload and the calculation of payments therefor, which have been held by WERC to be mandatory in prior cases. CITY OF JANESVILLE, DEC. NO. 21466 (WERC, 3/84) and RACINE SCHOOL DISTRICT, DEC. NO. 20654-A (WERC, 1/84). In addition, the “pink pages” required faculty to perform some administrative duties which the Commission has also found to be a mandatory subject of bargaining. FRANKLIN SCHOOL DISTRICT, DEC. NO. 21846 (WERC, 7/84).

In regard to the necessity defense, the Association noted that the District had agreed to clear language that the “pink pages” would sunset, apparently without any intention of living up to its agreement. The fact that the Association could not meet during the Summer break cannot excuse NTC’s failure to return to the old system of Deans and Associate Deans by the Fall of 1999. Finally, the Association urged that NTC’s argument that it was impossible to revert back to the old contract was belied by the parties’ tentative agreement (Union Exh. 30) which the College later rejected. All of these arguments essentially refute any necessity defense by the College.

The record shows that the NTC was motivated at least in part by its hostility toward Ehrenreich’s protected concerted activities and, therefore, its actions against Ehrenreich should be found to violate MERA. In this regard, the Association noted that even if the NTC’s refusal to grant Ehrenreich the 25% overload does not violate Sec. 111.70(3)(a)1 and 3, Stats., NTC should have offered the 25% overload as a part of its *status quo* obligation, as the payment for release time for union activities is a mandatory subject of bargaining. MILWAUKEE METROPOLITAN SEWERAGE DISTRICT, DEC. NO. 17123-B (WERC, 3/81); SHULLSBURG SCHOOL DISTRICT, DEC. NO. 20120-A (WERC, 4/84).

The Association urged that if the Examiner read carefully Union Exhibits 22 and 27, that she would then find a violation of the statute based upon Ehrenreich’s treatment by NTC regarding his request for credit approval. In this regard, the Association noted that Ehrenreich was initially denied credit approval because his course appeared to be a workshop while Wissen was granted credit even though his course was definitely a workshop and both courses were math education courses.

Regarding NTC’s refusal to transfer Ehrenreich, the Association noted that once Ehrenreich expressed an interest in Vollstedt’s position, it was put on hold, but it was later filled just four days after NTC lost its court battle and the injunction was put in place against NTC affecting General Education faculty employees’ employment based on their failure to receive graduate credits.

NTC

The College argued that the Association mischaracterized arguments as fact in its first brief and detailed these as follows. Union Exhibit 11 does not describe the NTCFA President's role in general, it describes the role of the faculty president on the President's Staff Committee; that NTC did not retaliate against the Association or undermine the Association as stated in the Association's fact section; that Dr. Ernst did not state that the compensation increase was due to his efforts; and that NTC e-mailed the gain share information to all faculty.

NTC argued that it had maintained the *status quo* by continuing the "pink pages" and that in any event, it had a necessity defense therefor, as recognized by the WERC. In this regard, NTC urged that TAYLOR COUNTY, SUPRA, was not applicable. In TAYLOR COUNTY, the working condition allegedly not maintained was Summer hours, which were not actually in effect at the time the contract expired. Here, the "pink pages" were in effect when the contract expired and, therefore, NTC was required to maintain them as conditions of employment in effect at contract expiration. The bargaining history and the express language of the "pink pages" support NTC's argument that the "pink pages" did not sunset on June 30, 1999. In this regard, NTC noted that the parties never intended the "pink pages" to sunset because the condition precedent never occurred, as required by the "pink pages," that the parties agree to discontinue use of the "employee working condition section" of the "pink pages" in order to trigger the sunset thereof. In addition, the parties were continuously involved in collective bargaining negotiations such that the NTCFA's allegations are without merit.

The College urged that if the undersigned finds that NTC failed to maintain the *status quo*, it had a necessity defense thereto under ST. CROIX FALLS SCHOOL DISTRICT, DEC. No. 27215-D (WERC, 7/93). Here, the Union postponed bargaining during the Summer of 1999 and this refusal to bargain placed NTC in a hopeless dilemma. As negotiations were progressing during the Spring, it appeared to NTC that the shared leadership model would continue, so that it would have been a "foolish waste of time" and resources to prepare to go back to the old way of operating under the contract prior to 1997-99. In addition, 30 days before the contract expired and 3 months before the start of the 1999 school year is not enough time to change the organizational structure of an entity such as NTC from that which existed under the "pink pages" back to the old contractual ways. Therefore, the NTC urged that it had proven a necessity defense to the Union's allegation.

NTC argued that it was merely exercising its legal rights and did not interfere with employee MERA rights regarding the allegations made by the Association that it demanded that Ehrenreich change communications; that it failed to pay him the 25% overload; and that it criticized Ehrenreich at the October 13, 1998 meeting. In this regard, NTC urged that Hegge's memo to Ehrenreich constituted free speech and did not contain any threat or promise and, therefore, did not violate MERA. NTC noted that it did not offer Ehrenreich the 25% overload because he refused to serve on President's Staff in the fashion that NTC felt was

appropriate. As NTC agents made no threats or promises and engaged in no name calling on October 13, 1998, NTC urged that it did not interfere with Ehrenreich's MERA rights at the October 13, 1998 meeting by the statements of its agents.

NTC further argued that it did not discriminate against Ehrenreich for failing to transfer him to Vollstedt's GOAL position or by refusing to grant Ehrenreich immediate approval of credit toward his Gen. Ed. requirement. On these points, NTC urged that it applied the same standard to Ehrenreich regarding credit approval as it did to other employees, noting the Wissen submitted his application for approval plus a letter from the head of the Math Department at UW-Oshkosh indicating that the course was suitable for a masters level and that Wissen received his credit approval seven days thereafter. As Ehrenreich had not submitted the proper supporting documentation showing that his course was content-based, it took ten days for NTC to approve his credit approval request, not an unreasonable period of time in NTC's view.

Finally, NTC's denial of Ehrenreich's transfer request was based on a concern for Vollstedt and not on Ehrenreich's protected concerted activities. In this regard, the College noted that the Association provided no proof that Hegge and Battist harbored any hostility or animus against Ehrenreich and the Association failed to demonstrate that Hegge and Battist were involved in a conspiracy to deny Ehrenreich Vollstedt's position. NTC noted that Battist and Hegge asserted they were friends of Ehrenreich's. As Hegge and Battist denied Ehrenreich's transfer request (not Dr. Ernst) in all of these circumstances, NTC urged that this complaint allegation be dismissed.

DISCUSSION

The Association has argued that NTC engaged in a pattern of retaliatory conduct against Ehrenreich in his capacity as NTCFA President including:

1. October 13, 1998 attack on Ehrenreich by NTC agents including Dr. Ernst and Hegge;
2. September 3, 1998 memo from Dr. Ernst withdrawing NTC's offer to grant Ehrenreich 25% release time pay for service on President's Staff;
3. December 22, 1998 Hegge's refusal to grant Ehrenreich credit approval on the same basis as other Gen. Ed. teachers toward the 18-credit requirement;
4. April 20, 1999 denial of Ehrenreich's transfer request to GOAL Math;
5. July 23, 1999 Hegge's request that Ehrenreich modify communications to NTCFA members.

The record demonstrates that NTC President Dr. Ernst had historically offered at least the last three NTCFA Presidents (Larson, Hommerding and Krcma) who served prior to Ehrenreich, a 25% release time payment for time spent in "attendance at various

staff/committee meetings as well as the establishment of a mutually agreed upon program of work for the President and NTCFA.” (Ernst’s April, 1998 memo.) In April, 1998, Ernst offered the same opportunity to Ehrenreich after his election as NTCFA President. It is significant that on August 11, 1999, Ernst drafted a memo “District-wide Role of NTCFA President” in which Ernst described the role of the NTCFA President on the President’s Staff as one of “faculty advocacy and district leadership,” to “understand and advocate for the direction provided by the Board of Trustees, with specific responsibility for . . . aligning faculty with the overall direction of the College, as defined by the Board.” Ernst also stated in this memo that the NTCFA President’s function would require “active participation coupled with a great deal of listening, support of the College’s mission, vision, and goals and fostering and creating an environment which strives to anticipate and meet customer needs, proactive approach in identifying and removing barriers, and the ability to accurately communicate the various views of all stake holders.” In addition, Ernst listed the following “responsibilities” of the NTCFA President, which NTC would pay for by up to 25% release time “to be used for those activities of a districtwide nature, not for Faculty Association business”:

- Team Leadership Council;
- Board of Trustees;
- President’s Staff;
- Operation’s Counsel.

In an August 13, 1998 memo, Hegge stated that “the minimum requirement would be that he (Ehrenreich) at least participate in President’s Staff and Board activities. Anything less would not give us the leadership that is necessary to fully participate.” Less than one month later, Ernst issued a September 3, 1998 memo to all NTC faculty in which he stated that he believed that “the faculty should have voice on the President’s Staff and . . . a monthly presence with the Board of Trustees . . .” and that for at least the previous two years the College had paid NTCFA President 25% release time “to serve as the faculty representative in the leadership of the College.” Ernst then listed his “expectations” for NTCFA President in the position of attending to President’s Staff meetings:

- . . . open and honest communication, collaborative and supportive atmosphere focusing on moving the College forward, and a futuristic approach to the challenges before us. This leadership role must be aligned with the principles of shared leadership and team development, with a focus on meeting the mission and Ends of the College, as defined by the NTC Board of Trustees.

Ernst then stated that NTC had to “regretfully . . . withdraw this offer” to Ehrenreich, because no agreement was reached concerning “the role of the NTCFA President with the designated groups, or on what constitutes 25% of [sic] relief time. . . .” Ernst then stated that he would be asking faculty representatives on the Team Leadership Council to provide an expanded leadership role in the interim; that Ernst and his staff would “continue to work towards filling this void with the faculty association leadership prior to the start of the second semester.”

It is clear based on this record that NTC expected Ehrenreich not to reveal information discussed on President's Staff regarding possible, potential or even suggested but unlikely future NTC actions affecting faculty terms and conditions of employment. In addition, it is clear that Ehrenreich and NTC had widely differed regarding what his 1998-99 teaching schedule should be and what the 25% overload or release time would amount to. However, it is significant that NTC's "Self Study" stated that the NTCFA President "has release time of 25% of teaching load . . . to devote to collegewide committees and other Association duties." The language used was not conditional or contingent. It is also significant that the Self-Study expressly stated that the NTCFA President could recuse him/herself from President's Staff if he/she perceived a conflict with the NTCFA had arisen or could arise.

It is in this context that the meeting of October 13, 1998 occurred. The meeting on October 13th was not a chance meeting; it was planned in advance and called for the avowed purpose of discussing Ehrenreich's role on President's Staff. In addition, it should be noted that Ernst and Ehrenreich had not been talking to each other for some time and that NTC manager Battist hoped that Ernst and Ehrenreich would leave the October 13th meeting able to communicate with each other. Indeed, early on in the meeting, the comment was made that perhaps Ernst and Ehrenreich should be put in a room and left to fight it out. Clearly, NTC managers intended to use this meeting at least to get Ehrenreich to change his mind about fully participating on President's Staff and other committees. This set the tone of the meeting.

In the Examiner's view, it is significant that Ernst had already decided to withdraw his "offer" of 25% release time to Ehrenreich before the October 13th meeting took place. NTC has argued that because Ralph Andren (NTCFA member) opened the subject by asking Ernst how he felt about Ehrenreich as a leader, this somehow justified Ernst's comments to Ehrenreich. In contrast, the Association has argued that Ernst's October 13th attacks on Ehrenreich amounted to unlawful threats, coercion and interference within the meaning of 111.70(3)(a)1, Stats.

Section 111.70(3)(a)1, Stats., provides that it is a prohibited practice for a municipal employer:

. . . to interfere with, restrain or coerce municipal employees in the exercise of their rights guaranteed in sub. (2).

Section 111.70(2), guarantees employees the following rights,

. . . to self-organization and the right to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing and to engage in lawful concerted activities for the purpose of collective bargaining or other mutual aid and protection. . . .

In order for a complainant to prevail on its complaint of interference with employee rights under MERA, it must demonstrate, by a clear and satisfactory preponderance of the evidence that the employer's conduct contained either some threat of reprisal or promise of benefit which would tend to interfere with an employee's exercise of his/her Sec. 111.70(2), Stats., rights. CITY OF BROOKFIELD, DEC. NO. 19367-A (SHAW, 11/82), AFF'D (WERC, 12/83); WESTERN WISCONSIN VTAE DISTRICT, DEC. NO. 17714-B (WERC, 6/81); DRUMMOND JOINT SCHOOL DISTRICT NO. 1, DEC. NO. 15909-A (WERC, 3/78); ASHWAUBENON SCHOOL DISTRICT, DEC. NO. 14774-A (WERC, 10/77); BROWN COUNTY, DEC. NO. 17258-A (HOULIHAN, 8/80), AFF'D BY OP. OF LAW, DEC. NO. 17258-B (WERC, 9/80). It is not necessary, however, to prove that an employer intended its conduct to have the effect of interfering with an employees' statutory rights. CENTRAL HIGH SCHOOL OF WESTOSHA, DEC. NOS. 29671-B (MAWHINNEY, 5/00) AND 29761-C (WERC, 8/00); CITY OF EVANSVILLE, DEC. NO. 9440-C (WERC, 3/71). Thus, proving up anti-union animus is not necessary in these cases. CITY OF BROOKFIELD, DEC. NO. 20691-A (WERC, 2/84).

Rather, interference may be proved by showing that the employer's conduct had a reasonable tendency to interfere with an employee's right to exercise his/her MERA rights. CENTRAL HIGH SCHOOL OF WESTOSHA, SUPRA; BEAVER DAM UNIFIED SCHOOL DISTRICT, DEC. NO. 20283-B (WERC, 5/84) and cases cited therein. In each instance, the statements/remarks "as well as the circumstances under which they were made must be considered in order to determine the meaning which an employee would reasonably place on the statement. The same statement made in two different circumstances might be coercive in one and not in the other." BEAVER DAM UNIFIED SCHOOL DISTRICT, SUPRA at p.5. But employer conduct which otherwise would have a reasonable tendency to interfere with employee protected concerted activity will not be found to violate Sec. 111.70(3)(a)1, Stats., if the employer had a valid reason for its actions. GREEN BAY SCHOOL DISTRICT, DEC. NO. 28871-B (WERC, 4/98); MILWAUKEE BOARD OF SCHOOL DIRECTORS, DEC. NO. 27685-A (McLAUGHLIN, 8/94) and cases cited therein, AFF'D BY OP OF LAW DEC. NO. 27685-B (WERC, 9/94).

Based upon the evidence in this case, I find that NTC agents Ernst and Hegge violated MERA by their harsh criticism of Ehrenreich on October 13, 1998, and their refusal to grant him the 25% release time benefit. Although no actual threats or promises were made, Ernst and Hegge attempted to denigrate and intimidate Ehrenreich and by their conduct essentially threatened to deny Ehrenreich the 25% release time benefit granted to prior NTCFA Presidents who (unlike Ehrenreich) had been less outspoken and strident in their leadership of NTCFA and who had been allowed to recuse themselves if their positions on President's Staff conflicted with faculty representation. Ernst made statements on October 13th that he was frustrated because Ehrenreich had done things that kept Ernst from getting things done that the NTC Board had asked him to do; that he (Ernst) found it difficult to work with Ehrenreich as Union President; that Ehrenreich interrupted meetings and asked only negative questions; that Ehrenreich would not engage in discussions and had nothing constructive to offer; and that Ehrenreich would point out things that were wrong at NTC and expect Ernst to fix them. Ernst also called Ehrenreich called "thorn in my side" and stated that Ehrenreich did not have

much value as a leader. 1/ Also during the October 13 meeting, I note that Hegge called Ehrenreich “a watchdog for the Union” and stated that Ehrenreich did not have much value as a leader. Although Hegge asserted that he told Ehrenreich what he did and did not want from Ehrenreich as a leader, no witness recounted any positive or supportive statements made to Ehrenreich during this meeting from either Hegge or Ernst or any other NTC manager. Thus, Hegge is not credited. Ernst and Hegge’s attacks on Ehrenreich were designed to cow and intimidate him, to put him in his place while they threatened to deny Ehrenreich the 25% release time if he did not conform.

1/ The above description is from Bettyann Battist’s testimony which I credit in its entirety as she was a witness who had extremely good recall.

The above evidence also demonstrates that Ernst and Hegge held a deep animus against Ehrenreich because of his activities as Association President. Hegge asserted herein that the meeting was uncomfortable but not an attack on Ehrenreich and that NTC and the Association were trying to reach an agreement with Ehrenreich on the 25% release time. These statements are simply not credible. Whether or not there was name-calling at the October 13th meeting does not change the tenor of the meeting. Indeed, both Union Representatives Klein and Andren, who are veteran teachers, were so upset and personally intimidated after this meeting that they complained to NTC managers that the meeting had constituted an unprecedented attack on Ehrenreich. The record facts showed that the meeting became an opportunity to intimidate, denigrate and subdue Ehrenreich’s union fervor.

Under these circumstances, and even though Ernst and Ehrenreich were physically well-matched (both appeared tall, fit and strong), it would be reasonable for Ehrenreich to feel intimidated by Hegge and Ernst’s (the top two NTC managers) criticism of his character and of his leadership. That such a meeting “could chill the assertion of dissenting views is apparent.” MILWAUKEE BOARD OF SCHOOL DIRECTORS, DEC. NO. 27685-A (McLAUGHLIN, 8/94), at page 17, AFF’D BY OP OF LAW, DEC. NO. 27685-B (WERC, 9/94). There is no doubt in the Examiner’s mind that the evidence showed that Hegge and Ernst harbored deep animus against Ehrenreich because of his protected concerted activity as Association President and that on October 13, 1998, that Ernst and Hegge interfered with, restrained and coerced Ehrenreich in the exercise of his Sec. 111.70(2), Stats., rights.

The next question to be determined here is whether NTC’s withdrawal of its offer to pay Ehrenreich 25% release time for service on President’s Staff and other committees violated Sec. 111.70(3)(a)3 and derivatively 1, Stats. Section 111.70(3)(a)3, Stats., makes it a prohibited practice for a municipal employer:

. . . to encourage or discourage a membership in any labor organization by discrimination in regard to hiring, tenure, or other terms or conditions of employment; . . .

The Wisconsin Supreme Court has held that to establish the required “discrimination” a complainant must show that:

1. The employee was engaged in protected concerted activity;
2. The employer was aware of that activity and hostile thereto; and,
3. The employer’s conduct toward the employee was motivated in whole or in part by the employer’s activity.

CENTRAL HIGH SCHOOL OF WESTOSHA, DEC. NO. 29671-B (MAWHINNEY, 5/00) AND DEC. NO. 29671-C (WERC, 8/00); CITY OF MILWAUKEE, DEC. NO. 29896-A (LEVITAN, 11/00); EMPLOYMENT RELATIONS DEPARTMENT V. WERC, 122 WIS. 2D 132 (1985); MUSKEGO-NORWAY C.S.J.S.D. V. WERC, 35 WIS. 2D 540 (1967).

In the instant case, it is undisputed that Ehrenreich was engaged in protected concerted/union activities and that NTC was well aware of his activity. I have also found, above, that NTC top management harbored strong animus against Ehrenreich because of his activities as NTCFA President. NTC has argued that the decision to withdraw the offer of 25% release time to Ehrenreich had nothing to do with his union or protected concerted activities. However, in my view, the record demonstrates that a major reason why NTC withdrew its offer to Ehrenreich was because Ehrenreich was a more traditional union representative and because he was not willing to keep in confidence all possible NTC actions discussed on President’s Staff (or other committees) as his predecessor Krcoma had done.

NTC has argued that there was simply a personality conflict between Ernst and Ehrenreich and that it is a mere coincidence that NTC took actions against Ehrenreich because NTC had other valid business reasons to take action against Ehrenreich. I note that on the point of its withdrawal of the offer of the 25% release time to Ehrenreich, NTC failed to offer any valid business reason for its withdrawal of that offer. Although there certainly is a vast difference between the personalities of Dr. Ernst and Hal Ehrenreich, as demonstrated at the hearing in this case during their testimony, I cannot find that the conflict between them is based upon a mere personality conflict. Indeed I note that the “pink pages” as well as the 1996-97 self-study described release time for the NTCFA President as a regular feature of NTC culture. In addition, there was no indication that NTC ever considered Ehrenreich’s request that he be allowed to recuse himself if issues arose during his service on President’s Staff that he was uncomfortable keeping confidential from the Association Executive Committee, although the 1996-97 Self-Study expressly recognized that the NTCFA President could be “excluded from participating in those discussions and decisions that are in conflict with the role of faculty as defined within the bargaining contract.

In his September 3, 1998 memo, Ernst essentially implied that Ehrenreich was not willing (or able) to fill the leadership role on President’s Staff that Ernst had described as requiring someone who is open, honest, collaborative, supportive and futuristic. In the Examiner’s view, this memo singled Ehrenreich out for criticism in a very public way. In these circumstances, NTC’s decision not to grant Ehrenreich the 25% release time violated the strictures of MERA.

The Association has argued that NTC's denial of Ehrenreich's request for credits toward the 18-credit requirement imposed by NTC in November, 1997, violated Sec. 111.70(3)(a)3, and 1, Stats. On December 3, 1998, Ehrenreich requested credits for a course entitled "Special Topics: Geometer's Sketchpad for Geometry." Ehrenreich listed the course as MED 780 at the University of Wisconsin - Stevens Point and noted the course description as follows: "Use of geometry software for geometric insights and conjectures."

On December 10, 1998, Hegge sent a memo to Ehrenreich indicating that he (Hegge) would await Ehrenreich's acquiring of additional information which would confirm that this course was appropriate to use toward the revised credentialing requirements for General Education faculty. On December 21, 1998, Ehrenreich submitted an e-mail from Patrick Collier, Chairman of the Department of Mathematics at UW-Oshkosh which stated:

Our department offers an MS degree in Mathematics Education. Most of the courses that apply to the degree are courses in the Mathematics Department and most of these courses are mathematics courses. However we do have several workshop courses and we do accept up to six credits in workshop courses toward our degree. If Mr. Ehrenreich were to be admitted to our [sic] program, he would expect that the course in question, MEd790 from UW-Stevens Point, would apply to the MS degree. This evaluation would be subject to a nine credit limit on transfer credits and a six credit limit on workshop credit.

On December 22, 1998, Hegge denied Ehrenreich's request for credit toward the Gen. Ed. requirement, as follows:

Regardless of the title of a Master's Degree program, we are making a distinction between content based versus education based courses. The title of a graduate degree may vary among universities; e.g. M.S. in mathematics and in M.S. or M. Ed. in mathematics education. The credentialing standard for current general education faculty is a minimum of 18 graduate credits in the academic field in which you are teaching. The 18 credits need to be content based in this discipline. . . . I understand that in your situation the search for graduate level mathematics courses has been difficult. As I mentioned to you, I would be willing to listen to an alternate plan, if you would like to bring one forward.

In the Examiners view, it is significant that in its original November 17, 1997 memo, NTC did not specifically mention that the 18 graduate credit hours would have to be in "content based" courses. Rather, that memo stated that general education faculty would be expected to "obtain a minimum of 18 graduate credit hours in the academic field in which they are teaching." On March 10, 1999, NTC issued a follow-up memorandum regarding the 18-credit requirement, which did not mention content based course work:

As communicated to you in earlier correspondence [sic], your continued employment under this (teaching) contract is contingent upon successful completion of a minimum of three credits of a graduate level course appropriate to the academic field in which you are teaching by May 31, 1999.

By e-mail dated December 29, 1998, the teacher of the Geometer's Sketchpad course, Richard Mitchell, stated:

I am not sure why the mathematics education is such a hindrance. It is listed as Math Ed course but we WILL be doing real (pure) mathematics in the course. We list all of our courses for teachers as Math Ed, but that does not imply that only education matters are being presented. The course this spring will be very much like our geometry course for future teachers that is cross-listed as math 340/Math Ed340 . . .

By his memo dated January 4, 1999, Hegge came to a different conclusion:

Although UW-Oshkosh has agreed to accept the course into the MS Mathematics Education program, they have accepted it as a "workshop course," not as a mathematics course. It has been our intention from the beginning to satisfy the NCA General Institutional Requirement by having our General Education faculty have at least 18 credits in their content area (in your case Mathematics) or a Masters Degree in the content area with approximately 18 credits in the content area.

In view of this information and since you have provided no documentation that you are accepted in the Mathematics Degree Program at UW-Oshkosh, my only option is deny approval of course MED 790 for the NTC requirement for current general education faculty.

It is clear to the Examiner from a brief analysis of this evidence that NTC had very inexact standards regarding what would be acceptable and what would not be acceptable under its new 18-credit Gen. Ed. rule. In addition, when one analyzes the evidence offered by Gen. Ed. teacher Wissen, it appears that NTC treated Ehrenreich more harshly than it did Wissen who was in essentially the same type of situation as Ehrenreich. In this regard, I note that on August 28, 1998, Wissen requested credit under the 18-credit rule for a research and statistical analysis course, course number B.A. 519, through Upper Iowa University. The description for the course he was to take was as follows:

Using statistical analysis to do research that is applicable to a wide range of businesses and applications.

Wissen also listed the benefits to NTC, as follows:

To help me in implementing different and applicable research projects in my stat classes.

As a part of his application for credit, Wissen also submitted a letter from UW-Oshkosh Mathematics Department Chair Collier, which read in relevant part as follows:

I am writing in regard to Michael Wissen and the appropriateness of BA 519 Research and Statistical Analysis from Upper Iowa University within the Masters in Mathematics Education degree at UW-Oshkosh. After reviewing the courses description, prerequisite and text of BA 519 Research and Statistical Analysis . . . it is my opinion that we could accept it as one of the courses in the Masters program. This course is similar to our course 67-702 Statistics Workshop and we do have a maximum of six credits for workshop courses allowed in the program. For students in this Masters program, the student and an advisor set up a program of course work and it would be at that point that the acceptance of the course would be determined.

Wissen stated herein that he understood that the course had to be a graduate level course to qualify for the 18-credit Gen. Ed. requirement or that the Gen. Ed. teacher had to get written approval from the chair of a University department, that the department would accept the course in Masters program. Wissen also stated that he got approval from NTC managers within one week of his submission of his request for educational experience approval, dated August 28, 1998. NTC did not object to Wissen's course because it was a workshop or because it was a bachelor's level course. Nor did NTC require Wissen to have proof he was accepted in a Math Masters program.

Section 111.70(3)(a)3, Stats., provides that it is a prohibited practice for a municipal employer to encourage or discourage membership in any labor organization by discrimination in regard to hiring, tenure, or other terms or conditions of employment. As stated above, in order to prevail on such a charge of discrimination, the complainant must prove that the employee was engaged in lawful and concerted activities protected by MERA; that the employer had knowledge of those activities; that the employer was hostile towards those activities; and that the employer's action was based, at least in part, on hostility towards those lawful and concerted activities. NORTHEAST WISCONSIN TECHNICAL COLLEGE, DEC. NO. 28909-D AND DEC. NO. 28954-C (WERC, 3/99); GREEN BAY SCHOOL DISTRICT, SUPRA; MILWAUKEE BOARD OF SCHOOL DIRECTORS, DEC. NO. 23232-A (McLAUGHLIN, 4/87), AFF'D BY OP. OF LAW, DEC. NO. 23232-B (WERC, 4/87).

In this case, I have found that both Hegge and Ernst harbored animus against Ehrenreich's exercise of his lawful and concerted activities on behalf of the NTCFA. Under

Commission case law, it is irrelevant that an employer has legitimate grounds for its actions if one of the motivating factors was hostility towards the employee's protected concerted and lawful activity. CITY OF MILWAUKEE, DEC. NO. 29896-A (LEVITAN, 11/00); LACROSSE COUNTY (HILLVIEW NURSING HOME), DEC. NO. 14704-B (WERC, 7/78). Although legitimate reasons for an employer's actions may properly be considered in fashioning an appropriate remedy, discrimination against an employee due to his/her exercise of lawful and concerted activity will not be encouraged or tolerated. CITY OF MILWAUKEE, SUPRA; EMPLOYMENT RELATIONS DEPARTMENT V. WERC, 122 WIS. 2D 132, 141 (1995). Indeed, as the Wisconsin Supreme Court has found, an employer may not subject an employee to adverse employment consequences when one of the motivating factors is his/her union or protected activity, no matter how many other valid reasons exist for the employer's actions. MUSKEGO-NORWAY C.S.J.S.D. No. 9 v WERB, 35 WIS. 2D 540, 562 (1967).

Thus, in this case, Ehrenreich engaged protected concerted activities as NTCFA President, NTC's admittedly had knowledge of those activities, and Hegge and Ernst were hostile toward Ehrenreich activities on behalf of NTCFA. The only question that remains then is whether the employer's action was based, at least in part, on the hostility toward Ehrenreich's NTCFA activities. At least to this Examiner, the fact that NTC treated Wissen much more liberally than it did Ehrenreich demonstrates that a reasonable inference can be drawn of pretext—that Hegge gave shifting reasons why he disapproved Ehrenreich's request for credit approval while easily passing Wissen's request for approval through.

In this regard, I note that Wissen was not required to show he had been accepted into any Masters program or that the course he wished to take was not a workshop course. However, NTC required Ehrenreich to jump through these hoops. In addition, Hegge stated herein that if an NTC faculty member got a letter from a credible University department chair, that the course requested was a Masters content level course, then NTC would have okayed it toward the general education credit requirement. Yet Hegge refused to grant credit approval to Ehrenreich based on Department Chair Collier's letter. Hegge also stated that the NCAA wanted credits in the field of teaching for its requirements and that Ehrenreich's course looked like an education course. Hegge stated, in contrast, that Wissen's statistics course looked more like a pure math course to him, and because Wissen got a letter stating that UW-Oshkosh would accept the statistics course as part of a Masters program, that was good enough for Hegge. Yet, I note the course that Wissen proposed to take was a math education workshop course, not a pure math course.

In addition, I note that Hegge asserted herein that after March, 1999, Ehrenreich's employment was not in jeopardy; and that he would have accommodated Ehrenreich. Hegge is not to be believed on this point, for this assertion is belied by the clear language of the letter received by Ehrenreich dated March 10, 1999, wherein Hegge stated Ehrenreich's continued employment "is contingent upon" the successful completion of three graduate level courses by May 31, 1999. Hegge's testimony herein demonstrated that he discriminated against Ehrenreich in denying him credit on the same basis as Hegge had granted credits to Wissen.

The fact that Hegge ultimately granted Ehrenreich credit after he jumped through the extra hoops that Hegge required of him, does not detract from my conclusion. However, as Ehrenreich was unable to take the course (as it was canceled) and as Hegge eventually granted him credit therefor, no Sec. 111.70(3)(a)3, Stats., remedy on this allegation can be or has been ordered.

The Association urged that April 20, 1999 denial of Ehrenreich's request for a transfer to Vollstedt's GOAL math course also violated Sec. 111.70(3)(a)3 and 1, Stats. NTC has resisted this charge on the grounds that the labor agreement does not allow for or address transfers; and that the instances raised by the Association (Teisinger, Krcma, Andren and Kanz) did not involve transfer requests. Rather, these past instances involved current employees who were either entitled to bumping rights or who were under threat of layoff and made application (just as any outside applicant would do) for a position to avoid a layoff. In addition, NTC urged that the decision not to allow Ehrenreich to transfer into Vollstedt's position, arose out of a concern for Ms. Vollstedt during her attempted convalescence from cancer and had nothing to do with Ehrenreich's protected concerted activities on behalf of NTCFA.

Although the other evidence regarding this allegation appeared, at least cosmetically, to support NTC's claims, the April 20, 1999 Bastable e-mail to Ehrenreich, in the Examiner's view, demonstrates NTC's true intent in denying Ehrenreich his reassignment request. In this regard, I note that the Bastable e-mail stated that "it is not in the College's best interest to make a move such as you have suggested, while at the same time we are working through the litigation process that is presently underway." This was one of the reasons why Bastable denied Ehrenreich's request to be reassigned to the GOAL math position: because the Association (which Ehrenreich headed) had filed for and received an injunction against NTC's full implementation of the 18 credit Gen. Ed. requirement and to force NTC to arbitration over the November 17, 1997 implementation of that rule. 2/ In addition, I note that in his e-mail, Bastable also informed Ehrenreich:

We will continue to analyze available options which include reassignment to a new position, continuation of your present assignment and suspension.

This veiled threat, as well as reference to the litigation process regarding the March, 1999 grievance filed on behalf of Gen. Ed. faculty against NTC, demonstrate that certainly one motive in denying Ehrenreich the Vollstedt position was because of Ehrenreich's pursuit of NTC in the legal and grievance forums as NTCFA President.

2/ I note that Chad Bastable did not testify in this proceeding. Therefore, Ehrenreich's testimony regarding what occurred between him and Bastable is credited it its entirety.

This conclusion is bolstered by the fact that when initially approached in the Spring of 1999, Bastable had indicated that the Vollstedt position was still open and Bastable had then stated that there would be no problem for Ehrenreich to be reassigned to that position. Although the deadline for application for Vollstedt's math position had been on March 4, 1999, it was not until after Ehrenreich sent his written request for a transfer to that position on April 6, 1999, and after he had spoke to Bastable about receiving that position that he was denied it by Bastable on April 20, 1999. (NTC never used as a reason for the denial Ehrenreich's late application.) It is significant that none of the managers at NTC had been concerned about Vollstedt's wishes when they originally posted her job (after she became ill) as a permanent opening. Thus, Bastable's denial of the GOAL math position to Ehrenreich in part because litigation was then pending regarding the 18-credit rule also violated Sec. 111.70(3)(a)3 and 1, Stats.

On or about May 5, 1999, Hegge and Andren reached what they thought might be a tentative agreement between NTC and the NTCFA regarding a successor agreement to the 1997-99 collective bargaining agreement. However, the settlement was never formally agreed to by the parties. The record demonstrates that sometime in May, 1999, NTCFA filed a request for "municipal mediation" (MM) with WERC. On June 9, 1999, Hegge issued a memo in which he informed NTCFA members that NTC had filed for interest arbitration (INT/ARB) with WERC. Hegge also asserted in his June 9th memo that the parties "would be back to ground zero" if mediation, under NTCFA's MM request failed. Hegge also stated that by NTC's filing for "the combined mediation/arbitration process up front, we expedite the process; fewer meetings with the intermediary would be needed." On July 19, Ehrenreich sent a memo to NTCFA members, with a copy to Hegge, critical of NTC's petition for interest arbitration (INT/ARB). Therein, Ehrenreich stated:

The mediation process, which we prefer, would have provided for continued negotiating with the help of a third-party mediator. Filing directly for arbitration, on the other hand, could circumvent continued discussion and force us directly into the final offer process.

We are, naturally, disappointed that the College rejected mediation.

On July 23, 1999, Hegge sent a memo to Ehrenreich in which he criticized Ehrenreich and his July 19 memo to NTCFA members as follows:

I was surprised to find that you have once again blatantly misrepresented me to our faculty. In your memo you stated that "the College rejected mediation." This is absolutely untrue . . . is inaccurate. It clouds the issue, creates miscommunication, undermines the organization, and can result in inaccurate conclusion. . . . I expect you will rectify this situation prior to August 2, 1999. Please let me know how this is corrected.

The Association has argued that Hegge's July 23 memo violated Sec. 111.70(3)(a)1, Stats. I disagree.

In regard to the exchanges between Ehrenreich and Hegge under consideration here, I note that neither Hegge nor Ehrenreich accurately described the affect and value of filing an MM request as compared to an INT/ARB petition, from a WERC mediator's point of view. Although it has been demonstrated above, Hegge harbored animus against Ehrenreich for his activities on behalf of NTCFA, and although in his July 23rd memo he described Ehrenreich as having "once again blatantly misrepresented" Hegge to the NTCFA, I do not find Hegge's statement, "I expect you will rectify this situation prior to August 2, 1999," to have a reasonable tendency to interfere with Ehrenreich's Sec. 111.70(2), Stats., rights.

In this regard, I note that Hegge's June 9th memo stated his, albeit mistaken, views about the relative merits of an MM over an INT/ARB petition. This type of statement is acceptable under Commission precedent as an exercise of an employer's free speech rights. SCHOOL DISTRICT OF THORP, DEC. NO. 29146-A (CROWLEY, 4/98) AFF'D BY OP OF LAW DEC. NO. 29146-B (WERC, 5/98); ST. CROIX COUNTY, DEC. NO. 28791-A (CROWLEY, 5/97), AFF'D BY OP OF LAW, DEC. NO. 28791-B (WERC, 7/97). In addition, although Hegge stated he expected Ehrenreich to "rectify the situation," I note that Hegge did not state any consequences if Ehrenreich failed or refused to do as Hegge requested. Indeed, Ehrenreich choose not to "rectify the situation" in any way despite his receipt of Hegge's July 23rd memo. In addition, I note that the dispute between Hegge and Ehrenreich occurred through an exchange of memos, a much less threatening and coercive type of exchange than a face-to-face exchange would have been or an exchange whereby all NTCFA members were copied. In all of the circumstances and given the fact that both Hegge and Ehrenreich were able to freely express their views on mediation and interest arbitration to the NTCFA, I cannot find that Hegge interfered with, restrained or coerced Ehrenreich in the exercise of his MERA rights, as alleged on this point.

Section 111.70(3)(a)4, Stats., makes it a prohibited practice for a municipal employer to negotiate directly with employees and such conduct will be found to constitute a refusal to bargain collectively with the employees' collective bargaining representative. CITY OF NEW LISBON, DEC. NO. 28935-A (CROWLEY, 7/97) and cases cited therein, REMEDY MODIFIED IN PART DEC. NO. 28935-B (WERC, 10/97). NTC has argued that it was merely exercising its First Amendment rights to communicate directly with members of the bargaining unit by Bastable's June 16, 2000 gain sharing memo and by Dr. Ernst's memos of July 28 and August 28, 2000 offering and then granting faculty a 4.2% compensation package.

The evidence in this case showed that on June 16, 2000, when Bastable (NTC H.R. Director) sent his gain sharing memo to NTCFA members, NTC had not notified NTCFA it intended to issue this memo to faculty. It is also undisputed that NTC never previously offered to negotiate with NTCFA, nor had it made any proposal regarding this gain sharing plan to the

NTCFA during bargaining. In addition, Bastable's memo, on its face, concerned wages, hours and working conditions as it contained an offer for enhanced remuneration to be paid for "growing (student) FTEs." Furthermore, Bastable opened his memo with the following:

We want all employees to know of a new initiative rolled out this year by NTC's Board of Trustees in case represented employee groups are interested in discussing this concept.

Although Bastable made no explicit attempt to undercut the Association in his memo and the memo did not contain any threats, where, as here, NTC had never made any proposal on gain sharing to the NTCFA and where the NTCFA bargaining team members received the June 16, 2000 memo at the same time all NTCFA members received it (a memo which could clearly impact wages and working conditions) the memo must be found to constitute an attempt to by-pass NTCFA and deal directly with employees in violation of Sec. 111.70(3)(a)4 and (derivatively) 1, Stats. CITY OF NEW LISBON, SUPRA; SCHOOL DISTRICT OF THORP, SUPRA; ST. CROIX COUNTY, SUPRA, and cases cited therein at page 9.

In RACINE UNIFIED SCHOOL DISTRICT, DEC. NO. 29659-A (CROWLEY, 12/99), Examiner Crowley aptly summarized WERC case law generally concerning the duty to bargain as follows:

A municipal employer's duty to bargain during the term of a contract extends to all mandatory subjects of bargaining except those which are covered by the contract or as to which the union has waived its right to bargain through bargaining history or specific contract language. CITY OF MADISON, DEC. NO. 27757-B (WERC, 10/94); SCHOOL DISTRICT OF CADOTT, DEC. NO. 27775-C (WERC, 6/94); EAU CLAIRE AREA VTAE DISTRICT, DEC. NO. 23944-C (WERC, 11/87); CITY OF RICHLAND CENTER, DEC. NO. 22912-B (WERC, 8/86); RACINE UNIFIED SCHOOL DISTRICT, DEC. NO. 18848-A (WERC, 6/82). An employer may, after bargaining with the union to an impasse, make unilateral changes that are in accordance with its last offer prior to impasse. JOINT SCHOOL DISTRICT OF WINTER, ET AL., DEC. NO. 14482-B (MCGILLIGAN, 3/77) AFF'D BY OPERATION OF LAW, DEC. NO. 14482-C (WERC, 4/77). (slip op. at p. 20).

The Association argues that the July 28, 2000 memo sent by Dr. Ernst to all NTCFA members offering them, *inter alia*, "a 4.2% total compensation package for each year" without first notifying NTCFA negotiators or offering them the same package, violated Sec. 111.70(3)(a)4 and 1, Stats. I agree. Initially, I note that Ernst attached to his July 28th memo salary grids for 1999 and 2000, showing the exact impact for each faculty member of the 4.2% increase he proposed to offer. It is also significant, in the Examiner's view, that Ernst's memo contained the following appeal aimed directly at NTCFA members:

. . .

In the interest of all concerned, I would like to resolve this matter and ask for your support. I have gone to the board to ask for their reconsideration of a 3.8 percent total package cap. We offer you a 4.2 percent total compensation package for each year, with the 1997-99 contract language folded in, i.e., the language that we are currently working under. I believe this is a win-win solution that provides us with several benefits. It . . .

- Puts well-deserved and hard-earned dollars in the pockets of faculty
- Grants compensation for faculty at a level comparable with other faculty associations in the Wisconsin Technical College System
- Brings closure to the contract for the start of the 2000-2001 school year, thus ending a difficult and divisive negotiations process
- Sets the stage for the 2001-03 contract negotiations, scheduled to begin in January 2001

NTC argued that it was privileged to make this offer pursuant to its First Amendment rights to address employees directly during negotiations as well as by the parties' agreement to issue regular updates on negotiations and NTC's past practice of sending memos and e-mails directly to all staff. There is no doubt in the Examiner's mind that Ernst's request for faculty "support" for a detailed settlement proposal (never made to NTCFA negotiators), listing four arguments for its acceptance, clearly runs afoul of the statute. Where, as here, an employer sends a communication directly to employees as an appeal for their "support," which contains a wage offer that the employer has never offered the union in negotiations, such a communication, on its face, constitutes an attempt to by-pass and denigrate the union and necessarily "seeks to obtain a contract directly with employees." 3/ ST. CROIX COUNTY, SUPRA. Compare, SCHOOL DISTRICT OF THORP, SUPRA. In addition, I note that the July 28th Ernst memo did not contain "truthful comments" as to NTC's "bargaining proposals that had been submitted to the bargaining representatives" previously. ST. CROIX COUNTY, SUPRA.

3/ *Dr. Ernst admitted herein that the NTC never offered the NTCFA either the gain sharing plan or 4.2% total compensation during bargaining for the 1999-01 labor agreement.*

NTC argued in its brief that it could have offered the 4.2% package to NTCFA negotiators one second before communicating its offer directly to faculty employees. 4/ In the Examiner's view, NTC's position on this point flies in the face of the statute, which requires

employers to “bargain” with the labor organizations that are chosen by their employees. The American Heritage Dictionary of the English Language, New College Edition, (Houghton Mifflin, 1976) defines the verb “bargain” as:

to agree on the terms of a purchase or joint undertaking; to negotiate the terms of a sale, exchange or other agreement; to arrive at an agreement; to exchange; to trade.

Thus, even under a layman’s interpretation of the language of the statute, NTC failed to live up to the strictures of the law. 5/ Finally, contrary to NTC’s urgings, I do not find the language contained in paragraph two of the July 28 memo to be exculpatory. 6/ Indeed, given Ernst’s treatment of Ehrenreich as described in this case, this verbiage could be considered to be a veiled threat.

4/ The Examiner notes that the record facts did not support a conclusion that NTC, in fact, offered NTCFA negotiators the 4.2% package at any time prior to the Ernst memo issuance.

5/ I note that the Association did not argue that the July 28th memo independently violated Sec. 111.70(3)(a)1, Stats., and no finding has been made thereon.

6/ “Some have said I am out to eliminate the NTC Faculty Association. This is not the case. I know unions have a role in our organization. I admit that I do not look fondly on any rules or regulations that restrict the college’s efforts to meet customer needs. I know my frustration is often apparent when these barriers present themselves. I continue to challenge the state and others in many of their policies that hamper our efforts to successfully position NTC for the twenty-first century. None of this means that I have set out to abolish unions.”

If there were any doubt that Ernst intended his July 28th memo to by-pass the Association, Ernst’s August 28, 2000 memo makes clear this was, in fact, his intent:

This summer I sent a memo to you (see attached) proposing a 4.2 percent total package increase for each year, 1999 and 2000. I made this offer in good faith to do what I thought was best for all. We have passed the first year of what should have been your 1999-2001 contract and it is likely that arbitration will take us through most of the second year. This timeline would cause the 2001-03 contract negotiation cycle to be delayed, a scenario I’m sure we all would like to avoid.

Some faculty have said that wages are not the issue, others have indicated they are, and they would like to receive their due compensation. I have not received an answer to my earlier memo and I am told that some are upset that this was sent out to all.

Since it is now clear that negotiations will not be resolved soon, I am authorizing the implementation of a 4.2 percent total compensation package each year increase retroactive to August 16, 1999. This increase will be reflected in the September 22, 2000 paycheck.

Ernst's use of the phrases, "I made this offer in good faith . . ." and "I am authorizing the implementation of a 4.2% total compensation package . . ." and Ernst's assertion that he could decide what was "best for all" demonstrates that Ernst desired personal credit for obtaining the 4.2% increase for faculty, which necessarily would denigrate the Association. The August 28, 2000 communication cannot be found protected pursuant to any past practice or free speech rights NTC otherwise might assert. In addition, in an August 2, 2000 up-date sent to NTC Board of Trustees, Ernst characterized his July 28th memo to faculty members as "our offer" for "settling this contract." No impasse had been reached by the parties; and the Association had not waived its rights. This is classic direct dealing which clearly violates MERA.

I turn now to the allegation that NTC violated Sec. 111.70(3)(a)4 and 1, Stats., by failing and refusing to allow the "pink pages" to sunset, as stated in the 1997-99 agreement. Examiner Crowley succinctly summarized the law in this area as follows in a recent decision, CITY OF MILWAUKEE, DEC. NO. 29524-A (CROWLEY, 6/99);

. . .

It is well settled that, absent a valid defense, a unilateral change in the status quo wages, hours or conditions of employment during a contractual hiatus is a per se violation of the employer's duty to bargain under the Municipal Employment Relations Act. Such unilateral changes are tantamount to an outright refusal to bargain about a mandatory subject of bargaining because they undercut the integrity of the collective bargaining process in a manner inherently inconsistent with the statutory mandate to bargain in good faith. CITY OF BROOKFIELD, DEC. NO. 19822-C (WERC, 11/84) AT 12; GREEN COUNTY, DEC. NO. 30308-B (WERC, 11/84) AT 18-19; AND SCHOOL DISTRICT OF WISCONSIN RAPIDS, DEC. NO. 19084-C (WERC, 3/85) AT 14.

. . .

The Association argued that NTC's continuation of the "pink pages" was contrary to the parties' express intent that they sunset on June 30, 1999, and therefore, constituted a refusal to bargain in violation of Sec. 111.70(3)(a)4 and 1, Stats. NTC has argued that it had no choice but to continue the "pink pages" because the Union refused to bargain over the summer months and NTC simply could not return to the old structure of Deans, Associate Deans and Department Heads, having dismantled the structure when the "pink pages" were agreed upon.

The Commission has held that the *status quo* is a dynamic concept defined by the language of the expired agreement, the manner in which the language has been implemented, 7/ and any bargaining history related to the language. 8/ TAYLOR COUNTY, DEC. NO. 29647-C (WERC, 6/00); RACINE UNIFIED SCHOOL DISTRICT, DEC. NO. 29254-A (WERC, 4/99); WASHBURN PUBLIC SCHOOLS, DEC. NO. 28941-B (WERC, 6/98); ST. CROIX COUNTY, DEC. NO. 27215-D (WERC, 7/93), AFF'D DEC. NO. 27215-E (COURT OF APPEALS, 8/94); RACINE UNIFIED SCHOOL DISTRICT, DEC. NO. 26816-C AND 26817-C (WERC, 3/93); MAYVILLE SCHOOL DISTRICT, DEC. NO. 25144-D (WERC, 5/92). The language of the parties' contract, the "pink pages" (pages 94-117 of the labor agreement), otherwise known as "Employee Working Conditions" Memorandum Of Agreement stated:

This agreement shall be in effect for the 1997-98 and 1998-99 years, and will expire on June 30, 1999 unless agreed to by the parties.

In addition, a legend was printed on the bottom of virtually every page of the 1997-99 labor agreement except the following:

Page 8, Article I, Authority of Board;
Pages 9-11, Article II, Recognition and Scope;
Page 65, Initiation of Grievance;
Page 66, Rules of Agreement;
Pages 67-80, Appendices: Regular part-time faculty, Project faculty, Positions excluded, Salary Schedules, Calendars.

The legend that appeared on the bottom of every other page in the agreement reads as follows:

Shaded language is superceded by "employee working conditions" side letter, page 94.

The "pink pages" and the list of shaded areas make clear that the substance of the "pink pages" concerned virtually all aspects of wages, hours and working conditions of the faculty.

7/ *No arguments regarding past practice were made in this case.*

8/ *No argument was made that the parties had reached impasse by June 6, 1999, and that NTC merely implemented its last offer to NTCFA.*

The "pink pages" themselves also contain a memorandum of agreement, "Bargaining History and Previous Practices." That memorandum reads in relevant part as follows:

- ...
2. That in the event the changes to workload and assignment of responsibilities as agreed to by the parties is not continued as a result of future contract negotiations, the parties agree that contract language and methods and procedures for determining workload and assignment of work responsibilities as existed prior to the 1997-98 school year shall be the starting point for further discussions between the College and the Association and may be relied upon by the Association as the existing practices and procedures that Association members were assigned to or worked under before the change in contract language implemented as part of the 1997-99 contract settlement.
 3. That the purpose of this Memorandum is to provide assurances to the Association that the prior contract language and workloads of Association members that existed prior to the change in contract language resulting from the 1997-99 contract settlement shall become the starting point or status quo that was in existence prior to the 1997-99 negotiations and may be relied upon as the basis for workload or assignment of responsibilities in the event it is necessary to return to the previously existing workloads or assignments.
- ...

When this memorandum is read along with the "Employee Working Conditions" Memorandum there can be no doubt that the parties intended the "pink pages" to expire on June 30, 1999, unless they were agreed to, anew, by the parties, and that upon contract expiration without a fresh agreement to the "pink pages," the Association could rely upon the "existing practices and procedures" in effect prior to 1997-99 to "become the starting point or status quo."

Buttressing this conclusion, are several additional facts. The fact that the parties made the "pink pages" a different color from the remainder of the contract; that the parties shaded the areas intended to be replaced by the "pink pages" and placed a legend on those pages making this clear; and that the parties attached the "pink pages" as a separate document (with its own Table of Contents) to the back of the old contract as amended, all support a conclusion that the parties intended the "pink pages" to constitute a separate and distinct agreement between them. Beyond this convincing documentary evidence, there is uncontested testimonial evidence from both Association and NTC management witnesses that everyone at the negotiations table understood that the "pink pages" would sunset upon the expiration of the 1997-99 agreement and that the parties intended that they would then return to the old way of doing business in effect prior to 1997-99.

However, NTC has argued that because it did not have a structure (of Deans, Associate Deans and Department Heads) to return to, it had no choice but to continue operating under the "pink pages." Thus, NTC argued that this constituted a "necessity defense" to the

The Commission has recognized "necessity" as a valid defense to a modification of the *status quo* during a contract hiatus in limited circumstances. CITY OF BROOKFIELD, DEC. NO. 19822-C (WERC, 11/84); BOARD OF SCHOOL DIRECTORS OF MILWAUKEE, DEC. NO. 15829-C (YAEGER, 8/79) AND 15829-D (YAEGER, 3/80). The instant case is similar to CITY OF BROOKFIELD, SUPRA, as there, the summer hours were for a trial period ending September 1, 1981, after which the hours reverted back to the regular hours listed in the labor agreement. Here, the "pink pages" clearly expired on June 30, 1999, unless the parties agreed to their continuation and the *status quo* was expressly stated to be that in effect under the practices and procedures of the prior contract.

In addition, this is not a case like MILWAUKEE BOARD OF SCHOOL DISTRICTS, SUPRA, which concerns the imposition of a school calendar and a student evaluation program which had to be in place prior to the start of school even though no successor agreement had been reached. In this case, NTC chose not to maintain the Deans/Associate Deans, etc., structure. To maintain these designations was clearly within NTC's control at all times. It is also significant that Ernst admitted herein that NTC had the same number of liaisons pursuant to the "pink pages" as it had Deans, etc., under the old structure. In addition, NTC failed to put any evidence into the record to show that any Deans/Associate Deans or Department Heads had quit or retired prior to June 6, 1999, or thereafter. Therefore, NTC's "necessity" defense has not been proved in the Examiner's view. 9/

9/ The Commission has held that:

1. Economic savings does not constitute "necessity." RACINE UNIFIED SCHOOL DISTRICT, DEC. NO. 23904-B (WERC, 9/87);

2. Discontinuation of hot lunches did not constitute "necessity." WISCONSIN DELLS SCHOOL DISTRICT, DEC. NO. 25997-B (SHAW, 4/90), AFF'D, DEC. NO. 25997-C (WERC, 8/90);

3. A change in sick leave policy did not constitute "necessity." ST. CROIX FALLS SCHOOL DISTRICT, DEC. NO. 27215-B (BURNS, 1/93), AFF'D, DEC. NO. 27215-D (WERC, 7/93);

4. Savings due to subcontracting did not constitute "necessity." VILLAGE OF SAUKVILLE, DEC. NO. 28032-B (WERC, 3/96).

NTC has also argued that because NTCFA waived its right to negotiate with NTC during the Summer of 1999, this made it impossible for NTC to reach agreement on a successor contract with the NTCFA and required NTC to continue operations under the "pink pages." On this point, I note that both NTC and NTCFA jointly agreed to suspend negotiations during the Summer of 1999 and that Hegge's memo, announcing that NTC intended to operate under the "pink pages" in the Fall of 1999, was actually issued on June 6,

1999, three months before the start of school in 1999. Thus, the facts herein do not prove a “waiver by inaction.” Rather, the facts show that NTC had three months to notify prior Deans, Associate Deans and Department Heads that their services would be needed and to select new Deans, etc., if those who had served under the prior contract had quit or retired.

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Clearly, NTC chose not to respond in this fashion. Rather, NTC chose to disregard the clear and unambiguous language of the “pink pages” as well as the bargaining history its agents admitted required that the “pink pages” sunset on June 30, 1999. In these circumstances, NTC has failed to prove both a necessity and a waiver defense (as argued herein). NTC failed to sunset the “pink pages” as required by their terms and this is a change in the *status quo* and a *per se* violation of Sec. 111.70(3)(a)4 and 1, Stats.

NTC’s other arguments to the contrary do not require a different conclusion. NTC argued herein that it maintained the *status quo* by continuing to operate under the “pink pages.” As the “pink pages” were in effect at the time the contract expired, NTC argued, they were part of the *status quo* that NTC was obliged to maintain upon the expiration of the labor agreement. If NTC were to prevail on this argument, sunset agreements could be wholly ignored. In addition, this argument ignores the clear language of the “pink pages” and the evidence of bargaining history herein which demonstrates the parties’ intent that the “pink pages” sunset on June 30, 1999. NTC also argued that the “pink pages” required that NTC could not revert back to their old structure unless the parties agreed to discontinue the “pink pages.” 10/ This argument flies in the face of the clear language which essentially provides for the opposite of this assertion. The “pink pages” state that in order to continue thereunder, the parties must expressly agree to continue them. NTC also argued that if it had tried to go back to the old structure in the Fall of 1999, this would have adversely impacted students. However, NTC put no evidence into the record to support this assertion.

10/ It should be noted that in the Spring and again in the early Fall of 1999, negotiations were held to try to get an interim agreement so that NTC could continue using the “pink pages.” These efforts failed.

NTC has no valid defenses for its actions. By continuing the “pink pages” it committed a unilateral change in the *status quo* regarding wages, hours and working conditions during a contract hiatus. NTC’s actions are tantamount to an outright refusal to bargain about mandatory subjects and tend to undercut the collective bargaining process. NTC’s actions also necessarily showed disregard for the role and status of the NTCFA and were inconsistent with good faith bargaining. SCHOOL DISTRICT OF WISCONSIN RAPIDS, DEC. NO. 19084-C (WERC, 3/85) AT 14. Therefore, NTC has been ordered to cease and desist unilaterally changing the *status quo* and to reinstate the *status quo* — the practices and procedures in effect prior to the 1997-99 agreement.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Dated at Oshkosh, Wisconsin, this 6th day of November, 2001.

Sharon A. Gallagher /s/

Sharon A. Gallagher, Examiner

SAG/ans

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