

BEFORE THE ARBITRATOR

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In the Matter of the Arbitration of a Dispute Between

**AFT – WISCONSIN LOCAL 395**

and

**WISCONSIN INDIANHEAD TECHNICAL COLLEGE**

Case 75  
No. 63699  
MA-12682

*(Dean Hoffman Discharge)*

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**Appearances:**

**William Kalin**, AFT-Wisconsin Representative, on behalf of AFT-Wisconsin Local 395.

Weld, Riley, Prens & Ricci, S.C., Attorneys at Law, by **Christopher R. Bloom**, on behalf of Wisconsin Indianhead Technical College.

**ARBITRATION AWARD**

AFT-Wisconsin Local 395, hereinafter the Union, requested that the Wisconsin Employment Relations Commission provide a panel of staff arbitrators from which the Union and Wisconsin Indianhead Technical College, hereinafter College, could select an arbitrator to hear and decide the instant dispute, in accord with the grievance and arbitration procedures contained in the parties' labor agreement. Thereafter, the parties selected the undersigned, David E. Shaw, to arbitrate in the dispute. A hearing was held before the undersigned on September 22, 2004 in New Richmond, Wisconsin. There was no stenographic transcript of the hearing. The parties submitted post-hearing briefs by November 15, 2004.

Based upon the evidence and the arguments of the parties, the undersigned makes and issues the following Award.

**ISSUES**

The parties stipulated at hearing that there are no procedural issues and to the following statement of the substantive issues:

Was the Grievant non-renewed for just cause? If not, what is the appropriate remedy?

**PERTINENT CONTRACT PROVISIONS**

**ARTICLE IV – WORKING CONDITIONS**

Section A. Discipline and Discharge

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2. After the probationary period, a teacher shall not be disciplined, discharged, or non-renewed except for cause.

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Section B. Evaluation Procedures

1. Teacher evaluation procedures are recognized to be a cooperative effort between the teachers and supervisors with the express purpose of achieving excellence in the area of effective and purposeful classroom instruction.
  - a. The supervisor shall make arrangements with the teacher being evaluated for a meeting to be held for the purpose of discussion of the evaluation. Such meeting shall be held within one (1) week of the date of the evaluation. When a written evaluation is filed by the supervisor, the teacher shall be presented with a copy of the same before the meeting is completed. Teacher signature on a written evaluation signifies that the teacher and supervisor have met and discussed the evaluation. The signing of said evaluation by the teacher is not to be considered an indication of agreement with all points of evaluation.
  - b. It shall be the responsibility of the administration to provide reasonable assistance to allow said teacher a fair and equitable chance to improve possible deficiencies in classroom instruction.
  - c. Student evaluations may be developed and used by the teacher for purposes of self-improvement in teaching and are not to become a part of the teacher's file.

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Section Q. Teacher's Files

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7. No secret file or any material, record, or the like, may be kept on any teacher for any purpose.

...

**BACKGROUND**

The Grievant was employed by the College from July of 1993 until the end of the 2003-04 school year as a Machine Tool Technics instructor in the Trade and Technology Department at the College's New Richmond campus. From 1993 until his retirement in May of 2002, Gary Moldenhauer, Dean of Instructional Operations, was the Grievant's supervisor. Since October 21, 2002, Nancy Cerritos has been the Dean of Instructional Operations and, as such, the Grievant's supervisor. There were three instructors in the Machine Tools program, the Grievant, Olaf Wick and William White. White was laid off in the 2003-04 school year and the Grievant was the most senior of the remaining instructors in the program. Machine Tools is a two-year program and has been experiencing a drop in enrollment state-wide.

In July of 1994, after his first year as a Machine Tool instructor at the College, the Grievant received a memorandum from Moldenhauer, the stated purpose of which was:

To identify specific areas of concern related to Dean Hoffman's performance of his teacher duties: student feedback/issue; peer instructor feedback/issues; and Supervisor concerns/direction.

In the memo, Moldenhauer stated that the students in one of the classes the Grievant taught in the first semester of the 1993-94 academic year had requested that he not teach them in the second semester. The students' complaints included that he went too fast and expected them to know things the first time through and that he had a poor attitude. The memo also noted concerns relating to peer instructor complaints that included only being concerned about himself, not following the course outlines or curriculum and a lack of communication. According to the memo, Moldenhauer had discussed these concerns with the Grievant during the formal instructor evaluation process, as well as during the 1993-94 school year.

The Grievant received "Instructor Performance Appraisals" from Moldenhauer for the 1995-96, 1996-97, 1997-98, 1998-99, 1999-2000 and 2000-01 school years. The College utilizes the following numerical point system in rating performance:

- 5.0 - Performance is consistently above expectations, work is of exceptional high quality/excellent progress.

4.5 -

4.0 - Performance frequently exceeds expectations.

3.5 -

3.0 - Performance consistently meets expectations based on experience and knowledge of employee.

2.5 -

2.0 - Performance is marginal and inconsistent. Improvement is achievable.

1.5 -

1.0 - Performance is below an acceptable level. Improvement is necessary/little or no progress being made.

The performance appraisal forms also include boxes to be checked: Exceeds Standards, Meets Standards, Below Standard, Not Observed/No Comment, as well as boxes for "Comments" and for the numerical rating.

The Grievant's 1995-96 appraisal contained no numerical rating of his performance; however, in the boxes regarding meeting the standard for specific tasks or duties, there were no checks in the "Below Standard" boxes. There were several "Comments" on the form, including with regard to "Assists in development of equipment specifications", Moldenhauer commented, "Get Involved, Familiarize yourself with WITC Purchase Pol./Procedure", and under "Supports and collaborates with WITC staff" it was stated to the effect that he needed to "Work on it. . ."

In his 1996-97 performance appraisal, the Grievant's performance was indicated as "Below Standard" with regard to the following duties or tasks: "Adapts instructional style and activities to meet the needs of students", "Provides constructive feedback to students", and "Develops rapport that encourages open and respectful two-way communications with students." Indicated as borderline "Below Standard" was "Completes requisitions according to procedure." As to the rest of the duties or tasks, the Grievant was indicated to have met or exceeded the standards. His numerical ratings ranged from 2.5 to 4.

In his 1997-98 performance appraisal, the Grievant met or exceeded the standards with regard to all of the duties or tasks listed. As to "Comments" it was noted as to "Adapts instructional style and activities to meet the needs of students" that "Student feedback indicates positive" and "Works at a level that students except (sic)." Under "Provides constructive feedback to students", Moldenhauer noted "Keep working on the constructive Respectful feedback." Under "Supports and collaborates with WITC staff", it was noted "Keep working

as an instructional team - good effort.” Under “Documents need for supplies”, it was noted “Works with other instructor in the program – keep up this effort.” His numerical ratings ranged from 3 to 5.

In the Grievant’s 1998-99 performance appraisal, he again met or exceeded the standards as to all duties or tasks listed. Comments included, “Good response to student questions.” Under “Supports and collaborates with WITC staff”, it was noted “Maintain effort to work as an instructional team.” Under “Develops rapport that encourages open and respectful two-way communications with students”, it was noted “Improved – Keep working on it.” Under “Provides academic advisement to students” it was noted “Excellent”. His numerical ratings again ranged from 3 to 5, but were 4 or above in all but two areas.

In the Grievant’s 2000-01 performance appraisal, the Grievant again met or exceeded the standards as to all duties or tasks. Comments were generally positive and his numerical ratings ranged from 3 to 4.

Early in September of the 2002-03 school year, Timothy Schreiner, Campus Administrator at the College’s New Richmond campus, met with the Grievant to discuss a complaint filed by a student regarding the Grievant’s classroom behavior toward that student. Schreiner subsequently received another complaint from a student regarding the Grievant’s classroom behavior toward the student and the Grievant’s not being present while the students were working. Schreiner issued the Grievant the following memorandum of October 7, 2002 as a result of those complaints:

TO: Dean Hoffman  
Machine Tool Technics Instructor, New Richmond

FROM: Timothy O. Schreiner  
Campus Administrator, New Richmond

DATE: October 7, 2002

SUBJECT: **Your Classroom Conduct**

Early in September, I asked to meet you and counselor Fae LaForte in my office to discuss a complaint filed by one of your students, (P), for which an incident report was filed. In that report, (P) implies that your behavior in your classroom, in regards to him, is condescending, negative, and that you, among other things, compared his learning ability to that of a cat.

In discussing this with you, you agreed to, immediately, send a letter of apology to (P), which you did. Ms. LaForte forwarded your letter to (P) via U.S. mail on September 10. Despite your letter of apology, (P) did not want to talk to anyone at WITC and had decided to change programs or drop out of WITC

entirely. This student's decision was based on your actions, which I find totally inappropriate and unacceptable as conduct of an instructor at WITC.

This past Thursday, Oct. 3, I received another complaint from a student on a College Incident Report Form that involved your leaving class and not being physically present while students were working. This is not the first time I have heard and personally observed your absence from the classroom/lab. I have observed you out in the hallway or in the mailroom while your class was in session. On a number of different occasions, at all staff meetings, I've reminded everyone about the college's policies and procedures requiring the instructor to be in class at all times. An instructor's absence from the lab/class creates a serious liability issue that the college simply cannot tolerate.

In addition, this recent incident report, again, talks about "Mr. Hoffman making remarks that make the student feel uncomfortable," which is creating a negative learning environment for the student. This recent report about your conduct and behaviors are causing even more students wanting to drop your class.

The enrollments in the Machine Tool Technics program are seriously low. We cannot afford to be losing students anytime. I cannot tell you how concerned and embarrassed I am about your conduct. You must cease and desist this behavior, immediately, if you are to continue to teach at WITC-New Richmond. Any further incident reports of this nature will result in disciplinary action.

Contact me immediately, if you wish to discuss this matter.

Cerritos (then Orser) began her employment with the College on October 21, 2002. Cerritos testified that within 1½ to 2 months of her starting, issues developed with the Grievant with regard to a lack of communication and a lack of keeping her informed about his activities. Specifically, in mid-December, the Grievant e-mailed Cerritos early in the morning stating that he would be at CESA #11 most of the day, that his classes were covered and apologizing for the short notice. Cerritos discussed her concerns with the Grievant when he returned and followed up with an e-mail expressing concern about the lack of details and the need to inform her before engaging in such activities. Cerritos also expressed concern about a pamphlet the Grievant had put together, regarding the need to discuss it with her before having it printed and her concerns that the pamphlet was misleading. Cerritos ended her e-mail by insisting that the Grievant "go through proper channels."

Cerritos testified that she felt the pamphlet suggested WITC had a pre-engineering design program when it does not and does not intend to have such a program. Cerritos further testified that after she saw the pamphlet, she told the Grievant not to distribute it. The Grievant responded to the e-mail, describing his activity at CESA #11, agreeing that the pamphlet should have been discussed before being distributed and that it could be misleading as it was worded, agreeing that he should go through proper channels and explaining he did not feel there had been time to do so in this case.

On January 8, 2003, Cerritos sent the Grievant an e-mail, which stated in relevant part:

Dean: As per our emails of December 12, I insist on being informed on what you are doing with your projects. It has come to my attention that you have requested more pamphlets. I believe we discussed the Battle-bot/Pre-engineering project before and I clarified that this is only in very preliminary stages of planning and in no way in the plans for the immediate future. You must quit giving the impression that it is. In fact, after our conversations with Walt, it is less likely than ever. We have curriculum development projects clearly laid out for us and no one has extra time for more projects.

I also happened to catch a tail end of a conversation and it seemed that you were discussing the Pre-engineering/Battle-bot stuff with a student at registration. Please do not hand out this pamphlet nor discuss this any further without consulting me. It is a question of credibility of the college. I am also requesting that you refrain from any work on this project at this time, at least until after we have discussed things with Walt again. I don't think this will be the direction we are taking.

Cerritos testified that she had overheard the Grievant talking to student L.O. at pre-registration night and that the Grievant implied that the College had a pre-engineering program. The Grievant testified that he had talked to L.O. about his future plans, L.O. saying he was planning on going to UW-Stout, but denied that he told L.O. that the College had a pre-engineering program. The Grievant also testified that he had already ordered more pamphlets before Cerritos had told him not to, and that when they subsequently came, he threw them away.

The Grievant subsequently explained to Cerritos that he was working on the "battle-bots" because he felt they would strengthen the program and attract more high school students to the program and to the College, and he felt he needed to find out if he was able to build it, before he brought it up as a curriculum project. On January 9, 2003, Cerritos e-mailed the Grievant a response, which stated that while she appreciated his enthusiasm, she wanted his agreement to keep her informed of his activities. She further indicated that any projects would have to be a group effort and that this must be decided as a team. She asked the Grievant to provide her with some times when he would be available to meet with her regarding these matters.

On February 7, 2003, Cerritos sent the Grievant the following e-mail:

Dean:

I must confess to being very disappointed in your conduct concerning your student (L.O.) I had occasion this week to speak to him and he is under the impression that he is taking classes to be transferred to the pre-engineering

program. We both know this is not the case. This is the same student that you assured me you had NOT given the impression that this was a planned program (see my earlier email from Jan. 8). This concerns me on several levels. This conduct is highly unethical and does NOT promote WITC in a positive light. It could also be highly detrimental to your student. L.O. made his educational choices based on information you supplied to him, information that you knew to be at best misleading, and at worst untrue.

I think I have made my position on the pre-engineering/battlebot subject quite clear to you – it is not something we are pursuing at this moment. (Again, refer to my email of Jan. 8).

Wick testified he had overheard the Grievant talking to L.O. on pre-registration night about a pre-engineering program. Wick stated this was why he believed that the Grievant had given L.O. the idea the College had such a program. Wick testified that he had asked L.O. what he was working on and L.O. had said he was working on a pre-engineering program. Wick informed Cerritos of this. The Grievant denied telling L.O. the College had a pre-engineering program and testified he had no idea how L.O. got the impression it did.

On February 14, 2003, Cerritos issued the Grievant the following:

Subject Letter of Deficiency

There are a number of problems with your conduct as an instructor and as an employee of WITC that need to be addressed and corrected immediately.

In October, you received a letter from Tim Schreiner that detailed two incidents involving your behavior towards students as well as your availability to students. The letter from Tim Schreiner informed you that further incidents of this nature would result in disciplinary action.

Earlier this week, I received a personal statement and problem solving form from one of your students. He states that you move through your computer screens much too fast for him to follow and that you do so without any explanation of why you are doing what you are doing. He doesn't feel you take into account the lack of computer experience of your students. He also mentions the extended periods of time that you are out of the room. He also commented on the amount of time you spent on your "robot project". Time spent out of the classroom is also mentioned in the letter you received from Tim Schreiner on October 7, 2002.

I sent an email to all T and T staff on February 4<sup>th</sup> stating that instructors needed to be physically present in the lab when students were operating equipment. The morning of February 7<sup>th</sup>, I found you at the computer while your students were operating equipment back in the lab.

I also spoke to another student who told me that he was having difficulty in your class due to how fast you moved through your computer screens. He also stated that you had no patience and made comments about his lack of proficiency with the mouse that made him feel uncomfortable and even more computer illiterate than he already felt. He told me that there were more classes that he wanted to take at WITC, but that he didn't think he ever wanted to take another class from you. This is another example of the type of behavior you were warned about in the letter of October 7<sup>th</sup>.

Further, there is your conduct regarding (L.O.). This is the student who told me (and another person as well) that he made his decision to come to WITC based on plans to enter the pre-engineering program. The fact that he has since recanted his original positions does not make me believe it was a misunderstanding. Rather, it leads me to the conclusion that intimidation was a factor. To approach him rather than me to discuss the issue was unprofessional and a misuse of your authority.

Based upon the above incidents, I looked further into your history at WITC. Among the notes that Gary left, I found references to incidents of the same nature dating back to 1994, 1996 and 2000.

There are additional serious issues with your use of college funds and credit card. You have continued to purchase materials to construct a combat robot after I requested that you discontinue that project. This is the project that you undertook without consulting your team members in the department, and also does not support the machine tool curriculum and has no direct involvement of students as a learning experience.

In summary, these are some of the issues I see as needing to be corrected:

**Interpersonal:**

- Lack of concern for other instructors' ongoing classes
- Failure to remain in the lab with the students
- Condescension and lack of solicitousness toward students
- Lack of patience with students
- Working on other projects instead of focusing on students
- Unavailability when students are working (Not in computer classroom))

- Lack of team spirit when dealing with other instructors (A demo project should be a team effort, not an individual one) (addressed in the email of the 8<sup>th</sup> of January)(This concern is also supported by other faculty comments)
- Failure to follow supervisor directives
- Misrepresenting facts to students

**Other:**

- Misuse of department budget to continue working on a project that has not been approved and is not supported by other staff.
- Continued misuse of funds after being directed not to continue on the project.
- Lack of follow through on projects (the TWO steam engines not yet completed)
- Disorganized lab-boxes of merchandise not unpacked or put away
- Failure to work with the other instructors to maintain the lab in an organized manner
- Failure to complete course outcome summaries in WIDS format.

Due to your continued pattern of behavior with these recent incidents, I am taking the following steps. To begin with:

- I am placing you on the full evaluation cycle. You and I will be meeting at scheduled intervals as well to discuss your progress toward the goals we set.
- We will also be adding staff development that includes interpersonal skills to your ILP. Additionally, at the receipt of this letter:
- I am requesting that you turn in your credit card to me. Any further purchases need to be made with my pre-approval.

Failure to comply with any of the requirements outlined above or a repeat of any of the undesirable behavior will result in immediate disciplinary steps, including, but not limited to, suspension without pay.



- The speed with which you “race” through explanations, using only one quick run-through and then expecting students to remember the steps or details.
- When demonstrating on the computer, you also go too quickly and do not explain each step as you make that step.
- Responding in a negative, belittling, and demeaning manner to student questions or concerns.
- Creating a barrier between yourself and your students by your expectations that they “should” know the material and by making them feel that questions are unwanted and not encouraged.
- Further creating an inhospitable learning climate by your engagement with the laptop computer and your perceived annoyance at student interference with you.
- Your perceived distractedness when talking to students and interruptions when they are talking. This is seen as a lack of interest and concern for their feelings.
- Making students feel “stupid” when asking questions. Comments made to students include “I already told you that”, “You should know that” and “I showed you once”.
- Some students feel that you don’t respect them and that your extensive web-enhanced and self-paced courses are an attempt to avoid contact with students.
- The feeling expressed by several students that you are NOT a resource for them.

There are also problems with the quality of your course materials. Some of these problems include:

- Creating extra work for your students by forcing them to enter workbook homework onto BlackBoard. This is seen by students as unnecessary since they have already done the work once. They also see this as an opportunity for them to make errors in entering on BlackBoard.
- Inattention to detail, manifested by incorrect program details, repetition of test questions, and discrepancies between syllabus and actual course

- Poor quality of course construction, including lack of correct sequencing in learning, references on tests and worksheets to information not available in any test or class reference materials or information not yet learned.

If you refer to the letter of deficiency on the fourteenth of February, you have repeated behaviors on the following bullet points:

Condescension and lack of solicitousness toward students

Lack of patience with students

Misrepresenting facts to students

Failure to complete course outcome summaries in WIDS format

In the letter of the 14<sup>th</sup> of February, I specifically mentioned a student having difficulty in your classes due to the above mentioned concerns. This student told me that he didn't want to ever take another class from you. Since then, three other students have expressed the same sentiment to me. It has also come to my attention that (L.O.), who thought he would be taking pre-engineering next fall, will NOT be returning in the fall.

In addition to the steps outlined in the last letter, I am taking the following steps:

- You will hand over materials and grades etc to Olaf for E.J. and work with her only through him.
- You will begin working with a mentor. You will meet with this instructor/individual at regular intervals and follow their coaching.
- You and I will meet once a week, both in the classroom and in my office, for more coaching. At these meetings we will also discuss your progress in meeting these corrective steps.
- You will attend Facilitating the Future this spring/summer.
- You will participate in a Career Track outline class "Communication for Increasing Understanding" or "Communication for Improving Relationships".



page of the notice were added after the meeting. Kearns also testified that the parties had just agreed on a new collective bargaining agreement that emphasized a change from top-down management to trying to work things out at the local level, and that there was no talk of grieving the suspension because they felt all were “on the same page” to try to help the Grievant. Kearns conceded that does not mean the Union would not grieve, if it was felt that there was not just cause for discipline.

Following the meeting on April 9, 2003, Kearns and Cerritos asked Findlay to assist the Grievant with his communication skills with students by observing the Grievant and offering suggestions. According to his affidavit, Findlay observed the Grievant in his class for an hour each time on April 16 and 21, 2003, took notes, and following the class, met with the Grievant and discussed areas of strengths and weaknesses. According to Findlay, there were some areas that needed improvement and many that were very positive. Findlay also met with Cerritos in late April or early May, 2003 to discuss his findings. Findlay also suggested to the Grievant workshops he could attend over the summer, which the Grievant did attend.

On May 2, 2003, Cerritos issued the Grievant a letter of reprimand as a result of an incident in the Machine Tool lab. A lathe was damaged when a student used stock that was larger than recommended for the machine and an anti-vibrator bushing, which had been incorrectly installed, had failed. The Grievant was reprimanded for non-compliance with safety measures, not reporting the incident, and for not wearing proper safety glasses in the lab. The letter warned the Grievant that failure to wear safety glasses in the lab or failure to report any such incidents could lead to further discipline “up to and including discharge. . .”

Cerritos conducted a performance appraisal of the Grievant at the end of the 2002-03 school year, using the same form and rating system as had been used in the past. In the eleven main areas of “Duties/Tasks”, the Grievant was rated as follows:

1. Plans/organizes/updates instructions, to include course description, outline instructional plans, syllabi, and appropriate resources 2.5
2. Works collaboratively in a productive manner with regional and college-wide staff in programming. 2.5
3. Delivers instruction. 2.0
4. Assesses student academic and social achievement. 2.0
5. Completes assigned record keeping/reporting activities regarding student data. 3.0
6. Displays mastery of subject matter and keeps up to date by participating in appropriate staff development activities. 3.0

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|-----|---|-----|
| 7.  | Promotes WITC to internal and external customers.                               | 3.0 |
| 8.  | Maintains professional relationships with customers, colleagues, and community. | 2.5 |
| 9.  | Assist in development of operational plans.                                     | 3.0 |
| 10. | Manages classroom/lab.  | 2.0 |
| 11. | Facilitates employment assistance.  | 3.0 |

There are 41 subareas under the above areas of duties/tasks. The Grievant was rated as “Meets Standard” in 17 subareas, as barely meeting the standard in 6 subareas, and as “Below Standard” in 8 subareas. The remaining subareas were either not marked or indicated “Not Observed/No Comment”. Cerritos rated the Grievant as “Below Standard” in the following subareas:

- 1.5 Develops course description, competencies, prerequisites, content outline, and learning resources.
- 3.2 Adapts instructional style and activities to meet the needs of students.
- 3.3 Shapes student behavior.
- 8.3 Participates in organizations appropriate to profession.
- 8.7 Develops rapport that encourages open and respectful two-way communications with students.
- 10.2 Manages materials and supplies.
- 10.3 Maintains proper safety standards.
- 10.5 Maintains clean and orderly classroom/lab.

Cerritos’ comments as to the Grievant’s performance included negative comments in the following areas:

- 1 Curriculum documentation not up to standard – repetition of information and duplications. Needs corrections on WIDS inf., not meeting timelines as required. Syllabi unclear as to importance of attendance.
- 2 Doesn’t work well collaboratively, plans for modification not well thought out or implemented well. Confusing to students as well as to

others.

- 3 Expectations not clear to students. Too dependent on self-paced outline, work doesn't adequately support students' learning. Students unclear as to expected behavior.
- 4 Lack of consistency in student assignments/students in same classes had different assignments.
  - Feedback to students is perceived as critical.
  - Students reluctant to approach instructor.
- 8 Very little participation on teams.
  - Not perceived by colleagues as "team player".
  - Area of improvement here – poor communication with students.
  - Does what is required.
- 10 Doesn't work with colleagues in ordering materials.
  - Orders materials not related to curriculum.
  - Doesn't wear proper eye wear.
  - Lab disorderly, materials not put away, not taken out of boxes (This has improved since Feb.)

Following the Grievant's performance appraisal, he received the following notice from Cerritos informing him that his salary increment for the next year would be withheld:

To Dean Hoffman  
Machine Tool Technics Instructor, New Richmond

From Nancy Cerritos  
Dean, Instructional Operations, Trade and Technology

Date June 2, 2003

Subject Withholding of Salary Increment

In your recent performance appraisal, your overall performance as an instructor did not meet expectations. A number of corrective measures have been put in

satisfactory level of performance as an instructor. These corrective measures are to be completed along with the other corrective measures already in place for you.

As a result of the difficulties with your professional conduct this contract period, and as a consequence of the less than satisfactory performance evaluation, a salary increment will be withheld for you this next contract period.

The loss of a salary increment is based on your unsatisfactory performance in the last year. You will become eligible for salary increments in future years after completion of the corrective measures and upon evaluations that meets performance expectations in those years.

The Grievant received the above notice from Cerritos on June 12, 2003, when they discussed his performance appraisal. There was no grievance filed in this regard. The Grievant and Cerritos also discussed at this time the duties that needed corrective measures and the corrective measures to be taken. The document summarizing the problem areas (taken from his performance appraisal), the planned corrective measures and the timeline for implementing those measures, was given to the Grievant when they discussed his performance appraisal.

Cerritos testified that during the first semester of the 2003-04 school year, she observed the Grievant in his classroom for 5 to 10 minutes one or two times every two weeks during the 16 weeks, and that while she noticed some improvement at the start as to his interactions with students, it tapered off during the course of the semester. Cerritos also felt that his interacting with other instructors did not improve and lack of collaboration with other Machine Tool instructors did not improve. Cerritos also testified that she held two student focus groups with the Grievant's students which confirmed her observations of the Grievant in the classroom. The Grievant also did not show up on December 19, 2003 for a work day scheduled to plan the next semester.

Findlay stated in his affidavit that the Grievant asked him at the start of the Fall 2003 semester to observe him, and did so on numerous occasions during the semester, but that he (Findlay) was too busy to do so. Findlay stated that he did observe the Grievant in his classroom on February 10, 2004, and that he felt the Grievant had made "a huge improvement" in his communication skills. He felt that the Grievant's need for assistance had moved beyond communication strategies to specific teaching techniques and asked David Hartung, an instructor teaching writing and oral interpersonal communications in the General Education department, to observe the Grievant and continue the process of helping him improve.

Hartung testified that he observed the Grievant in the classroom on February 24 and March 22, 2004. Hartung testified that while students were giving presentations on both occasions, so that he did not observe the Grievant instructing, the students appeared to be very

well coached and the Grievant had a very positive rapport with the students.

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The Grievant testified to the following. He had not involved the Union prior to his suspension in April of 2003, because he felt he and Cerritos would address the problems. As to the corrective actions he was to take following his suspension, Findlay observed him at least three times for at least a half hour each time and he attempted to follow Findlay's suggestions. He met with Cerritos a number of times in the Spring of 2003, but such meetings were not formally scheduled. Cerritos did not ask him to meet with her in the 2003-04 school year. He attended a three-day class and also took a class at the University of Minnesota on communication skills. He developed an action plan which listed specifically what he intended to do and submitted it to Cerritos, but did not receive any feedback from her. According to the Grievant, the largest effort involved reviewing each of the classes and reviewing the mode of delivery, reviewing and reading the syllabi for each, and completing the WIDS information for them. He submitted the syllabi to Cerritos for review. She made changes on some of them, but he otherwise did not receive any feedback on them from her. He observed Dombrock once, but had trouble trying to fit it into his schedule. He conceded he did not let Cerritos know about it. He did read the book Cerritos suggested and found it helpful. He discussed the book with Cerritos. Cerritos did "pop in" on his classes during the 2003-04 school year, but he did not receive any feedback from her.

By letter of February 20, 2004, the Grievant was given preliminary notice that the College's Board of Trustees voted not to renew his teaching contract with the College. The letter stated that the administration had recommended this action be taken for the following reasons:

- Failure to meet the performance expectations of the college
- Failure to respond to directives of your supervisor
- Receipt of adverse complaints and comments by students and staff members

There was subsequently a hearing before the Board in May of 2004 regarding the renewal of the Grievant's teaching contract. By letter of May 17, 2004, the Grievant was notified that his teaching contract would not be renewed for the 2004-05 school year.

A grievance was filed regarding the non-renewal of the Grievant's teaching contract. The grievance was processed through the parties' contractual procedure, and being unable to resolve their dispute, the parties proceeded to arbitration on the matter before the undersigned.

### **POSITIONS OF THE PARTIES**

#### **College**

The College cites arbitral precedent for the proposition that the proper analysis of just

consists of two elements – the misconduct of the employee and the contractually-appropriate discipline. Additionally, some arbitrators have taken the approach that management's decision regarding appropriate disciplinary action should not be set aside unless the action was arbitrary, capricious, discriminatory or excessively severe in terms of all relevant circumstances. The College concludes that based on arbitral precedent, just cause requires that the discipline imposed is reasonable and not excessive, arbitrary or capricious and also a showing that the conduct occurred.

In applying the just cause standard to the case at hand, the College asserts that the Grievant received two written warnings, a suspension, a frozen salary step, and an improvement plan; none of which were grieved.

On October 7, 2002, the Grievant was given a written reprimand from Campus Administrator Timothy Schreiner, for engaging in condescending, negative behavior directed towards a student. Concerns were also expressed with respect to the Grievant leaving his class unattended, as well as remarks made by the Grievant that made students feel uncomfortable and created a negative learning environment. The reprimand directed the Grievant to cease this behavior immediately if he wished to continue to teach at the College, and that further incidents of this nature would result in disciplinary action.

In February of 2003, the Grievant was issued another written warning regarding several incidents of concern to Nancy Cerritos. The first was complaints from students that the Grievant was moving too fast through computer screens and not explaining subject matter appropriately and confirming that the Grievant had left his classroom on at least one occasion for an extended period of time. The second involved the Grievant's conduct with a student where the student contradicted what he had previously told Ms. Cerritos, leading her to believe that the Grievant had intimidated the student into recanting his position regarding the pre-engineering certificate. Cerritos also addressed the additional issue regarding the improper use of College funds on the Grievant's school-issued credit card and that he continued to purchase materials to construct a combat robot after he was specifically told to discontinue the project. Cerritos also detailed numerous interpersonal areas in which the Grievant was deficient, including communicating with other instructors with respect to course curriculum, failing to follow supervisory directives and misrepresenting facts to students. Cerritos also addressed the failure by the Grievant to complete course outcome summaries in the WIDS format. Based on these incidents, the Grievant was placed on a full evaluation cycle for all classes, as well as regular meetings to discuss improvement. He was further directed to attend staff development with respect to interpersonal skills and based on his improper use of College funds, the Grievant was directed to relinquish his credit card. He was specifically advised to comply with these requirements, and that any repeat of this behavior would result in immediate discipline, including but not limited to, suspension. This discipline was not grieved.

In April of 2003, the Grievant was issued a three-day suspension without pay. Cerritos had observed the Grievant instructing students, and had further confirmed her observations by

talking to students through a student focus group. Student comments were consistent with her

observations that the Grievant moved too quickly through computer screens, was not creating a hospitable learning climate, and was not interested in helping students. The Grievant responded in a negative, belittling, and demeaning manner when students had questions or concerns. These concerns were similar to those expressed in previous disciplinary actions. There were additional problems with the quality of course material and his failure to complete the WIDS course summaries. The Grievant was given specific steps to undertake in order to retain his position at the College and was advised that failure to comply with any of these requirements or a repeat of the undesirable behavior would result in additional discipline, up to and including discharge. The suspension also was not grieved.

On May 2, 2003, the Grievant was issued another letter of reprimand for failing to comply with safety measures. The Grievant failed to inform Cerritos of an accident that occurred on the lathe and he was observed not wearing proper eye protection. Again, no grievance was filed over the discipline.

In June of 2003, the Grievant received his performance evaluation from Cerritos for the 2002-03 school year. The performance appraisal highlighted and discussed areas of concern with the Grievant's performance, including curriculum documentation not up to standards and needing correction, not working collaboratively on plans for curriculum modification, not adequately supporting student learning, a lack of consistency between classes and creating an environment in which feedback to students was perceived as critical, causing students to be reluctant to approach him. The evaluation further noted that the Grievant did not participate on departmental teams and was not perceived by colleagues to be a team player. He ordered materials not related to curriculum and did not work with colleagues in ordering materials. Based on this evaluation, Cerritos created an improvement plan for the Grievant and the Grievant was also informed that because of his performance not meeting expectations, his salary increment would be withheld for the subsequent pay period. The Grievant was further reminded of a number of other corrective measures that were put in place to assist him in changing and improving his performance to a satisfactory level.

Cerritos testified that there were no substantive changes in the Grievant's performance in the Fall semester of 2003. The Grievant did not work more collaboratively within the Department. Further, the Grievant did not show up, or provide any excuse for not doing so, for the planned day of work for the Department in December of 2003. With respect to working with a mentor to improve his course instruction, the mentor, Tom Findlay, and the Grievant did not meet during the Fall semester. With respect to interpersonal skills, while the Grievant attended "Facilitating the Future" and initially implemented technical journals, as of December he had not met with Cerritos to follow up on these discussions and requirements, nor had he initiated meetings and he discontinued the use of the technical journal. Regarding relationships with staff, while he joined the Marketing team and attended some meetings, he did not initiate meetings with the other instructor in his department and no meetings were held with that instructor. It was noted in December that the other instructor had a high level of dissatisfaction at the lack of cooperation between instructors.

Cerritos also observed the Grievant in the classroom during the Fall semester of 2003. She estimated that over the course of the semester, she observed the Grievant in class between 16 to 32 times and observed that nothing in his performance changed from prior semesters and that there were no improvements in the areas discussed. In addition to her observations, she also received feedback from students that they were frustrated for the same reasons as in prior semesters. She held a student focus group meeting which indicated the Grievant was unapproachable, the same concerns that had been voiced by students previously. Due to the failure to improve, Cerritos recommended the Grievant's non-renewal, and the Board voted by a majority to not renew his contract for the 2004-2005 school year.

While the Union argues that the Grievant's performance did improve and relies on the fact that Findlay and instructor Hartung observed the Grievant's performance to be satisfactory, both Findlay and Hartung observed the Grievant's performance a total of one to two times, none of which were during the Fall semester of 2003. Moreover, Cerritos' observations were confirmed by student feedback. While the Union will argue that the student complaints are not credible because they are hearsay, those complaints verify the observations made by Cerritos and the Union offered no evidence contrary to these student perceptions for either the Spring or Fall semester of 2003. Thus, Cerritos' observations, as well as the student's comments, must be given credibility. At the very least, the student complaints are not hearsay to the extent they prove that students continued to complain during the Fall semester of 2003.

Conversely, the Grievant's testimony was less than candid. He testified that he did not represent to L.O. any statement related to pre-engineering curriculum or a battle-bot program, but those statements were contradicted by L.O. himself, as well as overheard by Cerritos and fellow instructor Olaf Wick. Wick directly contradicted the Grievant's testimony in this regard. As he is an uninterested witness, his testimony must be given credibility.

The Grievant's contractual rights to employment must be balanced with the College's right to offer a program with adequate instruction. The Grievant was given several opportunities to improve his performance throughout the course of progressive discipline. The College specifically stated his deficient areas repeatedly over the course of at least two school years in his improvement plan, as well as in his performance evaluation, his suspension letter, and the notices of deficiencies. The improvement plan provided a specific course of action for the Grievant and the College invested a substantial amount of time and money to improve his performance. However, the Grievant continually failed to even minimally comply, despite the warnings that his employment was in jeopardy. The College concludes that it has met the just cause standard in the contract that the decision to terminate the Grievant's employment should be upheld.

## Union

The Union notes that the Grievant was employed by the College in 1993 as a Machine Tool instructor and that his supervisor was Gary Moldenhauer, Dean of Instructional Operations until he retired in the Spring of 2002. During the time Moldenhauer was the Grievant's supervisor, the Grievant received performance ratings that met or exceeded standards with the exception of one evaluation during the 1996-97 school year, where he was rated "Below Standard" on three out of the 40 performance tasks, still resulting in a 3.1 rating, equating to "Performance Consistently Meets Expectations Based on Experience and Knowledge of Employee". Moldenhauer's successor, Nancy Cerritos, began in October of 2002 and, by her own testimony, her background and training are in early childhood education and her work experience is as a training manager. The Union asserts that after meeting with the Campus Director to discuss instructors, Cerritos began a process of documenting unsubstantiated statements and sporadic ten minute or less observations of the Grievant, rather than a thorough and comprehensive evaluation. The Union notes the evaluation procedure set forth in Article IV – Working Conditions, Section B, of the parties' Agreement. It asserts that, by her own testimony, Cerritos did not comply with the evaluation procedures contained in the Agreement.

This pattern of not following the evaluation procedures in building a case for discharge continued to April of 2003, when she called for a meeting with the Grievant to provide him with the April 9, 2003 Notice of Suspension. The Notice was minus the section that addresses corrective measures to be taken. The unrefuted testimony of Union President Mark Kearns was that this section was added only when Kearns raised the issue of assistance for improvement of alleged deficiencies. Thus, the establishment of an agreement for corrective action. Kearns testified that the parties were acting in good faith when they jointly developed that portion of the letter that laid out corrective actions expected of the Grievant, and how Cerritos would be involved in the process. He testified that the parties agreed to ask Findlay, a career counselor at the College, to mentor the Grievant and to provide assistance in the area relating to communication skills.

Being unable to be present at the hearing, the parties agreed that Findlay could provide testimony by way of affidavit. Findlay's affidavit clearly establishes that he and the Grievant fulfilled their responsibility with respect to the April 9, 2003 document. It substantiates that the Grievant worked to improve his communication skills, and that in Findlay's observation of February 10, 2004, he found the Grievant to have made huge improvements. The affidavit supports that Findlay and the Grievant went beyond what was required in the improvement document and sought additional assistance from instructor David Hartung from the General Education department. Hartung testified that he observed the Grievant on February 24 and March 2, 2004 for a full class period each of those days. Hartung testified that the Grievant had excellent rapport with his students and that he was impressed with the quality of the effort the Grievant had inspired in his students and saluted him for creating a learning experience that engaged each student fully.

Based on the testimony of the Grievant, Findlay and Hartung, it is clear that the Grievant, with the others' assistance, lived up to his part of the April 9, 2003 agreed-upon improvement plan, while the College and Cerritos did not live up to their part.

The letter of June 2, 2003 from Cerritos to Hoffman states in relevant part: "A number of corrective measures have been put in place to assist you in changing and improving your performance to achieve a satisfactory level of performance as an instructor." The letter closes with "You will become eligible for salary increments in future years after completion of the corrective measures and upon evaluations that meets performance expectations in those years." (Emphasis added). Cerritos agreed to the corrective measures in the April 9, 2003 document and addresses those measures in her letter of June 2, 2003 with a commitment of further evaluation in the 2003-04 academic year, however, Cerritos never performed an evaluation of the Grievant after June, 2003. While Cerritos stated that the main reasons for non-renewal of the Grievant were his classroom interactions and his communication skills, she never found time for a true classroom observation where she would have been able to determine if the efforts of the Grievant, Findlay and Hartung had borne fruit. Rather, Cerritos' actions during the 2003-04 academic year were designed to discharge a ten-year employee. She totally ignored a commitment to evaluate the Grievant's improvements and to provide assistance as required by both the collective bargaining agreement and the April 9, 2003 agreement.

The Union asserts that Cerritos' method of evaluation relies almost in total on student evaluations of the Grievant, and asks that the Arbitrator exclude any and all references to student evaluations from the record and from consideration for the following reasons. Article IV, Section B,1(c), and Article IV, Section Q, paragraph 7 of the Agreement, establish that the parties did not intend to permit the use of student evaluations of an instructor for the purpose of discharge or non-renewal. The clear and unambiguous language, as well as the unrefuted testimony of Union President Kearns, clearly supports the conclusion that student evaluations, whether they are a written questionnaire or student focus group, are not to be used in the evaluation of instructors. Further, the student evaluations, and comments presented at the hearing are hearsay. The Union has no way of knowing how the statements were obtained from the students, what questions were asked or the tone of voice Cerritos used in asking the questions.

Last, the Union questions the testimony of Olaf Wick. The testimony elicited from Wick on cross-examination verified what the Union believed was the underlying reason for the move to non-renew the Grievant. The enrollment in the Machine Tool program has been decreasing and resulted in the layoff of one of the three Machine Tool instructors. With the continuing decrease in enrollment, the probability of another layoff is a reality and the Grievant is senior to Wick. Thus, by contract, Wick would be the one to be laid off. This was not the desire of the College, and thus the move to non-renew the Grievant.

The Union requests that the Arbitrator find that the College did not have just cause to non-renew the Grievant and that he be reinstated to his employment with full back pay and

## DISCUSSION

The parties' Agreement provides that a non-probationary teacher "shall not be . . . non-renewed except for cause." The "cause" or "just cause" standard requires that the employer establish that the employee engaged in conduct in which the employer has a disciplinary interest and that the discipline imposed was appropriate under the relevant circumstances.

In this case, the February 20, 2004 preliminary notice of non-renewal the Grievant received stated his non-renewal was being recommended for (1) failing to meet performance expectations, (2) failing to respond to his supervisor's directives, and (3) for adverse complaints and comments by students and staff. However, as the parties recognize, the Grievant's performance was the primary focus of the College. In that regard, the areas of concern were the Grievant's interaction with students, his instructional delivery, his course descriptions and syllabi, working with other staff, managing materials and supplies, maintaining safety standards and maintaining an orderly lab.

Looking at the Grievant's recent performance, he received a letter from Campus Administrator Schreiner on October 7, 2002, reprimanding him for his negative behavior toward a student in the classroom, for leaving his class while the class was in session, and for making negative remarks to students. On February 14, 2003, Cerritos issued him a letter of deficiency, which she based on, among other things, complaints she received from individual students about his going through computer screens too fast, being out of the classroom, and making negative comments to students. In April, 2003, he was given a three-day unpaid suspension for continued problems in his delivery of instruction, interaction with his students, and his course materials. On May 2, 2003, he received a letter of reprimand for not following safety procedures and not reporting an accident in the lab. In June of 2003, he was given a performance appraisal that noted continued problems in these areas, as well as his failure to work with colleagues and failure to follow safety procedures. As a result of his performance appraisal, his salary increment for the next school year was withheld. It is notable that none of these actions were grieved or otherwise challenged.

While the Union disputes Cerritos' use of the comments from the student focus groups, Cerritos testified that she had observed the Grievant in his classroom during the 2002-03 school year and had personally observed his instructional delivery and his communication with his students. She also testified as to individual complaints she received from students, and both her February 14, 2003 and April 9, 2003 letters reference such complaints, as does Schreiner's October 7, 2002 letter. Unsolicited complaints of individual students, while not dispositive as to whether the problems complained of existed, nevertheless support Cerritos' observations. However, the comments from the student focus groups are more problematic, in that we do not know what questions were put to the students in the Fall semester of 2003, nor how they were phrased. Further, as the Union notes, Cerritos' testimony in this regard is hearsay and we have only Cerritos' interpretation of what the students said. Moreover, soliciting students' verbal comments about an instructor's performance cannot be substantively distinguished from

distinction. Pursuant to that provision, the parties have agreed that “student evaluations” are not to be part of a teacher’s file, and ostensibly, not to be used as a basis for discipline.

Having established that the performance problems existed in the 2002-2003 school year, the question becomes did the Grievant’s performance improve in the 2003-04 school year. The evidence indicates that Findlay observed the Grievant instructing on two occasions in April of 2003 following the suspension, and not again until February 10, 2004. Findlay states that he felt the Grievant had made “a huge improvement” in communication skills, and that his need for assistance had moved beyond that into the area of specific teaching techniques. At Findlay’s and Union Representative Kalin’s request, David Hartung, an instructor in the General Education Department, observed the Grievant on February 24 and March 2, 2004. Hartung drafted a memo to Findlay reporting on what he had observed. Both in his memorandum and in his testimony, Hartung reported that the Grievant had very positive rapport with his students, and he felt the students did an excellent job with their presentations.

Cerritos testified that she observed the Grievant in his classroom once or twice every two weeks for 5-10 minutes each time during the first semester of 2003-04. According to Cerritos, there was some improvement at the start of the semester in the problem areas, but that it did not continue. While Cerritos also testified that she again held student focus groups in 2004 and heard the same concerns and complaints about the Grievant as in the past, as noted previously, those comments cannot be used as a basis of discipline, beyond showing that complaints were received.

Cerritos’ testimony as to the Grievant’s performance in the 2003-04 school year was based upon multiple observations of him while instructing, whereas, Hartung’s testimony was based upon two observations. Further, it is noted that Hartung’s observations of the Grievant were subsequent to the Grievant’s having received the February 20, 2004 preliminary notice of non-renewal. It is also noted that Hartung did not observe the Grievant instructing in the usual sense, as on both occasions the Grievant’s students were making presentations to the class. For these reasons, Hartung’s observations are of limited value in assessing the Grievant’s instructional performance and whether he has improved in the problem areas, e.g., the pace of instruction or answering students’ questions. Findlay’s assessment of the Grievant’s performance was based upon one observation. Findlay’s affidavit as to his observation of the Grievant in 2004 is also somewhat suspect, in that he appears confused about the timing of events. He stated in his affidavit that the Grievant’s improvement process came to a halt when he was suspended in early April of 2004. The only evidence in the record regarding a suspension is the suspension in April of 2003, which was the basis for Findlay being asked to assist the Grievant. For these reasons, Cerritos’ testimony is credited with regard to the Grievant’s performance in the 2003-04 school year.

The Union asserts that Cerritos did not follow the contractual evaluation procedures, arguing she was only interested in building a case against the Grievant and did nothing to assist him in correcting problem areas, while the Grievant and Findlay met their responsibilities and

more with regard to the corrective actions set forth in the April 9, 2003 suspension letter. The parties' Agreement, Article IV, Sec. B, 1, a, sets forth a procedure for the supervisor and the teacher being evaluated to meet and discuss the evaluation. The record indicates Cerritos did meet with the Grievant in June of 2003 to discuss his 2002-03 evaluation. The record also indicates that at that meeting, Cerritos and the Grievant again discussed the corrective actions he was to take pursuant to the April 2003 suspension letter, as well as some additional corrective measures. This would appear to satisfy Article IV, Sec. B, 1, b, which requires the administration "to provide reasonable assistance to allow said teacher a fair and equitable chance to improve possible deficiencies in classroom instruction." Contrary to the Union's assertions, the record indicates that the Grievant did not follow through. Findlay was selected to assist the Grievant following the meeting on his suspension. Findlay observed the Grievant twice in the Spring of 2003, April 16 and 21, and only once in the 2003-04 school year, February 10, 2004. Regardless, Findlay's two observations within a week of each other in the Spring of 2003, and one in February of 2004, just prior to the Grievant's being given preliminary notice of his non-renewal, would not appear to meet what was expected of them. Hartung's two quick observations of the Grievant appear to have been arranged more as a response by the Union to the notice of non-renewal, rather than as part of the corrective process.

The corrective measures he and Cerritos discussed in June of 2003 called for the Grievant to meet weekly with Cerritos to discuss his progress, especially as to interaction with students. According to Cerritos, she had to initiate any meetings they had, and the last such meeting was in early October of 2003. The Grievant testified he was not asked to meet in the 2003-04 school year, however, the corrective measures discussed at his evaluation conference in June of 2003, called for him to set up meetings with Cerritos. The Grievant has to take some responsibility for seeing that the corrective measures laid out for him were being followed. He had, since the Fall of 2002, received three letters of reprimand, a suspension, and a frozen salary increment based upon his performance. That is ample warning that he needed to make sure on his part that he was taking these corrective measures. Instead, he appeared satisfied to leave it to others. Knowing he was supposed to meet weekly with Cerritos, he made no attempt to do so, nor ask her about it. If Findlay was not available, the Grievant could have asked for someone else or asked Cerritos to find someone to continue the mentoring process, but he did not.

The corrective measures discussed by the Grievant and Cerritos at his evaluation conference also required him to set up bi-weekly meetings with his fellow instructor, Olaf Wick, to work on course modifications and coordinate subjects and content being taught in their courses. Wick complained to Cerritos in the 2003-04 school year that this was not occurring and testified that he was very frustrated with the lack of cooperation and collaboration from the Grievant. The Grievant also missed the scheduled work day in December of 2003 set aside to work on the curriculum, and offered no excuse for not attending.

The Union asserts that Wick's complaints and testimony regarding the Grievant are not credible, since he stood to benefit from the Grievant's being non-renewed. The assertion is not persuasive. Wick's testimony was forthright and he appeared genuinely frustrated with the Grievant's lack of communication with him. Further, Wick's complaints echoed many of those made by the Grievant's fellow instructors in 1994. It would appear that, in a number of ways, the Grievant had slipped back into old behaviors that had been problems in the past.

The Union asserts that Cerritos failed to perform an evaluation of the Grievant during the 2003-04 academic year, although she had committed to doing so in her June 2, 2003 notice that his salary increment was being withheld. However, that document clearly refers to the formal evaluation that comes at the end of an academic year, and not more frequent evaluations prior to the end of the 2003-04 academic year. While such evaluations could well be a useful tool, they are not required by the parties' Agreement and were not promised or made a part of the corrective plan for the Grievant in either the April 9, 2003 suspension letter or the June 2, 2003 notice.

In sum, the Grievant had performance problems, both in the classroom and in working cooperatively with the other instructor in his area, that were pointed out to him. He did not challenge the existence of the problems, nor did he grieve the discipline imposed upon him as a result of the problems prior to his non-renewal. While he made some effort to improve in the problem areas, and in fact improved in some, the College has sufficiently established that the Grievant's performance problems continued in the 2003-04 school year to a degree that justified the Board's decision to non-renew his teaching contract. Therefore, it is concluded that the Grievant was non-renewed for just cause.

Based upon the foregoing, the evidence, and the arguments of the parties, the undersigned makes and issues the following

**AWARD**

The grievance is denied.

Dated at Madison, Wisconsin, this 16th day of March, 2005.

David E. Shaw /s/

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David E. Shaw, Arbitrator

DES/gjc

