

STATE OF WISCONSIN

PERSONNEL COMMISSION

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MARY KAYE STYGAR,
 Complainant,
 v.
 Secretary, DEPARTMENT OF
 HEALTH AND SOCIAL SERVICES
 Respondent.

Case Nos. 89-0033-PC-ER
 90-0040-PC-ER
 91-0165-PC-ER
 93-0208-PC-ER
 94-0016-PC-ER

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ORDER

The Commission, after having considered the Proposed Decision and Order and the objections and argument in regard thereto, and after having consulted with the hearing examiner, adopts the Proposed Decision and Order with the following modifications to better reflect the record and to address matters raised by the parties in their objections and arguments with respect to the Proposed Decision and Order:

Finding of Fact 3: In line 4, after the semicolon, it should read "the clients on the first of the two floors of . . . "

Finding of Fact 8: Line 1 should read: "During 1982, complainant had five or six individual sessions with therapist Pam. . . . "

Finding of Fact 14: The date in line 2 should be changed to February 26 , 1988.

Finding of Fact 17 should be changed to read as follows: "The therapy notes from complainant's May 27, 1988, session indicate that she had gotten

feedback from her colleagues at work that she had displayed behavior in team meetings which looked to them like anger and hostility."

Finding of Fact 38: the first sentence on page 11 after the quotation should read as follows: "Complainant showed this 'ticket' to Mr. Hartman who indicated that he presumed it was a joke and he wasn't going to do anything about it. Mr. Hartman was aware at this time that similar messages had been placed on the cars of other NWC employees."

The following sentence should be added as the third sentence in Finding of Fact 43: "Complainant later learned that Darrell Arndt, NWC's Personnel Director, made the appointment."

The last sentence of Finding of Fact 43 should be revised to read as follows: "These notes also indicate that complainant acknowledged during this session that there had always been people at NWC with whom she had not gotten along and that she in general is a person who is difficult to get to know, 'appearing probably distant and feisty.'"

Finding of Fact 54 should be revised to read as follows: "The therapy notes from complainant's April 18, 1990, session refer to complainant's 'need for control' and its relation to her fear of change."

The following sentence should be added at the end of Finding of Fact 57: "Oral feedback was provided to complainant in relation to at least some of these incidents."

The reference in line 6 of Finding of Fact 65 should be changed from "his" to "her."

The date in Finding of Fact 81 should be changed to September 28, 1992.

The following sentence should be added to the end of Finding of Fact 84: "Dr. Rugowski testified that "at least in her [complainant's] perception, there were significant stresses at work."

The following sentence should be added to the end of Finding of Fact 94: "Ms. Chase's suggestion to complainant to sit on a stool while feeding a client was mistakenly characterized as a "directive" in a letter from NWC management to complainant dated January 13, 1994 (See Finding of Fact 129, below).

Line 3 of Finding of Fact 96 before the period should be revised to read as follows: "store should be located in a small area of the Cafe on NWC grounds."

Line 9 of Finding of Fact 127 should be revised to state as follows: "achieving the goals set out in the letter and the JPIP and for the purpose of encouraging dialogue; and that a schedule of. . ."

In regard to allegation e. The allegation as stated by complainant relates to a meeting held in December of 1988 and monitoring of complainant's classroom which began after that date. The hearing examiner, in reaching a conclusion that there was insufficient evidence in the record relating to this allegation, was aware of testimony by complainant as to monitoring of her classroom by QMRPs and her filing of a grievance as a result of this monitoring. However, in this testimony, complainant indicated that monitoring had begun in the fall of 1988 and, as a result, the hearing examiner concluded that the monitoring which was the subject of the allegation was different than that which was the subject of complainant's testimony. If it is concluded that the monitoring in the allegation and that in complainant's testimony are the same, it should be noted that complainant's testimony relates in very general terms that Mr. Hartman directed QMRPs to monitor complainant's classroom; that complainant concluded that the QMRPs were monitoring complainant, not the classroom or the clients; that she filed a grievance about this and that, as the result of the grievance, the monitoring of complainant was "supposedly" stopped by verbal directive of Mr. Hartman. In the context of retaliation, this monitoring occurred, given complainant's timeline, prior to her filing of the internal complaint of sexual harassment in January of 1989. In addition, the record shows that classroom monitoring by QMRPs was part of their routine function and complainant has failed to show with any particularity how the monitoring of her classroom differed from the

monitoring by the QMRPs of the classrooms of the other vocational teachers. Finally, the record shows that there was no objection offered and no testimony excluded which related to the monitoring allegation. Complainant has failed to show retaliation in this regard.

The final sentence of the discussion relating to allegation g. should be deleted.

The second sentence of the discussion relating to allegation i. should be revised to read as follows: "The record shows that the reason offered by respondent for its decision to deny complainant's request for an adjusted work schedule was the belief that these appointments could be scheduled outside of work hours and, as a result, the necessity for NWC to locate a substitute for complainant or **cancel scheduled programming** could be avoided. "

The next to the last sentence of the discussion relating to allegation i. should be revised to read as follows: "In addition, the record does not show that approving this adjusted work schedule for the psychiatrist required NWC to locate a substitute or **cancel scheduled programming.**"

Complainant appears to argue that evidence was not offered in relation to certain allegations presented in the complaints because the allegations were not included within the scope of the Initial Determination. However, allegation j. was specifically referenced and discussed in ¶s 23 and 24 of the ID; allegation m. in ¶s 43, 44, and 45 of the ID; allegation n. in ¶ 50 of the ID; allegation o. in ¶ 52 of the ID; allegation r. in ¶ 35 of the ID; and allegation x. in ¶ 73 of the ID.

In the fourth line of the discussion of allegation p., the language "**retracted the denial and**" should be deleted; and, in the the eleventh line, the language "**rescinding the denial and**" should be deleted. This change renders this discussion consistent with the relevant finding of fact.

In regard to allegation q., the record indicates that complainant testified that, on one occasion, she got conflicting dates from Mr. Arndt in relation to a grievance meeting. Due to the very general nature of this testimony, and to

complainant's failure to relate it to a particular period of time or more specifically to a particular circumstance, the hearing examiner did not relate this testimony to allegation q. As with allegation p., it would make no sense for Mr. Arndt to purposely mislead or confuse complainant in regard to the date or time of the grievance meeting because it was not a meeting that could be avoided.

The final sentence of the discussion relating to allegation u. should be deleted.

To render the discussion relating to allegation v. consistent with Finding of Fact 43, the second sentence in the discussion should be deleted; and the word "Finally" in the third sentence should be replaced with the words "In Addition."

The following sentence should be added to the discussion relating to allegation y.: "In addition, it should be noted here again that the individuals who had been complaining that complainant was not meeting applicable requirements were the QMRPs who were not shown by complainant to have had any reason to retaliate against complainant."

The first clause in the third sentence in the discussion relating to allegation bb. should be revised to read as follows: "The record also shows that complainant was required to sign in at the Education Center, where she had her morning programming duties,".

The third line in the discussion relating to allegation ee. should be revised to read as follows: "her supervisor had proposed changes which complainant and others countered with an. . ."

In regard to allegation ff, complainant points to limitations imposed on Mr. Knight's contact with complainant as evidence supporting this allegation. It should first be noted that allegation ff. refers to a period of time around late July or early August of 1993. However, the evidence to which complainant points, i.e., the testimony of Mr. Knight and C147 in particular, relate to

October of 1992 and to an earlier period of time during Mr. Hartman's supervision of complainant. In addition, the record does not show nor does complainant contend that Mr. Knight or anyone else was told to refrain from contact with complainant but only that Mr. Knight was told to limit his contacts with complainant.

If it is assumed that allegation ff. was intended to refer to limitations placed upon Mr. Knight's contacts with complainant, the following discussion would apply:

Ms. Wittmeier observed that complainant spent a great deal of time in Mr. Knight's office. Ms. Wittmeier counselled Mr. Knight verbally that, since these contacts involved loud laughter, casual conversation, and an open door, she presumed them not to be EAP-related or work-related and, since they were occurring during work time and were disrupting the work place, they should be curtailed. Ms. Wittmeier told Mr. Knight it was not her intent, however, to limit his EAP work. Ms. Sandholm similarly counselled Mr. Knight and advised him it was not her intent to limit his EAP work. Mr. Knight spent twice as much time, including both EAP and social time, with complainant as with any other EAP contact. Although complainant argues that no such limitation or contact was imposed on any other NWC employee, complainant has failed to show that any other NWC employee had contacts of the same nature or extent as complainant did with Mr. Knight, or that NWC did not impose on its other staff the requirement that work time be devoted to work activities.

In regard to allegation jj., the section of the discussion of this allegation beginning with the first complete sentence on the top of page 71 should be deleted and the following substituted:

Complainant also argues that the fact that other staff were permitted to do outside consulting demonstrates pretext. However, one of the two examples cited in the record relates to outside consulting done by staff psychologists who did this consulting on personal time. This option was made available to complainant. The other example relates to consulting done by Jeff Mueller. The record shows, through Mr. Mueller's testimony, that he had done

consulting work outside NWC five (5) times in the previous two (2) years (he provided this testimony on April 4, 1994), and had informed his supervisor when he would not be present to do programming. The record does not show when these five instances occurred (e.g., whether they occurred before or after NWC discontinued using LTEs as programming substitutes and made other changes in policies and procedures as the result of the survey and resulting decertification) or on how many of these occasions programming by Mr. Mueller had been scheduled. The record also shows, through Ms. Sandholm's testimony, that the use of LTEs for programming substitutes was discontinued after July of 1993, that Mr. Mueller had made a request to do consulting outside NWC during this period of time, that this request had not been forwarded to Ms. Sandholm for her approval as required, and that it was not necessary to provide a substitute for Mr. Mueller as a consequence of this instance of outside consulting. The record, viewed as a whole, does not show that the factual circumstances of any of the instances of outside consulting by Mr. Mueller have been shown to be parallel to the factual circumstances associated with the subject request for complainant's consulting services and, as a result, complainant has failed to demonstrate pretext.

In regard to allegation II, the following discussion should be added: Complainant implied in oral argument before the Commission that Mr. Kielley testified that it was inconsistent with the advice he had given for NWC not to have accepted and responded to complainant's written summaries of her understanding of the weekly meetings with Ms. Chase. Although Mr. Kielley had testified that it had been inconsistent with the intent of his advice for NWC not to have permitted complainant to have responded in her monthly meetings with Ms. Sandholm and her supervisor to factual incidents cited in the JPIP, his testimony relating to the weekly meetings with Ms. Chase was to the effect that one of the purposes of the weekly meetings was to make the exchange of information between complainant and her supervisor more efficient since it was not practical to process all the written

information complainant had been submitting; and when asked whether a memo complainant had prepared summarizing her understanding of instructions to limit writings given to her by Ms. Chase at one of these weekly meetings represented progress for complainant, Mr. Kielley responded that, if complainant had acted in accordance with this understanding rather than generating another writing, that would have shown progress. The record does not sustain complainant's argument here.

The following language should be added at the end of the first sentence of the discussion relating to allegation oo.: on January 28, 1994. Although Ms. Chase's original request may have been vague, the record does not support a conclusion that Ms. Chase specifically requested a list of complainant's personal wants and needs and then ignored it or contended it was unsolicited.

The following should be added to the discussion of the direct evidence:

Mr. Knight's testimony is that Mr. Arndt "indicated that Mr. Hartman had acknowledged sexual harassment, that they were going to roll over on this one and probably get even with her on a concentrated PPD." The hearing examiner interpreted the testimony to be that Mr. Arndt was saying that Mr. Hartman had said they would get even with complainant on a concentrated PPD. Complainant interprets the testimony as indicating that Mr. Arndt had made this statement.

If it is assumed that Mr. Arndt made the statement, the focus would shift to Mr. Arndt's role in the process used to evaluate complainant's work performance and to the process in general. The record shows that Mr. Arndt's involvement in the actions relating to the subject allegations consists substantively of the following:

(1) Mr. Arndt was asked to provide information to counsel for respondent (Paul Harris) to enable Mr. Harris to answer one or more of complainant's charges of discrimination/retaliation; and, in order to comply with this request, Mr. Arndt solicited

information from Mr. Hartman, Mr. Jankoski, and others at NWC on or after April 6, 1989. (Finding of Fact 35, above).

(2) Mr. Arndt was consulted in regard to the newsletter incident, he concurred in the conclusion that no further investigation would be conducted, and he communicated this information in writing to complainant (Finding of Fact 36, above).

(3), Mr. Arndt scheduled a psychological appointment for complainant (Finding of Fact 43, above).

(4) Mr. Arndt was present at and summarized in writing the results of a meeting between complainant and NWC management to discuss management's decision not to grant complainant's request to participate in NWC's Management Internship Program (Finding of Fact 55, above).

(5) Mr. Arndt recommended to NWC management that complainant be placed on a concentrated PPD (Finding of Fact 56, above). However, NWC management decided not to follow this recommendation but instead to follow the recommendations of Ms. Stella and Mr. Kielley.

(6) Mr. Arndt answered certain procedural questions relating to the JPIP which had been asked by Mr. Decker on complainant's behalf. (Finding of Fact 134, above).

Several points stand out here: (1) both during and after Mr. Arndt's tenure as Personnel Director, NWC relied upon the advice of Ms. Stella and Mr. Kielley, neither of whom have been shown to have had any reason to retaliate against complainant, to establish the process for evaluating complainant's performance; (2) the record does not show that Mr. Arndt prepared any of complainant's performance evaluations or reported personal observations of problems with complainant's performance which were relied upon in preparing such evaluations; and (3) as noted above, many if not most of the individuals who raised the concerns relating to complainant's performance which were detailed in the performance evaluations have not been shown to have had any reason to retaliate against complainant. Even if it were concluded that Mr. Arndt made such a statement, the record viewed as a whole does not support a conclusion that respondent retaliated

against complainant as alleged in regard to the evaluation of her performance.

The following sentence should be added as the second sentence in the paragraph in the Opinion section which begins at the bottom of page 73: **It should also be noted in this regard that complainant had referred to herself as having a "bitchy and controlling persona." (See Finding of Fact 16, above).**

Complainant asserts that not enough credence has been attributed to the testimony of Mr. Knight, Mr. O'Connor, and Mr. Decker. First of all, it should be noted that much of their testimony was credited. However, their testimony was not relied on to a greater extent because the record does not show that any of the three had a significant opportunity to observe complainant's day-to-day performance of her work duties and responsibilities or her day-to-day interactions with her supervisors, co-workers, or students. In addition, it should be pointed out that none of the three would qualify as disinterested observers, i.e., the record shows that Mr. Knight had extensive social contacts with complainant on the work site, Mr. Decker had served as complainant's union representative, and Mr. O'Connor had an action pending against NWC at the time of his testimony.

Complainant also pointed to respondent's failure to appoint Mr. Knight as her supervisor, and the failure to consult Mr. Knight regarding complainant's problems and how they related to her work performance as evidence of discrimination/retaliation. However, the record shows that Mr. Knight was not a supervisor in complainant's program area, was not in complainant's chain of command, and had never been requested by complainant to be her supervisor. The record also indicates that information communicated as part of an EAP contact is regarded as confidential and, as a result, information relating to complainant's problems acquired by Mr. Knight through his role as her EAP counselor would have not have been available to respondent.

Dated: April 17, 1995 STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson

LRM:lrn


DONALD R. MURPHY, Commissioner

Parties:

Mary Kaye Stygar
934 East Fillmore
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**NOTICE
OF RIGHT OF PARTIES TO PETITION FOR REHEARING AND JUDICIAL REVIEW
OF AN ADVERSE DECISION BY THE PERSONNEL COMMISSION**

Petition for Rehearing. Any person aggrieved by a final order (except an order arising from an arbitration conducted pursuant to §230.44(4)(bm), Wis. Stats.) may, within 20 days after service of the order, file a written petition with the Commission for rehearing. Unless the Commission's order was served personally, service occurred on the date of mailing as set forth in the attached affidavit of mailing. The petition for rehearing must specify the grounds for the relief sought and supporting authorities. Copies shall be served on all parties of record. See §227.49, Wis. Stats., for procedural details regarding petitions for rehearing.

Petition for Judicial Review. Any person aggrieved by a decision is entitled to judicial review thereof. The petition for judicial review must be filed in the appropriate circuit court as provided in §227.53(1)(a)3, Wis. Stats., and a copy of the petition must be served on the Commission pursuant to §227.53(1)(a)1, Wis. Stats. The petition must identify the Wisconsin Personnel Commission as respondent. The petition for judicial review must be served and filed within 30 days after the service of the commission's decision except that if a rehearing is requested, any party desiring judicial review must serve and file a petition for review within 30 days after the service of the Commission's order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. Unless the Commission's decision was served personally, service of the decision occurred on the date of mailing as set forth in the attached affidavit of mailing. Not later than 30 days after the petition has been filed in circuit court, the petitioner must also serve a copy of the petition on all parties who appeared in the proceeding before the Commission (who

are identified immediately above as "parties") or upon the party's attorney of record. See §227.53, Wis. Stats., for procedural details regarding petitions for judicial review.

It is the responsibility of the petitioning party to arrange for the preparation of the necessary legal documents because neither the commission nor its staff may assist in such preparation.

Pursuant to 1993 Wis. Act 16, effective August 12, 1993, there are certain additional procedures which apply if the Commission's decision is rendered in an appeal of a classification-related decision made by the Secretary of the Department of Employment Relations (DER) or delegated by DER to another agency. The additional procedures for such decisions are as follows:

1. If the Commission's decision was issued after a contested case hearing, the Commission has 90 days after receipt of notice that a petition for judicial review has been filed in which to issue written findings of fact and conclusions of law. (§3020, 1993 Wis. Act 16, creating §227.47(2), Wis. Stats.)

2. The record of the hearing or arbitration before the Commission is transcribed at the expense of the party petitioning for judicial review. (§3012, 1993 Wis. Act 16, amending §227.44(8), Wis. Stats. 2/3/95

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MARY KAYE STYGAR, *

Complainant, *

v. *

Secretary, DEPARTMENT OF *

HEALTH AND SOCIAL SERVICES *

Respondent. *

Case Nos. 89-0033-PC-ER *

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PROPOSED
DECISION
AND
ORDER

Nature of the Case

These are complaints of discrimination/retaliation. A hearing was held on April 4-8, 1994, before Laurie R. McCallum, Chairperson. The parties were permitted to file briefs and the briefing schedule was completed on October 21, 1994.

Findings of Fact

1. At all times relevant to this matter, complainant has been employed as a vocational teacher at respondent's Northern Wisconsin Center for the Developmentally Disabled (NWC).
2. Complainant was hired by NWC in 1974, working first as a limited term employee substitute teacher and then as a permanent vocational teacher in the Education Center. Roger Lebeis was the Education Director at NWC at the time complainant was hired and was her supervisor for 1 1/2 to 2 years (from approximately 1976-1977) until the unit system was implemented at NWC and complainant was assigned to a living unit and supervised by a unit director. Mr. Lebeis observed during his supervision of complainant that she would leave her classroom/workshop during programming hours and leave her clients unattended; that she made it very difficult for him to discuss programming with her and their meetings to discuss programming frequently

ended in discord; and that complainant exhibited sudden mood changes, temper tantrums, and angry confrontational behavior. Mr. Lebeis did not observe this behavior on the part of any of the other vocational teachers he supervised.

3. In 1978, complainant was assigned to Cottages 5 and 9 and was responsible for client assessment and vocational teaching. The clients in Cottage 9 were relatively high functioning, i.e., some of them were capable of employment on the grounds of NWC; the clients on the first two floors of Cottage 5 were clients with behavior management problems and those on the upper floor were comparable to those in Cottage 9.

4. In a performance evaluation signed by supervisor Tiller on September 19, 1979, it was stated that:

Mary's excellent teaching approaches are sometimes attenuated by her shortness in discussions with other staff. It is necessary to elicit cooperation from staff at all levels to accomplish a truly successful program for our clients.

5. In a performance evaluation signed by supervisor Janice Giedd on September 17, 1980, it was stated that:

While Mrs. Stygar does have difficulty at times relating to other staff, she does attempt to communicate effectively on behalf of the residents. Her relationship at times with supervision is strained. Her relationships with residents appear to be therapeutic and appropriate.

Complainant filed a written response to this performance evaluation which stated as follows, in pertinent part:

Supervisor admitted that strained relationship is as much her fault. Supervisor has relied a great deal on secondary information when making judgments regarding employee. Strained relationship is caused by supervisor's behavior. For example, supervisor has criticized this employee without sufficient facts in front of aid staff.

Supervisor has admitted discussing employee with other professional staff.

Supervisor and employee have discussed a variety of issues. Supervisor is very defensive and, if a disagreement does arise, supervisor says it is because of poor communication skills and/or misperceived information on the part of employee.

Supervisor claims that employee has "difficulty at times relating to other staff" disregarding employee's total effectiveness with a large percentage of staff.

Clearly, the statement of "strained relationship" is a result of supervisor's own inability to communicate and effectively work with people.

Ms. Giedd observed, during the period of her supervision of complainant, that complainant did not get along with other staff; was not well-liked by her peers although they respected her for what she knew; and was seen by many of her co-workers as a person who could not be trusted, who had her own agenda, and who manipulated others to further her agenda.

6. Beverly Schmidmayr became complainant's supervisor some time in 1981 or 1982. In August or September of 1982, Ms. Schmidmayr reviewed with complainant a written evaluation of complainant's performance over the previous two years. Ms. Schmidmayr gave complainant an opportunity to engage in discussion relating to this written evaluation but complainant limited her oral responses to single words. Complainant later indicated in writing that:

Employee strongly feels supervisor cannot objectively relate to employee and supervisor's thinking and decision-making is colored by emotional overtones, resulting in a very poor evaluation (PPD) and comments by supervisor. This statement is based upon the supervisor's relationship with this employee this past year.

During supervision of complainant, Ms. Schmidmayr was aware that on occasion complainant would leave her work area without notifying anyone and, as a result, Ms. Schmidmayr would go in search of her; was advised by other employees that complainant would make them uncomfortable or ignore them when they were present in her classroom/workshop; was aware that complainant on occasion would visit the restroom at the beginning of programming hours in her workshop, occasionally even immediately after her lunch break, remain in there until the clients were returned to their living units, and not report this to her supervisor until the end of the programming period; observed on occasion that complainant would turn her back to Ms. Schmidmayr when she was speaking to her and on other occasions would face her and stare or glare in a confrontational manner; and observed on occasion that complainant would not respond when someone spoke to her.

During this period of time, a male psychologist and a male social worker indicated to Ms. Schmidmayr that they did not want complainant to be present in their offices under any circumstances. In Ms. Schmidmayr's opinion, complainant was such a difficult employee to supervise that, had complainant been reassigned to her supervision at any time after complainant was transferred from her supervision in or around 1984 or 1985, she would have retired early.

7. During all or part of the time that she was supervised by Ms. Schmidmayr, complainant was assigned to the unit composed of Cottages 3, 6, 8, and 10. The clients in this unit were somewhat lower functioning than those in Cottage 9. Complainant subsequently requested a transfer out of this unit feeling that she had exhausted her resources for programming the clients in this unit and needed a new challenge. In 1985, complainant was transferred to Oak Grove/Brookside and Richard Hartman, the unit supervisor of this unit, became her supervisor. The clients in this unit were somewhat higher functioning than those in the unit composed of Cottages 3, 6, 8, and 10.

8. During 1982, complainant had five or six sessions with therapist Pam Johnson. Complainant sought this therapy to explore the observations made to her by certain co-workers that her tendencies at work to be a perfectionist and to set unreasonably high expectations for herself and others may have been causing the personal problems she was experiencing with other employees at NWC. The co-workers who discussed this with complainant included Larry Werner, Ray Decker, David Bates, John Jelinek, Roger Grilley, and Joel Vettrus.

9. Subsequent to 1985, several changes were initiated which had significant impacts on the structure and program of NWC. These included new federal requirements that a Qualified Mental Retardation Professional (QMRP) be designated to coordinate and oversee the total programming for each client; de-institutionalization of the more skilled clients into community settings resulting in only the less skilled clients remaining at NWC; and the development of active treatment plans for each client which stressed a "normalized" routine resulting in, among other things, vocational and other programming being conducted in locations other than the wards on which clients resided.

10. Sixteen to twenty QMRPs were designated at NWC, i.e., approximately one for every thirty clients, and each functioned under the supervision of a

unit director. The written information to be submitted to the QMRPs by those providing programming to the clients, including vocational teachers, was required to follow a particular format and to include particular information. In addition, the QMRPs were required to closely monitor each program provided to a client.

11. When complainant was first transferred to Mr. Hartman's supervision, their working relationship was relatively smooth and was similar to Mr. Hartman's relationship to the others he supervised.

12. Complainant resisted and disliked the QMRP requirement, and resented the extra layer she felt it imposed between her and her supervisor and the restrictions she felt it imposed on her professional independence.

13. During the summer of 1987, complainant alleged that Mr. Hartman made comments to her which had a sexual innuendo and, in regard to some of these comments, told Mr. Hartman that she felt they were inappropriate and she wanted them to stop.

14. In February of 1988, complainant began receiving psychotherapy services. In her notes of complainant's first session on February 6, 1988, the therapist indicated that complainant was upset about sexual innuendo in certain statements made by her supervisor and about the change in management structure at NWC, i.e., she felt resentful and angry that this new structure changed her access to her supervisor and removed some of her job functions; and the result was that she was "touchy and unpredictable emotionally at work."

15. The therapy notes from complainant's March 17, 1988, session indicate that complainant felt cramped and constrained in her new job, and felt angry because of that; and that complainant didn't like the job because she didn't have the freedom, autonomy, and ability to be creative which she wanted.

16. The therapy notes from complainant's April 1, 1988, session indicate that her old "bitchy and controlling" persona had been coming out at work.

17. The therapy notes from complainant's May 26, 1988, session indicate that she had gotten feedback from her colleagues at work that she had showed anger and hostility in team meetings.

18. In her testimony at hearing, complainant indicated that, in May of 1988, she had discontinued therapy because she felt that it had been

successful; and that her relationship with Hartman was improved at this time and for a short while thereafter.

19. Beginning in August of 1988, and continuing to January of 1989, on six occasions Mr. Hartman called complainant "Mare." On each of these occasions, complainant told Mr. Hartman that her name was Mary Kaye and that she did not want him to call her Mare. Mr. Hartman had frequently used the nickname "Mare" for others he had known named Mary.

20. The therapy notes from complainant's September 14, 1988, session indicate that the situation with her supervisor at work was comfortable now.

21. The therapy notes from complainant's October 26, 1988, session indicate that she could probably trust her supervisor more than she had previously thought.

22. Some time in November of 1988, Mr. Hartman mentioned to complainant that he was aware of her sexual attraction to him.

23. The therapy notes from complainant's November 9, 1988, session indicate that her supervisor had been behaving in his old ways toward her and making her feel uncomfortable.

24. Prior to and subsequent to December of 1988, Mr. Hartman had received complaints from QMRPs, other professional employees, and aides (Resident Care Technicians) that they felt that complainant's clients were not getting the required programming and attention from her and that they felt complainant's approach to other staff was harsh and confrontational.

25. Part of the role of the QMRP was to monitor all client activities, including vocational programming. As a result, the QMRPs were required to monitor the classroom/workshop programming of the vocational teachers. Complainant requested that the QMRPs call her and schedule classroom/workshop monitoring times with her, and imposed her own 10-minute time limitation on such monitoring. None of the other vocational teachers requested monitoring scheduling or time limitations and the QMRPs simply dropped in on their classrooms/workshops.

26. The QMRPs and the vocational teachers, as part of their responsibilities, participated in client staffings which were meetings to discuss the programming for each client. In such staffings, the majority of the time complainant would be openly hostile to questions relating to her programming, would refuse to provide direct answers to questions directed to her, and would not volunteer information. County social workers who were

present at these staffings commented on this unusual behavior by complainant.

27. On January 6, 1989, complainant filed an internal complaint of sexual harassment with Dave Jankoski, the NWC sexual harassment inquirer. This complaint was based on Mr. Hartman's utilization of the word "Mare" when calling complainant by name. Mr. Jankoski contacted Mr. Hartman to discuss the complaint with him. Mr. Jankoski's standard practice was to advise the alleged harasser to refrain from engaging in the behavior which was the subject of the complaint, not to discuss the complaint with anyone else, and not to retaliate against the person filing the complaint. Mr. Hartman, after discussing the complaint with Mr. Jankoski, did discuss the complaint with one or more shift supervisors.

28. Mr. Willkom, NWC Director, also discussed the complaint with Mr. Hartman and told him that, even though he did not agree with complainant that the behavior complained of constituted sexual harassment, Mr. Hartman should cease and desist from engaging in it further. Mr. Hartman was very reluctant to supervise complainant after the filing of this complaint and requested of Mr. Willkom at some thereafter that responsibility for supervising complainant be transferred to a different unit director or different supervisor. Mr. Willkom's policy was to encourage co-workers to resolve such difficulties and not to encourage supervisor-shopping and, as a result, he denied this request.

29. During or after the summer of 1987, complainant requested that Mr. Hartman no longer supervise her. This request was denied. On or around January 31, 1989, Larry Werner, a vocational teacher at NWC, requested a transfer of his supervision from Mr. Hartman to Roger Grilley. At the time, although Mr. Werner was unit-assigned to Oak Grove/Brookside, the clients he programmed at the Education Center came from other units as well. As a result, Mr. Grilley, who supervised the Education Center, had effectively served as Mr. Werner's supervisor since October of 1988. The NWC labor/management council agreed with Mr. Werner's request that his supervision be transferred and Mr. Grilley granted the request.

30. Teri Haugen was employed as a speech and language pathologist at NWC from August of 1985 through September of 1991. During part of this time, she and complainant were assigned to the same unit, i.e., Cottage 5 or Oak Grove, and interacted relatively frequently at client staffings and unit

programming meetings. Ms. Haugen and complainant, during the early part of their employment together, had a good working relationship. Ms. Haugen then went on maternity leave and returned from leave in the early part of 1989. Shortly after her return, Ms. Haugen was contacted by complainant who advised her that problems had developed between complainant and the direct care staff; that, as a result, Mr. Hartman was requiring complainant to sign in and out of the institution; and that she wanted Ms. Haugen not to sign in when she arrived and to then go back, sign in later, and copy the sign-in sheet for complainant after signing in. Ms. Haugen was concerned about this request and discussed it with her union representative Joe Hilmer who advised her not to do it. After Ms. Haugen advised complainant that she did not intend to carry out the action requested by complainant, their relationship changed: complainant would not engage in any personal conversation with Ms. Haugen, complainant would either not make eye contact with Ms. Haugen or she would glare at her, and complainant often would not respond when Ms. Haugen greeted her in the hallway. Ms. Haugen also observed after her return from maternity leave that, in professional meetings, it was often difficult to get a response from complainant and, if she did respond, she would be verbally aggressive or confrontational; that complainant, unlike the other vocational teachers, did not consistently meet her clients at the bus to escort them to her classroom/workshop and did not escort her clients from the classroom/workshop to the bus, leaving that task for other teachers and staff members; and, on one occasion, complainant failed to prepare the required vocational assessment for a client staffing at which NWC staff and community experts from outside NWC were present. Ms. Haugen was not aware that any other vocational teacher had ever failed to complete a vocational assessment for a client staffing. Ms. Haugen reported these difficulties with complainant to Mr. Hartman and, through Vince Maro, Teacher Supervisor, requested and participated in a meeting with NWC management to discuss these difficulties. Ms. Haugen resigned from NWC because, as the result of complainant's actions, her work situation became chronically painful and led to health problems.

31. The therapy notes from complainant's February 15, 1989, session reference the filing of the sexual harassment complaint on January 6, 1989, and indicate that complainant felt that her supervisor was primarily responsible for the difficulties she was having in her interpersonal relationships.

32. Some time after January 6, 1989, complainant was advised by certain QMRPs that they had not received some of her client vocational reports. Complainant concluded from this that they had been removed from her clients' files and devised a system to track her reports. To effect this system, complainant requested from her supervisor a stamp pad and a stamp which would place the word "Duplicate" on a document. She was provided with a stamp pad and Mr. Hartman forwarded her request for a stamp to the NWC purchasing unit. The NWC purchasing unit denied her request for the "Duplicate" stamp. Complainant implemented her system without the stamp and, once her system was implemented, the QMRPs did not report further that they had not received the vocational reports for complainant's clients.

33. Some time after January 6, 1989, complainant requested of Mr. Hartman that she be permitted to purchase materials and supplies for her programming at times during the work day which Mr. Hartman considered "core hours." Mr. Hartman advised complainant that she could not use core hours to perform this function but could use work hours before and after these core hours. Mr. Hartman's practice was to require those under his supervision to be present at NWC during these core hours.

34. Some time after January 6, 1989, complainant requested of Mr. Hartman that she be allowed to work an adjusted work schedule one day every two weeks, i.e., an earlier starting and ending time for this work day. Complainant made this request so that she could schedule medical appointments after her scheduled time on that day was completed. This adjusted work schedule would have required that Mr. Hartman find a substitute teacher for complainant for certain programming duties on that day. Mr. Hartman denied this request based on his opinion that such medical appointments could be scheduled outside of core programming hours and, as a result, locating a substitute would not be necessary. Mr. Hartman did grant an adjusted work schedule to a psychiatrist who had wanted to start his work day earlier in order to observe the waking behaviors of certain clients.

35. On April 6, 1989, complainant filed a charge alleging sex discrimination and Fair Employment Act retaliation with the Commission. Counsel for respondent contacted Mr. Arndt, the NWC Personnel Director, and asked him to provide information to enable respondent to answer the charge. In order to comply with this request, Mr. Arndt solicited information from Mr. Hartman, Mr. Jankoski, and others at NWC.

36. On April 14, 1989, complainant received in her mail slot at NWC a copy of the NWC newsletter *Northern Lights*; and, when she turned to the pages on which the articles which she had authored were printed, she discovered that the words "big fucking deal" had been written there. Complainant reported this to Mr. Hartman and to the personnel unit. Mr. Hartman consulted with Mr. Willkom and Mr. Arndt and they concluded that a thorough and aggressive investigation of the incident could not be accomplished without attracting and focusing a great deal of attention on Ms. Stygar which could lead to further action against her. For this reason, they decided not to conduct such an investigation. This decision was communicated to complainant by Mr. Hartman and Doug Knight, Coordinator of Community and Support Services. In addition, in a memo to complainant dated June 13, 1989, Mr. Arndt stated as follows, in pertinent part:

Regarding the incident involving your articles in the January-March issue of *Northern Lights*, this is to advise that I have completed my investigation. At this time there is no evidence available which would enable management to determine who committed this act.

Mr. Hartman has brought this matter to the attention of the Supervisors.

Complainant filed a grievance relating to this incident. Complainant did not appear at the first step meeting and, as a result, the grievance was denied at the first step. When complainant notified Mr. Hartman that she had not received the meeting notice, Mr. Hartman scheduled another meeting.

37. On May 23, 1989, Mr. Hartman met with the QMRPs to discuss programming matters. The QMRPs brought to Mr. Hartman's attention at this meeting that they felt that certain aspects of the Adult Enrichment Program (AEP) duplicated certain of the programming done on the living units. As a result, a decision was made at this meeting to discontinue these aspects of the AEP. These discontinued aspects of the AEP were program components with which complainant had worked and in regard to which she had provided staff inservice training.

38. On June 27, 1989, complainant discovered that a card resembling a parking ticket had been placed on her car in the Oak Grove parking lot. This card stated as follows:

THIS VEHICLE IS PARKED IN A RESERVED SPACE

The make, model and license number have been recorded. If this improper parking is repeated a second time this vehicle will be towed to the Commercial Iron and Metal Company where the interior will be removed by fire and the auto will be compressed into a scrap cube approximately 1 1/2' x 1 1/2' x 3'. The cube will be shipped (freight collect) to your home for use as a coffee table and to serve as a constant reminder not to park in these reserved parking spaces.

Complainant showed this "ticket" to Mr. Hartman who indicated that he was aware that similar messages had been placed on the cars of other NWC employees and he wasn't going to do anything about it. On June 28, 1989, complainant contacted the Chippewa Falls Police Department and requested that an officer be sent to NWC in regard to the matter. An officer responded and interviewed complainant who agreed that she felt the "ticket" itself was humorous but, based on past incidents of harassment directed against her, she felt that the incident should be documented.

39. As part of the "normalization" effort at NWC, in the fall of 1989, certain vocational teachers who had been doing their client programming on the living units were assigned to do their programming at the Education Center. As a result, complainant's office and classroom/workshop were relocated to the Education Center although she was still unit-assigned to Oak Grove and required to sign in and out there. This was not an uncommon arrangement for vocational teachers at that time and thereafter, although certain of these teachers had only their classrooms/workshops, and not their offices, located at the Education Center. There were some, however, including Amy Randelman who was unit-assigned to Parkview, whose offices and classrooms/workshops were located at the Education Center. The clients which appellant was assigned to program at the Education Center were somewhat lower functioning clients than she had been programming at Oak Grove/Brookside.

40. In anticipation of this change in programming location, NWC conducted a "dry run" on or around August 22, 1989. There was a staff meeting held prior to this date to discuss the procedures to be followed in this "dry run." All relevant staff were advised of this meeting. In a memo to Mr. Hartman dated August 22, 1989, Donna Meyer-Klick, a QMRP, stated as follows, in pertinent part:

I attended the "dry run" at the Education Center to observe and trouble shoot from approximately 10:05-11:05 a.m. today.

* * * * *

. . . I moved into the vocational area down the hall.

Since I found the vocational door locked, I knocked quietly (Mary Kaye had already spotted me through the window). When she came to the door, she bodily blocked my entrance to the room (she opened the door less than a foot and stood in the opening while hanging onto the door) and asked, "What do you want?" I stated I'd come to observe. She made some comment about me having no reason to be there while she continued to block the doorway. I reminded her that I and other people had the right to enter at which point she stepped aside, complained about disruptions and sat down in her chair.

As I sat down in the chair by the door in the back of the room (I needed to take only 2-3 steps into the room), I asked her if she was having any problems at which time she said "yes!" When I asked her if we could talk about them and try to solve them now, she remained silent. I sat quietly observing for about 3 minutes. "Lady & the Tramp" was playing on the TV in front with all clients sitting at tables in the dark, except for Scott B. who was sitting on the floor in the back by my chair. Mary Kaye and Virginia were sitting along the side wall, watching clients/video. I observed 2 or 3 clients turn around to look at me, but they then returned their attention to the video tape. Allen F. was noisy and rose from his seat 2-3 times at which time Mary Kaye would yell, "Sit down!" from her chair. When Scott B. quietly started to pull on my feet, Mary Kaye got up, walked over and asked me to leave. I reminded her that she'd have to expect people to be coming in and out today and any day, but she asked me again to leave, saying "Donna, just leave it alone." At that point, I left to prevent any further escalation on her part.

I returned to the day services area where the lummi stick activity was continuing. I helped out there and then assisted with getting people onto the bus. All staff, except for Mary Kaye, rode back on the bus and assisted with escorting clients into the buildings.

41. On September 29, 1989, about 1:00 p.m., complainant initiated a telephone conversation with Mr. Grilley questioning him about the reassignment of client George P. from her classroom/workshop. During this conversation, Mr. Grilley indicated that he wished to visit complainant's classroom/workshop in regard to this reassignment and they discussed that afternoon or the following Monday as possible times for this visit. Complainant indicated to Mr. Grilley that doing it that afternoon would be difficult for her. At approximately 1:50 p.m., Mr. Grilley arrived at and entered

complainant's classroom/workshop with Betty Latsch, Teacher Supervisor. Complainant asked them to leave several times and, when they did not, she called the "b-team," i.e., the group of NWC staff summoned when another staff member needs assistance with an unruly client. When Mr. Grilley directed complainant to give certain tasks to client George P. so that he could observe him perform them, complainant refused. When the "b-team" arrived, complainant asked them to escort Mr. Grilley and Ms. Latsch from her classroom/workshop which they declined to do. Complainant then left her classroom/workshop and used a pay phone to call the police. Mr. Grilley attempted to obtain information from complainant and to discuss the situation with her as it was proceeding, but complainant refused to talk to him. Complainant received a one-day suspension without pay for this incident.

42. When Ms. Haugen later came to Mr. Hartman to discuss her ongoing problems with complainant and her impression that NWC management was doing nothing to address complainant's actions, Mr. Hartman told Ms. Haugen about the discipline of complainant. When this came to the attention of NWC management, Mr. Hartman was disciplined for disclosing this information.

43. When complainant arrived for her therapy session the afternoon of October 4, 1989, she was advised that someone had set up a psychiatric appointment for her for 9:30 a.m. that day. Complainant had not been advised of this prior to arriving for her therapy session. The notes of her therapy session that day reference the incident of September 29 and that, when the therapist asked her to consider whether it would have been better to attend to her clients and ignore the supervisors, she responded that it may have been the better approach but that she didn't "take well to raw authority." These notes also indicate that complainant acknowledged during this session that there had always been people at NWC with whom she had not gotten along and that she in general is a person who is difficult to get to know because she tends to be distant and feisty.

44. A written evaluation of complainant's work performance for the period of August of 1987 to August of 1988 was prepared by Mr. Hartman and discussed with complainant. This evaluation indicated that complainant had generally met performance expectations. Mr. Hartman did not complete a separate written evaluation of complainant's work performance for 1988-89 but extended the 1987-88 evaluation. This was a practice Mr. Hartman had followed in regard to other employees he supervised. In August or September

of 1989, a written document entitled "EXPECTATIONS--UNTIL NEXT PPD--THIS IS AN EXTENSION OF CURRENT PPD" was prepared by Mr. Hartman and indicated as follows, in pertinent part:

A. Implement Unit V Adult Education Program to meet identified needs

A1. Continue to notify shift supervisors and myself of cancellations

A2. Reduce cancellation rate to 75%. (Method of documentation - cancellation notification and number of possible client sessions.) Management will review additional duties that cause cancellations.

A3. At the beginning of the class, advise shift supervisor when a client is absent without authorization. (Method of verification - periodic reports from shift supervisors.)

A4. Attend only those staffings which relate to residents you are programming.

B. Participate in Unit programs as a member of the Interdisciplinary Team.

B1. Aid in developing a harmonious work environment by communicating with colleagues in a courteous, non-demeaning manner. (Method of verification - periodic contact with staff - written report if they desire.)

B2. Be mindful that the team, during staffings, represents the Center and that the impression generated there is carried back to the community and is a reflection of the type of care the Center offers. (Method of verification - periodic contact with QMRPs, written reports, and feedback from other staff.)

Note: Each incident covered by B1 and B2 will be checked out with you.

C. Feedback, relative to above, will be at least every two months until a new PPD is developed in March of '90.

45. In a written evaluation discussed with complainant on October 10, 1989, Mr. Hartman indicated that each of the items was acceptable except for A3. in regard to which he indicated as follows:

Expectation is that a phone call to the Shift Supervisor will be placed when a client does not appear at the beginning of the class. Attendance slips report absence after the fact and are not acceptable. It was agreed a phone call will be placed followed up by the attendance slip. Once this pattern is in place, this portion of the PPD will be acceptably corrected.

46. Prior to receiving the instructions from Mr. Hartman referenced in Finding 44, above, complainant had insisted on attending staffings for all clients. This had necessitated finding a substitute for complainant when she was scheduled for programming responsibilities at the same time as a staffing. Other staff generally only attended staffings relating to clients they were responsible for programming or staffings for other clients which did not conflict with their programming time. Staffings relate to the programming and other needs of an individual client.

47. On or before October 5, 1989, Mr. Lebeis and Ms. Latsch brought to Mr. Hartman's attention a sign which was posted in complainant's work area in a location where client David was programmed. This sign read "The lab called--your brain is ready." Mr. Lebeis and Ms. Latsch felt that this sign was inappropriate for display in such an area where a developmentally disabled client was programmed and advised Mr. Hartman that they felt it should be removed. Mr. Hartman wrote a memo to complainant directing her to remove the sign from the area immediately. Complainant responded in writing to Mr. Hartman's memo indicating that the sign had been removed and apologizing for its display. Subsequently, complainant notified Mr. Hartman in writing that she had observed the same sign hanging in "Jill's office," inquiring "Am I being treated differently and singled out, again?", and sending a copy of her writing to Barbara Sandholm, Mr. Arndt, Mr. Grilley, Joseph Hilmer, Raymond Decker, and Michael Moore of the Wisconsin Education Association Council. Although this sign was posted in other areas of NWC, none of these was an area where client programming or client care was routinely carried out. Mr. Lebeis was not aware at the time that he brought it to Mr. Hartman's attention that this sign was posted in these other areas.

48. On or before November 6, 1989, certain of the QMRPs under Mr. Hartman's supervision brought to his attention their concern that complainant was not providing required information to them or was not providing such information in the required format. Complainant had previously attended an inservice training session relating to the type and format of the information required to be provided. Mr. Hartman, after receiving this communication from the QMRPs, directed complainant to participate in a one-on-one inservice training session relating to the required type and format of information required to be provided by complainant to the QMRPs. Some time in October of 1989, one or more QMRPs rescheduled and relocated a meeting and failed to advise complainant of these changes.

49. The therapy notes from complainant's November 13, 1989, session indicate that complainant acknowledged things in her personality which made it difficult for her to work in a situation where she has to be under someone's direct authority, and the more that authority is exercised, the more difficult it is for her.

50. On November 15, 1989, complainant attended an emergency session with a psychiatrist who rendered a diagnosis of depression and prescribed anti-depressant medication for complainant.

51. The therapy notes from complainant's November 24, 1989, session indicate that she had been experiencing stress due to the sex harassment allegations that she had made but there were other stressors as well, including being voted out as a union representative, which might have been a factor leading to her emergency psychiatric visit on November 15.

52. The therapy notes from complainant's November 28, 1989, session indicate that complainant discussed her perfectionism and moodiness, that she recognized that she was capable of "cutting people's heads off" verbally, and that she was not always aware when she was doing that. The therapy notes from complainant's December 8, 1989, session indicate that she had decided not to take a leave of absence from NWC in January of 1990; that one of her supervisors was retiring and that other people involved in her situation at NWC had not, during the last three weeks, been doing what they had been doing before.

53. On March 8, 1990, complainant filed a second charge with the Commission (Case No. 90-0040-PC-ER) alleging sex discrimination and Fair

Employment Act (FEA) retaliation on the part of respondent in regard to certain incidents which had occurred since the filing of her first charge.

54. The therapy notes from complainant's April 18, 1990, session refer to complainant's "need for control."

55. Some time prior to May 2, 1990, complainant had requested that NWC management support her participation in the DHSS Management Internship Program. NWC management had not granted this request and complainant asked for a meeting to discuss this action. Barbara Sandholm, NWC Director; Mr. Arndt; Raymond Decker, who was functioning at the meeting as complainant's union representative; and complainant met to discuss this matter on May 2, 1989. Ms. Sandholm cited the following four reasons for management's action:

1. The incident which occurred in the fall of 1989 and for which complainant received a two-day suspension.
2. Relationships with QMRPs, specifically preparation of inadequate OIFs and the necessity of holding a special training session for complainant relating to the completion of these OIFs.
3. Failure to escort clients to and from buses as presented in a complaint by one of complainant's peers.
4. Failure to provide assistance to a peer when a client was displaying very disruptive, uncontrollable behavior as presented in a complaint from this peer.

Mr. Arndt's summary of this meeting also indicated as follows, in pertinent part:

Ms. Sandholm clearly pointed out to Ms. Stygar that Stygar's attitudes and approaches to peers are very intimidating and she conveys to them a very angry, hostile, intimidating posture whenever she deals with peers. Ms. Sandholm went on to praise Ms. Stygar's abilities and pointed out she felt that Ms. Stygar probably did not mean to display the nasty hostility towards peers that she does, but the fact is, she does do it and peers do not want to be around her or work around her much less deal with her personally.

56. In a memo to Ms. Sandholm dated July 23, 1990, Mr. Arndt recommended as follows:

After a great deal of deliberations with the materials, talking with staff, and consulting with Kathy Stella from Bureau of Personnel and Employment Relations, I recommend that we

proceed with a concentrated PPD on Ms. Stygar. Ms. Stygar's PPD anniversary is August 1990 so rather than do the standard PPD I feel that there is enough record established over the past year to support and justify the concentrated PPD. The following is an outline of incidents and problems evident in Ms. Stygar's performance:

1. Classroom Performance

March 19, 1990: Observations of Jill Schultz reveal that there was a lack of client interaction.

July 9, 1990: Observations of Roger Lebeis and Richard Hartman reveal that the employe, during class time, spent considerable amount of time sitting at the desk and used a very directive approach with the clients. There was an obvious lack of client interaction.

2. Failure to Implement Client Programs Identified by the Team:

December 14 to January 11: Lack of responsiveness to the QMRP request on the Lawrence H. case.

February 7, 1990: No appropriate programming provided for Allen F. as recommended and requested by the Team, QMRP, and supervisors.

February 14, 1990: Resistance to taking Doyle B. into her class in the schedule and program identified by the Team. She suggested a totally unreasonable alternative of a time period of 2:00 to 2:30, which is the time period when clients are to be on break.

Speed memo regarding appropriateness of clients in her class: Due to the low class numbers she responded to Mr. Hartman and indicated there were no clients in the unit appropriate for her class.

March 30, 1990: Failure to implement communication objectives in the Barbara M. case. Advised QMRP that she does not give reinforcements.

May 23, 1990: Refused to integrate speech goals and do ongoing programs for clients Leroy N. and J. L.

July 9, 1990: Refused to integrate Dan C. into the class programs which resulted in a written direct order to take this client.

3. Failure to Follow Procedures in Schedules as determined by the Unit and Educational Center Programming:

1. Client absence notification system, as set in the 1989 PPD, not followed consistently. Employe develops her own note systems.

Hartman issued direct order to terminate her independent note system.

2. Refuses to provide the clients breaks as determined by the Team and the schedule.

4. Attendance: January 1, 1990, through June 16, 1990, equals 23 occurrences of sick leave use.

57. In an August 2, 1990, memo to Ms. Stella, Mr. Arndt requested that she review a summary of incidents in which complainant was involved and give him a recommendation as to whether or not a concentrated PPD would be appropriate. These incidents included those cited in Mr. Arndt's July 23, 1990, memo to Ms. Sandholm as well as the following:

March, 1990: Observations by Anne Millkamp regarding Michael S. Lack of client interaction.

April 26, 1990: Observations by Donna Meyer-Klick regarding client Sharon S. No reinforcements given.

July 24, 1990: Observations of Paul Wergedal: lack of client interaction.

February 6, 1990: Refusal to implement any of the identified need areas for client Allen F., stating she had not and will not work on the ATP objectives.

February 28, 1990: At a mini-staffing for Scott B. she advised the Team that this client could not be enrolled in her class and that she had determined that the class size of six clients was the maximum. The unit director had determined that she could have at least eight clients.

March 21, 1990: At a mini-staffing for Tom C., Ms. Stygar stated she could not take him due to overload, when in fact she did not have eight clients in all of her class schedule hours.

March 23, 1990: Refused to cooperate with the Team and complete a new assessment on Cathy W.

April 17, 1990: Refused to provide necessary information as requested by QMRP regarding ODIs.

May 9, 1990: Failure to cooperate with the Team in the annual staffing by refusal to identify vocational needs for Judy K.

58. In a September 24, 1990, memo to Mr. Hartman, Mr. Arndt stated as follows, in pertinent part:

After Kathy Stella received the attached document and reviewed it, she did offer some suggestions. First, she does not really feel this is a strong case for a concentrated PPD. She sees many of the incidents as being work rule violations and areas where disciplinary action could have been taken. She feels, however, with the passage of time, no disciplinary action should be taken until a new incident occurs.

She does suggest one method of dealing with the situation is to proceed with the normal PPDs and discuss some of the topics surrounding the issues attached. She feels that somewhere in the near future, probably during the PPD meeting, Ms. Stygar should be advised that future incidents of neglecting or refusing to participate in the treatment programmings and plans will likely be dealt with as a work rule violation and disciplinary procedures started.

I would recommend that you schedule and hold the annual PPD, which I understand was due in August, and as a result of that PPD, after discussion, set objectives accordingly.

59. In a memo to complainant dated September 21, 1990, three QMRPs, Anne Millkamp, Jill Schultz, and Donna Meyer-Klick, stated as follows, in pertinent part:

We appreciate your desire to inform us of your perspective on vocational services and your stated desire for creative problem solving to occur.

You suggested that we meet on a regular basis with agenda items to "creatively problem solve" and "open lines of communication." Instead, we felt that communication would be enhanced and client needs best met by contacting us as soon as problems arise. Meetings could then be held, as needed, with relevant staff.

Rather than the four of us meeting to discuss the issues raised on 9/19/90 as you suggested, we propose that you provide a Unit 5 inservice to address those issues relevant to the vocational programming you currently provide, including: philosophy, vocational service plans, how clients access the program, and how Unit 5 and NWC vocational services fit into the larger community.

We suggest you discuss the possibility of an inservice with Roger and Dick; if they agree to it, please let us know if we can assist you in the coordination.

60. The therapy notes from complainant's September 27, 1990, session indicate that complainant showed her therapist three memos from QMRPs, including the one quoted in Finding 60, above; that complainant had

interpreted these notes as antagonistic; that complainant was surprised when the therapist offered her opinion that they were not antagonistic; and that the therapist pointed out that complainant's tendency to generalize and lecture to others about what complainant was wanting may have the tendency to establish a power differential which puts other people off.

61. On October 25, 1990, Mr. Hartman met with complainant to conduct a "session on work instruction and expectations" in lieu of a PPD session. At the beginning of this session, Mr. Hartman presented complainant with a memo which stated as follows, in pertinent part:

A. Development and implementation of resident programs

A1. During annual or mini-staffing, you will provide other team members with requested information.

A2. You will respond to requests for information from the QMRPs and other relevant staff in a timely, constructive manner.

A3. Your SOPs will contain complete information and not refer the reader to other unavailable forms (DCTF-4008)

A4. Data will be furnished to the QMRP in the form outlined in the APOC manual

A5. Integrated objectives will become a part of the workshop programming.

A6. Behavior treatment data, your observations of the resident's behavior, and your suggestions relative to a resident's behavior, will be forwarded to the appropriate psychologist in a timely manner.

A7. Team decisions will be carried out in the manner developed by the team.

A8. The RCT assigned to your classroom will be trained and integrated in teaching those residents participating in the pre-skill program.

B. Interaction with other staff and residents.

B1. Your response to queries, telephonically or in person, and in written form will be done in a courteous manner.

B2. The requests you have of other staff will be presented in a courteous manner.

B3. Positive interactions between you and the residents will occur on a personal level as opposed to directives being given from behind the desk.

The above are considered problem areas that need attention. Instances of continued situations, as outlined above, will be met with disciplinary measures of increasing severity up to and including discharge.

62. During the period of time that he served as complainant's supervisor, Mr. Hartman received numerous unsolicited oral and written complaints from complainant's co-workers. It was not Mr. Hartman's practice to show the written complaints to complainant.

63. Complainant filed a grievance in relation to the October 25, 1990, "session on work instruction and expectations" and accompanying memo based on her contention that this procedure was not authorized by the applicable collective bargaining agreement or by DHSS policies and procedures. The grievance was denied but NWC management indicated for information purposes on the written grievance form as follows, in pertinent part:

. . . the grievant will receive a PPD review on an annual or more frequent basis and the Oct. 25th memo from Mr. Hartman will be removed from the personnel file. The Grievant will receive a letter of warning to be filed in a supervisory file. The letter of warning will be given to the Grievant with a union representative present.

64. Some time in late October or early November of 1990, Mr. Lebeis concluded that complainant's work situation at Oak Grove had become dysfunctional and complainant was not carrying out effective active treatment for her Oak Grove clients. As a result, Mr. Lebeis met with complainant and asked her what types of clients she wanted to work with. Based on the description she offered, Mr. Lebeis concluded that these types of clients were assigned to the Parkview unit. Mr. Lebeis raised the possibility of complainant's assignment to the Parkview unit with various Parkview staff members and generally encountered strong resistance and a very negative reaction. As a result, Mr. Lebeis did not consider further the possibility of reassigning complainant to the Parkview unit. When Mr. Lebeis met with complainant and described the reaction he had received from Parkview staff, she had a temper tantrum, left his office, and slammed the door behind her.

65. Some time in November of 1990, it was concluded by NWC management that the plastics recycling program coordinated by one of the vocational teachers had expanded to such an extent that it had grown from a part-time assignment to a full-time assignment for this teacher. As a result, a decision was made to assign this teacher to this recycling program on a full-time basis and to reassign his remaining Hillcrest responsibilities to another vocational teacher. Mr. Hartman and Mr. Lebeis determined that the vocational teacher with the fewest client programming hours each week was complainant and decided that complainant would be assigned half-time to the Education Center and half-time to Hillcrest. The clients at Hillcrest were lower functioning than the clients which complainant had been responsible for programming at any time during her tenure at NWC. Although complainant felt that this assignment to these lower functioning clients did not take advantage of her skills, she also regarded the new assignment as a new challenge.

66. In a memo dated December 12, 1990, Mr. Hartman and Mr. Lebeis wrote as follows, in pertinent part, in relation to complainant's reassignment:

1. Hours to start - January 7, 1991

7:45 - 9:00 Paperwork
9:00 - 10:45 OG/BR Clients
10:45 - 11:45 Paperwork
11:45 - 12:30 Lunch
12:30 - 12:45 Travel to Hillcrest
12:45 - 2:30 Hillcrest Clients
2:30 - 3:00 Staffings, Paperwork, Hillcrest
3:00 - 3:45 Hillcrest Clients
3:45 - 4:30 Paperwork

Flextime Core Hours - 8:30 to 11:45 a.m.; 12:30 to 4:30 p.m.

2. Sign-in -- Education Center Office
Sign-out--Hillcrest Receptionist Office
3. Client Assessments -- A computer program will be purchased in 1991. Mary Kaye Samsa-Stygar will have active treatment assessment responsibilities for the clients she programs.
4. Objectives for this teacher position to occur during 1991.
 - A. Increase client contact hours to the NWC Vocational/Adult Education teachers average of 5-1/2 hours.

B. Increase client caseload to 35 to 40 clients.

67. The therapy notes from complainant's February 22, 1991, session indicate that complainant was "surprised that the harassment from the administration has not started up again;" and that she acknowledged that she was extremely sensitive to what people do. The therapy notes from complainant's May 8, 1991, session indicate that her employment situation was actually improving even though her building was closing and she would be reassigned to a new location; she had been hassled less and had become involved in some projects which she found quite meaningful.

68. Judy Wittmier became the Director of Client Services for NWC in May of 1991. In this position, Ms. Wittmier supervised Mr. Lebeis, Mr. Knight, and the unit directors. When Ms. Wittmier first arrived at NWC, the NWC administration was seriously considering implementing "scenarios" programming. A scenario is a type of script which enables different staff members to always use the same words or techniques in teaching a developmentally disabled client to perform a particular task. Complainant had been involved in researching the scenarios concept; conducting, on one occasion, a portion of a scenarios training session for NWC staff; and training staff on her unit in the utilization of scenarios. Some time after complainant conducted the portion of the scenarios training session for NWC staff, she came to Ms. Wittmier's office, stated that she would not do further scenarios training for these sessions because there was no support from NWC administration, stated in a loud voice, "I'm just not going to do it," and quickly turned her back to Ms. Wittmier and walked away. Ms. Wittmier spent time reviewing scenarios programming and discussing it with Dr. Saunders who had considerable expertise in this area. However, once Ms. Wittmier began to develop a scenarios plan for NWC, NWC faced another downsizing and she concluded, given the staffing situation being faced as the result of this downsizing, that it would not be possible to implement a scenarios program institution-wide. Complainant disagreed with this decision and felt that a scenarios program could be successful at NWC with an 8:1 client:staff ratio.

69. During her employment at NWC from May of 1991 through January of 1994, Ms. Wittmier observed that complainant exhibited wide mood swings which changed not only from day to day but minute to minute. Ms. Wittmier observed that it was not unusual for complainant to refuse to talk to her when

Ms. Wittmier would greet her or talk to her, or to snap at Ms. Wittmier when Ms. Wittmier would talk to her. When Ms. Wittmier first came to NWC, she had learned complainant's name before being introduced to her and greeted her one morning by saying, "Good morning, Mary Kaye." Complainant responded by turning and stating to Ms. Wittmier in a harsh tone, "How did you know my name?"

70. As part of the normalization effort, NWC management decided to discontinue the physical education program some time in 1991. At or around this same time, a vocational teacher position at Oak Grove/Brookside was to be filled. NWC management proposed at a labor/management meeting on August 26, 1991, that the Oak Grove/Brookside position be opened for transfer and Joe Hilmer, a physical education teacher, be allowed to apply. The union representatives present at this meeting were asked to provide input on or before September 3. Mr. Hilmer was present at the meeting as a representative of labor and indicated that, on a personal level, he preferred that the position be filled through a management reassignment. This position was ultimately filled through the management reassignment of Mr. Hilmer to the position some time in November of 1991.

71. The therapy notes of complainant's September 5, 1991, session indicate that she was being transferred to another unit; that she felt that her talents and experience did not fit with these clients who had a developmental level of approximately 1 year; and that she was angry about the transfer because it required a lot more direct client care than she liked to do. The therapy notes of complainant's September 24, 1991, session indicated that "In her other interactions . . . she continues to try to avoid having an opinion or making a decision about anything since those are the things issues can be made of. She does find it very difficult to go to staffings with that kind of perspective and with her survival strategy of not investing herself in her clients."

72. The therapy notes of complainant's October 9, 1991, session indicated that things were going well for complainant and that her depression symptoms had lessened greatly.

73. On November 11, 1991, complainant filed a third charge (Case No. 91-0165-PC-ER) with the Commission alleging sex discrimination and FEA retaliation in regard to certain incidents which had occurred in 1991. The

issues noticed for hearing included within their scope only the following in regard to these incidents:

Issue 1. Whether complainant was discriminated against by respondent on the basis of sex in regard to the assignment of certain duties to Joe Hilmer (see incident #31 on page 35 of the Initial Determination) as alleged in Case No. 91-0165-PC-ER; . . .

Issue 2. Whether complainant was retaliated against for fair employment activities . . . as alleged in regard to her transfer to the Hillcrest location (see incident #26 on page 34 of the Initial Determination) in Case No. 91-0165-PC-ER.

74. Complainant's first-line supervisor became Ms. Sandholm, NWC Director, in May of 1991. Complainant was the only teacher being supervised by Ms. Sandholm at this time. Ms. Sandholm made the decision to supervise complainant because she felt that their working relationship had generally been positive, and because no other NWC supervisor wanted to assume this function. In the fall of 1991, the Hillcrest unit was closed and complainant was assigned to the Highview 1 unit. While assigned to Highview, complainant conceived and implemented a vocational program known as the "Buddy Biscuit" program. This program entailed the preparation, baking, and packaging of gourmet dog biscuits by Highview clients. Complainant located markets for and coordinated the sale of this product.

75. The therapy notes from complainant's sessions during the period of time from November 15, 1991 through April 7, of 1992, generally indicate that things were going well and complainant's symptoms of depression had lessened.

76. The notes of complainant's psychiatrist, James Rugowski, from a meeting that he had with complainant on April 14, 1992, indicate that complainant had lost confidence in her therapist Sandra Hansen because complainant felt that Ms. Hansen had failed to deal with the transference issue relating to complainant's relationship with Mr. Knight.

77. The therapy notes from complainant's April 15, 1992, session with her new therapist Kris Ruckman indicate that complainant described a current work relationship which was distressing to her, that this co-worker was significant in her life, and that she was having problems dealing with his upcoming retirement.

78. In a PPD report signed on June 18, 1992, Ms. Sandholm indicated that complainant's performance for the past year had met performance expectations.

79. The therapy notes from complainant's June 18, 1992, session indicate that the discussion centered on complainant's intensely dependent relationships with men which affected adversely her feelings of self-worth.

80. The therapy notes from complainant's September 16, 1992, session indicate that "at work she is volunteering to be involved in some committee work and projects feeling that she has to take the initiative in this respect."

81. The therapy notes from complainant's September 8, 1992, session indicate that she was feeling bored at work which led to her feeling bored, depressed, and tense; and that she was concerned about Doug Knight's retirement and had begun to detach herself from him further by not contacting him more than two times each week versus twice a day as she had done previously.

82. The therapy notes from complainant's December 8, 1992, session indicate that she was feeling stress as the result of her daughter's heart problems.

83. The therapy notes from complainant's February 3, 1993, session indicate that she continued to struggle with fatigue, tearfulness, hopelessness, and the ongoing boredom she felt at work.

84. Over the period of complainant's therapy since the filing of her first charge with the Commission, the notes refer frequently to the stress complainant was experiencing as the result of the investigation and litigation of her charges.

85. The therapy notes from complainant's March 25, 1993, session indicate that she continued to experience boredom at work and was considering the possibility of offering her assets to her immediate supervisor.

86. In March of 1993, the Division of Health completed a survey of NWC and the resulting report listed a number of deficiencies. A plan of correction was imposed and, when the plan was not completed by NWC within the allotted 4-6 days, NWC was placed on decertification and had 60 days to complete implementation of the plan of correction. Preparing for the survey, participating in the survey, and implementing the plan of correction was the top priority and an unusually time-consuming effort for top NWC administrators for much of 1993.

87. Complainant met with Ms. Sandholm on April 1, 1993, at complainant's request. Complainant presented to Ms. Sandholm at this meeting a document detailing her boredom with her work assignments, her very low level of job satisfaction, and her feeling that her education and abilities were not being fully utilized, as well as a listing of the following "possible solutions:"

- * community-referenced programming relative to vocational services
- * develop a program for social/vocational survival skills for clients meeting the criteria of placement
- * trouble-shooting in the area of vocational programs
- * working with RCT's as they become implementors in active treatment vocational programs
- * assist units/department, on an as needed basis, to develop and implement new programs strategies, when an extra person is needed, short term
- * pursue the retail store for client's projects/products
- * in the event of down-sizing, work in some capacity, in a transitional unit, if one is developed

Complainant suggested at this meeting that Buddy Biscuit production be transferred to the Highview units. This was consistent with the NWC goal of having vocational staff develop programs for implementation by the units.

88. Complainant's typewritten notes from the meeting, which she provided to Ms. Sandholm in memo form, indicate that complainant and Ms. Sandholm discussed complainant's concerns in some detail. This memo also indicated as follows, in the final paragraphs:

You told me you would take this conversation seriously. You said you wanted to discuss these issues further with Jill and Judy. However, you were pressed for time this week because of other constraints on your time.

Our discussion concluded with me stating that the bottom line was that I am very bored. This was my attempt to inform you of the problem. If indeed you elect to not act on my stated problem, I would continue to carry on my current assigned duties.

89. As a result of this meeting, Ms. Sandholm discussed complainant's assignments with Ms. Chase and they developed a proposal to switch complainant's assignments with those of Diane Clouch. This was proposed to complainant at her June 24, 1993, PPD session (See Finding of Fact 97, below).

90. The therapy notes from complainant's April 27, 1993, session indicate that she was trying to become more involved at work by volunteering to serve on some committees; that she told her supervisor that she was bored; that, in response to this, she got some additional assignments although she did not feel that her employer was using her abilities or training.

91. Some time in April of 1993, complainant was appointed to a six-member committee formed to find a feasible location for a store to be established to market products made by NWC clients.

92. On or around May 17, 1993, responsibility for the production of the Buddy Biscuits was transferred to the staff of the Highview 1 unit, and complainant's remaining responsibilities in relation to this program were to coordinate overall production, market the product, coordinate sales, order supplies, train unit staff, set active treatment goals, and monitor accomplishment of goals. Ms. Sandholm, in realigning responsibilities for the Buddy Biscuit program in this manner, anticipated that each day of the week, one of the Highview 1 wards would be responsible for Buddy Biscuit production, and complainant would be present on the ward when such production was being carried out.

93. One of the deficiencies cited in the Division of Health survey (See Finding of Fact 86, above), was NWC's failure to provide adequate supervision and staffing during meals. As a result, staff who were assigned feeding duties, including most of the vocational teachers, both male and female, were provided feedback on the performance of their feeding duties and additional inservice training was provided.

94. Some time in May of 1993, complainant was feeding clients and was observed by Jill Chase, a Highview unit director. Ms. Chase observed complainant standing while feeding a client and suggested she sit on a stool rather than stand. At a subsequent inservice training session on client feeding, the presenter, Vince Maro, was asked whether it was necessary or required for a staff person to sit on a stool while feeding a client. Mr. Maro explained that it was not necessary or required that a staff person sit on a stool while feeding a client but cautioned against standing over the top of a client or outside their field of vision while feeding them. Ms. Chase never ordered complainant to sit on a stool while feeding clients.

95. On May 24, 1993, a one-hour meeting was held at which Mr. Decker, as a union representative for complainant; Ms. Sandholm; Ms. Chase; and

complainant were present. The purpose of the meeting was to discuss how the changes in the Buddy Biscuit program were progressing. Complainant prepared a memo to Ms. Sandholm summarizing the discussion at the meeting which stated as follows, in pertinent part:

. . . I told you I would be training the morning shift for the next couple of weeks so I made sure everyone had a chance to go through the entire process, start to finish.

* * * * *

Discussion centered around my providing work activities for a client on second floor of Highview. I indicated I had some possible tasks that the client could perform. I had worked with the client in the past and knew some of her skills. You and Jill both indicated you saw no problem with me working with the staff and client on work tasks. In fact, you welcomed it and said you appreciated any help I could offer. I would work out the details and try to get a task started as soon as possible.

Jill questioned the use of my time on Fridays. It was discussed and you told me to resume programming as previously scheduled on Fridays only.

Then discussion centered around expanding the time staff would be making the Buddy Biscuits on the ward. I indicated I was still in the training stage of the process but would suggest to the staff ways of expanding the project. I felt the staff needed to become better acquainted with the project and fit it into their daily routine over a period of time. I also pointed out that clients are not available for programming in the early afternoon due to their need to be repositioned. Additionally, my lunch hour extends to 1:15 p.m. This allows for little time to program the clients until the second shift has been on duty for about one and a half hours.

* * * * *

The use of my time in the afternoon was questioned. I said that I didn't know what I would be doing in the afternoon and that I was waiting for direction. You suggested I would have time for working with the client from second floor.

96. On or around June 3, 1993, the committee formed to find a feasible location for the store which would market clients' products decided that the store should be located on NWC grounds. This decision was based on the feeling that the types of clients leaving NWC due to downsizing and community placements were the types of clients who would have been producing products for the store, and that the absence of or small remaining number of these

types of clients would make it difficult if not impossible to staff such a store or to produce enough products to maintain such a store. Complainant was of the opinion that the store should be located off NWC grounds in the nearby community and had made community contacts and done research in regard to such facilities in other communities. When complainant learned of the committee's decision, she resigned from the committee.

97. The PPD report which complainant signed on June 24, 1993, indicated that complainant's performance for the past year had met performance expectations. During her meeting with Ms. Sandholm to discuss this report, complainant indicated that her assignments were not keeping her busy. Ms. Sandholm was surprised to hear this because she was under the impression that complainant's oversight responsibilities for the Buddy Biscuit program which required her presence on each Highview 1 ward during Buddy Biscuit production, in addition to her Friday programming duties, her feeding duties, and her programming duties relating to certain special clients should keep complainant busy. Ms. Sandholm proposed that complainant's assignments be switched with those of Diane Clouch. As an alternative, complainant and certain other vocational teachers subsequently put together a proposal relating to the assignment of vocational teaching duties which the administration considered and, with negotiated modifications, approved on or around August 9, 1993. The resulting plan called for complainant to be responsible for clients on Highview 1 and Wards A and B of Highview 2.

98. In a July 12, 1993, memo to certain NWC supervisory staff, complainant stated as follows, in pertinent part:

I sense there are many tasks, projects and innovative ideas which could be put into action if only there were staff who would or could expend the time and energy to get involved. I'm sure each of you could think of several areas in your units or departments in which you could use an extra hand, be it with clients or special projects, specifically, short-term projects, one-to-one client training, inservice, etc.

I would like to be of assistance to you in facilitating the enhancement of some purposeful aspect of your unit or department goals. Please give this some thought and consideration. If you have a need in your unit or department that would benefit the clients and Northern Center as a whole, but have no one to assist you with your goals, please contact my immediate supervisor, Barb Sandholm, and discuss it with her.

99. When Ms. Sandholm became aware of this memo, she issued a memo to the same supervisors on July 13, 1993, stating as follows:

Please disregard the above named memo. If any such service is to be offered in the future, you would receive a memo from me indicating such.

100. The therapy notes from complainant's July 14, 1993, session indicate that she had told her supervisor that she was bored and, as a result, had been given some increased staff training assignments which went well; that, since that time, she had proposed some projects which were rejected and she had spent much time doing nothing; that, at the same time, NWC was placed in a status which could possibly lead to loss of their certification and NWC staff was preoccupied with those issues; and that, now that the certification issues appear to have been resolved, "Mary feels staff members will be able to refocus some attention on her and her situation."

101. In a July 27, 1993, memo to Ms. Sandholm, Ms. Chase, and Ms. Wittmier, complainant stated as follows, in pertinent part:

* * * * *

The events since April 1 are of concern to me.

1. I have developed a program over the past 20 months-- only to have it completely stripped from me.
2. I have asked for direction and received none.
3. I have indicated my commitment to the majority of clients on Highview 1, only to be directed to move somewhere else.
4. I have asked for additional work assignments and been denied.
5. I have sent memos only to have them retracted by management.

The concerns I expressed April 1 are even more significant as of this time. Lack of direction continues, and my efforts to give help have been "headed off at the pass." Therefore, after giving this considerable thought, and because I feel a deep ethical and professional responsibility, I feel it is only appropriate that I use my time more effectively and wisely. I have consulted with the QMRP and committed myself to developing a vocational program for some Highview 1 clients. On 7/28/93 the program will commence, subject to any guidance you may provide. However,

until my duties are clarified, I feel my skills must be put to some use to benefit our clients.

102. On August 5, 1993, during a program planning meeting at which Ms. Sandholm, certain vocational teachers, complainant, and Ms. Chase were present, Ms. Chase mentioned to the group that it was very hard to plan when complainant was away from NWC frequently due to sick leave. Ms. Chase had mentioned several times previously to Ms. Sandholm that she was concerned about complainant's time away from her unit, especially during programming time. Ms. Sandholm told Ms. Chase after the August 5 meeting that it had been inappropriate for Ms. Chase to mention complainant's use of sick leave in a meeting with other employees present.

103. After the August 5 meeting, complainant had discussed with Ms. Sandholm her concern about Ms. Chase's remark at the meeting about her absences. Ms. Sandholm told complainant that she intended to transfer complainant's supervision to Ms. Chase and that, until that was accomplished, she should report to Ms. Chase in Ms. Sandholm's absence.

104. On August 9, 1993, Ms. Sandholm observed complainant standing near a fire door which had been propped open with a sand jug. There were two other staff members present. Ms. Sandholm, in the presence of these other staff members, reminded complainant that it was a violation of the fire code to prop open a door with a sand jug. Complainant had not propped the door open with the sand jug on this occasion although Ms. Sandholm had counseled her when she had done this on a previous occasion.

105. Complainant wrote a lengthy memo to Ms. Sandholm dated August 10, 1993, expressing her concern about being singled out in relation to the incidents of August 5 and August 9.

106. On August 18, 1993, Ms. Sandholm held a meeting with the relevant QMRPs and with Ms. Chase to discuss the programming schedule for the clients programmed by complainant. Ms. Sandholm had previously received complainant's input in this regard. Complainant was not invited to attend the August 18 meeting.

107. The case notes prepared by therapist Ruckman on August 18, 1993, indicate that she had not seen complainant for more than 90 days, that she was dropping her from her active case load, and that complainant would be followed by Dr. Rugowski for medication management purposes.

108. In a letter to Ms. Sandholm dated August 30, 1993, Nancy Jelinek, Family/Consumer Education Teacher, DeLong Middle School, Eau Claire, stated as follows, in pertinent part:

I would be appreciative if you would grant Mary Kay Stygar time to consult with staff at DeLong Middle School in Eau Claire. At this time we are developing curriculum for our CD-severe students in the Family and Consumer Ed. area. There are two classes meeting on a Day 1, Day 2 basis at 10:20-11:05 each day.

Mary Kay has assisted the Eau Claire School District in the past and has been most helpful in her recommendations.

109. Ms. Sandholm telephoned Ms. Jelinek and advised her that she would not be granting state time for this purpose but had no objection to complainant taking personal time to provide the requested services; and that she was not granting the request because she was concerned about interrupting scheduled programming time. It was common for other NWC professional staff, such as the staff psychologists, to provide outside consulting services on their personal time.

110. Due to staffing changes necessitated by the plan of correction, NWC had to reduce or eliminate LTE staffing. LTEs had been used to substitute for professional staff such as complainant when they were not available to conduct scheduled programming.

111. NWC staff member Jeff Mueller, during this period of time, had done outside consulting on state time. However, he had not requested approval from Ms. Sandholm as required, and it had not been necessary to find a substitute for him while he was outside NWC providing these consulting services.

112. Complainant wrote a lengthy memo to Ms. Sandholm dated August 31, 1993, taking issue with the fact that she was not included in the meeting of August 18, 1993; pointing out problems she perceived with the schedule established at this meeting; and "requesting, through the QMRPs, another meeting with you be set up with me and the RCTs included, where we, as a team, can discuss many of the above mentioned issues and hopefully come to some resolve around the issues of programming."

113. Complainant wrote a lengthy memo to Ms. Sandholm dated September 2, 1993, taking issue with Ms. Sandholm's decision not to grant Ms. Jelinek's request for complainant's services.

114. The therapy notes from complainant's September 8, 1993, session indicate that others at work were starting to be more critical of her and she now was given a project of managing some behavioral programs but felt that she had been undermined so she was considering asking to be relieved of the position.

115. In response to complainant's request in her memo to Ms. Sandholm of August 31, 1993 (See Finding of Fact 112, above), Ms. Sandholm scheduled a meeting to include the QMRPs and complainant to discuss the programming schedule for complainant's clients. This meeting occurred on September 9, 1993. When the rationale for not including complainant in the previous meeting was offered, she refused to accept it and accused the others present of not treating her like part of the team. Bob Mitchell, a QMRP, stated to complainant that she was not a team player. Complainant stated several times that she could not trust the others present. Complainant then asked Ms. Sandholm to be reassigned and Ms. Sandholm indicated that this was not possible because there were no vacant positions at that time. Complainant became very angry, would not respond to questions, and angrily left the meeting while it was still going on. It was the standard practice at NWC for the management team, i.e., unit directors and QMRPs, to meet first to make program decisions and to schedule a subsequent meeting with those who would be implementing the program such as vocational teachers, Resident Care Supervisors, etc.

116. In a memo to complainant dated September 10, 1993, Ms. Sandholm stated as follows:

This is to clarify my expectations as follow-up of our meeting held on 9/9/93. My expectations are that you will continue the programming on Highview 1 and 2, and you are expected to work cooperatively with all disciplines, supervisory staff and direct care staff.

117. In a memo to Ms. Sandholm dated September 10, 1993, complainant stated as follows, in pertinent part:

Your expectations as a follow-up to the meeting held on 9/9/93 are not totally clear. It is not clear to me if these same expectations are being expected of Bob Mitchell, Barb Paterick and Jill Chase, as well. If the expectations are the same, please indicate so by providing me with a copy of the memo(s) sent to them. If a "work cooperatively" correspondence has not been

delivered to them, please indicate the reasons. Am I being singled out again?

Since "work cooperatively" is not a measurable expectation, I need to know what the criteria is for me to meet this expectation. Additionally, I need to know who will determine I have met or have not met the criteria.

Response requested.

118. In a memo to complainant dated September 13, 1993, Ms. Sandholm stated as follows:

Memos sent to supervisors and your peers giving direction would only be shared with that person's supervisor.

As far as working cooperatively, I expect the following:

1. Programming conducted according to your schedule unless authorized otherwise.
2. Consultation with the QMRPs if there is a problem with the programming as scheduled, because they are responsible for program oversight.
3. Quarterly reports submitted to the QMRPs in the format required by policy.

As your supervisor, I will determine whether or not you have met the criteria.

119. The therapy notes from complainant's September 30, 1993, session indicate that complainant had made decisions on her own and presented them to the team, outlining her dissatisfaction and making proposals for change; and that her proposals had met with the usual lack of resolution.

120. In a memo to Ms. Sandholm dated October 29, 1993, complainant stated as follows, in pertinent part;

Within the past two weeks I have been unable to attend four mini-staffings and one other meeting, for which I am a committee member, because of your expectation that all my attendance at meetings needs your written consent. I send you the necessary information as soon as I receive it. I have either not received a response from you or I have received the response after the meeting has been held. In one case, I attended a meeting without your written consent, risking insubordination.

I have a responsibility to my fellow team members, the clients, staff and committee members because of my role as a team member, a provider of services, and the professional expertise I have to offer.

When I do not receive authorization from you in a timely manner, it impedes my ability to function in a professional manner. I am very uncomfortable communicating to my fellow colleagues the message you have instructed me to deliver to them when I am questioned as to why I am unable to attend certain meetings. That message is "Tell them your supervisor said so."

I can not continue to function in my professional duties when I receive inconsistent responses from you. I am unable to plan my day or make appropriate responses to the people who count on me. I cannot be an effective member of a committee if I am unsure of my ability to be in attendance.

Perhaps you have another way of dealing with this situation so I am able to carry out my professional responsibilities. I need further clarification.

121. Ms. Sandholm answered this memo in a memo to complainant dated November 2, 1993, which stated as follows, in pertinent part:

On October 15, 1993, I sent you a memo informing you that I would be away from the Center beginning Monday, October 18, 1993, through Wednesday, October 27, 1993, and asked you to contact Jill Chase if you had questions/problems during that time. I understand that subsequently Jill was gone from the Center Monday through Wednesday, October 18-20. She informed me that she sent a memo to her staff, including you, that Pat Anderson was in charge during her absence. Two of your requests that were sent to me on October 19 and 20 should have been directed to Pat Anderson who was acting as Unit Director.

The only request to attend something that you may not have had a timely response was one on Audrey L. that was sent on October 28, which I did not return to you until the a.m. of the 29th. Since I had been gone eight working days, I did not get to all of my mail until the end of the day on the 29th.

If a situation arises where you have not gotten a response from me and the time is due for the meeting, I would appreciate a telephone call from you or you can go directly to Jill and ask her.

122. Complainant responded to this memo on November 2, 1993, as follows:

1. Questions/problems are not the same as "authorization."
2. You instructed me to contact Jill if I had questions/problems. I did not have a question or a problem. You gave me no further instruction. It was unclear what I was to do next.

3. It was not and still is not clear who should have sent what to whom.

4. Four working days prior to your October 18 vacation day, I sent you a request for authorization to attend a committee meeting. You did not respond. Both you and Jill were gone October 19, the date of the meeting. It remains unclear who I was to contact. You were given ample time to respond. Instead, you ignored my request. This places me in a difficult situation. It reflects back on you and your management style.

5. I send you meeting requests immediately after I receive them, even if I must make extra trips to the copy machine. I sent you Audry L. mini-staffing notice in a timely manner on October 28. I can not accept your response. You did not respond in kind. The time indicated on the notice was for 11 am Oct. 29. I was specifically told by you that I was not to call you unless I received a notice the very same day of the proposed meeting. I did not call because I received the notice the day before the meeting. Again, you set the rules, fail to respond and impede my ability to function as a team member. In a memo from you dated 9/10/93, you specifically direct me "to work cooperatively with all disciplines, supervisory staff and direct care staff." You give me a directive then fail to allow me to meet that directive.

It appears, as well, that you are also confused about your directives. Again, I must stress, you continue to impede my ability to carry out my professional duties by your continued unclear and contradictory rules, using them, as it appears, to fit your unmet needs and excuses.

123. The therapy notes from complainant's November 9, 1993, session indicate that complainant was being monitored more closely at work, that her supervisor was having to sign off for every meeting complainant was to attend, and that she felt that she was the only person under this sort of scrutiny.

124. On December 3, 1993, complainant filed a fourth charge of discrimination alleged sex discrimination and FEA retaliation in relation to certain incidents which occurred during 1993.

125. The therapy notes from complainant's December 6, 1993, session indicate that complainant's anger was surfacing; that her emotions were particularly incised by any contact she needed to have with her supervisor; that she was afraid she may be providing others with evidence of a "potential unstable, uncooperative personality which could be used against her;" and that she had basically decided she would prefer to have little eye-to-eye

contact with her supervisor and would, therefore, make continued use of memos and/or planned meetings.

126. In the late summer of 1993, Earl Kielley, a senior employment relations specialist in respondent's Bureau of Personnel and Employment Relations (BPER), became aware of certain concerns NWC management had relating to complainant's work performance. On October 7, 1993, Mr. Kielley travelled to NWC and met with Ms. Sandholm, Ms. Chase, and Carolyn Thompson, NWC Personnel Director, to discuss these concerns.

127. Mr. Kielley recommended during this meeting that NWC proceed slowly because the institution had not attended to complainant's performance problems consistently prior to this time; that concerns relating to complainant's attitude, relationships with co-workers, and misconduct be addressed in a letter; that concerns relating to the quality of complainant's work performance be addressed in a job performance improvement plan (JPIP); that complainant's supervisors meet with her to discuss the letter and the JPIP for the purpose of determining if she felt there were any obstacles to achieving the goals set out in the letter and the JPIP; and that a schedule of frequent meetings between complainant and her supervisor to review the goals set forth in the letter and the job performance improvement plan be established.

128. The JPIP was a mechanism that had been used by respondent since approximately 1989 and had been used several times before with NWC employees. The JPIP was not the same process as a concentrated performance planning and development (concentrated PPD). The purpose of the JPIP was to help an employee succeed in changing an aspect of his or her performance that was unsatisfactory. Although the goals of the JPIP and concentrated PPD are equivalent, the JPIP is not accompanied by a letter of consequence. The JPIP is designed to describe for the affected employee what is unsatisfactory about their current performance and what will constitute satisfactory performance in the future. The purpose of the frequent meetings between complainant and her supervisor was to make the exchange of information more efficient since Mr. Kielley agreed with Ms. Sandholm and Ms. Chase that it was not practical to process all the written information that complainant was submitting to them and to the QMRPs.

129. The letter which was prepared pursuant to Mr. Kielley's recommendation was dated January 13, 1994, and signed by Ms. Sandholm. It stated as follows, in pertinent part:

The purpose of this letter is to inform you that some of the current behavior you exhibit while on the job is no longer acceptable. Numerous examples have been described and listed at the end of my letter to help you gain a good understanding of behaviors that are problematic and therefore must cease.

The Employer shares in the responsibility for having allowed this behavior to continue for such a lengthy period of time, absent any formal accountability - we admit that we are partially responsible for its continuation. As a result, we must begin measures to eliminate the continuation of such behavior because it causes anguish with co-workers and supervisors. People have become tired and burdened with the never ending conflict caused by the problematic behavior.

This letter, which will NOT become a part of your personnel file, is to place you on notice that future recurrences of the problematic behavior, some of which is listed below, will initiate progressive discipline. Our effort with this letter is to help you become successful in overcoming behaviors that have been problematic. We hope that our admission of partial blame for the behavior will also contribute toward a more balanced perspective.

* * * * *

I expect these behaviors to cease, and if they do not, discipline will follow.

130. The behaviors/incidents listed in this letter included those described in Findings of Fact 94, 98, 99, 115, 120, 121, and 122 in addition to the following:

On 9/7/93, I requested a meeting with you and you requested that your union representative be present. I opened the conversation by stating that I felt our communications had become very strained and that we were not communicating effectively as evidenced by your recent memos to me. You indicated that you no longer trusted me because of my involvement with the QMRPS which resulted in increased programming time for you, and that I had done this deliberately behind your back. We also discussed my refusal to let you consult with a program in the community. The last item we talked about was a situation where I found a sand jug propping a door open in the workshop area and you felt that I had wrongly accused you in front of others. The tone of the meeting was hostile and accusatory as evidenced by your facial

expressions, tone of voice, rigid body language and repeated statement, "I can't trust you." The purpose of this meeting was to clarify the issues that seemed to have caused the problems, but this did not happen. At the end of the meeting, I again told you that I hoped we could communicate before problems arose and before the necessity of writing multiple memos. I also told you that my door was always open to solve problems. You again stated that you could no longer trust me.

On 9/16/93, you got into a confrontation with Jill C. when she questioned your request to leave the Unit, cancelling programming, to handle an EAP request. You told her that Doug Knight had instructed you to contact Jill. Jill asked if you had contacted me since she knew that you were not an EAP Coordinator. You replied that you had not contacted me, but offered to have Doug Knight talk with her. Jill attempted to contact me and I was unavailable. She then asked you how long you would be gone, and if the immediate supervisor of the person needing assistance was aware of the situation. You became angry over answering questions and began yelling. Jill told you to stop shouting and change your tone of voice and informed you that she needed to know when you would be back on the Unit to resume programming. In a loud tone of voice, you demanded a direct order from Jill Chase. She gave you one and you said, "Put it in writing." She told you that in the future, you should seek approval from me for such requests since you were reluctant to accept direction from her.

On 10/14/93, you confronted a Clerical Supervisor who was at the copier completing an assignment she had been given to do. She had the completed copies laying on the counter by the photo copier machine. You were standing by the counter looking at the materials. You turned to the Clerical Supervisor and in a demanding voice asked, "Whose materials are these?" She answered that they were hers and she was doing a project for the QMRP Coordinator. You then asked her why she was copying the materials and stated ". . . it is mine, things that I have done." She responded that she did not know and was only doing what she was asked to do. The Clerical Supervisor returned to her office. Approximately five minutes later, you called her and demanded to know who gave her the materials. You stated that you had called the QMRP Coordinator and that she relayed to you that she didn't know what you were talking about. The Clerical Supervisor's opinion, from the tone of voice that you were using, was that you were insinuating that she had lied to you regarding who she was photocopying for. She told you that you were putting her in a helluva position and that she did not want to discuss it any further and separated herself from you. The Clerical Supervisor was doing her job as instructed, felt as if she was being called a liar by you and was very unhappy with your approach to her.

In a memo dated 10/15/93, that you sent to an LPN reminding her that she owed \$0.90 for Buddy Biscuits, you ended that memo by stating, "Failure in receiving a check or cash in 5 working days

will result in my contacting Joan Foris, Client Complaint Investigator." This is very intimidating and threatening.

In a meeting held 11/22/93 with you, your union representative, Jill Chase, and me, I requested that you take your requests for vacation/meetings and other time off that would interfere with scheduled programming to Jill Chase. You replied, "She's not my supervisor." It was necessary to give you a verbal directive to do so after informing you that as your supervisor, I could delegate this matter.

In a meeting on 12/2/93, with the Highview teachers, RCSs, QMRPs, Unit Director, Judy Wittmier and me, the name of the Vocational Discipline Coordinator was suggested as a resource, and your response was derisive laughter interpreted by at least three of those present as disrespectful.

131. Complainant was also presented with a JPIP on January 13, 1994, which stated as follows:

Major Job Objective 1: Improve the quality of communications with co-workers and supervisors.

* Desired Result: Decrease complexity of communications with your supervisor and co-workers

- list questions needing attention and meet weekly with your supervisor

- one-half hour meeting will be scheduled by your supervisor for the first four weeks. Necessity for continued meetings will be evaluated after that.

* Current Performance Requiring Change - Examples:

1a. During the week of 10/4/93, during one 8-hour day, you called your supervisor at least 4 times to request permission to attend mini staffings or meetings. This could have been accomplished with one call/note.

1b. Between 9/21/93 and 10/15/93, you submitted 15 handwritten pages of materials to your co-workers. Much of this information was unnecessary and could have been communicated verbally. Written communications of this nature obligate the receiver to respond in writing when it is not necessary.

Major Job Objective 2: Improve the quality of effort in problem-solving in planning for program implementation and program schedules for clients.

* Desired Result: Positive active participaiton in planning program implementation and monitoring

- active involvement in monitoring Buddy Biscuit Program - work with supervisor to implement this during half hour weekly meetings.

- cease negative input at meetings.

* Current Performance Requiring Change - Examples:

2a. Lack of cooperation (as demonstrated by your comment, "We don't have a problem, you do," in response to my saying, "We have a problem") during the meeting held 11/5/93 in Jill Chase's office to discuss implementation/evaluation of the Buddy Biscuit program.

2b. Lack of willingness, demonstrated by your stating that you would not give a definite schedule for HV 2A clients because of their action, i.e., illness, behavior, etc. in meeting held 11/29/93 with QMRPs, RCSs, UD, teachers, Judy Wittmier and Barb Sandholm. Definite schedules are provided by other teachers and needed for RCS follow through with RCTs.

Major Job Objective 3: Improved cooperation with Vocational Discipline Coordinator and other authorized monitoring efforts.

* Desired Result: Compliance with monitoring activities. DCs are responsible for monitoring their discipline's performance. Cease requesting unnecessary staff be present during routine meetings.

* Current Performance Requiring Change - Examples:

3a. On 11/10/93, you refused monitoring activity of DC stating you did not have time for that and that an appointment must be made through your supervisor. An appointment has never been a requirement.

3b. When a management audit was conducted on unit workshops accounting for client earnings, you unnecessarily requested that another person be present.

Major Job Objective 4: Improve the quality of job performance with client programs.

* Desired Result: Conduct workshops as scheduled. Only request permission to attend activities which you plan to attend.

* Current Performance Requiring Change - Examples:

4a. During the week of 10/25/93, you were observed in the Administration Wing of Highview at 2:50 p.m. - your program schedule called for you to be with clients until 3:15 p.m.

4b. On 11/1/93, you were observed walking in the Highview Building at 12:00 Noon when you should have been involved in a meal time program.

4c. On 11/8/93, programming had not been initiated at 1:35 p.m. on Highview 2B. Programming was to have started at 1:15 p.m.

4d. EAP Presentation 10/18/93 was not attended after permission was granted.

4e. Mini staffing not attended on 11/1/93 after permission was granted.

4f. PMP in-service 10/29/93 not attended after permission was granted.

132. Ms. Chase and Ms. Sandholm met with complainant on January 13, 1994, to discuss the JPIP and the letter. During this discussion, complainant was advised that Ms. Chase was now her first-line supervisor. Complainant was quiet at this meeting and was not permitted to discuss or offer her version of the incidents cited in the letter or JPIP at this meeting.

133. In a memo to Ms. Sandholm dated January 19, 1994, Mr. Decker, functioning as complainant's union representative, presented two questions in relation to the January 13 JPIP:

1. Is this really a concentrated PPD with a different name?
2. Will Mary Kaye be allowed Union representation at the weekly meetings and monthly review sessions set forth in the Plan?

134. In a memo to Mr. Decker dated January 21, 1994, Mr. Arndt, serving as Acting NWC Director in Ms. Sandholm's absence, stated as follows:

In response to your memo and questions of 1/19/94, you are advised of the following:

1. This is not a concentrated PPD. The "subject" of your memo identifies it as a "Job Performance Improvement Plan," and that is what Management intends it to be.
2. The weekly meetings are to facilitate ongoing communications regarding the daily operations, programming, and schedules as applicable to Mary Kaye's duties. At any time discipline is considered by Management, proper notice will be given, investigatory and pre-disciplinary meetings will be held, and disciplinary procedures will be followed with union representation.

Union representation will not be allowed at the weekly meetings, but will be allowed at the monthly review sessions.

135. The first weekly meeting between Ms. Chase and complainant took place on January 21, 1994. After the meeting, complainant prepared a memo to Mr. Decker summarizing the discussion at the meeting. This memo indicated that Ms. Chase discussed five matters with her and then asked complainant if she had any problems or concerns or anything she'd like to talk about and complainant indicated she did not. The memo also indicated that Ms. Chase had asked complainant to prepare a "wants and needs" list. After the meeting, complainant also prepared a memo for Ms. Chase presenting her with eight questions she would like answered.

136. In a memo to Ms. Chase dated January 26, 1994, complainant presented a "wants and need" list relating to her personal and professional wants and needs. This list did not include what complainant wanted and needed for the programs with which she was involved at NWC.

137. Complainant and Ms. Chase met again on January 28, 1994. During the meeting, Ms. Chase indicated that the list she had received from complainant related to her personal wants and needs but what she had been seeking was a list of program wants and needs. In response to this, complainant directed a memo to Ms. Chase dated January 28, 1994, indicating that she was not aware that Ms. Chase had concerns relating to complainant's programs and presenting Ms. Chase with a list of 6 questions to answer in that regard.

138. Complainant and Ms. Chase met again on February 4, 1994. In response to the discussion which occurred at this meeting, complainant directed a memo to Ms. Chase dated February 4, 1994, relating to an assignment to prepare a proposal which addressed covering client programming once LTEs were no longer available for this purpose.

139. Complainant directed a memo to Ms. Chase on February 9, 1994, asking her to specify the procedure complainant was to use to alert staff when she would not be conducting scheduled programming in order to prevent the situation which had occurred that day when staff was not notified that complainant had an excused medical absence during programming time and clients were brought to the programming area.

140. Complainant and Ms. Chase met on February 10, 1994. After this meeting, complainant wrote a memo to Ms. Chase dated February 10, 1994,

confirming her understanding of Ms. Chase's direction relating to written communication as follows:

1. I am not to send you any memos, unless it be those to request vacation, sick time, meeting attendance. If a memo is requested of me, I will be told what I can write.
2. You will not respond to me in a written form as this is not your style.
3. Weekly meetings are set up for both of us to present issues, problems, concerns, and questions.

141. Complainant filed a grievance on February 17, 1994, challenging NWC's order to her to "use no written communication." Ms. Thompson denied this grievance at the second step on February 22, 1994, responding that, ". . . it was not the Unit Director's intent to prohibit all written communications."

142. Complainant had a meeting with Ms. Sandholm and Ms. Chase on February 24, 1994, to review complainant's performance as it related to the JPIP and to present complainant with a written update of the JPIP. In the "Results" section, this written update stated as follows:

**Major Job Objective 1
Unsatisfactory (1a through 1f)
Examples:**

1a. On 1/25/94 I received four mail envelopes in the same mail run with four separate requests:

- 2/1/94 - vacation 2:30-4:30
- 1/27/94 - sick 8:30-10:00
- 2/8/94 - sick 8:30-9:30
- 2/16/94 - sick 8:30-9:30

1b. You submitted two pages of an unsolicited "wants and needs" list on 1/26/94 before our scheduled meeting on 1/28/94. You then submitted another written memo on 1/28/94 summarizing my comments on the "wants and needs" list. These were topics for discussion at our weekly meetings, not written assignments.

1c. During the morning of 2/10/94, I received three mail envelopes with three pieces of communication: a request for sick time, a copy of a memo written to Cheryl Korn, and a memo describing a coverage error. Our weekly meeting was arranged at 3:30 that afternoon. Some, if not all, of these issues could have been relayed at that time.

1d. On 2/10/94, you submitted a written confirmation/summary of our weekly meeting, even after you were told that it is not wanted or necessary.

1e. On 2/10/94, I received your written memo describing a coverage/substitution error which happened on 2/8/94. This problem should have been communicated verbally to me immediately upon your arrival to work so as to be corrected immediately.

1f. On 2/11/94, I received three mail envelopes with three different pieces of communication:

Request for sick time 2/14/94, 8:30-9:00

Request to cancel sick time 2/14/94, 2:30-4:00

A summary of our weekly meeting on 2/19/94. (I had stated at this meeting that I did not want a written summary of our meetings; it is not necessary.)

Major Job Objective 2

Unsatisfactory (2a through 2h)

Examples:

2a. Cheryl Korn, RCS, asked for your help in preparing a justification for a second oven in HV, since the one oven is used part of the week for baking Buddy Biscuits. You would not provide a justification and stated that there is no need for a second oven in HV.

2b. You attended a meeting on 1/31/94 as instructed by me. I asked everyone at the meeting to identify issues and solutions to solve the problem of program coverage. You did not participate at all. You were silent throughout the meeting.

2c. When you were asked for your assigned schedule proposal to help solve the LTE coverage/substitution problem, you stated, "That is not my problem. I have no thoughts on this. I cannot help you." When you were asked who would cover during your absence, you stated, "That's a Management problem."

2d. You have displayed a lack of cooperation in the development of the computer lab in HV as evidenced by your comment, "I cannot oppose the training if you want me to receive it."

2e. You monitored the Buddy Biscuit program as instructed during the week of 1/31/94. You revealed that the program was not carried out as assigned, but refused to say which day of the week or which ward did not program. You stated, "You are going to have to find that out on your own."

2f. You responded negatively during the weekly meeting on 2/4/94 after I told you to use your own judgment about starting your workshop when a scheduled client is running late. You stated, "That's a new one! I can't use my own good judgment; someone won't like what I do!"

2g. On 2/8/94, Darlene Crandall called and asked if you would pick up the valentine balloons from Northern Industries for the Highview clients. I called and gave you approval to pick them up during non-programming hours. You told me that you would not go during non-program time or during your lunch break. I arranged to have someone else pick up the balloons.

2h. You responded negatively during the weekly meeting of 2/10/94. After telling you that I would review the facsimile from Paul Harris regarding your initial questions, you stated, "What!? I don't get a written reply?! What's the matter? Does the guy have something against writing?"

Major Job Objective 3

Unable to evaluate at this time. No monitoring activities took place during the first review period.

Major Job Objective 4

Unsatisfactory (4a through 4b)

Examples:

4a. On 1/24/94, you were observed walking out of Highview with your lunch and coat at 12:10 p.m., yet you had made a point of protesting on two occasions that I was interrupting your lunch - on 1/20/94 and 1/21/94. At that time you stated your lunch was scheduled for 12:30-1:15 p.m.

4b. You took yourself out of the dining room program with the change of vocational case loads and did not provide any mealtime assistance or other type of programming during that period.

Summary

Your job performance for this review period is unsatisfactory.

Complainant was not permitted to discuss or offer her version of the incidents cited in the JPIP update. Complainant was asked if there were any obstacles to her meeting performance expectations and she did not answer. It was explained to complainant at this February 24 meeting that she was not prohibited from submitting memos but the volume needed to be reduced; and that, if a matter could wait until the weekly meeting, it should be discussed then but that, if it were an emergency, it should be brought to her supervisor's attention immediately.

143. There was an NWC psychologist who was on a JPIP at or around the same time as complainant. In the JPIP-related meetings conducted with him by his supervisor, this male psychologist was not allowed to respond to the incidents cited in his JPIP.

144. In a lengthy memo to Mr. Decker dated March 25, 1994, complainant responded to each of the points expressed in the letter directed to complainant on January 13, 1994.

145. In a lengthy memo to Mr. Decker dated March 25, 1994, complainant responded to each of the items listed in the JPIP of January 13, 1994.

146. In a lengthy memo to Mr. Decker dated March 25, 1994, complainant responded to each of the items listed in the JPIP of February 24, 1994.

147. During her assignment to Highview, complainant generally got along well with the Resident Care Technicians (RCTs) who regarded her as a competent and creative teacher. Over the course of her employment at NWC, complainant also had good working relationships with certain employees who were her peers.

148. Mr. Hartman called complainant a "bitch" in a private conversation with Mr. Grilley.

149. On February 7, 1994, complainant filed her fifth charge of discrimination alleging sex discrimination and FEA retaliation in regard to certain incidents which occurred during 1994.

150. Ms. Sandholm became aware of the first three charges complainant had filed with the Commission on March 8, 1991; she became aware of the fourth charge on February 14, 1994, when she returned from vacation; and she became aware of the fifth charge on February 16, 1994.

151. During Ms. Sandholm's and Ms. Chase's supervision of complainant, the volume of written memos and other documents generated by complainant was ten times more than the volume generated by any other NWC employee. Many of complainant's writings concerned matters other staff members discussed informally as they saw each other during the work day.

152. At one time, Jill Schultz was also instructed by NWC management to reduce the volume of memos and other documents she had been generating. Ms. Schultz complied with this instruction.

Conclusions of Law

1. This matter is properly before the Commission pursuant to §230.45(1)(b), Stats.

2. The complainant has the burden to prove that she was discriminated/retaliated against as alleged.

3. The complainant has failed to sustain this burden.

Opinion

The issues to which the parties agreed are as follows:

1. Whether complainant was discriminated against by respondent on the basis of sex in regard to the assignment of certain duties to Joe Hilmer (see incident #31 on page 35 of the ID) as alleged in Case No. 91-0165-PC-ER; and in regard to the physical relocation of her office/classroom or the removal of a sign (see incidents #9 and #20 on pages 29 and 30 of the ID) as alleged in Case No. 90-0040-PC-ER.

2. Whether complainant was retaliated against for fair employment activities as alleged in Case No. 89-0033-PC-ER and 90-0040-PC-ER and as alleged in regard to her transfer to the Hillcrest location (see incident #26 on page 34 of the ID) in Case No. 91-0165-PC-ER.

3. Whether complainant was retaliated against for fair employment activities or discriminated against on the basis of sex in regard to those incidents alleged in the charge filed with the Commission on December 3, 1993 (Case No. 93-0208-PC-ER).

4. Whether complainant was discriminated against by respondent on the basis of sex or retaliation for engaging in activities protected by the Fair Employment Act as alleged in the complaint filed with the Commission on February 7, 1994 (Case No. 94-0016-PC-ER).

Under the Wisconsin Fair Employment Act, the initial burden is on the complainant to show a prima facie case of discrimination/retaliation. If complainant meets this burden, the employer then has the burden of articulating a legitimate, non-discriminatory reason for the actions taken which the complainant may, in turn, attempt to show was a pretext for discrimination. McDonnell-Douglas v. Green, 411 U.S. 792, 93 S. Ct. 1817, 5 FEP Cases 965 (1973); Texas Dept. of Community Affairs v. Burdine, 450 U.S. 248, 101 S. Ct. 1089, 25 FEP Cases 113 (1981).

It will be assumed, for purposes of this analysis, that complainant established a prima facie case of discrimination/retaliation in relation to each of the incidents identified below unless noted otherwise.

a. Incident #31 on page 35 of ID: According to complainant, she was transferred out of Oak Grove/Brookside to the Education Center in September of 1989 with the understanding that her program was being discontinued; in November of 1991, Joe Hilmer, a male physical education teacher, was assigned duties with the clients that complainant had formerly programmed at Oak Grove/Brookside; and, unlike complainant, Mr. Hilmer had no specific training in vocational programming. (sex discrimination--Issue 1--Case No. 91-0165-PC-ER). [See Findings of Fact 39 and 70, above].

In view of the requirements imposed on and implemented by NWC in relation to client programming, it must be assumed that one or more vocational teachers were assigned to program those Oak Grove/Brookside clients which complainant no longer programmed after her relocation to the Education Center in the two years between complainant's relocation in September of 1989 and Mr. Hilmer's reassignment in November of 1991. As a result, the presence of these intervening teachers as well as the length of the intervening time period militate against a conclusion that complainant has successfully demonstrated pretext here, i.e., complainant has failed to show that Mr. Hilmer "replaced" her at Oak Grove/Brookside. Complainant has also failed to show that, in her relocation to the Education Center, which was part of a relocation of other vocational teachers as well, she was treated differently than any other vocational teacher. It should also be noted in this regard that management initially proposed that the vacant Oak Grove/Brookside position to which Mr. Hilmer was reassigned be filled through transfer, but effected a management reassignment as the result of a recommendation made by the union. If complainant is asserting here that the manner in which the position was filled evidences a discriminatory intent, that decision was in large part attributable to the union, not the respondent.

b. Incident 39 on page 29 of ID: According to complainant, prior to September, 1989, Mr. Hartman notified her that her program and office were being relocated to the Education Center Building, approximately 1/2 mile (or a 10-minute walk) from its former location in Oak Grove; that complainant was still required to sign in and out at Oak Grove; that, when complainant objected to the split arrangement, she was not removed from Hartman's supervision; that, at the Education Center, the physical dimensions of her classroom were cut in half, but her client numbers were doubled for each session from five to ten; that complainant's clients were changed from those with preskill vocational levels to those with little vocational potential; and that, while other people's classrooms were changed to the Education Center,

complainant was the only person whose office was moved to the Education Center. (sex discrimination--Issue 1--Case No. 90-0040-PC-ER; retaliation--Issue 2--Case No. 89-0033-PC-ER). [See Findings of Fact 29 and 39, above]

As discussed above, the record shows that the relocation of complainant's programming, classroom/workshop, and office to the Education Center was part of a wider NWC "normalization" effort which affected numerous vocational teachers, male and female. As also discussed above, complainant has failed to show that she was treated differently in regard to this relocation than other affected vocational teachers, e.g., Finding of Fact 39 indicates that teacher Amy Randelman's programming, classroom/workshop, and office were relocated to the Education Center but she remained unit-assigned to Parkview where she was required to sign in and out. Complainant has also failed to show that the physical dimensions of her classroom/workshop differed in any substantial way for any substantial period of time from those of the classrooms/workshops of other vocational teachers. Although complainant also asserts that it was discriminatory/retaliatory for her to be assigned programming duties in relation to lower functioning clients as the result of the relocation, the record shows not only that vocational teachers were not hired by NWC to program a specific level of client but also that, as the result of de-institutionalization, the higher functioning clients were being moved out of NWC and only the lower functioning clients remained. Finally, complainant alleges that she was discriminated/retaliated against as the result of the denial by NWC management of her request to be removed from supervision by Mr. Hartman; and points to the transfer of Mr. Werner's supervision from Mr. Hartman to Mr. Grilley as evidence of this. However, the record does not show that these two situations were parallel. Unlike complainant, who primarily if not exclusively programmed clients from the unit to which she was assigned, Mr. Werner programmed clients from several units, not just from the unit which his supervisor Mr. Hartman directed, and, as a result, Mr. Grilley, the supervisor of the Education Center, had effectively served as Mr. Werner's supervisor for several months prior to the change in supervision. In addition, this supervision transfer was not effected solely as the result of action by NWC management but was the result of a recommendation from the NWC labor/management council. The record indicates that it was the practice of Mr.

Willkom, NWC Director during the time period relevant to this allegation, not to encourage supervisor-shopping. As a result, he denied not only complainant's request to no longer be supervised by Mr. Hartman but also Mr. Hartman's request to no longer supervise complainant, i.e., Mr. Willkom's actions in regard to both complainant and Mr. Hartman were consistent with this practice. Complainant has failed to demonstrate pretext.

c. Incident #20 on page 30 of ID: According to complainant, on October 5, 1989, Hartman sent her a memorandum directing her to remove a sign in her office which read, "The lab called...your brain is ready;" the sign had been in complainant's office for a couple of months and was also posted in a teacher's office in Highview, and the QMRP office in Oak Grove; and Ray Decker was one of the teachers who had the same sign posted in his workshop/office and was not required to remove it. (sex discrimination--Issue 1--Case No. 90-0040-PC-ER; retaliation--Issue 2--Case No. 89-0033-PC-ER). [See Finding of Fact 47, above]

The record shows that this sign had been posted by complainant in a location where client David was routinely programmed by complainant. The record does not show that the locations in which others had posted this sign were routinely utilized by NWC staff for client programming or client care. This is the distinction articulated by respondent and is an important distinction since even complainant has acknowledged that it would insensitive and inappropriate to post such a sign in an area where it could be interpreted as a reference to a developmental disability of a client. Complainant has failed to show that the situations with which she compared hers in this regard were comparable and, as a result, has failed to show pretext.

d. According to complainant, in December of 1988, QMRPs began giving her work orders either with Mr. Hartman's permission or promotion. (retaliation--Issue 2--Case No. 89-0033-PC-ER). [See Findings of Fact 9, 10, 12, 25, and 26, above]

The record shows that complainant resented the authority and responsibility of the QMRPs, especially as it related to complainant's vocational programming, because she did not feel that most of the QMRPs had expertise comparable to hers in this area. The record does not show that the QMRPs gave complainant "work orders" but does show that she was expected by the QMRPs to comply with the same programming, monitoring, and reporting requirements as the other vocational teachers. Complainant resisted these

requirements and made it difficult for the QMRPs to fulfill their responsibilities in this regard. As a result, the QMRPs became very frustrated in their professional dealings with complainant and frequently reported these frustrations to management. There is no evidence in the record to link complainant's generally poor relationship with the QMRPs to Mr. Hartman or to any other member of management, i.e., the record shows that this generally poor relationship with the QMRPs can be traced to complainant's own actions. It should also be noted in this regard that, although many of the alleged retaliatory incidents upon which complainant bases her charges relate to actions by one or more QMRPs, complainant has failed to show that the QMRPs had any reason to retaliate against complainant, i.e., the record does not show that she accused any of the QMRPs of discriminating or retaliating against her which could have given them a motive for retaliating against her based on her FEA activities; that any of the QMRPs had any reason to know of her allegations of harassment or her charges of discrimination/retaliation; or that any of the QMRPs, as a representative of management, were put in the position of defending NWC or DHSS against complainant's allegations/charges of discrimination/retaliation. In other words, complainant has failed to show that any of the QMRPs who were allegedly giving her a hard time either knew about or had a reason to care about her allegations of harassment or her charges of discrimination/retaliation. Complainant has failed to show pretext here.

e. According to complainant, on December 12, 1988, a meeting was held with discipline coordinators, QMRPs, Mr. Hartman and the complainant; complainant understood the purpose of the meeting to be to discuss problems concerning the relationship between complainant and the QMRPs; the meeting, however, discussed the difficulty of clients reaching complainant's classes and how to address their nonattendance and, as a result of the meeting, a monitoring system was instituted which complainant understood to be for the purpose of monitoring students but which she later alleged was for the purpose of monitoring her. (retaliation--Issue 2--Case No. 89-0033-PC-ER).

The evidence in the record is either non-existent or not sufficient to permit meaningful analysis of this allegation. Even though the hearing examiner instructed counsel for both parties to provide in their briefs detailed proposed findings and detailed discussion relating to each allegation, counsel for complainant failed to do this. In fact, on page 13 of his brief, counsel for

complainant indicated, in pertinent part, that "[t]he contents of this section are not meant to be exhaustive, since other incidents were related during the course of testimony and evidence in this case, . . . However, these highlights . . . are representative of the attitude which was taken towards the complainant after she commenced her sexual harassment complaint. . . ." As a result, it was also not possible to glean from complainant's brief the basis for this allegation. Complainant has failed to sustain her burden here.

f. According to complainant, after she filed her internal complaint on January 6, some of her vocational reports began to disappear from client's files; after this went on for a period of 5 months, she devised a method to track her reports and requested a rubber stamp to initiate her system; the administration provided her an ink pad but purchasing turned down her request for a stamp; and as soon as complainant began her tracking system, her reports stopped disappearing from the files. (retaliation--Issue 2--Case No. 89-0033-PC-ER). [See Finding of Fact 32, above]

The only individual involved in this incident who could have had a motive to retaliate against complainant was Mr. Hartman. However, the record shows that Mr. Hartman did not deny complainant's request, i.e., he located the requested stamp pad and forwarded the paperwork for the requested stamp to the purchasing unit. Complainant has failed to show that the QMRPs who had indicated that the vocational reports were missing or the individual in the purchasing unit who denied the request for the stamp would have had any motive for retaliating against complainant based on her allegations of sexual harassment against Mr. Hartman.

g. According to complainant, Mr. Hartman shared with other staff members the fact that complainant had filed the January 6th complaint, and Mr. Willkom directed Hartman to "cease and desist" from this behavior. (retaliation--Issue 2--Case No. 89-0033-PC-ER). [See Findings of Fact 27 and 28, above]

To establish a prima facie case in the retaliation context, there must be evidence that (1) the complainant participated in a protected activity and the alleged retaliator was aware of that participation; (2) there was an adverse employment action; and (3) there is a causal connection between the first two elements. In the context of this allegation, complainant has failed to show that her employer took an "adverse employment action" against her. The record shows that Mr. Hartman was aware of the internal complaint filed by

complainant and discussed it with certain shift supervisors. The record also shows that Mr. Willkom discussed the internal complaint with Mr. Hartman and directed him to cease and desist from engaging in the behavior upon which the complaint was based. It appears from her argument that complainant is asserting that the discussion of the internal complaint by Mr. Hartman with the shift supervisors somehow constituted an adverse employment action. The Commission does not agree and concludes that complainant failed to establish a prima facie case of retaliation in regard to this allegation. Even if complainant had succeeded in establishing a prima facie case of retaliation here, complainant acknowledges that the top management of NWC took immediate action to address the matter which militates against a finding of retaliation on the part of respondent.

h. According to complainant, prior to filing her January 6th complaint, Mr. Hartman had permitted her to purchase class materials during the school day when she was done with classes; but, after she filed the complaint, Mr. Hartman would not permit her to do school shopping during the work day. (retaliation--Issue 2--Case No. 89-0033-PC-ER). [See Finding of Fact 33, above]

The record shows that Mr. Hartman followed the same practice in this regard with complainant that he followed in regard to the other vocational teachers, i.e., to permit this function to be carried out by the teachers on work time but only outside core hours. The record does not confirm complainant's allegation that Mr. Hartman did not permit her to do school shopping during the work day. The record also does not confirm complainant's allegation that Mr. Hartman's instructions to her in this regard changed after the filing of her internal complaint. Complainant has failed to show pretext.

i. According to complainant, as a result of her encounters with Mr. Hartman, among other things, she began to use a lot of sick leave for appointments; and, as a result, she requested a temporary adjusted work schedule to start work earlier in the day and leave earlier in the day, one day every two weeks, which Hartman denied. (retaliation--Issue 2--Case No. 89-0033-PC-ER). [See Finding of Fact 34, above]

Complainant has failed to show that she was treated differently in this regard than similarly situated NWC employees. The record shows that the reason offered by respondent for its decision to deny complainant's request for an adjusted work schedule was the belief that these appointments could be

scheduled outside of work hours and, as a result, the necessity for NWC to locate a substitute for complainant could be avoided. This reason is both legitimate and non-retaliatory on its face. The only pretext argument apparently offered by complainant relates to an adjusted work schedule granted an NWC psychiatrist. However, the circumstances are not parallel. This psychiatrist requested an adjusted work schedule to permit the psychiatrist to observe the waking behaviors of certain clients. Obviously, waking behaviors can only be observed during a very limited portion of the day. This is in contrast to medical appointments which can be scheduled at any time during normal office hours. In addition, the record does not show that approving this adjusted work schedule for the psychiatrist required NWC to locate a substitute. Complainant has failed to demonstrate pretext.

j. According to complainant, she sent memos to Hartman's superiors seeking responses to client-related matters but received no response; she sent a number of program proposals to Hartman which, prior to January 6, he would promptly respond to but, after January 6, he failed to respond to; and, when she copied program proposals to Grilley, Lebeis, or Knight, she would receive no responses or they would say they did not understand her proposal. (retaliation--Issue 2--Case No. 89-0033-PC-ER).

The evidence in the record relating to this allegation is either non-existent or not sufficient to permit meaningful analysis. Even though the hearing examiner instructed counsel for both parties to provide in their briefs detailed proposed findings and detailed discussion relating to each allegation, counsel for complainant failed to do this. In fact, on page 13 of his brief, counsel for complainant indicated, in pertinent part, that "[t]he contents of this section are not meant to be exhaustive, since other incidents were related during the course of testimony and evidence in this case,However, these highlights . . . are representative of the attitude which was taken towards the complainant after she commenced her sexual harassment complaint. . . ." As a result, it was also not possible to glean from complainant's brief the basis for this allegation. Complainant has failed to sustain her burden here.

k. According to complainant, on April 14, 1989, her copy of NWC's publication *Northern Lights* was defaced with the words "Big Fucking Deal" over the two articles authored by her; and Mr. Willkom decided that nothing would be done and complainant was

so advised by Mr. Hartman and Mr. Knight. (retaliation--Issue 2--Case No. 90-0040-PC-ER). [See Finding of Fact 36, above]

The record shows that Mr. Hartman consulted with Mr. Willkom and Mr. Arndt and they concluded that a thorough and aggressive investigation of this incident could not be accomplished without attracting and focusing a great deal of attention on complainant which could lead to further action against her by the individual(s) who had defaced her articles. This rationale is legitimate and non-retaliatory on its face. Complainant has not shown that respondent had a means of identifying the perpetrator(s) which they did not employ; that they identified the perpetrator(s) but took no action against them; that similar incidents relating to other NWC employees were handled in a different manner; or that respondent's concerns relating to the potential impact of an investigation on complainant were unfounded. Complainant has failed to show pretext.

1. According to complainant, on May 25, 1989, she was notified by Mr. Hartman that her Adult Enrichment Program was terminated without her being invited to the May 23, 1989, meeting at which the decision was made; and when complainant asked Mr. Hartman why she had not been included in the meeting, he told her that she allegedly yelled at staff, she had a demeaning manner and attitude, she wrote many memos, and she was not interested in meetings (which was reflected in her doodling during the course of them). (retaliation--Issue 2--Case No. 90-0040-PC-ER). [See Finding of Fact 37, above]

The record shows that complainant was not included in the May 23 meeting. However, the record does not show that it was NWC's practice to include vocational teachers in such meetings between the unit directors and the QMRPs. The record also shows that the QMRPs brought to Mr. Hartman's attention at this meeting that this particular aspect of the Adult Enrichment Program duplicated programming done on the living units. The record does not show that such duplication did not exist. In addition, it should be noted that it was the QMRPs, not Mr. Hartman, who initiated this discussion and recommended the elimination of this particular aspect of the AEP and, as discussed above, complainant has failed to show that the QMRPs had any motive to retaliate against her for her FEA activities. Complainant has failed to show pretext.

m. According to complainant, on June 27, 1989, she found a "parking ticket" on her car; and she complained about it to Mr. Hartman who told her he was sure it was intended as a joke and took no further action. (retaliation--Issue 2--Case No. 90-0040-PC-ER). [See Finding of Fact 38, above]

Complainant appears to allege here that the failure of NWC to investigate this matter further was evidence of retaliation. However, the record shows that similar "tickets" were placed on the cars of other NWC employees, and complainant has failed to show that she was treated differently in this regard than these other NWC employees. In addition, it should be noted that complainant indicated to the police officer who was sent to NWC at her request that she felt the ticket was humorous, i.e., complainant apparently acknowledged to this police officer through this comment that she did not really feel threatened by it. Although complainant is apparently arguing that respondent did not take this ticket seriously enough and should have regarded it as a threat to her, she apparently did not seriously regard it as a threat herself. Complainant has failed to show pretext.

n. According to complainant, on September 1, 1989, she was a topic of discussion at a meeting to which she was not invited in regard to a dry run day for moving programs to the Education Center. (retaliation--Issue 2--Case No. 90-0040-PC-ER). [See Findings of Fact 39 and 40, above]

The record shows that there was a meeting relating to the dry run and that all relevant staff were invited. The record does not show that complainant was a topic of discussion at this meeting. Furthermore, the record does not relate the notice of the meeting or the discussion at the meeting to Mr. Hartman or anyone else at NWC who could have had a motive to retaliate against complainant for her FEA activities.

o. According to complainant, on September 5, 1989, staff members were discussing recommendations for clients to see the psychiatrist and Dennis Eikenberry, a social worker at NWC, put the initials MKS on the list; and the supervising physician, Helen Gonzaga, informed Eikenberry that his action was inappropriate. (retaliation--Issue 2--Case No. 90-0040-PC-ER).

Complainant has failed to show that Mr. Eikenberry knew or had a reason to know of complainant's internal complaint or FEA complaints. Even if it could be concluded that he did, the record does not show that Mr.

Eikenberry had any motive to retaliate against complainant for her filing of such complaints.

p. According to complainant, after she filed a grievance on April 25, 1989, relating to the *Northern Lights* incident, the notice of the hearing date was either never placed in her mailbox or removed from it; and, as a result, Hartman denied her grievance on April 17, 1989. (retaliation--Issue 2--Case No. 90-0040-PC-ER). [See Finding of Fact 36]

The record shows that Mr. Hartman denied the grievance when complainant did not appear at the scheduled grievance meeting. The record also shows, however, that, when complainant notified Mr. Hartman that she had never received the meeting notice, he retracted the denial and scheduled another meeting. The most plausible explanation for complainant's failure to get the notice is not that Mr. Hartman purposely failed to provide it to her, i.e., Mr. Hartman was aware that complainant would be provided a copy of the grievance denial and, in fact, provided to her such a copy; and, as a result, was aware that he could not avoid the grievance meeting or avoid deciding the grievance at the first step by not providing complainant the meeting notice, and his action in rescinding the denial and rescheduling the meeting confirms this. Complainant has failed to prove that Mr. Hartman or anyone else with a motive to retaliate against her for her FEA activities purposely failed to provide her with a copy of the meeting notice.

q. According to complainant, with regard to a third step grievance meeting, she was provided with three conflicting dates and had to contact Arndt to verify the date. (retaliation--Issue 2--Case No. 89-0033-PC-ER). (retaliation--Issue 2--Case No. 90-0040-PC-ER).

The evidence in the record is either non-existent or not sufficient to permit meaningful analysis of this allegation. Even though the hearing examiner instructed counsel for both parties to provide in their briefs detailed proposed findings and detailed discussion relating to each allegation, counsel for complainant failed to do this. In fact, on page 13 of his brief, counsel for complainant indicated, in pertinent part, that "[t]he contents of this section are not meant to be exhaustive, since other incidents were related during the course of testimony and evidence in this case, . . . However, these highlights . . . are representative of the attitude which was taken towards the complainant

after she commenced her sexual harassment complaint. . . " As a result, it was also not possible to glean from complainant's brief the basis for this allegation. Complainant has failed to sustain her burden here.

r. According to complainant, from approximately January of 1989 through the end of June of 1989, she found on a number of occasions that she would lock her filing cabinets at the end of the day and come in the next morning to find them open although no items had been removed; and she reported this to Mr. Decker and to Mr. Knight but did not notify Mr. Hartman until the problem was resolved. (retaliation--Issue 2--Case No. 90-0040-PC-ER).

The evidence in the record is either non-existent or not sufficient to permit meaningful analysis of this allegation. Even though the hearing examiner instructed counsel for both parties to provide in their briefs detailed proposed findings and detailed discussion relating to each allegation, counsel for complainant failed to do this. In fact, on page 13 of his brief, counsel for complainant indicated, in pertinent part, that "[t]he contents of this section are not meant to be exhaustive, since other incidents were related during the course of testimony and evidence in this case, . . . However, these highlights . . . are representative of the attitude which was taken towards the complainant after she commenced her sexual harassment complaint. . . " As a result, it was also not possible to glean from complainant's brief the basis for this allegation. Complainant has failed to sustain her burden here.

s. According to complainant, she attempted to be friendly and courteous to other employees, but often was treated with either silence or hostility and felt that this behavior was encouraged by Hartman. (retaliation--Issue 2--Case No. 90-0040-PC-ER).

The record shows that complainant had a poor working relationship with most if not all of her supervisors, with most of the QMRPs, with many of the other professional employees at NWC, and with certain of the unit staff. There is no evidence in the record that these poor working relationships were the result of any action on the part of Mr. Hartman or on the part of anyone else at NWC who could have had a motive to retaliate against complainant for her FEA activities. The record is replete with evidence that these poor working relationships were primarily if not exclusively the result of

complainant's moodiness, resistance to taking supervision or direction, and confrontational style.

t. According to complainant, as a result of the changes instituted in her program, her areas of greatest skill and expertise were eliminated from the programs in which she was involved; she was advised what she could teach and which clients were appropriate for her case load without the benefit of her input into the decisions; and, although she had previously attended all staffings, she was advised at a PPD session to only attend staffings relating to residents with whom she worked. (retaliation--Issue 2--Case No. 90-0040-PC-ER). [See Findings of Fact 39, 44, and 45, above]

Complainant has failed to show that she was treated differently in this regard than any of the other vocational teachers at NWC. In relation to the staffings issue, the record shows that complainant had always insisted on attending the staffings of all clients even if it necessitated finding a substitute for her programming duties. Mr. Hartman's decision to limit complainant to attending the staffings of her own clients or to other clients only if it did not interfere with her programming time was consistent with the practice he followed in regard to the other vocational teachers. In addition, it is apparent from the record that de-institutionalization of the higher functioning clients would have an impact on the type of client each of the vocational teachers would be programming, i.e., eventually, none of the clients with vocational capabilities would remain at NWC and only pre-skill clients would be left. Complainant has failed to show that she was more affected by the institutional changes at NWC than the other vocational teachers or that her participation in the decisions made relating to the programming of clients was different in any significant way from the participation of the other vocational teachers. Complainant has failed to demonstrate pretext.

u. According to complainant, on October 9, 1989, Mr. Hartman met with staff members and, during the course of the meeting, shared with them the letter of discipline issued to complainant as a result of the September 29, 1989 incident. (retaliation--Issue 2--Case No. 90-0040-PC-ER). [See Finding of Fact 42, above]

The record shows that Ms. Haugen came to Mr. Hartman to discuss with him her ongoing problems with complainant and her impression that NWC management was doing nothing to address complainant's actions; that Mr.

Hartman, to demonstrate to Ms. Haugen that NWC management was not ignoring these problems, showed her the discipline that had been taken against complainant in regard to the b-team incident of September 29, 1989; and that, once NWC management became aware of Mr. Hartman's actions in this regard, he was disciplined for disclosing this information to Ms. Haugen. Once again, it is difficult to conclude that Mr. Hartman's disclosure of this information to Ms. Haugen constituted an "adverse employment action" against complainant. Moreover, once NWC management became aware of this disclosure, they immediately took action against Mr. Hartman, i.e., it is apparent that respondent did not condone or tolerate Mr. Hartman's actions and their prompt response once these actions came to their attention militates against a finding of liability.

v. According to complainant, on October 2 or 3, 1989, some representative of respondent scheduled a psychiatric appointment for her without her advance consent. (retaliation--Issue 2--Case No. 90-0040-PC-ER). [See Finding of Fact 43, above]

Complainant fails to show how this constitutes an "adverse employment action." In addition, based on the record, it would be speculative at best to determine the identity of the individual who made this appointment. Finally, in view of complainant's bizarre reaction on September 29, 1989, (See Finding of Fact 41, above) to the presence in her classroom/workshop of two supervisors, it appears much more plausible that the scheduling of this psychiatric appointment was a reaction to a genuine concern relating to complainant's mental health rather than to an intent to retaliate against her for her FEA activities.

w. According to complainant, on October 26, 1989, she showed up for a staff meeting which had been changed without notifying her. (retaliation--Issue 2--Case No. 90-0040-PC-ER). [See Finding of Fact 48, above]

The record shows that this meeting was rescheduled and relocated by certain of the QMRPs. As discussed above, the Commission does not conclude that the QMRPs had any motive for retaliating against complainant for her FEA activities or even knew or had reason to know of these FEA activities.

x. According to complainant, on November 2, 1989, she requested of Hartman if additional room space could be made

available so that she could work on expansion of her program; and Mr. Hartman told her that he would check into it but never responded to her request. (retaliation--Issue 2--Case No. 90-0040-PC-ER).

The evidence in the record is either non-existent or not sufficient to permit meaningful analysis of this allegation. Even though the hearing examiner instructed counsel for both parties to provide in their briefs detailed proposed findings and detailed discussion relating to each allegation, counsel for complainant failed to do this. In fact, on page 13 of his brief, counsel for complainant indicated, in pertinent part, that "[t]he contents of this section are not meant to be exhaustive, since other incidents were related during the course of testimony and evidence in this case, . . . However, these highlights . . . are representative of the attitude which was taken towards the complainant after she commenced her sexual harassment complaint. . . ." As a result, it was also not possible to glean from complainant's brief the basis for this allegation. Complainant has failed to sustain her burden here.

y. According to complainant, on November 6, 1989, she was required by Mr. Hartman to attend an in-service in regard to completing a form for the QMRPs in which she had already participated. (retaliation--Issue 2--Case No. 90-0040-PC-ER). [See Finding of Fact 48, above]

The record shows that respondent required complainant to participate in this in-service due to the fact that she was not providing required information to the QMRPs in the proper format despite her earlier participation in training relating to these requirements. Complainant has failed to show that she was meeting applicable requirements or that she was treated differently than other vocational teachers in this regard and, as a result, has failed to show pretext.

z. According to complainant, on November 8, 1989, Mr. Hartman directed her to receive one-on-one computer training whereas others who had experienced difficulty with the original training were not so directed. (retaliation--Issue 2--Case No. 90-0040-PC-ER).

The evidence in the record is either non-existent or not sufficient to permit meaningful analysis of this allegation. Even though the hearing examiner instructed counsel for both parties to provide in their briefs detailed proposed findings and detailed discussion relating to each allegation, counsel

for complainant failed to do this. In fact, on page 13 of his brief, counsel for complainant indicated, in pertinent part, that "[t]he contents of this section are not meant to be exhaustive, since other incidents were related during the course of testimony and evidence in this case, . . . However, these highlights . . . are representative of the attitude which was taken towards the complainant after she commenced her sexual harassment complaint. . . ." As a result, it was also not possible to glean from complainant's brief the basis for this allegation. Complainant has failed to sustain her burden here.

aa. According to complainant, on November 27, 1989, Mr. Hartman directed her to "iron out the problems" she had with two other employees but, when she contacted these employees, each indicated that there were not particular problems. (retaliation--Issue 2--Case No. 90-0040-PC-ER).

The evidence in the record is either non-existent or not sufficient to permit meaningful analysis of this allegation. Even though the hearing examiner instructed counsel for both parties to provide in their briefs detailed proposed findings and detailed discussion relating to each allegation, counsel for complainant failed to do this. In fact, on page 13 of his brief, counsel for complainant indicated, in pertinent part, that "[t]he contents of this section are not meant to be exhaustive, since other incidents were related during the course of testimony and evidence in this case, . . . However, these highlights . . . are representative of the attitude which was taken towards the complainant after she commenced her sexual harassment complaint. . . ." As a result, it was also not possible to glean from complainant's brief the basis for this allegation. Complainant has failed to sustain her burden here.

bb. (Incident #26 on page 34 of the ID)--According to complainant, in January of 1991, she was transferred to a new location (Hillcrest) where the clients were no longer appropriate for her programming and she was required to check in and out at her former location. (retaliation--Issue 2--Case No. 91-0165-PC-ER). [See Findings of Fact 64, 65, and 66, above]

The record indicates that complainant was assigned these part-time Hillcrest responsibilities due to the fact that she was the teacher with the fewest client programming hours each week. Although complainant contends that her supervisor determined the number of programming hours she was assigned each week, the record does not show that the Hillcrest

assignment should be regarded as a retaliatory assignment, i.e., the record does not show that the Hillcrest clients were any more "undesirable" or lower functioning than the clients assigned to any of the other vocational teachers and, in fact, shows that complainant regarded her new assignment as a new and not entirely unwelcome challenge. The record also shows that complainant was required to sign in at Oak Grove/Brookside where she had her morning programming duties, and to sign out at Hillcrest where she had her afternoon programming duties. Complainant has failed to show that these sign-in/sign-out requirements were inconsistent with those imposed on other vocational teachers with split assignments or were somehow unreasonable given her split assignment. Complainant has failed to show pretext.

cc. According to complainant, on May 17, 1993, the Buddy Biscuit program was taken from her hands and turned over to various floor personnel. (sex discrimination/retaliation--Issue 3--Case No. 93-0208-PC-ER). [See Finding of Fact 87]

The record actually shows that, in a meeting on April 1, 1993, complainant suggested to Ms. Sandholm that Buddy Biscuit production be transferred to the Highview living units. The record further shows that implementing this suggestion would be consistent with the NWC goal of having vocational staff, including complainant, develop such programs for eventual implementation on the units. Thus, the record shows not only that the impetus for the change actually originated with complainant but also that the change was consistent with NWC policy and practice as applied to the programs of the entire vocational staff. Complainant has failed to show pretext.

dd. According to complainant, at the time of her PPD evaluation on June 21, 1993, she mentioned as she had on May 21, 1993, that her assignments (Buddy Biscuit supervisory role, feeding lunch to clients, and programming clients one day per week) were not keeping her busy and was told that some changes would be considered; several hours later, complainant was notified that she would be moving to Northern Industries but given no other details; complainant and certain other vocational teachers subsequently put together a proposal to which they did not receive a response for nearly a month; eventually, after negotiations, the proposal as modified was accepted on or around August 9, 1993; and the resulting plan called for complainant to be responsible for

clients on first floor Highview and wards A and B on Highview 2. (sex discrimination/retaliation--Issue 3--Case No. 93-0208-PC-ER). [See Findings of Fact 88, 89, and 97, above]

The record indicates that, although complainant had advised Ms. Sandholm previously that she was bored with her current assignments, she had not advised her until this meeting or shortly before that she had a lot of free time on her hands; that, once this was brought to Ms. Sandholm's attention, she quickly took action by proposing that complainant's assignments be switched with those of another vocational teacher; that complainant did not accept this proposal but, with certain other vocational teachers, developed an alternative proposal; that Ms. Sandholm and these teachers debated this proposal for a period of time and eventually reached a compromise which was implemented; and that, for this entire period of time, Ms. Sandholm's time and energy were being consumed by work on a plan of correction and concern about decertification of the entire institution. The essence of the retaliatory nature of this allegation is not entirely clear. Certainly, simply because an employee tells an employer that she does not feel professionally challenged by her assignments, an employer is not required to effect a change in her assignments (which would necessarily require a change in the assignments of other employees) to avoid a finding of retaliation in the absence of showing that this employee's assignments differ in any significant way from those of peer employees. Such a showing is absent here. When it subsequently came to Ms. Sandholm's attention that complainant was not simply bored but actually not busy, Ms. Sandholm took quick action to propose a change in complainant's assignments and, when complainant presented an alternative proposal, considered it and eventually approved and implemented a compromise reached by negotiation and mutual agreement. Complainant appears to be arguing in regard to this aspect of the allegation that it was not the nature of the proposed change or the implemented change in her assignments which was retaliatory but the length of time that it took to effect the change. However, in view of the decertification and plan of correction activities with which Ms. Sandholm and much of the rest of NWC management was occupied during this same period of time, Ms. Sandholm's quick effort to propose a change in complainant's assignment once it was brought to her attention that complainant's time was

not fully occupied, and NWC management's consideration of and participation in discussions of alternative and further reaching changes proposed by the vocational teachers, lead to a conclusion that no showing of pretext has been made in regard to this allegation.

ee. According to complainant, on or around July 13, 1993, she issued a memo to various supervisory personnel, without her supervisor's knowledge or approval, offering her assistance with any projects with which they might need help; and Sandholm issued a memo in response instructing supervisory personnel to ignore complainant's memo. (sex discrimination/retaliation--Issue 3--Case No. 93-0208-PC-ER). [See Findings of Fact 98, 99, and 101, above]

The record shows that, by this point in time, complainant had brought her concerns relating to her work assignments to her supervisor's attention, her supervisor had proposed changes which complainant countered with an alternative proposal, and her supervisor was considering this alternative. However, complainant obviously didn't feel this process was moving fast enough so attempted to circumvent it by going around her supervisor not only as evidenced by this incident but also by the memo complainant prepared dated July 27, 1993. It is axiomatic that it is a management right to assign duties and management's action blocking an employee's attempt to determine her own assignments does not demonstrate pretext.

ff. According to complainant, during this same period of time, Ms. Sandholm instructed certain employees at Northern Center to refrain from personal contact or socializing with complainant. (sex discrimination/retaliation--Issue 3--Case No. 93-0208-PC-ER).

The record does not establish that Ms. Sandholm every instructed certain employees at NWC to refrain from personal contact or socializing with complainant.

gg. According to complainant, on August 5, 1993, Ms. Chase mentioned, in a meeting with other staff, a concern relating to the amount of leave time that complainant had been taking; when complainant mentioned her concern relating this incident to Ms. Sandholm, Ms. Sandholm advised her that she was intending on transferring complainant's supervision to Chase and that, in the interim, she should contact Ms. Chase, rather than Ms. Wittmier (which had been the procedure to date) if Ms. Sandholm were not available. (sex discrimination/retaliation--Issue 3--Case No. 93-0208-PC-ER). [See Findings of Fact 102 and 103]

The record shows that Ms. Chase did make a comment during a meeting at which other staff were present relating to complainant's frequent use of sick leave, and that Ms. Sandholm subsequently counseled Ms. Chase that such a comment was inappropriate. It should first be noted that there is no showing in the record that Ms. Chase knew or should have known of complainant's FEA activities or had any motive to retaliate against complainant for these FEA activities. In addition, once Ms. Sandholm became aware of this comment, she took immediate action to address it. The transfer of complainant's supervision to Ms. Chase was explained by respondent as a means of providing complainant with a supervisor who was more accessible than the Director of the institution and of freeing Ms. Sandholm to spend more time on her Director duties which had increased as the result of the decertification action. These reasons are legitimate and non-discriminatory on their face. In addition, this action would render the nature of complainant's supervision, i.e., supervision by the unit director of the unit to which she was assigned, similar to the nature of the supervision provided the other vocational teachers. Complainant does not argue and the record does not show that complainant regarded her supervisory relationship with Ms. Sandholm as desirable at this point in time and in fact complainant points to it as the basis for several of her allegations of retaliation; and it is not apparent from complainant's arguments why or whether she considered supervision by Ms. Chase as less desirable than this obviously flawed relationship she felt she had with Ms. Sandholm. Complainant has failed to show pretext.

hh. According to complainant, on August 9, 1993, Ms. Sandholm accused complainant of creating a hazard by propping open a fire door with a sand jug; and complainant subsequently issued a memo to Ms. Sandholm expressing her concerns with this incident to which Ms. Sandholm did not respond. (sex discrimination/retaliation--Issue 3--Case No. 93-0208-PC-ER). [See Findings of Fact 104 and 105, above]

The record shows that propping NWC doors open constituted a serious security violation, that NWC management was still very preoccupied with correcting any types of deficiencies in its operation as the result of the plan of correction and decertification action, and that Ms. Sandholm had counseled complainant previously when complainant had propped a door open. First of all, this action does not appear to constitute an adverse employment action and,

as a result, it is concluded that complainant failed to establish a prima facie case in this regard. Moreover, Ms. Sandholm based her statement on complainant's previous actions in propping a door open, i.e., the record does not show that Ms. Sandholm's conclusion that complainant propped open the door had no reasonable basis. As a result, even if it were concluded that complainant had established a prima facie case of retaliation, the reason offered by respondent for Ms. Sandholm's action is legitimate and non-retaliatory on its face and complainant has failed to show pretext.

ii. According to complainant, on August 18, 1993, Ms. Sandholm set up a meeting to determine programming for complainant's clients but did not invite complainant to the meeting; and, on August 31, 1993, complainant issued a memo expressing her concern with this incident to which she did not receive a response. (sex discrimination/retaliation--Issue 3--Case No. 93-0208-PC-ER). [See Findings of Fact 106, 112, 115, 116, 117, and 118]

The record shows that Ms. Sandholm had solicited complainant's input prior to the August 18 meeting and that it was not NWC practice to include vocational teachers in such management team meetings (See Finding of Fact 115, above). The record also shows that, in contrast with complainant's allegation here, Ms. Sandholm did respond to complainant's August 31 memo by scheduling a meeting on September 9, 1993, (See Finding of Fact 115, above). Complainant has failed to sustain her burden here.

jj. According to complainant, on August 31, 1993, a local middle school made a request for complainant's assistance; this request was denied by Ms. Sandholm who cited a lack of coverage for complainant's programming, even though complainant had in the past been allowed to leave the grounds with coverage for programming being provided only once in 2 1/2 years; and complainant issued a memo on September 2, 1993, expressing her concern with this incident and did not receive a response. (sex discrimination/retaliation--Issue 3--Case No. 93-0208-PC-ER). [See Findings of Fact 108, 109, 110, 111, and 113, above]

The record shows that, due to staff funding difficulties resulting from changes made pursuant to the plan of correction, limited term employees (LTEs) were not longer available to serve as programming substitutes as they had been in the past. This was the reason offered by respondent for its action here and is both legitimate and non-retaliatory on its face. As evidence of pretext, complainant argues that coverage for programming had not been a

concern when she was granted such leave in the past. It difficult to sustain this argument based on the incomplete evidence in the record, i.e., although complainant testified that a programming substitute was provided due to her absence for such a purpose only once in two and a half years, the record does not indicate how many times during this two and a half year period she was absent from NWC for such a purpose during times she was scheduled to provide client programming. Moreover, due to the plan of correction and the decertification action, NWC procedures, including procedures related to programming, were changed so it is difficult to compare the practice in 1993 to the practice prior to 1993. Complainant also argues that the fact that other staff were permitted to do outside consulting demonstrates pretext. However, the only two examples cited in the record relate to outside consulting done by staff psychologists who did this consulting on personal time and this option was made available to complainant; and consulting done by Jeff Mueller who not only did not obtain the required approval for this consulting from Ms. Sandholm but who also did not provide these consulting services during programming time. Neither of these examples provides a parallel to complainant's situation and it is concluded that complainant has failed to demonstrate pretext.

kk. According to complainant, Ms. Sandholm did schedule the meeting requested by complainant in her August 31 memo but did not include the RCTs; this meeting occurred on September 9, 1993, and, after the complainant aired her concerns, Ms. Sandholm ordered the meeting closed without discussion or resolution of the issues raised by complainant; and complainant subsequently received a memo from Ms. Sandholm expressing Ms. Sandholm's expectations that complainant would "work cooperatively" with disciplines and staff. (sex discrimination/retaliation--Issue 3--Case No. 93-0208-PC-ER). [See Findings of Fact 112, 115, 116, 117, and 118, above]

The record does not support complainant's version of this incident. The greater weight of the credible evidence shows that complainant was uncooperative and angry during this meeting and abruptly left the meeting before it had concluded. Based on the feeling of the QMRPs who were present at the meeting that complainant had not been acting like a team player and on complainant's behavior at the meeting, Ms. Sandholm wrote a memo to complainant indicating that she expected complainant to work cooperatively with all other staff at NWC. Not only has complainant failed to show that this

incident occurred as she alleged but she has also failed to show that similar behavior on the part of any other staff person at NWC was not or would not be subject to the same reaction from management as her behavior was. Although the record does show that complainant was singled out for certain treatment, the clear weight of the credible evidence shows that this occurred because complainant's behavior was so far removed from the norm of appropriate and reasonable behavior.

ii. According to complainant, on January 13, 1994, she was notified that her supervision was changing from Ms. Sandholm to Ms. Chase; presented a Job Performance Improvement Plan which complainant believes was a form not used for any other employee; was scheduled for performance review sessions for January 13, February 14, and mid-March; was directed to meet once a week with her supervisor Ms. Chase for the following four weeks; was presented with a letter detailing examples of inadequate performance; and was not permitted to discuss the incidents cited in the letter or the performance expectations in the JPIP. (sex discrimination/retaliation--Issue 4--Case No. 94-0016-PC-ER). [See Findings of Fact 126, 127, 128, 129, 130, 131, 132, 133, 134, and 143]

The record shows that the Job Performance Improvement Plan (JPIP) was a mechanism that had been used by respondent since approximately 1989 and had been used several times before with NWC employees (see Finding of Fact 128, above); and that, at or around this same period of time, there was a male NWC psychologist who was on a JPIP who had not been allowed to respond to the incidents cited in his JPIP during JPIP-related meetings with his supervisor(s). In addition, the recommendation to utilize the JPIP, the letter, and the regular meetings came from Mr. Kielley of respondent's central office who was not aware of and who had no reason to be aware of complainant's FEA activities, and who had no apparent motive to discriminate or retaliate against complainant. Complainant has failed to show pretext.

mm. According to complainant, it was her perception that other NWC employees have been given encouragement by the administration to report on her activities. (sex discrimination/retaliation--Issue 4--Case No. 94-0016-PC-ER).

The record does not show that NWC management actively solicited complaints or statements from other NWC employees relating to complainant's activities, but that they did accept such complaints and statements when they were offered. Complainant has failed to show that this was not the practice

followed in relation to other NWC employees. Complainant has failed to show pretext.

nn. According to complainant, she was denied union representation for the first of her weekly meetings with Ms. Chase which occurred on January 21, 1994. (sex discrimination/retaliation--Issue 4--Case No. 94-0016-PC-ER). [See Findings of Fact 133, 134, and 135, above]

Complainant has failed to show that it was a requirement imposed on respondent or a practice followed by respondent to allow union representation at such meetings and, as a result, has failed to show pretext. Although complainant was allowed union representation at previous meetings not related to discipline, it was clear from the record that this was a very unusual occurrence at NWC.

oo. According to complainant, at the second weekly meeting with Ms. Chase on January 28, 1994, Ms. Chase disregarded complainant's "wants and needs" list as relating to personal rather than program needs; Ms. Chase's comments implied that she was dissatisfied with complainant's program efforts, with complainant's monitoring the past week of the Buddy Biscuit program; and Ms. Chase passed over complainant's questions and concerns regarding the Enabling Technology Lab by indicating the need to set up future meetings with other staff. (sex discrimination/retaliation--Issue 4--Case No. 94-0016-PC-ER). [See Findings of Fact 135, 136, and 137, above]

The record shows that it was not Ms. Chase's intent to solicit from complainant a list of her personal and professional wants and needs but a list of what complainant wanted and needed in order to carry out her client programming duties, and she told complainant that when they met. The record also shows that Ms. Chase had some program-related questions of complainant during their meeting which had occurred to her during the intervening week, and complainant has failed to show that these questions were unreasonable or inappropriate for some reason. Finally, complainant has failed to show that complaint's questions and concerns relating to the Enabling Technology Lab needed or were appropriate for an immediate response or that it was unreasonable for Ms. Chase to suggest that additional information be obtained. Complainant has failed to show pretext.

The above discussion centers on indirect evidence of discrimination or retaliation. Complainant has also presented direct evidence of discrimination/retaliation, i.e., the record shows that Mr. Hartman called complainant a "bitch" in a private conversation he had with Mr. Grilley and may have utilized this pejorative in the context of "getting" complainant through her performance evaluations.

The use of the term "bitch" to refer to complainant in and of itself does not lead to a finding of discrimination or retaliation by Mr. Hartman. In addition, the fact that the testimony which was introduced to establish that Mr. Hartman stated that he would "get the bitch" through her performance evaluations was hearsay testimony and not a matter of clear recollection for the witness also does not in and of itself lead to a finding of discrimination or retaliation but does prompt the Commission to carefully review the evaluations of complainant's performance prepared by Mr. Hartman.

Complainant first appears to take issue with Mr. Hartman's failure to complete an evaluation of her performance for 1988-89. However, as the record shows, this was not an uncommon practice for Mr. Hartman and complainant has failed to show that she was treated differently in this regard than other employees. (See Finding of Fact 44, above).

In Mr. Hartman's October, 1989, evaluation of complainant's performance, he indicated that all stated expectations had been met except A3 which related to the reporting of client absences. Complainant has failed to show that this same expectation/procedure was not imposed on other vocational teachers or that she had been consistently following this procedure prior to October of 1989. (See Finding of Fact 45, above)

Mr. Hartman also completed an evaluation of complainant's performance in October of 1990. (See Finding of Fact 61). The incidents which prompted the conclusion in this evaluation that there were "problem areas that needed attention" appear in Findings of Fact 57 and 58, above. Complainant has failed to show that the description by respondent of her role in these incidents is inaccurate, or that the same performance expectations listed in the written evaluation were not imposed on the other vocational teachers. It is apparent that complainant's actions in the cited incidents failed to satisfy the stated performance expectations. It should also be noted that many of the individuals who raised concerns regarding complainant's performance in regard to these incidents were QMRPs or other staff who have

not been shown by complainant to have been aware of complainant's FEA activities or to have any motive for discriminating or retaliating against complainant.

Complainant also appears to argue by implication that her behavior had not changed over the period of her employment at NWC but it was not until Mr. Hartman completed these performance evaluations that she had been threatened with discipline. First of all, although it is true that complainant had been cited for performance deficiencies by several of her previous supervisors, the record does not show that the incidents upon which these cited deficiencies were based were as numerous or as egregious as the ones cited as the basis for Mr. Hartman's 1990 evaluation. In addition, failure by previous supervisors to address performance deficiencies should not bind future supervisors, and the filing of discrimination or retaliation complaints should not be allowed to protect employees from the consequences of their actions, i.e., an employer should not be required to tolerate the inappropriate and unacceptable actions of an employee simply because that employee has chosen to invoke the protections of the Fair Employment Act.

Order

These complaints are dismissed.

Dated: _____, 1994 STATE PERSONNEL COMMISSION

LAURIE R. McCALLUM, Chairperson

LRM:lrn

DONALD R. MURPHY, Commissioner

JUDY M. ROGERS, Commissioner

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