

MICHIGAN DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

BUREAU OF EMPLOYMENT RELATIONS

PETITIONING PARTY:

Northwestern Michigan College

and

RESPONDING PARTY:

Northwestern Michigan College Faculty Assn, MEA/NEA

MERC CASE NO.: L18 K-0952

FACT FINDER'S REPORT

Pursuant to Michigan Labor Mediation Act (P.A.176 of 1939 as amended)
[MCL 423.1, et seq], and
Public Employment Relations Act (P.A.336 of 1947 as amended)
[MCL 423.201, et seq]

Fact Finder

Ralph L. Maccarone

Advocates

Employer Advocates:

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Union Advocate:

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Michigan Education Association

PETITION(S) FILED: January 17, 2019

PANEL CHAIR APPOINTED: February 11, 2019

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WITNESS LIST

1. Vicki Cook, V.P. of Finance and Administration, Northwestern Michigan College.
(Employer)
2. Mark Liebling, A.V.P. of Human Resources, Northwestern Michigan College.
(Employer)
3. Stephen Siciliano, V.P. for Educational Services, Northwestern Michigan College.
(Employer)
4. Ruth Beier, Michigan Education Association Economist. (Union)
5. Deb Pharo, Faculty Association Bargaining Team Member.(Union)
6. Arthur Przybylowicz, Esq., Faculty Association Co-Chief Negotiator Chief
Negotiator (Union)
7. Brandon Everest, Faculty Association Co-Chief Negotiator and Association
President (Union)

1. INTRODUCTION AND BACKGROUND

Michigan Community Colleges in General

Michigan has 28 public community colleges located throughout the state. These community colleges offer a wide variety of educational programs, including traditional two-year transfer programs, associate degrees, career and technical education, developmental and remedial education, continuing education, and baccalaureate programs in a limited number of areas. These colleges are supported primarily through a combination of state aid, local property tax revenue, and tuition and fees.¹

Northwestern Michigan College

Northwestern Michigan College (“NMC” or “the College”) was established in the spring of 1951 with the first classes beginning that Fall.² The College is a publicly funded community college. NMC is reported to serve more than 50,000 learners annually throughout the Grand Traverse region and beyond.

Seven partner universities grant baccalaureate, graduate and doctoral degrees through NMC’s University Center. In addition to credit bearing instruction, NMC’s Extended Education program offers an array of non-credit classes to more than 10,000 local residents annually.³

Associate degrees and certificates are awarded to those NMC students who complete a prescribed set of courses in specific areas of study. Many programs, especially in occupational areas, also lead to additional career licenses or certifications.

NMC offers the following degree and certificate options:

- Certificate of Achievement
- Associate in Applied Science (AAS)
- Associate Degree in Nursing (ADN)
- Associate in General Studies (AGS)
- Associate in Science and Arts (ASA)
- Bachelor of Science in Maritime Technology (BS)
- Bachelor of Science - Marine Technology (BS)
- Bachelor's degrees (through NMC University Center partners)
- Master's degrees (through NMC University Center partners)
- Doctoral degrees (through NMC University Center partners)⁴

¹ Summary: Michigan House Fiscal Agency Executive Budget Recommendation for Fiscal Year 2019-20 COMMUNITY COLLEGES at p.1.

² <https://www.nmc.edu/library/about/mission.html>

³ <https://www.nmc.edu/about/index.html>

⁴ <https://www.nmc.edu/programs/degrees-certificates/index.html>

The College offers more than 80 areas of academic study, all of which reportedly feature small classes and personal attention from dedicated faculty who average 17 years of teaching experience. Many NMC programs are available in online formats.

Among the areas of study offered by NMC are:

- Aviation, including Unmanned Aerial Systems program;
- Business, including Computer Information Technology and Culinary Arts programs;
- Communications, including English and World Language programs;
- Health Occupations, including Nursing, Dental Assistant and Surgical Technology programs;
- Humanities, including Audio Technology, Music and Visual Communications programs;
- Great Lakes Maritime Academy, including Deck Officer and Engineering Officer programs;
- Science & Math, including Engineering and Plant Science programs;
- Social Science, including Law Enforcement and Social Work programs; and,
- Technical Division, including Engineering Technology and Marine Technology programs⁵

The College's seven University Center Partners are:

- Central Michigan University
- Davenport University
- Ferris State University
- Grand Valley State University
- Michigan State University
- Spring Arbor University
- Western Michigan University⁶

NMC is also host to:

- The Dennon Museum Center, which seeks to engage, enlighten and entertain its audiences through the collection of art, and the presentation of exhibitions and programs in the visual arts, sciences and performing arts;
- The Hagerty Conference Center, located on NMC's Great Lakes Campus, providing facilities for gathering of various kinds;

⁵ <https://www.nmc.edu/programs/academic-programs/index.html>

⁶ <https://www.nmc.edu/uc/index.html>

- The International Affairs Forum, where NMC brings diplomats, ambassadors, economists, military leaders, journalists, educators and others to address issues of local and global significance;
- Lobdell's: a 90-seat Teaching Restaurant serving as a working laboratory for culinary students and is open to the public;
- The Osterlin Library, a Federal deposit Library with over 50,000 stack pieces of literature and full-service computer research access for students;
- The Rogers Observatory, where students from the NMC Astronomy Club and the Grand Traverse Astronomical Society (GTAS) study and host public viewing nights.
- The University Center, a student academic and career advising center that also coordinates with the College's University Partners to advance students beyond an Associate Degree; and,
- WNMC 90.7 FM Community Radio, providing educational and culturally enriching programming to its northern Michigan service area.⁷

The College is accredited by the Higher Learning Commission⁸ (HLC) of Chicago, IL.⁹

NMC's Faculty Enhancement through the Center for Instructional Excellence

The College's Center for Instructional Excellence supports student learning by encouraging faculty-driven initiatives, promoting development of faculty knowledge, and recognizing the achievement of excellence.

- Professional Development - Each year the Center for Instructional Excellence hosts three days of Professional Development sessions open to all faculty. The first Professional Development Day takes place on the afternoon of Opening Conference in September. In October, there is a full day of sessions at the mid-semester break. The third Day takes place on the afternoon of Mid-Year Conference in January.
- Friday Forums - Friday Forums are presentations over the lunch hour, which give faculty a chance to share new methods and discoveries with each other in a less formal atmosphere than a Professional Development Day. There are three Forums scheduled each semester.
- Professional Development Days - In order to maintain a networked and knowledgeable workforce at NMC, faculty will often attend conferences, off-site meetings or otherwise address their goals through professional development. CIE has a budget for reimbursing full-time faculty members who take advantage of these opportunities with department approval. Adjunct faculty are also eligible for stipends towards their professional development.

⁷ <https://www.nmc.edu/about/index.html>

⁸ The Higher Learning Commission (HLC) is an independent corporation that was founded in 1895 as one of six regional institutional accreditors in the United States. HLC accredits degree-granting post-secondary educational institutions in the North Central region, which includes 19 states including Michigan.

⁹ <https://www.nmc.edu/about/accreditation.html>

- In 2013, CIE purchased a subscription to Magna Publications series “20 Minutes Mentor.” Three times each semester, a CIE Advisory Board member will host faculty in an active learning classroom on campus to watch a “20 Minute Mentor” video and facilitate discussion. The atmosphere is casual and gives faculty an opportunity for lively and engaging conversation.
- Reading Groups (CIE, Global Lit) - At Opening Conference in September, CIE distributes a chosen book to faculty who are interested in joining a discussion group during the October Professional Development Day. CIE also co-sponsors the Global Literature Reading Group hosted by Osterlin Library and subsidizes the purchase of Global Lit books.
- Conferences - CIE maintains a list of links to conferences that faculty have attended in the past, and a review system for attendees to provide reviews of conferences they have attended.
- CIE Resource Library - CIE maintains a section of books and resources within the Osterlin Library for faculty use.¹⁰

The Union

Michigan Education Association

The Michigan Education Association (MEA) is a self-governing education association, representing about 125,000 teachers, education support professionals and higher-education employees throughout Michigan.

MEA started in 1852 as the Michigan State Teachers Association with 20 teachers in Ypsilanti. Today, headquartered in East Lansing, it is the largest single public employee union in the state and the third largest education association in the United States. The MEA is affiliated with the National Education Association.

Through collective action, MEA is dedicated to the purpose of serving its members’ employment goals, interests and needs, while advocating for quality public education.¹¹

National Education Association

The National Education Association (NEA), the nation's largest professional employees’ organization, is committed to advancing the cause of public education. NEA's 3 million members work at every level of education—from pre-school to university graduate programs. NEA has affiliate organizations in every state and in more than 14,000 communities across the United States.¹²

¹⁰ <https://www.nmc.edu/departments/cie/index.html>

¹¹ <https://www.mea.org/about-us/>

¹² <https://www.nea.org/home/2580.htm?cpssessionid=SID-E2DA083A-07E069F8>

Northwestern Michigan College Faculty Association

Organized in 2015, this fact finding represents the second contract negotiation that the Union has had with the College.

The Union Membership affected by this fact finding is comprised of both supervisory (Faculty Chair) and non-supervisory (Faculty) teaching positions. 83 members were used in the calculations for NMC's budgeting 2019-2020 FY expenses. Spread across 5 campuses, NMC faculty (Union Members) is responsible for teaching 4,000+ students.

Michigan Employment Relations Commission

The Michigan Employment Relations Commission (MERC or the Commission) is an independent agency charged with administering various laws governing labor-management relations throughout the State of Michigan.

*The Bureau of Employment Relations (the Bureau or BER) is housed within the Michigan Department of Licensing and Regulatory Affairs (LARA). BER is the administrative arm of the Commission. MERC/BER activities are conducted through two separate divisions - - the Labor Relations Division and the Mediation Division. The Labor Relations Division assists in resolving unfair labor practice charges (ULPs) and union representation matters (e.g., bargaining unit determinations). The Mediation Division assists with settling disputes involving contract negotiations and grievances in the public and private sectors.*¹³

When the parties failed to resolve all of their disputed collective bargaining issues in contention, MERC assigned Frederick Vocino, a well-seasoned and knowledgeable Mediator,¹⁴ to engage in what can be described as “shuttle diplomacy” between the parties in this public sector contract dispute to try to reach an accord. In this case Mediator Vocino met with the parties on December 17th and 20th 2018, and on January 2, 2019. That timeline indicates more than sufficient time for exchange of positions through a third party, hearing the Mediator's impressions and deciding a course of action. With over 80 issues in contention tentatively resolved¹⁵, five issues where the best efforts of the mediation process did not prevail are now left to fact finding.

¹³ MICHIGAN EMPLOYMENT RELATIONS COMMISSION - FISCAL YEAR 2018 ANNUAL REPORT (October 1, 2017 through September 30, 2018) https://www.michigan.gov/lara/0,4601,7-154-89334_17485_79529-341149--,00.html

¹⁴ 'Fred' Vocino has been a Labor Mediator with the Bureau of Employment Relations since October 2009. From 1991 to 2009, he held a staff position with the Michigan Nurses Association (MNA). There he conducted contract negotiations/ administration and rights arbitration, assisted with policy development and led the mediation and ULP proceedings. Id

¹⁵ If an agreement is reached in collective bargaining negotiations between the parties, it is called a "Tentative Agreement" or "T.A." because it is not put into effect until each side has ratified (or voted to approve) it.

Fact Finding

Fact finding follows Mediation for any unresolved issues. Fact finding offers a last best chance for the parties to have an open exchange of positions with a neutral and subject matter knowledgeable party (the fact finder) listening. The fact finder is a state appointee of MERC. They have no interest in either party's position. Presentations made in fact finding are crucial to the report that follows that hearing.

The underlying hope of fact finding is that the logjam of unsuccessful negotiations might be broken if there is public awareness of the facts regarding the negotiations. The fact finder, at the conclusion of the process, issues a report and findings of fact and a recommendation regarding each issue. The recommendations are just that and neither party is required to give in or agree to the recommendations so fact finding doesn't settle anything unless the final report persuades one or both of the parties to change its previous position.

The fact finder will conduct a hearing at which both sides will present evidence in support of their positions on the issues.

After the fact finder issues the findings and recommendations, the bargaining process continues. After good faith bargaining continues for at least sixty days, but not before, it may happen that an impasse is reached. an impasse occurs when the positions of the parties on the issues have solidified, are very clear, and further bargaining would be useless.¹⁶

The effect of an actual impasse is often a two-edged sword that cuts both parties when good faith bargaining, mediation, and fact finding all fail. It is the fact finder's report and recommendations that is often used to form public opinion as to which party should have given way, or at least softened their position, to the other on an issue by issue basis.

2. STATUTORY AUTHORITY

This Fact-Finding Report is governed by the Michigan Labor Mediation Act – P.A. 176 of 1939 as amended (MCL 423.1 *et seq.*) and the Public Employment Relations Act – P.A. 336 of 1947 as amended (MCL 423.201 *et seq.*). In addition, having also served as a MERC Arbitrator, this Fact Finder, as many, shall also consider guidance given under Act 312 binding arbitration Section 423.239, for economic rationale of his findings.

423.239 Findings, opinions, and orders; factors considered; financial ability of governmental unit to pay.

Sec. 9. (1) If the parties have no collective bargaining agreement or the parties have an agreement and have begun negotiations or discussions looking to a new agreement or amendment of the existing agreement and wage rates or other conditions of employment

¹⁶ Labor Negotiations Handbook for Municipal Officials at Chapter 4. Negotiation Dispute Resolution Procedures, Michigan Municipal League http://www.mml.org/resources/publications/ebooks/nh_ebook.htm

under the proposed new or amended agreement are in dispute, the arbitration panel shall base its findings, opinions, and order upon the following factors:

(a) The financial ability of the unit of government to pay. All of the following shall apply to the arbitration panel's determination of the ability of the unit of government to pay:

(i) The financial impact on the community of any award made by the arbitration panel.

(ii) The interests and welfare of the public.

(iii) All liabilities, whether or not they appear on the balance sheet of the unit of government.

(iv) Any law of this state or any directive issued under the local financial stability and choice act, 2012 PA 436, MCL 141.1541 to 141.1575, that places limitations on a unit of government's expenditures or revenue collection.

(b) The lawful authority of the employer.

(c) Stipulations of the parties.

(d) Comparison of the wages, hours, and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours, and conditions of employment of other employees performing similar services and with other employees generally in both of the following:

(i) Public employment in comparable communities.

(ii) Private employment in comparable communities.

(e) Comparison of the wages, hours, and conditions of employment of other employees of the unit of government outside of the bargaining unit in question.

(f) The average consumer prices for goods and services, commonly known as the cost of living.

(g) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays, and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.

(h) Changes in any of the foregoing circumstances while the arbitration proceedings are pending.

(i) Other factors that are normally or traditionally taken into consideration in the determination of wages, hours, and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration, or otherwise between the parties, in the public service, or in private employment.

(j) If applicable, a written document with supplementary information relating to the financial position of the local unit of government that is filed with the arbitration panel by a financial review commission as authorized under the Michigan financial review commission act.

(2) The arbitration panel shall give the financial ability of the unit of government to pay the most significance, if the determination is supported by competent, material, and substantial evidence.

3. STIPULATIONS AND PRELIMINARY RULINGS

The parties have reached tentative agreements (“TA’s”) on a substantial number of issues. When not in direct conflict with the enumerated issues (and their sub-issues) considered in this Fact Finding, TA’s will be incorporated in an agreed upon contract.

4. COMPARABLES

Comparables selected by the parties are discussed as the Issues are presented below.

5. ISSUES BEFORE THE FACT FINDER

a. 1. Wages (Salary Schedule & Salary Plan Placement)

Economic

Wage Changes Proposed

The College proposal:

..... seeks to eliminate Steps 1 through 5, moving any faculty who are at Step 4 or 5 immediately to Step 6. Any faculty who are newly hired would start out at Step 6 or above, based on previous experience and College need.

....in addition to having faculty start out at a higher rate of pay, NMC has proposed to increase the pay scale as a whole. The scale adjustments, in summary would include:

- o 2019 adjustments for steps 6-19 \$1,050; step 20 \$1,000
- o 2020 adjustments for steps 6-20 \$900
- o 2021 adjustment for steps 6-20 \$900

6-19	1,050	900	900	2019 %	2020 %	2021 %	
20	1,000	900	900				
scale adj				Increase	Increase	Increase	
Step	2018	2019	2020	2021	in step	in step	in step
1	43,690						
2	45,313						
3	46,966						
4	48,743						
5	50,555						
6	52,432	53,482	54,382	55,282	2.00%	1.68%	1.65%
7	54,380	55,430	56,330	57,230	1.93%	1.62%	1.60%
8	56,401	57,451	58,351	59,251	1.86%	1.57%	1.54%
9	58,497	59,547	60,447	61,347	1.79%	1.51%	1.49%
10	60,672	61,722	62,622	63,522	1.73%	1.46%	1.44%
11	62,925	63,975	64,875	65,775	1.67%	1.41%	1.39%
12	65,263	66,313	67,213	68,113	1.61%	1.36%	1.34%
13	67,688	68,738	69,638	70,538	1.55%	1.31%	1.29%
14	70,204	71,254	72,154	73,054	1.50%	1.26%	1.25%
15	72,813	73,863	74,763	75,663	1.44%	1.22%	1.20%
16	75,519	76,569	77,469	78,369	1.39%	1.18%	1.16%
17	78,324	79,374	80,274	81,174	1.34%	1.13%	1.12%
18	81,235	82,285	83,185	84,085	1.29%	1.09%	1.08%
19	84,254	85,304	86,204	87,104	1.25%	1.06%	1.04%
20	87,379	88,379	89,279	90,179	1.14%	1.02%	1.01%

Example of proposed salary increases

	Percentage increase				3 years	per yr.
	current	2019	2020	2021		
Move from 17-20	78,324	82,285	86,204	90,179	15.14%	5.05%
Move from 6-9	52,432	55,430	58,351	61,347	17.00%	5.67%
step 20	87,379	88,379	89,279	90,179	3.20%	1.07%

Current table offer by Administration

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¹⁷ College Statement of Position, pp 6 & 7 June 6,2019 and Hearing Exhibit 6a.

The Faculty Association, recognizing that for :

Article XXVII. Salary Schedule

The Employer proposed and the Association agreed to the elimination of the first five steps of the salary plan, since there are very few bargaining unit members on those steps.

The Association proposal provides for 4 % increases on each step of the salary plan for calendar years 2019, 2020, and 2021.

FA Summary of Position Statement, p 3 para 2

The fact finder illustrates that calculation¹⁸ as:

Faculty Association Proposal 4% per year per Step

	2018	2019	2020	2021
Step		4.0%	4.0%	4.0%
6	\$ 52,432	\$ 54,529	\$ 56,710	\$ 58,979
7	\$ 54,380	\$ 56,555	\$ 58,817	\$ 61,170
8	\$ 56,401	\$ 58,657	\$ 61,003	\$ 63,443
9	\$ 58,497	\$ 60,837	\$ 63,270	\$ 65,801
10	\$ 60,672	\$ 63,099	\$ 65,623	\$ 68,248
11	\$ 62,925	\$ 65,442	\$ 68,060	\$ 70,782
12	\$ 65,263	\$ 67,874	\$ 70,588	\$ 73,412
13	\$ 67,688	\$ 70,396	\$ 73,211	\$ 76,140
14	\$ 70,204	\$ 73,012	\$ 75,933	\$ 78,970
15	\$ 72,813	\$ 75,726	\$ 78,755	\$ 81,905
16	\$ 75,519	\$ 78,540	\$ 81,681	\$ 84,949
17	\$ 78,324	\$ 81,457	\$ 84,715	\$ 88,104
18	\$ 81,235	\$ 84,484	\$ 87,864	\$ 91,378
19	\$ 84,254	\$ 87,624	\$ 91,129	\$ 94,774
20	\$ 87,379	\$ 90,874	\$ 94,509	\$ 98,289

In its Summary of Position Statement, the FA also noted:

...during the just completed academic year, there were 33 out of 87 bargaining unit members on the top step of the salary plan. During the past three years, the faculty have received increases on the salary schedule of 0%, 0.3%, and 1 %.

FA Summary of Position Statement, p 3 para 5

¹⁸ Illustration of calculated amounts are subject to verification.

Background on Salary Negotiations

Although the MEA – NEA have a long-standing history of negotiating contracts for the benefit of their member “local units”, this case involves a union that, *...entered into their first collective bargaining agreement in 2017 after 18 months of bargaining.*¹⁹

In its Post Hearing Brief , the FA pointed out that,

...prior to 2016, faculty members were not represented, and the administration solely determined their terms and conditions of employment....

And,

... While it is not the contract the FA ultimately wanted, having a contract that covered some of the contract’s terms and conditions was progress for them.

FA PHB p 1, para 3

Testimony revealed the fact that the bargaining unit representatives drawn from the Faculty Association in this negotiation are different than those who negotiated the first contract negotiations.

The Challenge of Comparables

Irving Bernstein, professor of political science at the University of California and a noted labor historian summed up the prevailing thought on wage comparables, writing in 1954:

*Comparisons are preeminent in wage determination because all parties at interest derive benefit from them. To the worker they permit a decision on the adequacy of his income. He feels no discrimination if he stays abreast of other workers in his industry, his locality, his neighborhood. They are vital to the union because they provide guidance to its officials upon what must be insisted upon and a yardstick for measuring their bargaining skill. In the presence of internal factionalism or rival unionism, the power of comparisons is enhanced. The employer is drawn to them because they assure him that competitors will not gain a wage-cost advantage and that he will be able to recruit in the local labor market. Small firms (and unions) profit administratively by accepting a ready-made solution; they avoid the expenditure of time and money needed for working one out themselves. Arbitrators benefit no less from comparisons. They have the appeal of Precedent and awards based thereon are apt to satisfy the normal expectations of the parties and to appear just to the public.*²⁰

¹⁹ College at page 2 Item 2 & FA at p 2, item A. 1.

²⁰ *The Arbitration of Wages*, p 54, Irving Bernstein, Univ. of California Press (1954) ISBN:05200011174

Since that was written, when data was reviewed on carbon paper copies that had been typewritten by hand, data that is more modernly available opens doors for opponents to find differences in even simple examples of comparability. Those differences probably always existed, but data points used in that era were more simplified. That permitted a more direct comparison. Over time, the scope and depth of data forming comparison reports have evolved affording ‘new’ sources of information²¹. Those can now be used in any number of ways to advance or rebut any number of positions. The upshot of this is that third-party ‘deciders’ face developing challenges when dissecting more and more complexly assembled data that both sides can use to support their opposing arguments.

The significance of comparability in labor contract negotiation intervention lies in the theory that the outcome should be where an arbitrator, or as here a fact finder, believes the parties would have agreed, had they settled the contract themselves, without third-party intervention. Especially in fact-finding, a non-binding recommendation process, the ultimate goal is to craft an award that would be a realistically predictable outcome of good faith bargaining had it concluded in an agreement without third-party intervention.

In theory, comparables used in labor contract negotiations allow for a report of factors such as other employer's compensation packages for similar work, major benefits provided by comparable employers, and recent contract settlement terms for comparable employers in the same industry and geographic area. Sometimes looking at comparable employers in other geographic areas can provide the proponent of them with favorable economic comparisons. All of these are useful to a degree. And here, both parties have provided what can be fairly stated as a wide array of data points from which a fact finder could choose. In its own words, the College,

...conducted an in depth analysis of what other comparable colleges have been offering as wages to their faculty, ...using ...data provided by the Association of American University Professors (AAUP), and ... the Bureau of Labor Statistics Report ²²... as what the College described as forming, ... nationally-based data as benchmarks, and ...consulted those data points, which existed at the time of NMC's proposal during bargaining, as a means to determine whether NMC's wage proposal was within a reasonable and appropriate range among similar institutions.

College PHB pp 4 & 5

In addition to looking at nation-wide benchmarks, [the College] summarized the salaries offered by all community colleges within the state of Michigan. (Tr. at 61-62; NMC Exhibit 4.)

College PHB p 5, para 2

²¹ By way of example, it was not until 1971 that the Department of Commerce Bureau of Labor Statistics began its Occupational Employment Statistics (OES) program which produces employment and wage estimates annually. Modernly, these estimates are available for the nation as a whole, for individual states, and for metropolitan and nonmetropolitan areas; and national occupational estimates for specific industries.

²² College Exhibit 5b; Tr. at 56-57

For its part,

The FA contends that the most appropriate comparables lie with faculty employed at all Michigan public community colleges.

FA PHB p 4 Item 3.b.

Labor and employment comparables rarely ‘check every box’ as identical. Deciding disputed outcomes based on comparability is an inexact science. The closer the better, but rarely ‘spot on’.²³ When done nationally, comparisons rarely adjust for the regional cost of living such as between New York City, Honolulu, and Des Moines. When reviewing what is offered in a CBA, these factors can affect recruiting and retention. There are also workplace factors that may affect recruiting and retaining talent. In academic recruiting and retention, these can include the prestige of being a faculty member at an institution of premier recognition; being on faculty where one or more specialized areas of academic study and research is practiced²⁴, and working within a ‘rare’ field of study for which the educator was trained not generally found elsewhere²⁵. Where comparisons are made as to locale, other quality of life features are arguably considered factors. In that regard, the Grand Traverse Region and Traverse City²⁶ enjoys publicized accolades worth mention:

Traverse City, known as a four-season playground, is now celebrated for quality cuisine, wine and culture. Miles of sugar-sand shoreline include the Sleeping Bear Dunes National Lakeshore with romantic lighthouses and coastal villages. The glacier-sculpted landscape of orchards and vineyards includes 16 golf courses. Swimming, sailing, paddling, hiking and fishing are favorite warm weather activities, while winter turns the region into a playground for skiers, snowmobilers and snowshoers.²⁷

Among the less facial qualities in the array of information one can compare, there are also yardsticks that can be considered from secondary sources using data from authoritative sources such as the U.S. Department of Education. Such resources can inform an aspiring or tenured professor to consider when deciding the institution of their choice, or a change from it. Among the many criteria reported are:

- Index of Professor Salary against Median Household Income in the local area.
- Total full-time undergraduate students per full-time undergraduate faculty.
- Number of faculty awards per full-time faculty member.
- Percent of full-time faculty who are National Academy members.
- Percent of instructional faculty working full-time for the institution.
- Total expenditures dedicated to research per full-time undergraduate student.
- Total expenditures dedicated to research.²⁸

²³ As in this case, among variables that are not reported in a preassembled format, are the local cost of housing, transportation (calculated in commuting time and cost of travel), quality of public safety, availability of medical care, quality of K-12 schooling, and local cost of goods and services, etc.

²⁴ NMC’s Maritime Academy is an example.

²⁵ e.g. Astronomy taught with an available teaching observatory.

²⁶ Where the main campus of the College is situated.

²⁷ https://www.tripadvisor.com/Tourism-g42758-Traverse_City_Grand_Traverse_County_Michigan-Vacations.html

²⁸ Excerpted from *2020 Colleges with the Best Professors Methodology* - <https://www.niche.com/about/methodology/best-college-professors/>

Then, there is the math.

The College's Point of View

Despite lengthy negotiations over the salary schedule in the initial CBA, the Union has proposed increases to the Faculty Salary Schedule which would nearly double the total costs to NMC, as compared to the College's proposal. [emphasis added]

College PHB at p 5, Item III.

The College argues that in the Faculty Association wage proposal:

..... the Union has proposed wage increases for faculty over a three-year period between 12.49% and 25.50%. These are increases unheard of within the higher education community and the greater Traverse City area.

College PHB at p 5, Item III.

The Faculty Association's Position

There is a significant difference between the parties on their salary proposals. The Association submits that when the ability of NMC to pay the salaries proposed by the Association is considered, appropriate comparable salaries are reviewed, and the impact of the cost of living on faculty members living in the Traverse City area is taken into account, the fact finder should recommend that the salary proposed by the Association should be included in the successor collective bargaining agreement.

FA PHB at p 8, Item 3.d.

The Faculty Association sums up its position saying:

The position of the FA is for a two and a half-year contract with step increases in each year and a 4% wage increase in all years.

FA PHB at p 3, Item 2.a

Ability to Pay in the Face of Declining Enrollment

Although there was testimony that enrollment at the College,

...has been on a trend of decline since 2009. And, The College's 2009 budget reflects another anticipated 2.5% decline in enrollment.

College PHB p 4, para 2

both parties agree that (presently), 'ability to pay' is not at issue.

College PHB, pp 3 para 2 & FA PHB pp 3 & 4, Item 3.a.

Discussion

It is to be expected that each side will present comparisons that they believe best support their position in any CBA presentation. If both sides approached the same issue from the same vantage point, using the same analytical criteria and resources, it would follow that both would arrive at a similar conclusion. Predictably, here that was not the result. Post hearing briefs contained some vigorous objections to the manner and method of using comparisons and testimony supporting the opposing position on wages. I found nothing misleading to me in my review. Transcribed testimony, exhibits, position statements, and post hearing briefs²⁹ indicated that each side drew from resources that they found to be of worth in supporting their position on wages (and the other issues in this Fact Finding). As to claims made of misinterpretation or miscalculation of supporting sources, nothing reviewed by the fact finder when taken as a whole, appeared as an attempt at deception.

Recommendation on Wages

Having considered all of the relevant and material evidence in support of their respective positions on the issue of Wages (“Salary”), according all of them such weight as deemed appropriate, I believe it fair and reasonable that a compromise calling for increases on each step of the salary plan for steps 6 through 20³⁰ in each calendar year be adopted as:

2019, 2.0%; 2020, 2.5%; and 2021, 3.0% which illustrates³¹ as:

Fact Finder's Wage Recommendation

Step	2018	2019	2020	2021
		2.0%	2.5%	3.0%
6	\$ 52,432	\$ 53,481	\$ 54,818	\$ 56,462
7	\$ 54,380	\$ 55,468	\$ 56,854	\$ 58,560
8	\$ 56,401	\$ 57,529	\$ 58,967	\$ 60,736
9	\$ 58,497	\$ 59,667	\$ 61,159	\$ 62,993
10	\$ 60,672	\$ 61,885	\$ 63,433	\$ 65,336
11	\$ 62,925	\$ 64,184	\$ 65,788	\$ 67,762
12	\$ 65,263	\$ 66,568	\$ 68,232	\$ 70,279
13	\$ 67,688	\$ 69,042	\$ 70,768	\$ 72,891
14	\$ 70,204	\$ 71,608	\$ 73,398	\$ 75,600
15	\$ 72,813	\$ 74,269	\$ 76,126	\$ 78,410
16	\$ 75,519	\$ 77,029	\$ 78,955	\$ 81,324
17	\$ 78,324	\$ 79,890	\$ 81,888	\$ 84,344
18	\$ 81,235	\$ 82,860	\$ 84,931	\$ 87,479
19	\$ 84,254	\$ 85,939	\$ 88,088	\$ 90,730
20	\$ 87,379	\$ 89,127	\$ 91,355	\$ 94,095

²⁹ An accumulation of over 600 pages of materials that have been read.

³⁰ With the tentatively agreed elimination of Steps 1 through 5 inclusive.

³¹ Illustration of calculated amounts are subject to verification. Percentages are as indicated.

This recommendation is made in light of the prolonged stalemate on this issue as a path for the College to continue its here-to-fore prudently managed finances³², while allowing the Faculty Association membership to achieve a meaningful advancement in their compensation over the status quo.

b. 2. Benefits – All Economic

i. Child Care Leave

It is undisputed that,

Under the expired contract, the legal minimums are provided for leave after the birth or adoption of a child (NMC Ex. 1, p. 37).

FA PHB p 13, d.1.

The Union Proposal on Child Care Leave

The FA proposal allows for childcare leaves to be granted to any faculty member regardless of length of employment. The FA proposal also relates the length of the childcare leave to the semester schedule of faculty members. A faculty member may request childcare leave for the remainder of the semester following the FMLA leave or he or she may request a full semester of childcare leave if the FMLA leave ends at the close of the previous semester. Faculty initiating childcare leave at the beginning of the semester may request a reduced teaching load for that semester. A third semester of childcare leave may be granted by the Employer. A faculty member returning from an approved childcare leave of two semesters or less shall have the same right of return as an individual returning from an FMLA leave. A faculty member returning from a third semester of childcare leave is not guaranteed employment, but the Employer shall make every effort to return the faculty member to the same or an equivalent position.

The College's Position on Child Care Leave

NMC seeks to keep the current child care leave provision, which is consistent with the College's policy for non-faculty employees and will allow for uniform administration throughout the College. NMC seeks to have the policy reflect that Human Resources would receive the requests for leave, instead of the employee's supervisor. NMC believes that HR is most appropriate to receive and review these requests, so that not only will the policy be applied fairly and consistently, but also so that the appropriate decisions regarding staffing in an employee's absence can be made. (Testimony of Leibling, Tr. at 127- 129.)

³² Ref. to NMC Financial Report, June 30,2018 – Employer Exhibit 14

The Family Medical Leave Act³³

The (Federal) Family and Medical Leave Act of 1993, as amended (FMLA) provides certain employees with up to 12 weeks of unpaid, job-protected leave per year. It also requires that their group health benefits be maintained during the leave.

FMLA is designed to help employees balance their work and family responsibilities by allowing them to take reasonable unpaid leave for certain family and medical reasons. It also seeks to accommodate the legitimate interests of employers and promote equal employment opportunity for men and women.

FMLA applies to all public agencies, all public and private elementary and secondary schools, and companies with 50 or more employees. These employers must provide an eligible employee with up to 12 weeks of unpaid leave each year for any of the following reasons:

- *For the birth and care of the newborn child of an employee;*
- *For placement with the employee of a child for adoption or foster care;*
- *To care for an immediate family member (i.e., spouse, child, or parent) with a serious health condition; or*
- *To take medical leave when the employee is unable to work because of a serious health condition.*

Employees are eligible for leave if they have worked for their employer at least 12 months, at least 1,250 hours over the past 12 months, and work at a location where the company employs 50 or more employees within 75 miles. Whether an employee has worked the minimum 1,250 hours of service is determined according to FLSA principles for determining compensable hours or work.

Time taken off work due to pregnancy complications can be counted against the 12 weeks of family and medical leave.

Military family leave provisions, first added to the FMLA in 2008, afford FMLA protections specific to the needs of military families.

³³ Source: <https://www.dol.gov/general/topic/benefits-leave/fmla>; See also: Congressional Research Service publication - *The Family and Medical Leave Act (FMLA): An Overview*, Gerald Mayer - Analyst in Labor Policy, September 28, 2012

Discussion

In reviewing the Union's proposal components that:

A faculty member may request childcare leave for the remainder of the semester following the FMLA leave or he or she may request a full semester of childcare leave if the FMLA leave ends at the close of the previous semester.

Faculty initiating childcare leave at the beginning of the semester may request a reduced teaching load for that semester.

A third semester of childcare leave may be granted by the Employer.

A faculty member returning from an approved childcare leave of two semesters or less shall have the same right of return as an individual returning from an FMLA leave.

A faculty member returning from a third semester of childcare leave is not guaranteed employment, but the Employer shall make every effort to return the faculty member to the same or an equivalent position.

The fact finder went through a series of "what-if" scenarios that resulted in a number of sequencing issues and decision making options that the fact finder found to be difficult to decipher in terms of who, what, when and how notifications and decisions would be made and communicated without dispute. Then, there is the question of use of public funds. Private employers are known to have expanded childcare leave and protections otherwise mandated by the FMLA, and some public employers may have done likewise, primarily in successfully concluding collective bargaining negotiations (quid pro quo).

Based upon the record, and with deference to the other bargaining and non-bargaining unit workers in the College's employ, this fact finder is not prepared to recommend the changes requested by the Union of a quasi-publicly funded employer³⁴. The following testimonial confirmation when asked by the fact finder of the Union supports this:

1. Q. On childcare, you're asking for eligibility
2. immediately upon hiring?
3. A. Yes, sir.
4. Q. So an employee hires in on a Tuesday, and on a
5. Wednesday they deliver and they're automatically in the
6. childcare. Is that the way you are presenting this, just so
7. that I understand it?
8. A. Yes, that would be possible.

³⁴ Q. ... where [do] the college's revenues come from? [College] A. Generally, we have 50 percent in tuition, in fees. We have 20 some, 24, 25 percent in property tax, and the same amount in State appropriations, a small amount in other income, which would include private gifts from the foundation and those types of resources. TR p 21 14-20

Recommendation – Child Care Leave

The fact finder recommends maintaining the status quo on Child Care Leave.

ii. Family Medical Leave

The College says:

....the Union has provided no rationale for its proposed changes to the family and medical leave provisions of the CBA...

And,

....seeks to have benefits applied uniformly across employee groups. No employee group on campus, including its other unionized work groups, receive benefits in addition to what is guaranteed by the FMLA. The Union submitted a proposed change to this provision allowing faculty to be eligible for FMLA leave after only 6 months of employment with NMC, as opposed to the FMLA's requirement and the current CBA's language of 12 months.

Considering that such a digression from an established provision affecting all other workers in the College's employ, and without a definitive rationale justifying a change from what is a nationally promulgated standard, the fact finder again cannot justify a recommendation for change.

Recommendation – Family Medical Leave

For the foregoing reasons the fact finder recommends maintaining the status quo on Family Medical Leave.

iii. Health and Dental

The Union Position – Health and Dental

The FA has agreed to continue with the same health and dental benefits and the same contribution levels for 2019. However, for the 2020 and 2021 years, the FA is proposing that NMC actually bargain benefits and agree to at least maintain the same level of health and dental benefits as they currently have. Moreover, the FA is proposing that NMC pay the yearly legal maximum contribution of 80% towards the insurance premiums.

The College's Response – Health and Dental

The Union seeks to have the College receive bids from MESSA for health and dental insurance, and that MESSA be approved if they were the lowest bid and that this change would be implemented for all employees of the College, not just Union members. NMC does not feel that simply accepting “low bid” for purposes of a health and dental insurance program is appropriate. NMC has utilized, and desires to continue to utilize, a Benefits Advisory Committee, which currently includes two (2) members of the faculty. (Testimony of Leibling, Tr. at 135.) Moreover, MESSA has been included in the bidding process since around 2015. (Id. at 137.)

Seemingly, the Union's only real issue with this arrangement is that the President of the College ultimately has the authority to approve the recommendation of the BAC.

NMC has offered, in compromise, a provision which ensures that health and dental benefits will be equitable across all employee groups within the College and that the Union will have a third faculty member (as opposed to the current two) on the College's Benefits Advisory Committee to represent the faculty union's interests in recommending what benefits package should be utilized.

Discussion

The issue of health (and dental) care is always of importance to both sides in a collective bargaining negotiation. In recent history, the challenge is to provide ‘acceptable’ coverage at an ‘affordable’ cost. When at the bargaining table, the argument for absorbing the cost of ‘acceptability’ and ‘affordability’ can shift back and forth, typically until fatigue brings about some result.

Agreeing to maintain ‘...the same level of health and dental benefits...’ may prove to be an unenforceable promise. With well-publicized uncertainties in the health insurance market, no one can say at what cost which benefits may continue, if offered at all.

The increased cost of health insurance is a central fact in any discussion of health policy and health delivery.

In 2018 the average annual premium for employer-based family coverage rose 5% to \$19,616 for single coverage, premiums rose 3% to \$6,896. Covered workers contributed 18% of the cost for single coverage and 29% of the cost for family coverage, on average, with considerable variation across firms.

By comparison, annual premiums for 2017 reached \$18,764, up 3 percent from 2015 for an average family coverage with workers on average paying \$5,714 towards the cost of their coverage, according to the Kaiser Employer Survey, October 2018 and 2017, applying to employer-based insurance.³⁵

³⁵ Ref. <http://www.ncsl.org/research/health/health-insurance-premiums.aspx>

For the Union's part:

The FA is simply asking that NMC guarantee for the next two years that it will provide at least the same level of benefits that it has currently.

...although all of NMC's proposals regarding insurance contributions were regarding the 80%, [the College] testified that the board of trustees had actually adopted to pay the legal hard cap, rather than the 80% (T. 148). NMC is proposing to continue paying only 75% of the premium for core insurance despite that amount being below the hard cap chosen by the board of trustees (T. 148) and despite any claim of inability to pay. When comparing the premium contribution from other Michigan public community colleges, it appears that all are either paying the maximum hard cap amount or 80% of the premium cost (Union Ex. C-6)

The FA requests that the Fact Finder recommend the Association's proposal to ensure that actual bargaining of this mandatory topic occurs.

FA PHB pp10 & 11, B3.

In its Position Statement of June 6, 2019, the College offered:

For calendar years 2020 and 2021, the Benefits Advisory Committee (BAC) shall seek bids from health insurance providers including but not limited to MESSA, Priority Health, and Blue Cross. The BAC will review bids and make a recommendation that best meets the College's needs. Run out costs will be included in all cost comparison evaluations that are used in making this recommendation. The Faculty Association President shall appoint a member to the Benefits Advisory Committee each year.

BAC may recommend a change in coverage based on needs and trends in healthcare costs. The BAC weighs, among other factors, the coverage offered and the impact on overall costs to the employee and the college when evaluating any changes in benefits. The BAC goal is to keep costs affordable to all employee groups under applicable law and circumstances. If the faculty association chooses to remain at a level not consistent with the other employee groups the faculty will pay the full difference in costs.

During the course of this contract the premium paid by full-time faculty shall be based on the following cost distributions:

- HSA plan 80% college 20% employee*
- Core plan 75% college 25% employee.*

The College's HSA contribution will be \$1,300 for individuals and \$2,600 for families.

With the addition of another Union member to the BAC, leaving the President as the ‘selector-in-chief’, and raising the ‘Core plan’ modified from 75% College 25% employee to ‘80% College 20% employee’³⁶ and two year experience should give a better framework to argue on who should make the choice of coverage, and have a track record to point to the President’s (whomever they are³⁷) deference or lack of it to the BAC.

Inevitably, this subject matter is so important to the maintenance of a healthy workforce and financial stability of the employing unit, that both sides have an almost equal stake in assuring good quality health (and dental) care at an affordable price point for both parties.

Recommendation – Health and Dental

The fact finder recommends:

1. Status quo for 2019;
2. A (CBA) provision which ensures that health and dental benefits will be equitable across all employee groups within the College and that the Union will have a third faculty member (as opposed to the current two) on the College’s Benefits Advisory Committee to represent the faculty union’s interests in recommending what benefits package should be utilized.; and,
3. Adoption of the College’s Position Statement of June 6, 2019, offering:

For calendar years 2020 and 2021, the Benefits Advisory Committee (BAC) shall seek bids from health insurance providers including but not limited to MESSA, Priority Health, and Blue Cross. The BAC will review bids and make a recommendation that best meets the College’s needs. Run out costs will be included in all cost comparison evaluations that are used in making this recommendation. The Faculty Association President shall appoint a member to the Benefits Advisory Committee each year.

BAC may recommend a change in coverage based on needs and trends in healthcare costs. The BAC weighs, among other factors, the coverage offered and the impact on overall costs to the employee and the college when evaluating any changes in benefits. The BAC goal is to keep costs affordable to all employee groups under applicable law and circumstances. If the faculty association chooses to remain at a level not consistent with the other employee groups the faculty will pay the full difference in costs.

During the course of this contract the premium paid by full-time faculty shall be based on the following cost distributions:

- HSA plan 80% college 20% employee
- Core plan 75% college 25% employee.

The College’s HSA contribution will be \$1,300 for individuals and \$2,600 for families.

Changing Number 3, above titled ‘ Core plan’

FROM: 75% college 25% employee. TO: 80% college 20% employee.

³⁶ Bringing this 5% differential into line with ‘comparable’ colleges clearly represents an added cost to the employer, but also recommending that the ‘enhanced union membership’ on the BAC should bring some balance to periodic forays into cost vs. benefit analysis in recommending and selecting successor providers.

³⁷ It became apparent during the Hearing that the Union has a concern with judgment calls not necessarily made by present administration decision makers, but that may be made by their yet unknown successors.

iv. Short-Term Disability

The College speaks to this issue saying:

Faculty members who have completed 90 days of employment at NMC and have suffered a single serious health condition arising from illness or injury are eligible for their pay to continue Faculty members who are unable to work due to work-related illness or injury covered under Workers' Compensation are not eligible for Short-Term Disability.

and,

NMC proposes to continue to have its short-term disability policy mirror that of the policy for other employee groups, for the purposes of minimization of administrative burden and expense, as well as fair and uniform application throughout the College.

College PHB, p 14, 3.f.

NMC's position on this provision:

- *Provides the same level of benefits to faculty as it does to all employee groups;*
- *Is consistent with the requirements for short-term disability based on the College's insurance requirements; and*
- *Provides for ease of administration.*³⁸

College's Statement of Position, p.17 June 6, 2019

The Union looks for modification in part, saying:

Both parties propose to continue an existing short-term disability leave program that provides pay for certain eligible illnesses or accidents. The first 15 days of disability are not covered by the short-term disability plan, but the faculty member may use accumulated sick time. Disability for days 16 through 60 are paid at 100% of salary, while days 61 through 180 are paid at 2/3 salary.

The FA is proposing language that clarifies that a faculty member is not required to report an accident or illness that occurs outside of the instructional period until and unless he or she has received a medical opinion stating that the faculty member will not be able to return to work at the start of the following semester. The proposals of both parties provide that a faculty member must be actively at work or on an approved leave other than short-term disability in order to qualify for this benefit. The FA also proposes to add faculty members who are employed during the non-teaching semester. Also, the FA proposes that the FMLA

³⁸ NORTHWESTERN MICHIGAN COLLEGE'S SUMMARIES OF LAST POSITIONS, June 6, 2019 – For complete details see pp 17-22.

standard for return should apply to any return from disability within the 180-day short term disability period. [emphasis added]

b. The Employer proposal only includes the FMLA right to return language (return to his or her original position or an equivalent position with equivalent pay, benefits, and other employment terms) when the return is within the FMLA period. [emphasis added]

FA PHB p 15&16 E.2.a.&b.

Discussion

In addition to adding in the CBA that:

a faculty member is not required to report an accident or illness that occurs outside of the instructional period until and unless he or she has received a medical opinion stating that the faculty member will not be able to return to work at the start of the following semester.

Add(ing) faculty members who are employed during the non-teaching semester. and, the FMLA standard for return should apply to any return from disability within the 180-day short term disability period; with assurance that, a faculty member who is on an approved leave has the right to return to his/her position (T. 297-298)

The College wants the status quo to remain for, among other things, *uniform application throughout the College.*

Short-Term Disability is an employee financial safety net that allows a percentage of wage continuation while a non-work-related illness or injury prevent attendance at work. This sort of benefits package, including eligibility, reporting, medical verification, etc. is often tailored by the provider (insurer).

The College looks to keep a policy and procedure that applies to all of its qualified employees. The Union looks to expand this benefit adding eligibility for faculty when in a non-teaching semester, assure a faculty member's return to their previously held position, and giving to the beneficiary of the plan the right to select when before a semester to obtain a medical opinion and then give notice to the College (and consequently, the Short Term insurance provider) of an otherwise reportable qualifying event involving a delayed return to work. These may be laudable goals. Without a substantial record explaining the need for them in this collective bargaining agreement (e.g. by way of experience or plausible examples), this subject matter is better deferred to future negotiations.

Recommendation – Short Term Disability

The fact finder recommends maintaining the status quo on Short Term Disability.

c. 3. Association Days – Economic

In its Post Hearing Brief, the College said:

Based on the evidence presented, NMC's offer of increasing the number of association days to eight (8) seems a fair and reasonable compromise. NMC believes that offering eight (8) days meets with the Union's request that it have professional development days for its officers, and eight (8) would provide two (2) days for each of its four (4) officers.

College PHB p 12, 3.c.

In its Post hearing Brief, the Union countered,

[The Union] testified that the need for more days was for purposes of consulting with others and for educational training provided at conferences (T. 300). When examining all other 28 public community colleges, the amount of Association days varied from 0 days to 16 days. Also, the notice requirements to use those days varied from college to college. However, the longest notice period required by the other community colleges was 5 days. NMC's 14-day notice requirement is clearly out of line with the external comparables (Union Exhibit C-2).

Thus, the FA requests that the Fact Finder recommend that the FA receive 10 Association days and reduce the notice time to use such days.

Discussion

As previously mentioned, the Union is newly formed, with about 4 years in experience.³⁹ Its bargaining team and officers have already changed once.

It has been this fact finder's observation that the more training a union member elevated to union official receives in employer-employee relations, the more skilled they become. Typically, an administration's human resource staff comes onboard fully trained. A wise employer always has their HR expert nearby, if not at the table. Having a well-versed union official at the same table lends itself to more productive time spent there.

Recommendation – Association Days

The fact finder recommends that the current CBA provision for 'Association Days' be modified "...granting a total of ten (10) days release time annually for the purpose of transacting association business." with notice to the College given "a minimum of seven (7) working days in advance of the desired dates."

³⁹ Answering a question on their experience filing grievances, the FA is quoted as saying, 'We're learning how to be a proper functioning unit...' TR p301, 15-16.

d. 4. Faculty Retrenchment - Economic

The College stated its perspective on this CBA provision in its Position Statement of June 6, 2019:

When bargaining over the first CBA, the parties spent a considerable amount of time negotiating the terms of this Article. The current retrenchment Article reflects the College's priority to stay nimble and the parties' desire to ensure that only the most qualified faculty are retained in the unlikely event of a layoff; rather than simply the most senior. What is more, the College has only had to invoke the retrenchment Article once, as part of a one-person reduction. And that instance did not create a dispute between the parties. The College has not invoked this Article in any way to suggest that the administration of the current CBA language is unfair, unworkable, or otherwise in need of adjustment.

The Union's Post Hearing Brief states in pertinent part:

The FA proposal seeks to establish priorities when the College President is deciding which faculty positions to reduce or eliminate. The FA wants those decisions to be based upon two criteria: (a) the least impact upon students and (b) the least impact upon faculty members. The FA proposes that the College President should consider potential alternatives to staff reductions, but if staff reductions are determined to be necessary, courses taught by non-bargaining unit members (staff and adjunct faculty) should be eliminated first and then the lowest enrolled classes and classes not necessary for the completion of a degree or certification should be eliminated. The FA proposal also seeks to eliminate multiple criteria (prior experience, recency of experience, education certifications, discipline in the past 12 months, and-- only if a tie among those-- length of service) in deciding whether a particular faculty member should be reassigned, laid off, or have reduced College assignments. The FA proposes to replace those multiple criteria with length of service (seniority), provided the faculty member is qualified for the position without trial or training.

Discussion

The concept of Faculty Retrenchment easily evokes a concern that a bargaining unit member may be treated unfairly. Having read all that was provided on this subject, I find that based on the record a case can be made for the College's proposal of 1-11-2019 resubmitted on 2-18-2019. Ref. College Exhibit 11.

The proposed change adds a new B.1 *Procedure* on page 1., with numbering of old B1. becoming B.2, and so on. This proposal appears to the fact finder as a reasonable step in the right direction to address concerns expressed by the Union on this sensitive subject.

For the College to exceed any grant of authority created in it beyond the spirit and intent of best business practices, or to 'personalize' it, would surely evoke a response worthy of serious consequence.

The proposal recommended for Faculty Retrenchment is the College's as stated below:

Article XXII
Faculty Retrenchment

A. POLICY

The President of the College will be responsible for the determination of the need for retrenchment or restructuring. The President and/or his designee shall determine the classifications and positions that are to be included in the retrenchment or restructuring. Faculty retrenchment shall be completed by the procedures set forth below.

B. PROCEDURE

1. Discussion regarding potential alternatives to reductions of members of the Faculty Association bargaining unit.

When the college determines it may be necessary to decrease the size of the instructional staff within the Association bargaining unit due to overstaffing and/or adverse financial conditions, the College President shall meet and consult with the President of the Faculty Association. Affected departments or instructional areas shall have an opportunity to make recommendations and present alternatives to staff reductions to the College President or his/her designee.

2. NOTICE OF RETRENCHMENT

Before any layoff, reduction, or reassignment is initiated under this policy, the Association will be given a 60 calendar-day notice of such anticipated action. If it is necessary to undertake retrenchment at Northwestern Michigan College, the Director of Human Resources will provide notice of retrenchment to those faculty members who are in positions being considered for retrenchment. Retrenchment can result in one of three actions. The faculty member may be reassigned, laid off, or receive a reduction of College assignments. The President must approve any retrenchment actions.

- a. Retrenchment Within an Instructional Area

Reasonable effort will be made to give notice of retrenchment to faculty members no less than 120 calendar days prior to retrenchment action is to be implemented, but under no circumstances will less than 60 calendar days' notice be given.

- b. College-wide Retrenchment

Notice of retrenchment will be given as soon as is practicable.

- c. Notice

The retrenchment notice will be in writing and will state that the faculty member will be reassigned, laid off, or have a reduction of College assignments unless other opportunities within the College can be arranged according to the procedures below.

3. REASSIGNMENT TO OTHER POSITIONS WITHIN NMC

- a. Upon notification of retrenchment, the Director of Human Resources will discuss the options and procedures which are to be pursued in receiving consideration for continued employment within the institution with the affected faculty member, the appropriate Vice President, and the faculty member's immediate supervisor.

with the remainder of the existing provisions to remain unchanged.

e. 5. Dues Check Offs - Economic

In its Post Hearing Brief, at pages 10 & 11, the College stated:

Article I of the 2016-2018 CBA provides that the College is responsible for deducting Association dues, fees and assessments from faculty pay. (NMC Exhibit 1, at pg. 3). NMC has proposed removing Article I in its entirety....

NMC's position that Article I should be removed from the CBA in its entirety is reasonable. Since Michigan became a Right-to-Work state, it is in the best interest of employers to not know who is and who is not a dues-paying member of the Union. [The Union] agreed during his testimony, that some faculty members may not want the College to know whether or not they are paying dues.

NMC presented evidence regarding the administrative burden and risks on the College if this provision is retained. [The College] testified regarding the responsibility being imposed on the College for Union members who decide to begin or stop paying dues to the Union. The College has the burden of coordinating with the Union and the individual regarding those additions and subtractions. (Tr. at 115-117.) Moreover, the Union is already collecting dues from some of its members directly, so there would be a minimal additional burden on the Union for doing so for all dues-paying members.

The Union provides an Exhibit (marked for the fact finder's use as NMC FA Exhibit Part 2 , page 1) which indicates a survey it appears to have conducted indicating:

Issue: Dues Checkoff/Payroll Deduction

College Dues Checkoff/ Payroll Deduction Provision in the CBA?

- Alpena Yes
- Bay de Noc Yes
- Glen Oaks Yes
- Gogebic Yes
- Grand Rapids Yes
- Henry Ford Yes
- Kalamazoo Yes
- Kellogg Yes
- Kirtland Yes
- Lake Michigan Yes
- Lansing Yes
- Macomb Yes
- Mid-Michigan Yes
- Montcalm Yes
- Monroe Yes
- Mott Yes
- Oakland Yes
- Schoolcraft Yes
- St. Clair Yes
- Washtenaw Yes
- Wayne Yes
- West Shore Yes
- NMC Yes**

Discussion

In essence, right-to-work laws regulate the contracts between employers and unions, preventing employers from excluding non-union workers or requiring existing employees to join a union or pay union dues. In 2013, Michigan began allowing workers to choose whether to be members and pay dues to unions under Public Act 348 of 2012.

The fact finder is not convinced that departing from the existing practice on the record before him justifies the request of the College for a Union that has existed less than four years and appears to have most, if not all eligible employees maintain dues paying status.

Any abuse of the sort mentioned, (opt out, opt in, opt out, etc.) could result in a different result in future negotiations and if an organized ‘job action’, could become the subject of a review by MERC.

Recommendation

The fact finder recommends maintaining the status quo on Dues Check Offs.

f. 6. Contract Maintenance Committee – Communication and Consultation - New Non-Economic

In its Post Hearing Brief at page 19, the Union advises:

The FA is proposing to have regular meetings with NMC. The FA wants to be able to call a meeting with NMC so that the parties can spend more time together and resolve issues before they arrive. [The Union] testified that this proposal will create mandatory meetings (T. 122). The FA agrees. Once a month or once a semester, a meeting to discuss concerns and issues goes a long way towards improving labor relations. Although [the Union] testified that [the College] has never refused to meet with him, he could have certainly done so under the terms of the CBA. Significantly, [the Union] testified that other administrators have refused to meet with him on Association matters (T. 301).

Therefore, the FA requests that the Fact Finder adopt the FA's proposal and encourage dialog between the parties.

The College’s Post Hearing Brief, at page 17 opposes this proposal in part because:

... it has an open-door policy to discuss issues concerning the interpretation of the CBA with the faculty association. (Tr. at 304.) ... and both [College Witnesses] testified that neither had refused to discuss such matters with the Union. (Tr. at 123, 139.)

It remains NMC's position that creating such a committee is unnecessary in light of the parties' current relationship and obligations under the law to bargain in good faith... [emphasis added]

Discussion

Again, the lack of a record justifying adoption of a new provision keeps the fact finder from recommending the Union's Proposal. Having said that, the fact finder observed personal interactions during visits to the College Campus that lead him to believe that any number of informal discussions between the College and the FA could address developing issues in avoidance of a formal proceeding.


Recommendation

The fact finder recommends that the status quo be maintained on the issue of Contract Maintenance Committee and that none be created in this Collective Bargaining Agreement.

6. SUMMARY OF RECOMMENDATIONS – See Appendix for current CBA Provisions

ISSUE	RECOMMENDATION
A. Wages/Salary Plan	2019, 2.0%; 2020, 2.5%; and 2021, 3.0% increases on each step of the salary plan for steps 6 through 20
B. Benefits -	
1. Child Care Leave	Maintain Status Quo without reduction in the CBA
2. Family Medical Leave	Maintain Status Quo without reduction in the CBA
3. Health and Dental	2019 Maintain Status Quo without reduction in the CBA 2020 & 21 BAC Recommends to President with Core plan increased from 75% to 80% to be paid by College
4. Short-Term Disability	Maintain Status Quo without reduction in the CBA
C. Association Days	10 Association Days to be allowed on at least 7 days' notice to College
D. Faculty Retrenchment	College Proposal of 1-11-2019 resubmitted on 2-11-2019
E. Dues Check Off	Maintain Status Quo
F. Contract Maintenance Committee (New)	Maintain Status Quo - No New CM Committee

Respectfully submitted,



Ralph L. Maccarone , Fact Finder

Dated: August 22, 2019

*Fact Finding Report and Recommendation Appendix
containing selected excerpts of existing CBA provisions for illustration.
Not all inclusive of the subject matters for which recommendations are made.*



Northwestern Michigan College

-AND-

NMC FACULTY ASSOCIATION

COLLECTIVE BARGAINING AGREEMENT

Effective
January 1, 2016 through December 31, 2018

ARTICLE XXVII
Faculty Salary Schedule

Step	Current	2016	2017	2018
1	43,128	43,128	43,257	43,257
2	44,730	44,730	44,864	44,864
3	46,392	46,392	46,531	46,531
4	48,116	48,116	48,260	48,260
5	49,904	49,904	50,054	50,054
6	51,758	51,758	51,913	51,913
7	53,681	53,681	53,842	53,842
8	55,676	55,676	55,843	55,843
9	57,745	57,745	57,918	57,918
10	59,891	59,891	60,071	60,071
11	62,116	62,116	62,302	62,302
12	64,424	64,424	64,617	64,617
13	66,818	66,818	67,018	67,018
14	69,301	69,301	69,509	69,509
15	71,876	71,876	72,092	72,092
16	74,547	74,547	74,771	74,771
17	77,317	77,317	77,549	77,549
18	80,190	80,190	80,431	80,431
19	83,170	83,170	83,420	83,420
20	86,255	86,255	86,514	86,514

1. Faculty will move one step on the scale based on satisfactory performance each year of the contract (3.71%).
2. Scale adjustment for 2017 will be 0.30% based on COLA
3. Scale adjustment for 2018 will be equal to the Social Security COLA with a maximum increase of 1% even if the Social Security COLA exceeds 1%, and become effective January 1, 2018.
4. Faculty that are at Step 20 and do not move along the plan will receive a 1% payment of their base salary each year of the CBA (2016, 2017, and 2018).
5. The 2016 step payment will be made within 30 days of ratification of the CBA.

ARTICLE XXVIII
Faculty Salary Plan Placement

1. **COVERAGE AND STRUCTURE**

The salary plan covers all teaching and non-teaching faculty of Northwestern Michigan College who are annually contracted to work at least two semesters per year for 50 percent or more of a full time work load.

The salary plan has 20 steps. Each step has an incremental value of 0.037155 and represents one year of satisfactory performance.

2. **PLACEMENT ON THE PLAN**

New faculty will be placed on the plan at a step appropriate to their education, experience, and professional achievement. Minimum qualifications for faculty teaching in the liberal arts shall be a master's degree in their teaching discipline. Minimum qualifications for faculty teaching in the occupational programs shall be a bachelor's degree plus two years professional experience in the appropriate academic area; however, a master's degree is preferred. These qualifications must follow credential standards of the Higher Learning Commission. Additional qualifications may be established for specialty positions with approval of the Vice President for Educational Services and Director of Human Resources. During the selection process, the availability of funds and a department's needs may affect the importance placed on a candidate's previous years of experience.

The Vice President for Educational Services and the Director of Human Resources will evaluate the individual's credentials and make a placement recommendation. The placement recommendation is subject to approval by the President. Initial placement beyond step 1 may be made according to the following factors:

a. **Education**

New faculty may be placed by educational credentials as follows:

Bachelor's degree plus two years' experience	Step 1
Master's degree	Step 4
Master's plus 30 graduate credits	Step 5
Master's plus 60 graduate credits or earned doctorate	Step 6

b. **Teaching Experience**

Each year of full-time equated teaching experience at an accredited institution of higher education may advance the initial placement on the plan by one step, to a maximum of three steps. Relevant high school teaching experience will be given credit for step placement at a two years high school to one year NMC ratio,

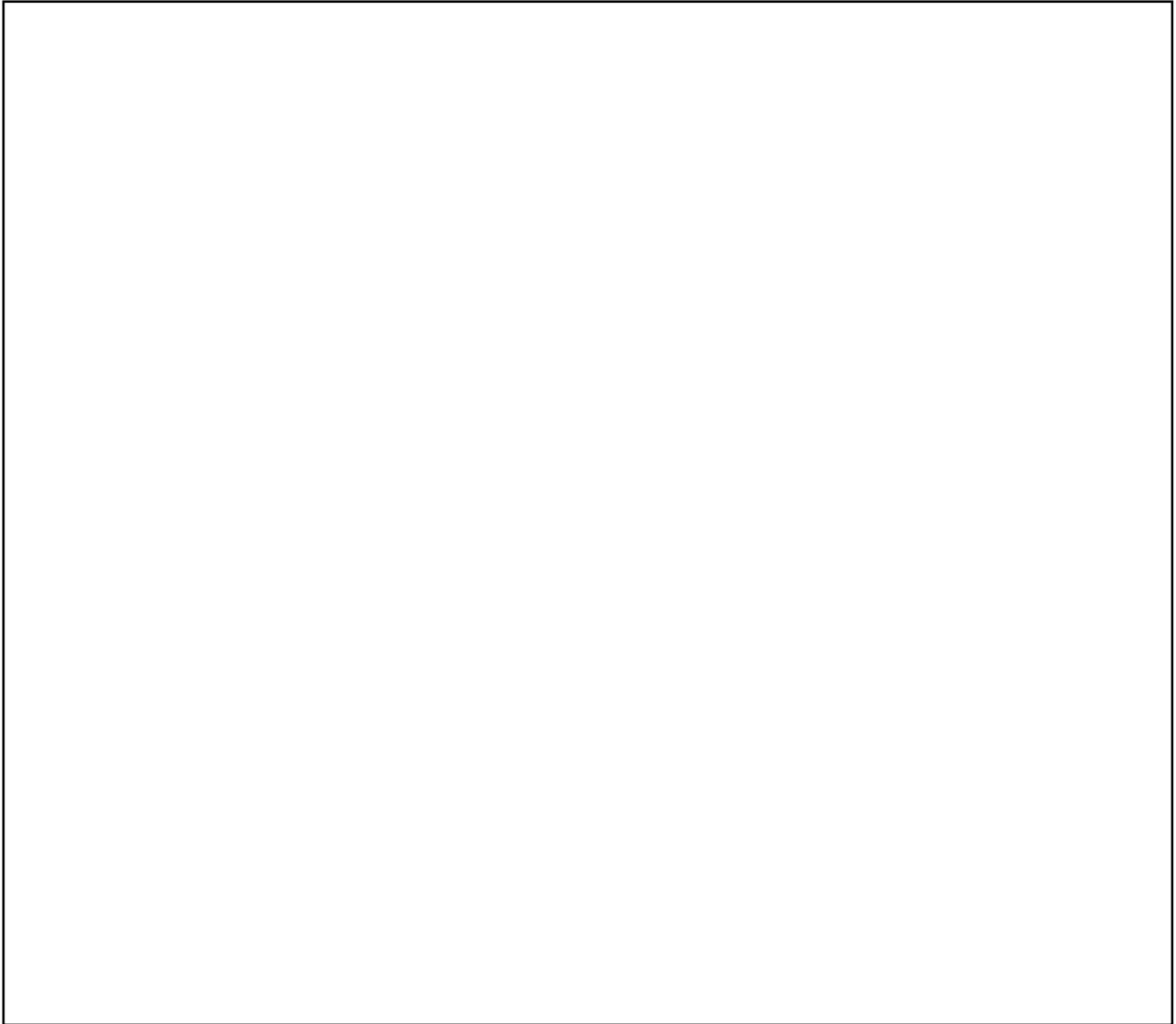
compared to higher education. Teaching as a graduate assistant will not be credited.

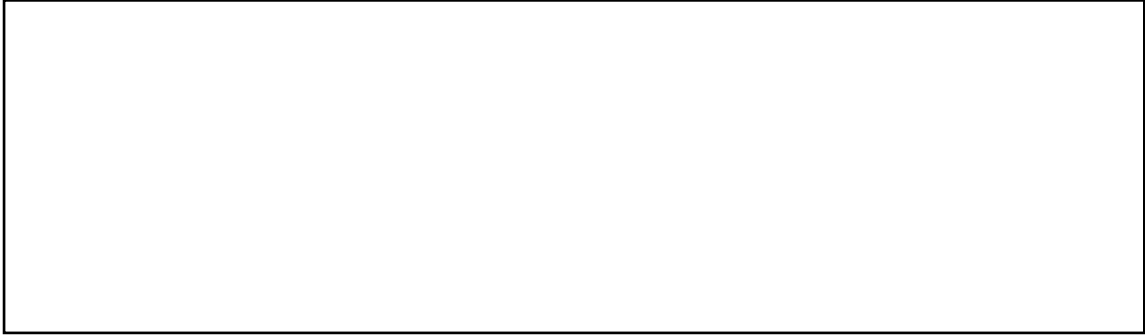
c. Other Relevant Professional Experience

Each additional two years of relevant professional work experience beyond the minimum experience required for the position may advance the placement on the plan by one step, to a maximum of three additional steps. (Teaching experience and other relevant professional experience combined may not exceed three additional steps.)

d. Job Market

In rare circumstances, a recommendation may be made for higher placement on the basis of demonstrated market factors in the particular academic area that result in a documented inability to attract qualified faculty.





- ***Child Care Leave Policy and Procedures***

Child Care Leave Policy

Child care leave for a period of up to 12 months may be granted to any eligible employee who has successfully completed at least one year of employment, for the purpose of providing child care after the child's birth or adoption of a child under 18 years of age.

The child care leave period will run concurrently with Family Medical Leave (FMLA) whenever an employee is eligible for FMLA.

Child Care Leave Procedure

Requests for the child care leave shall be made in writing to the appropriate supervisor using the Child Care Leave Request Form at least 90 calendar days prior to the expected birth or placement of an adoptive child, except under extenuating circumstances. Requests are to be approved by the appropriate executive officer.

Notice of the date of return shall be given in writing to the supervisor at least 30 calendar days in advance of return.

Child care leave will be coordinated with other leave policies as appropriate.

- The child care leave period will run concurrently with Family Medical Leave (FMLA) whenever an employee is eligible for FMLA. Refer to Policy D-722.00 and Procedure D-722.01 for FMLA eligibility.
- Accumulated sick leave and wage continuation will be provided for the period of time the employee is certified by a physician as being under medical care and unable to work. Refer to Policy D-720.00/Procedure D-720.01 and Policy D-721.00/Procedure D-721.01 for details.
- Accumulated sick days may be used in accordance with Family Care Policy D-723.00.
- Accumulated vacation shall be used prior to commencement of the unpaid portion of the leave.
- The remainder of the 12-month leave not covered by accumulated sick leave, wage continuation, or vacation shall be unpaid.

Medical coverage will continue to be provided during the period that the employee is on FMLA, with premiums deducted from the employee's paycheck. If the employee is on unpaid leave while on FMLA, an arrangement will be made for repayment of medical premiums upon return to work. The employee may choose to continue dental, vision, and other benefits while on FMLA under the same conditions.

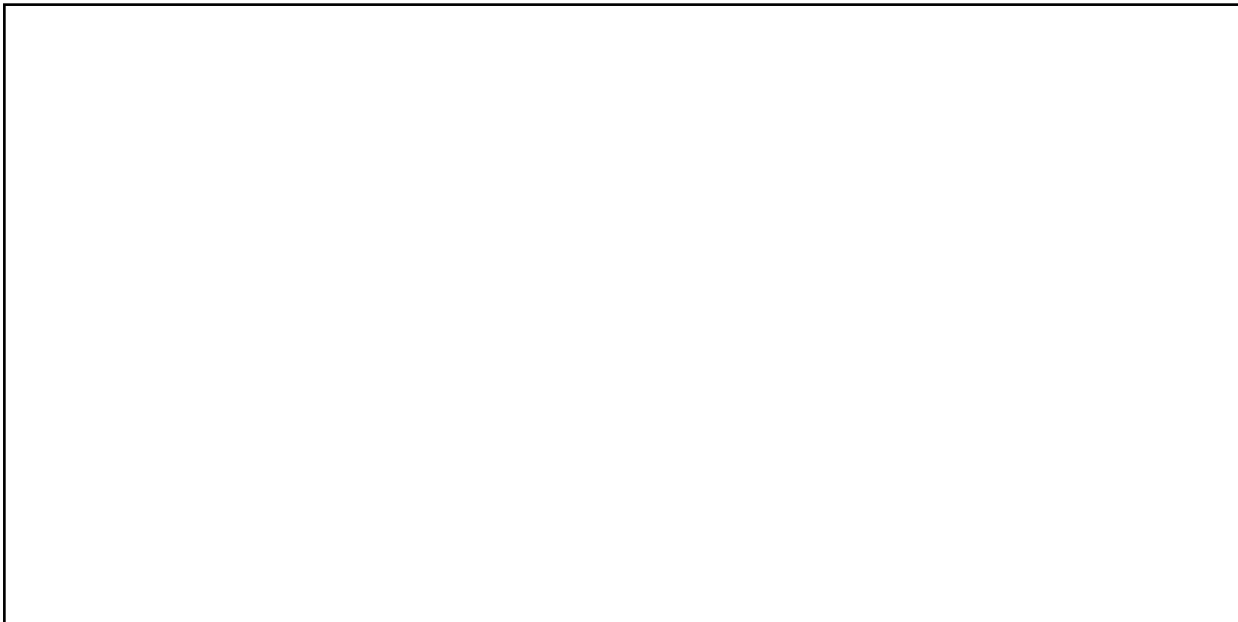
If the employee chooses to continue any benefits while on unpaid child care leave beyond the 12-week FMLA leave period, they will be placed on COBRA in accordance to that policy.

No other wage or benefits will be paid or accrued during the unpaid portion of the leave.

Upon return from child care leave, the employee will be returned to his or her original position or an equivalent position with equivalent pay, benefits, and other employment terms if it is within the 12-week FMLA leave period. If not, every effort will be made to return the employee to the same or an equivalent position, however, there is no guarantee of placement or continuing employment.



APPENDIX B – BENEFITS



- *Health and Dental Insurance*

Comprehensive hospital medical and surgical coverage will be offered by the College to eligible employees and their eligible dependents with employee contributions through payroll deduction. An employee on a medical leave of absence may continue medical coverage (and coverage for eligible dependents) during the leave for 12 months following the day the medical leave began, with the participant contribution at the same rate as for an active employee while out on paid leave. If the employee is terminated because he/she is physically unable to work and has exhausted all accrued sick time and vacation time paid out using the number of hours per day worked in their regular schedule COBRA premium shall be waived during the remainder of the 12 month period. The employee is responsible for informing Human Resources if they acquire medical coverage elsewhere before the 12-month period is complete, at which time the College-provided COBRA would end.

Part-time eligible employees (on regular, annual appointments calling for 50 percent or more of a full-time work load) may purchase medical coverage for themselves and eligible dependent family members. NMC will pay a prorated portion of the premium based upon the percentage of a full-time appointment held.

Dental coverage will be offered to regular full-time employees and their eligible dependents with employee contributions through payroll deduction.

See also Appendix C

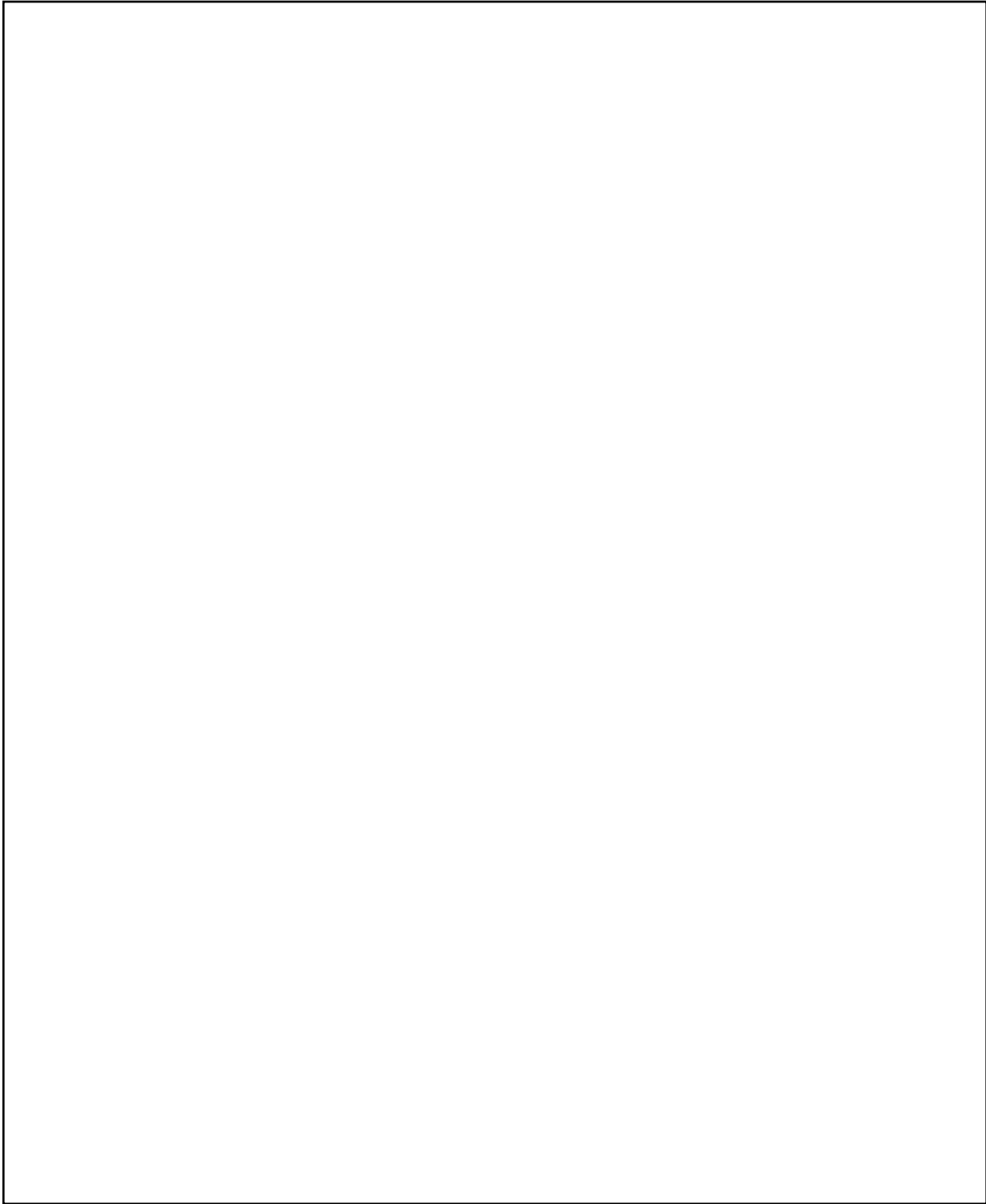
APPENDIX C

Health and Dental Plan

Self Funded	HSA	Core PPO
Coinsurance (In/Out)	80%/60%	80%/60%
In-Net Deductible (single/family)	\$1,300/\$2,600	\$500/\$1,000
In-Net Coinsurance Max (single/family)	Not Applicable	\$1,500/\$3,000
True Out of Pocket Max	\$2,250/\$4,500	\$6,350/\$12,700
Primary Care Physician Copay	80% after ded.	\$20 copay
Inpatient Care	80% after ded.	80% after ded.
Emergency Room Copay	80% after ded.	\$150 copay
Prescription Drug Copays	\$10/\$40/\$80 after ded.	\$10/\$40/\$80
Contract Type	PD/12	PD/12
Specific	\$70,000	\$70,000
Spec Includes	Med/Rx	Med/Rx
Annual Aggregate Attachment Point – Single	\$11,107	\$11,107
Annual Aggregate Attachment Point – Family	\$11,107	\$11,107
Aggregate includes	Med/Rx	Med/Rx
HSA Contributions		
<i>5 Tier Contributions</i>		
Single	\$1,300	\$0
EE + Spouse	\$2,800	\$0
EE + Child	\$2,800	\$0
EE + Children	\$2,800	\$0
Family	\$2,800	\$0
Paycheck Contribution		
<i>5 Tier Rates (24 Pays)</i>	<i>Paycheck Contribution</i>	<i>Paycheck Contribution</i>
Single	\$55.93	\$73.50
EE + Spouse	\$116.31	\$154.36
EE + Child	\$85.15	\$102.91
EE + Children	\$107.41	\$139.67
Family	\$147.47	\$205.82

- Annual HSA seeding/contributions will be distributed as follows: 70% in January; 30% in July.

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- *Family and Medical Leave Policy and Procedures*

Family and Medical Leave Policy

The College shall grant eligible employees up to 12 weeks of unpaid family and medical leave (FMLA) in any 12-month period in accordance with the provisions of the Family and Medical Leave Act of 1993, and as may be amended, for one or more of the following basic reasons:

- To care for the employee's child after birth, or placement for adoption or foster care;
- To care for the employee's spouse, son, daughter, or parent who has a serious health condition; or
- For a serious health condition that makes the employee unable to perform his/her job.

Military Family Leave Entitlements

- Eligible employees may also use their 12-week leave entitlement to address certain qualifying exigencies if the employee's spouse, son, daughter, or parent who is a member of the Armed Forces, National Guard, or military reserves is on covered active duty or called to active duty status.
- Military caregiver leave provides up to 26 weeks of FMLA leave in a 12-month period by an eligible spouse, parent, son, daughter, or next of kin of a covered service member to care for a member of the Armed Forces, including a member of the National Guard or reserves, who has a serious illness or injury incurred in the line of duty while on active duty. This leave also covers a veteran who was a member of the Armed Forces, National Guard or reserves during the previous five years and suffered an illness or injury while on active duty that manifested itself during or after the member was discharged from active duty.

To be eligible for family and medical leave an employee must have worked for Northwestern Michigan College for at least 12 months, and for at least 1,250 hours during the year preceding the start of the leave.

The College has adopted the 12-month period measured forward from the date of the first FMLA leave usage.

If both parents work for the College, they are entitled to take only a total of 12 weeks of leave for the two of them for FMLA related to birth or adoption. Additional child care leave may be granted under the provisions of the Child Care Leave Policy D-726.00.

Accrued vacation, sick leave, wage continuation, or family care leave shall be substituted for unpaid leave where applicable under those policies.

Medical coverage will continue to be provided during the leave including dependent coverage. No other wages or benefits will be paid or accrued during the unpaid portion of the leave.

Upon return from family and medical leave, the employee will be returned to his or her original position or an equivalent position with equivalent pay, benefits, and other employment terms.

Family and Medical Leave Procedure

The College will comply with the provisions of the Family and Medical Leave Act of 1993, and as amended.

To be eligible for family and medical leave an employee must have worked for Northwestern Michigan College for at least 12 months and for at least 1,250 hours during the year preceding the start of the leave.

Employees shall provide at least 30 calendar days' advance notice in writing to the supervisor, where the leave is foreseeable. The leave shall be reported to the Human Resources, who will verify that the time off requested qualifies for family and medical leave.

Medical certification will be required to support a request for leave because of a serious health condition. A medical release to return to work will also be required. Forms for this purpose are available from Human Resources.

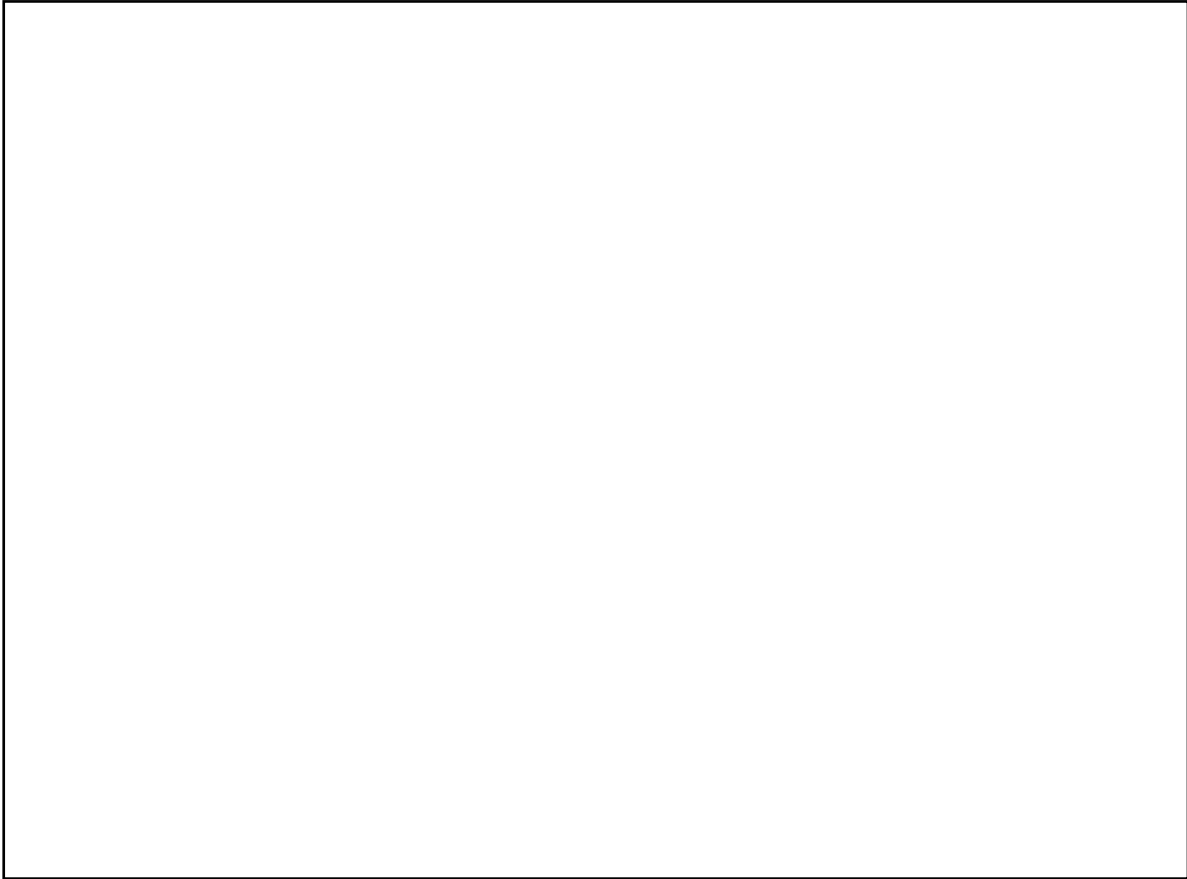
Intermittent or reduced-time leave schedules must be approved by the supervisor unless medically necessary.

Medical coverage will continue to be provided during the leave including dependent coverage, with premiums deducted from the employee's paycheck. If the employee is on unpaid leave, an arrangement will be made for repayment of medical premiums upon return to work. The employee may choose to continue dental, vision, and other benefits while on FMLA under the same conditions. No other wages or benefits will be paid or accrued during the unpaid portion of the leave.

NMC may recover both the employee premiums and the NMC share of the premiums as well for continued benefits coverage if the employee does not return to work, unless the reason for not returning is the continuation of a serious health condition or other circumstances beyond the employee's control.

Employees requesting family and medical leave will be provided with a statement of their rights and obligations regarding this leave.





- ***Wage Continuation (Short Term Disability) Policy and Procedures***

Wage Continuation Policy

Wage Continuation is Northwestern Michigan College's self-insured program for short-term disability. Eligible employees who have completed 90 days of employment and have suffered a single serious health condition arising from illness or injury are eligible for their pay to continue under the provisions of the procedure.

The purpose of this policy is to alleviate the unpaid leave status of Family Medical Leave for an employee's own serious health condition and to provide up to 180 calendar days of paid leave, with part-time employees paid based on their appointment percent, for employees that request the benefit and meet the qualifications described in the procedure. Wage continuation shall run concurrently with Family Medical Leave in cases where the employee is eligible for both.

Wage Continuation Procedure

Wage Continuation is Northwestern Michigan College's (NMC) self-insured program for short-term serious health conditions. Eligible employees may request this benefit as outlined in this procedure. Eligibility is determined according to the definition of full-

time and part-time regular employees, in the Definition of Employee Categories who have completed 90 days of employment at NMC. Employees not working because of work-related injuries covered under Workers' Compensation are ineligible for Wage Continuation.

The Wage Continuation period will run concurrently with Family Medical Leave (FMLA) whenever an employee is eligible for FMLA due to their own serious health condition. Wage Continuation is a benefit that will pay the employee for time off that is unpaid under the FMLA regulations, based on their appointment percent, and does not replace or circumvent FMLA.

NMC has attempted to address the most common situations for accidents and illness and how the Wage Continuation benefit applies. The Director of Human Resources, or designee, reserves the right to address unusual circumstances and administer this benefit as is practical.

Initial Qualification for Wage Continuation:

Accident

1. After an employee has been off work for one (1) work day or a part of a work day due to a single serious health condition caused by an accident, the employee may request to be paid under the Wage Continuation provisions.
2. A Wage Continuation Employee Request Form must be completed and signed by the employee or designee in order to be paid under this benefit.
3. The first work day off due to a single serious health condition caused by an accident will be paid under Wage Continuation provisions.

In order to qualify for Wage Continuation, a medical certification will be required. The employee must submit the medical certification to the Office of Human Resources as soon as is practical or within 15 days maximum of receiving the request form. If there are questions or the nature of the serious health condition needs clarification, then NMC's physician will contact the employee's physician to determine if a second opinion is necessary. NMC reserves the right to require medical certification from NMC's physician. If the employee does not obtain the required certification within the 15-day period, their leave will be handled according to the Family Medical Leave Act, which states that leave will be denied if necessary certification is not provided.

Illness

1. After an employee has been off work for 15 consecutive work days due to a single serious health condition due to illness, the employee may request to be paid under the Wage Continuation provisions.
2. A Wage Continuation Employee Request Form must be completed and signed by the employee or designee in order to be paid under this benefit.

3. The 15-day qualification period will be handled according to the following Wage Continuation provisions.

In order to qualify for Wage Continuation, a medical certification will be required. The employee must submit the medical certification to the Office of Human Resources as soon as is practical or within 15 days maximum of receiving the request form. If there are questions or the nature of the serious health condition requires clarification, then NMC's physician will contact the employee's physician to determine if a second opinion is necessary. NMC reserves the right to require medical certification from NMC's physician. If the employee does not obtain the required certification within the 15-day period, their leave will be handled according to the Family and Medical Leave Act, which states that leave will be denied if necessary certification is not provided.

The employee must be actively at work or on an approved leave day other than Wage Continuation in order to qualify for Wage Continuation. A new Wage Continuation period will not be approved for a new serious health condition unless the employee has been released to return to work from the original serious health condition. The employee must be at work for at least one full workday. All other qualifications as stated above will apply.

Wage Continuation Pay

Wage Continuation will provide pay for the balance of a total of 180 calendar days (including weekends) based on the employee's appointment percent after the initial qualification period has been met.

Pay Schedule

1. Day 1 through Day 15 will be paid using all sick time accrued prior to the beginning of the leave, then by vacation time if the employee chooses, or will be unpaid leave for the qualification period.
2. Day 16 through Day 60 will be paid at 100% of base pay
3. Day 61 through Day 180 will be paid at 66.67% of base pay
4. Sick or vacation leave may not be used to make up the remainder of the base pay on Days 61-180.
5. Leave time will be reported to MPSERS according to their guidelines (currently normal assigned hours). MPSERS service hours remain the same but the pay is reduced.

Continuing Certification Required

1. A minimum of one additional certification will be required from the employee's physician or NMC's physician when the employee has been off work for 12 work weeks. Certification may be required every 30 days in order to continue pay under this policy, depending on the circumstances of the accident/illness. NMC reserves the right to require medical certification from

NMC's physician. Additional certifications may be required from the employee's personal physician. NMC will pay expenses or any deductible and co-pay, after health plan coverage for required certifications. No additional expenses will be paid by NMC.

2. Based on the additional certification, if the duration of the absence is anticipated to be continued beyond the 12-week FMLA period, the College reserves the right to fill the employee's position or determine if it will remain open.

3. Based on the duration of the anticipated absence as outlined in the additional certification, applications for Long Term Disability and MPERS Retirement Disability (if applicable) should be started. This process may change if the duration of the anticipated absence changes.

4. The Maintenance/Custodial staff will follow their employee bargaining agreement if applicable.

Employee's Responsibility

1. After requesting Wage Continuation pay the employee will cooperate in a timely manner and obtain medical certification from their physician or NMC's physician as soon as is practical or within 15 days at a maximum of receiving the request form. NMC reserves the right to require medical certification from NMC's physician.

2. During the Wage Continuation period, it is the employee's responsibility to contact the FMLA administrator in the Human Resources office at least once every two weeks regarding their fitness for duty or intention to return to work. Failure to comply may result in time without pay.

3. When practical the employee will give 30 days' notice of their intent to return to work.

4. The employee will be required to provide fitness for duty certification.

Wage Continuation pay may be denied if the employee does not satisfy these requirements.

Return to Work

1. If the employee returns to work for a period of less than 30 calendar days, before the maximum benefit of 180 days is paid out, the 15 day requirement for illness will be waived for future time off related to the same illness/injury and the original 180-day period will resume. Another medical certification will be required according to provisions under "Continued Certification Required", item 1. NMC reserves the right to require medical certification from NMC's physician.

2. If the employee returns to work for a period of more than 30 calendar days but less than 6 months before the maximum benefit of 180 days is paid out, the 15-day qualifying requirement for illness will apply for future time off related to the same illness/injury and the original 180-day period will resume. Another medical

certification will be required according to provisions under “Continued Certification Required”, item 1. NMC reserves the right to require medical certification from NMC’s physician.

3. If the employee returns to work for a period of at least 6 months before the maximum benefit of 180 days is paid out, future time off related to the same illness/injury will be treated as a new Wage Continuation period will begin. Another medical certification will be required according to provisions under “Continued Certification Required”, item 1. NMC reserves the right to require medical certification from NMC’s physician.

4. NMC requires the employee to provide a medical certification of the employee's fitness to return to work including any restrictions and their duration. This applies only to the health condition which caused the employee to be unable to perform the functions of the employee's job. This requirement will be communicated to the employee when it is determined that the concurrent use of FMLA will be counted during Wage Continuation and it must be job-related and consistent with business necessity pursuant to the Americans with Disabilities Act (ADA).

5. If all of NMC's notification responsibilities have been met and the employee fails to provide a fitness for duty certificate as required at the time the employee is to return to work, NMC may delay the return to work until it is provided.

6. Upon return to work, returning the employee to a position will be as follows:

- a. If the leave qualified for FMLA and the 12-week period has not expired, placement will be made in the same or an equivalent job according to FMLA standards.
- b. If the leave qualified for FMLA and the employee has been out past the 12- week period, every effort will be made to return the employee to the same or an equivalent position, however, there is no guarantee of placement or continuing employment.
- c. If the leave did not qualify for FMLA and the employee has been out past 12 weeks, every effort will be made to return the employee to the same or an equivalent position, however, there is no guarantee of placement or continuing employment.

7. If an employee is found to have fraudulently obtained Medical Certification to qualify for FMLA and/or Wage Continuation from NMC, job restoration and maintenance of benefits will NOT be protected.

8. Employees found working outside of NMC while they are restricted from working under Medical Certification and are on FMLA and/or Wage Continuation will have job restoration, maintenance of benefits and Wage Continuation pay terminated. Disciplinary action up to and including termination may take place.

Applicable Benefits:

All benefits pertaining to the employee's classification shall continue to apply including wage and hour reporting for retirement, except the following:

- Sick leave accrual will be discontinued during the use of Wage Continuation since the employee is not currently working.
- Vacation leave accrual will be discontinued during the use of Wage Continuation since the employee is not currently working.

If the employee returns to work for less than full-time, as defined in the Definition of Employee Categories, these benefits will accrue at the rate of actual hours worked.

This policy supersedes the benefits of FMLA in pay status only. All other provisions of FMLA regarding benefits apply except where stated in "Applicable Benefits".

If the employee is not released to work Upon Completion of the Total 180 Days of Absence

- No regular pay will be in effect after the total 180-day period.
- Faculty who have chosen to have their contract paid over 26 pays will have the earnings over the 180-day period calculated, including the corresponding deferred pay amount, and this prorated amount will be paid out.
- After the 180 days, and all accrued leave has been paid out, if the employee is unable to return to work, employment will be terminated unless there is assurance in writing from the employee's health care provider that the employee will be able to return to work within a reasonable period of time.
- The Maintenance/Custodial staff will follow their employee bargaining agreement if applicable.

The college maintains the right to administer this procedure according to the requirements listed and to terminate pay if the employee does not comply with these requirements.

This policy supersedes the benefits of FMLA in pay status only. All other provisions of FMLA regarding benefits apply except where stated in "Applicable Benefits".

The Director of Human Resources reserves the right to waive and/or alter any portion of this procedure depending on individual circumstances to meet the needs of the employee and the institution.



Article XIX
Association Days

Members of the Faculty Association shall be granted a total of five (5) days release time annually for the purpose of transacting association business. The release time will be granted without loss of salary or benefits. The Association President will notify the Vice President of Educational Services, in writing, a minimum of fourteen (14) working days in advance of the desired dates. Employees on paid Association Days will be responsible for making arrangements approved by the Vice President of Educational Services to cover their responsibilities at no additional cost to the College.



Article XIX
Association Days

Members of the Faculty Association shall be granted a total of five (5) days release time annually for the purpose of transacting association business. The release time will be granted without loss of salary or benefits. The Association President will notify the Vice President of Educational Services, in writing, a minimum of fourteen (14) working days in advance of the desired dates. Employees on paid Association Days will be responsible for making arrangements approved by the Vice President of Educational Services to cover their responsibilities at no additional cost to the College.



Article XXII
Faculty Retrenchment

A. POLICY

The President of the College will be responsible for the determination of the need for retrenchment or restructuring. The President and/or his designee shall determine the classifications and positions that are to be included in the retrenchment or restructuring. Faculty retrenchment shall be completed by the procedures set forth below.

B. PROCEDURE

1. NOTICE OF RETRENCHMENT

Before any layoff, reduction, or reassignment is initiated under this policy, the Association will be given a 60 calendar-day notice of such anticipated action.

If it is necessary to undertake retrenchment at Northwestern Michigan College, the Director of Human Resources will provide notice of retrenchment to those faculty members who are in positions being considered for retrenchment. Retrenchment can result in one of three actions. The faculty member may be reassigned, laid off, or receive a reduction of College assignments. The President must approve any retrenchment actions.

a. Retrenchment Within an Instructional Area

Reasonable effort will be made to give notice of retrenchment to faculty members no less than 120 calendar days prior to retrenchment action is to be implemented, but under no circumstances will less than 60 calendar days' notice be given.

b. College-wide Retrenchment

Notice of retrenchment will be given as soon as is practicable.

c. Notice

The retrenchment notice will be in writing and will state that the faculty member will be reassigned, laid off, or have a reduction of College assignments unless other opportunities within the College can be arranged according to the procedures below.

2. REASSIGNMENT TO OTHER POSITIONS WITHIN NMC

a. Upon notification of retrenchment, the Director of Human Resources will discuss the options and procedures which are to be pursued in receiving consideration for continued employment within the institution with the affected faculty member, the appropriate Vice President, and the faculty member's immediate supervisor.

b. Upon notification by the Director of Human Resources that retrenchment will be necessary, the affected faculty member will generate a current vitae and a letter outlining his or her perceptions of instructional and/or administrative strengths and specifically express interest in those areas in which he or she feels most qualified to work.

c. Options for reassignment will be pursued in the following order:

- i. Instructional opportunities and needs within the instructional area (liberal or occupational studies) of current employment.
 - ii. Instructional opportunities and needs not in the current instructional area of employment (liberal or occupational studies).
- d. If the corresponding vice presidents believe it appropriate to transfer the faculty member to a new area, the vice presidents will recommend the reassignment to the President for approval. If the President approves the reassignment, the faculty member will be placed on probation and subject to the same evaluation procedures, support, and guidance as all other probationary faculty. The probationary period shall be based on the faculty evaluation plan in effect at that time.

3. CRITERIA FOR SELECTING FACULTY MEMBERS AND BUMPING RIGHTS

- a. The criteria for selecting faculty members to be reassigned, laid off, or have reduced College assignments shall be as follows: the faculty member's ability and qualifications to contribute to new or restructured programs within the instructional area or other areas (as evidenced by such things as prior experience, recency of experience, education, and/or certifications relevant to the area of reassignment); and whether the faculty member has received discipline within the past 12 months. If all such criteria are equal, any layoff, reassignment, or reduction of College Assignments shall be done based on length of service in the annually appointed position, such that the faculty member with the shortest length of service shall be subject to retrenchment, unless a faculty member with a greater length of service in that instructional area volunteers to accept that retrenchment.
- b. Any faculty member laid-off, reassigned, or having College assignments reduced shall have the option of displacing any adjunct faculty member from their positions provided the faculty member is qualified for the position, without trial or training, while preserving their recall rights.
- c. Faculty members are not entitled to bump or displace other faculty and staff members of the college.

4. NOTICE OF LAYOFF

If the reassignment process described in Section 2 of this Article is not successful, final layoff notice will be given to the faculty member.

- a. Retrenchment Within an Instructional Area
Final notice of layoff will be given no less than 60 calendar days prior to the date of layoff. The final work schedule will be determined by the supervisor, the employee, and the executive officer.
- b. College-wide Retrenchment
Final notice of layoff will be given as soon as is practicable.

5. LAYOFF BENEFITS

The following benefits will apply when faculty are to be laid off. Faculty who are laid off:

- a. Will continue to receive health and dental coverage in which they are enrolled at the time of layoff, as provided by the College under the current benefit guidelines, for three full calendar months after the last day of employment;
- b. Will be given information regarding medical and dental continuation coverage;
- c. Will be given continuation of tuition benefits for courses delivered by NMC for themselves and any current eligible dependents for one year from the last date of employment;
- d. Will be given information regarding available outplacement services;
- e. For a period of three years, will be given first consideration for any position vacancies within the College for which they may qualify and apply (although first consideration does not guarantee employment when a vacancy occurs); and
- f. Will have reinstated all length of service credit as of the date of layoff, if rehired.



Article I
Checkoff

- (a) Effective the first of the month after ratification, the College agrees to deduct uniformly assessed Association membership dues, initiation fees, and union assessments to the extent permitted by law from the pay of each employee who executes and files with the College, through the Association, a proper checkoff authorization form supplied by the Association. The College agrees to provide this service without charge to the employee or Association.
- (b) A properly executed copy of the written checkoff authorization form for each employee for whom dues, initiation or service fees are to be deducted hereunder shall be delivered to the College at least fourteen (14) calendar days prior to any payroll date for which such deduction is to be made. Any written authorization which lacks the employee's signature will be returned to the Association by the College.
- (c) Deductions for dues shall be made each pay period, in standard amounts only, provided the employee has sufficient net earnings to cover the dues. In the event an employee does not, in said pay period, have sufficient net earnings to cover said amounts, such deduction shall commence with the next pay period for which sufficient net earnings are available.
- (d) The Association shall notify the College in writing of the proper amount of dues and any subsequent changes in such amounts.
- (e) The College shall not be liable to the Association by reason of the requirements of this Section of the Agreement for the remittance or payment of any sum other than that constituting actual deductions made from employee wages and the Association agrees to hold the College harmless for any and all claims, expenses or legal fees arising out of its agreement to deduct dues.

