

BEFORE THE MONTANA DEPARTMENT
OF LABOR AND INDUSTRY

IN THE MATTER OF HUMAN RIGHTS BUREAU CASE NO. 0131016284

RANDY BACHMEIER,)	Case No. 1323-2014
)	
Charging Party,)	
)	
vs.)	HEARING OFFICER DECISION
)	AND NOTICE OF ISSUANCE OF
MONTANA STATE UNIVERSITY-)	ADMINISTRATIVE DECISION
NORTHERN,)	
)	
Respondent.)	

* * * * *

I. Procedure and Preliminary Matters

Randy Bachmeier filed two complaints with the Department of Labor and Industry on May 30, 2013. He alleged that Montana State University-Northern (“MSU-N”) discriminated against him in employment because of sex (sexual harassment) and retaliated against him because he resisted and opposed the sexual harassment (HRB Case No. 0131016284). He alleged that MSU-N Provost Rosalyn Templeton likewise discriminated against him in employment because of sex (sexual harassment) and retaliated against him because he resisted and opposed the sexual harassment (HRB Case No. 0131016285). He filed first amended complaints against both MSU-N and Templeton on November 8, 2013, adding allegations of retaliation against MSU-Northern related to the fall 2013 search for a new provost and Bachmeier’s exclusion from certain meetings. On February 11, 2014, the department gave notice Bachmeier’s complaints against both MSU-N and Templeton would proceed to a contested case hearing, and appointed Terry Spear as hearing officer.

On April 25, 2014, the Hearing Officer granted the unopposed motion of MSU-N to dismiss Templeton, pursuant to Mont. Code Ann. §2-9-305(5), because Bachmeier’s claims against MSU-N and Dr. Templeton arose from the identical subject matter and MSU-N acknowledged that the conduct on which the claims were based occurred within the course and scope of Dr. Templeton’s employment, so that she had statutory immunity for her actions.

The contested case hearing proceeded on June 17-19, 2014, in Havre, Montana, and concluded on July 15, 2014, in Helena, Montana. Charging party Randy Bachmeier attended with counsel, Colette Davies, Davies Law PLLC, and

John Heenan, Bishop & Heenan. MSU-N attended through its designated representative, Chancellor James Limbaugh, with counsel, Jessica M. Brubaker and Vivian V. Hammill, Office of the Commissioner of Higher Education and Elizabeth L. Griffing, Axilon Law Group PLLC. John Does 1-99 have now been dropped from the caption, since no actual persons have been identified as additional parties hereto.

Exhibits 1-11, 13-15, 17-20, 20C, 21-25, 28-34, 36-37, 40-41, 44-52, 55-56, 58 [admitted by this decision], 102 (sealed), 104-105, 107, 110, 112-123, 125-127, 130, 133, 135-143, 145, 150-151, 161-162, 165, 167, 170, 172-179 were admitted into evidence. Exhibits 103 and 168 were refused.

The following witnesses testified under oath, in the following order and on the following dates:

June 17, 2014	1	Christine Shearer-Cremean
	2	Lawrence Strizich (Videoconference/phone)
	3	Lindsey Brown (Videoconference)
	4	Christine Shearer-Cremean
	5	Scott Norton Pease
	6	Randy Bachmeier
June 18, 2014	7	Randy Bachmeier
	8	William James Rugg
	9	James M. Limbaugh
	10	Mary Kay Bonilla
June 19, 2014	11	James M. Limbaugh
	12	Waded Cruzado
	13	Daniel Clifford Ulmen
	14	Kevin Gregory Zoren
	15	Sylvia Moore
	16	Greg Kagel
	17	Kathy Jaynes
	18	Randy Bachmeier
July 14, 2014	19	Rosalyn Anstine Templeton

II. Issues

1. Did MSU-N unlawfully discriminate against Randy Bachmeier in his employment because of sex (hostile environment)?
2. Did MSU-N unlawfully retaliate against Randy Bachmeier because he resisted and/or complained of sexual harassment by his supervisor?
3. If MSU-N engaged in unlawful discrimination and/or retaliation, what should the department require to correct and prevent similar discriminatory and/or retaliatory practices?

III. Findings of Fact

1. Montana State University-Northern (“MSU-N”) hired Randy Bachmeier in 2002 as project coordinator for the Community Technology Education Center, a grant-funded program. He earned his Baccalaureate degree at MSU-N before he became employed there, and has been employed in various capacities at MSU-N since 2002. His family moved to Havre, Montana, when he was four years old, and he has lived there ever since.

2. As of the time of hearing in this case, summer of 2014, Bachmeier had been married for 25 years. He and his wife have six children. His wife has stayed at home and he is and has been his family’s sole provider. Both his parents and his wife’s parents live in Havre. He and his family have made the decision to stay in Havre, and he made the decision to stay at MSU-N. He respects and loves the school, which he “knows very well, in and out, everybody here, the entire institutional history.” He has “no intention of going anywhere if I can help it.” His wife does not want to leave Havre. He does not want to uproot his children from Havre.

3. Bachmeier earned his Master’s degree in curriculum and development, also at MSU-N, in 2004. He remained in the project coordinator position for those two years, until a colleague left work at MSU-N, and her Perkins Grant was combined with his grant funding. With that increased grant funding, and with his Master’s degree, he continued to work on student support, faculty support, faculty community development and community education, from 2004 to 2006, when he took on additional duties (vacated by another colleague who left MSU-N) as the Director of On Line Learning and the Learning Center.

4. Continuing to work at MSU-N, Bachmeier enrolled in an on-line Ph.D. program, so that he could remain at work at MSU-N and keep his children in school and his family residing in Havre, Montana. His Ph.D. program was entirely on-line except for required attendance for summer residencies as he progressed toward his doctoral degree. He earned his Ph.D. (defended his thesis) in Educational Psychology in 2009. Dr. Bachmeier has been and is a good and valuable employee of MSU-N.

5. Dr. Bachmeier is not a member of a union and has never been covered by a Collective Bargaining Agreement (“CBA”). He serves under annually renewable contracts at the discretion of MSU-N, as an administrator. He has never had tenure and has never been an Associate Professor or Professor. He taught one or two business courses at the Community Technology Education Center during approximately twenty-five semesters over a period of around 10 years (there are three semesters a year, counting summer).

6. In June 2010, MSU-N hired Rosalyn Anstine Templeton, Ph.D., as the new provost. The MSU-N Provost supervises the deans and they in turn supervise the department chairs. The graduate programs are also within the provost's purview. In addition to her duties of supervision, Provost Templeton was also responsible for pursuing the vision that the chancellor had for the institution. Initially, she was Dr. Bachmeier's direct supervisor for his administrator's work in Graduate Programs.¹

7. Provost Templeton's academic and administrative credentials when she came to MSU-N included a degree in elementary education from Southern Oregon University, with a special endorsement in learning disabilities and remedial reading; special training in Life Space Crisis Intervention Theory for helping severely emotionally disturbed children; work in Lowell, Oregon, teaching children with disabilities in a group home; a master's degree from American University in Washington, D.C.; and a Ph.D. from the University of Oregon in the field of curriculum instruction, educational policy, and organizational management. With her Ph.D., Templeton worked as an assistant at Willamette University developing a master's degree program in elementary education that is still utilized today. She next secured a position as Assistant Professor at Bradley University in Peoria, Illinois as well as the Coordinator of the Special Education Program, and the Director of the Office of Teaching Excellence and Faculty Development. She took on some administrative duties at Bradley, and became a Kemper Fellow with a grant to be used to build relationships with faculty from different disciplines for two years. She pursued a move into academic administration, next securing a position at Ferris State in Grand Rapids, Michigan as an Associate Dean in the College of Education and Human Services. After that, she became Dean of the College of Education and Human Services at Marshall University in Huntington, West Virginia. She has been a tenured assistant professor with an earned Ph.D., and has served as both an academic and an administrator.

8. When Dr. Templeton arrived at MSU-Northern, she became the fourth provost in ten years at MSU-N. She came to MSU-N at a point when the school was facing several difficulties, including financial problems, a lack of organizational structure, a particular group of faculty members who were "disengaged" (indicating their discontent and hostility toward the administration and often even other parts of the university community) and a nursing program in disarray and in accreditation review. In addition, MSU-N itself was undergoing an accreditation review. She was not welcomed by all in the university community. Some faculty members circulated articles about union grievances at Marshall University to which she was linked.

¹ Jan Brady, Dean of Extended University, was Dr. Bachmeier's direct supervisor for his work as Director of On Line Learning and for his teaching.

9. When she began at MSU-N in June 2010, Provost Templeton was also assigned the additional job of serving as temporary Dean of the College of Education, Arts & Sciences and Nursing, until that position could be filled. There can be a conflict of interest between the provost position and a dean position. The provost looks at the campus as a whole, while a dean focuses on a particular college within the university. Filling both roles at once was challenging for Dr. Templeton.

10. In August 2011, Dr. Bachmeier was appointed as Interim Dean of Extended University. The MSU-N Chancellor at the time, Joseph Callahan, appointed Dr. Bachmeier to replace Jan Brady, who had retired from that position. Provost Templeton was now Dr. Bachmeier's sole direct supervisor.

11. On November 1, 2011, Montana State University President Waded Cruzado announced the selection of Dr. James Limbaugh, subject to approval by the Montana Board of Regents, as new chancellor of MSU-N, starting January 1, 2012. At the time of the announcement, Limbaugh was Vice President for Strategy, Planning and Policy at Angelo State University in San Angelo, Texas, a position he had held since 2008. Previously, Limbaugh was Interim Provost and Vice President for Academic and Student Affairs at Angelo State from 2009 to 2010. From 2007 to 2008, he was the Associate Vice President for Institutional Effectiveness at Frostburg State University in Maryland. At Frostburg State, he also served as Assistant to the Provost from 2002 to 2007; Director of Special Academic Services from 1995 to 2002; Director of Auxiliary Services from 1984 to 1995; and Associate Dean of Students from 1980 to 1984. Prior to Frostburg State University, Limbaugh served as Assistant Director of the Memorial Student Union at the University of Nebraska-Kearney from 1976 to 1980.

12. Limbaugh earned baccalaureate degrees in history from Frostburg State University and in general business and English from Texas A&M University, a Master's degree in student personnel and guidance from Texas A&M and a Ph.D. in educational policy and leadership from the University of Maryland. He had never served as an associate professor or full professor and had always worked as an administrator rather than an academic.

13. Some MSU-N faculty members contacted Chancellor Limbaugh after his hiring but before his arrival on campus, to express their dislike of Provost Templeton. Both Templeton and Limbaugh faced challenges at MSU-N. The school was undertaking an "academic program prioritization," a review of all programs on campus, to classify each program as "viable" or "non-viable." The provost was responsible for this huge endeavor, reporting directly to the chancellor. Programs found "non-viable" would be considered for moratorium (no longer offered pending further review) or termination (removed permanently from MSU-N's courses of

study). This was a difficult and sensitive process for faculty, many of whom felt strong connections to their programs and feared diminished roles and perhaps the need to seek positions at other schools if a program in which they were deeply involved was found “non-viable.”

14. Templeton also made necessary budget and course approval decisions that were unpopular with some faculty members. For example, in dealing with the new hire (Christine Shearer-Creman) for Dean of the College of Education, Arts & Sciences and Nursing, Templeton bargained her out of dual status, leaving her with no security as a full time administrator on annual contracts renewed at the discretion of MSU-N. Templeton alienated this new hire, who was under her direct supervision. Shearer-Creman became a harsh and persistent critic of Templeton’s leadership. She had a very direct communication style, which also upset some faculty members and administrators. Bachmeier did not like Templeton’s management style and found working for her difficult.

15. Soon after her hire, Provost Templeton began making physical contact with Dr. Bachmeier when they interacted. He testified that the first physical contact happened on or about October 14, 2010, when she placed her hand on his knee and allowed it to linger for several seconds, making him uncomfortable. Thereafter, she continued to touch him intermittently, stroking his arm with her fingertips or rubbing his shoulders and back with an open palm, from neck to waist. He experienced these touches as unduly personal and intimate but did not tell her so until April 30, 2013. Templeton testified that she did not remember more than one or two times that she touched him, and that any touching of him was not intimate.

16. Dr. Bachmeier was molested as a child. He sought treatment on and off for years because of the molestation, including seeking inpatient treatment at least twice. He last sought treatment addressing his childhood trauma fifteen years before the contested case hearing herein. To the present day, he is not fond of being touched or hugged. As provost, Templeton continued to touch him in ways he experienced as unduly personal, he began to have internal “black outs” – holding still and losing conscious contact with his present situation. He supposed that the black outs could be a defense mechanism learned from childhood, by which he “turns off” emotions and senses and manages “just to be not present.” He has never had similar black out experiences from touches by anyone except the provost.

17. There was no evidence at hearing demonstrating or even suggesting that an observer could discern or detect Dr. Bachmeier’s black outs. Thus, there was no evidence that Provost Templeton or anyone else at MSU-N knew or should reasonably have known about his black outs. There was no evidence that any level of

administration or faculty at MSU-N had any knowledge or information about his childhood trauma.

18. Dr. Bachmeier was distressed by the situation and did not know what to do, since Provost Templeton was his direct supervisor. He made efforts to avoid situations where she could touch him. He tried to avoid meetings alone with her as much as he could. During meetings, he tried to position his seat so that she would be physically unable to touch him. He rearranged his office so that his desk faced the door, in an effort to see her advancing into his space. He readily agreed to move his office to a less desirable location when the opportunity presented itself so that his office was no longer in such close proximity to hers. He installed a chime on the door to his office suite to insure that he had as much warning as possible when she entered his office wing.

19. Dr. Bachmeier also testified that he attempted to communicate his discomfort to Provost Templeton about her touching him with nonverbal cues, beginning in October 2010. This included crossing his arms, and using other “closed” body language. During his testimony and his participation in the four day contested case hearing, Bachmeier, as the Hearing Officer observed him, did not noticeably display any strong emotions through body language or nonverbal cues, except that when he became quite upset during his testimony, it was very noticeable. Although Bachmeier believed he had made his best attempts at indirectly notifying Templeton that he was distressed by her touches, there was no credible evidence that she could have or should have received that message through his nonverbal cues or body language, since his black outs were not noticeable. The only evidence about Bachmeier being visibly disturbed during interactions with Templeton came from Templeton, who interpreted his visible disturbance (tears in his eyes) as resulting from the reprimand she was giving him, and tried to comfort him by touching him (see, Finding No. 23, *infra*).

20. Dr. Bachmeier completed on-line sexual harassment training provided by MSU-N on September 10, 2011 and again on August 21, 2012. Exhibits 126-127. He knew how to report sexual harassment and he knew to whom to report it. He testified that he knew of other administrators who filed internal complaints (grievances) regarding management at or above the level of the provost, whose grievances were found to lack merit and who were thereafter not renewed for further one-year contracts. His fear of similar treatment was the reason why he did not pursue internal remedies at MSU-N regarding the touching for approximately two years and seven months.

21. Provost Templeton touched other male MSU-N employees, including Norton Pease, Department Chair of the College of Education, Arts & Sciences and

Nursing and Associate Professor of Art and Design, and Lawrence Strizich, Department Chair of the College of Technical Sciences and Professor of Electronics and Computer Engineering Technology. Pease characterized Templeton's touching as a lingering, fingertip massage and that "she touches me like my wife." Strizich characterized Templeton's touching of him as "borderline fondling ... certainly more than a pat."

22. On January 30, 2012, Chancellor Limbaugh appointed Dr. Bachmeier as Dean of Extended University (as opposed to interim dean) and he continues to serve in this capacity today. He was paid a lower salary than his predecessor in that position. Dean Bachmeier still serves under annual contracts and still is not a member of a CBA. As Dean of Extended University, he is a member of the senior management team at MSU-N. Provost Templeton agreed with and supported the chancellor's appointment of Bachmeier to this position.

23. Provost Templeton testified that she did touch male co-workers, often subordinates of hers, but she did not recall touching them nearly as often as other witnesses described. She testified that her touches were meant to be reassuring. For a particularly pertinent example, on April 18-19, 2012, Dean Bachmeier distributed two emails about the actual costs of summer school, in which he argued that the model used by MSU-N for calculating and comparing revenue and expenses for summer school was not appropriate. Chancellor Limbaugh was one of the recipients of the emails, and took serious exception to the contents of both emails. He directed Templeton to give Bachmeier a verbal reprimand regarding the emails. Exhibit 140. Templeton called Bachmeier to her office and read to him Limbaugh's scathing directive regarding Bachmeier's conduct. She testified that she looked up and saw tears in Bachmeier's eyes, so she reached over and patted his forearm. Asked specifically why she touched him that day, she responded "Because I saw that he was visibly upset, and I wanted to reassure him it was going to be okay, that it wasn't the end of the world . . ." Tr. IV, 1016:25-1017:2. None of the men who testified at hearing about her touching them indicated that they found her touches reassuring.

24. On August 15, 2012, Christine Shearer-Creman became dean of the College of Education, Arts & Sciences and Nursing, resolving the provost's dual job status. Provost Templeton recruited Shearer-Creman, who left a tenure track position as an associate professor and senior faculty member (about to become eligible for full professor), at Black Hills State University. Tr. I, 14:3-15:13. When Shearer-Creman came to MSU-N, Templeton told her that advancing to full professor was not available to her, and she was brought in at a rank equivalent to "associate professor," but in a non-tenured administrator position, without a "home department," not covered by a CBA, on an annual administrator's contract renewable

at the discretion of MSU-N. Tr. I, 14:19-15:17 and 17:19-20:5. Shearer-Cremean's testimony about her hiring showed that Templeton was, indeed, doing excellent work for the institution, at the price of alienating some of its employees (cf., Finding 14).

25. In her position as dean, Shearer-Cremean became Chair Pease's direct supervisor. She testified that Provost Templeton would regularly touch male employees in a "stroking" manner which Shearer-Cremean characterized as "inappropriate, kind of creepy" and "the way [she] would touch her husband, not a fellow employee." She specifically cited Pease and Daniel Ulmen, facilities services director at MSU-N, as two men she had observed Templeton "stroking." Shearer-Cremean observed that Templeton touched female staff members in a different manner, and only singled out male subordinate employees for touches that Shearer-Cremean thought were not appropriate.

26. Dean Shearer-Cremean testified that she observed the provost stroking Ulmen by "sort of reach[ing] up and she was running her fingers up and down from like the nape of his neck to like midback. And I'd never seen anything like that before." On the other hand, Ulmen testified that "with my kind of background, where I grew up, it was pretty western, I was really unaware. I mean, people touch me all the time. She [Templeton] was a very touchy-feely person. She did that all the time." Clearly, although Shearer-Cremean testified that she found Templeton's touches unsettling and inappropriate to watch, Ulmen was unfazed by being the recipient of some of those touches, remarking offhandedly that Templeton "did like to, you know, rub and stroke and pat."

27. In March 2013, in the context of a staff evaluation process known as a 360 Evaluation, Dr. Bachmeier provided an anonymous written comment asking MSU-N administration to direct Provost Templeton to stop her inappropriate touching. Chancellor Limbaugh acknowledged receiving and reading that written comment, but he concluded it did not require any immediate action in response. Templeton's work on program prioritization was, by this time, the center of a swirl of unrest and dissatisfaction among some members of the MSU-N community. Dr. Limbaugh's testimony indicated that the anonymous request was not something he considered urgent – he testified that he had so many complaints about Provost Templeton, running the gamut in severity, that it was hard to know what was legitimate and what was not.

28. Assistant Professor Rodney Ridenour was a CPA and a member of the faculty in the College of Technology. With regard to summer classes in 2013, sometime early in 2013, Pease (Chair of the College of Education, Arts & Sciences and Nursing) approached Strizich (Chair of the College of Technology), about using Ridenour to teach an economics class that summer in the College of Education, Arts

& Sciences and Nursing. Strizich had no objection. Later in January 2013, Bachmeier, who in his capacity as Dean of Extended University did the paperwork for the summer classes, issued a summer schedule that showed Ridenour teaching an economics class that summer. That schedule was approved at a periodic meeting of the deans and the chairs. After that schedule issued, and as the time neared for confirming and completing contracts for individuals to teach summer classes, Provost Templeton began to question using Ridenour to teach the accounting class.

29. On April 10, 2013, at 3:49 p.m., Provost Templeton sent an email to Assistant Professor Ridenour and to Assistant Professor Lanny Wilke (who was also in the College of Technology) questioning Ridenour continuing to teach accounting as independent studies. That email is the earliest in time, and therefore is at the bottom of the last page of each of two separate email strings, one being Exhibit 138 and the other being Exhibit 139. Ex. 138, pp. 3-4, and Ex. 139, p. 4. The dean (Greg Kegel) and the chair (Strizich) of the College of Technology were copied. Dr. Bachmeier was not. Wilke responded on April 10, 2013, at 10:27 p.m., to Templeton and Ridenour, copies to Kegel and Strizich, no copy to Bachmeier, in a noncommittal way that seemed to support Ridenour continuing to teach the accounting courses. Ex. 138, p. 3, Ex. 139, p. 3. Ridenour himself responded on April 10, 2013, at 11:38 p.m., to Templeton and Wilke, copies to Kegel and Strizich, no copy to Bachmeier, by listing the independent study accounting courses he had taught in the last four semesters (exclusive of summer semesters). Ex. 138, pp. 2-3, Ex. 139, p. 3.

30. On April 17, 2013, at 5:20 p.m., Provost Templeton sent a further email in the (so far) identical two email strings, to the Deans of the College of Technology (Kegel), the College of Education, Arts & Sciences and Nursing (Shearer-Cremean) and Extended University (Bachmeier) stating that she was not approving course development for Ridenour to teach a microeconomics course ("ECNS 201-901"). It read:

I have a proposal for Rodney to develop an online microeconomics course – ECNS 201-091.

I am not approving this course development for the following reasons.

- The accounting area courses need to be developed online, especially 410 and 441 which are repeatedly requested for independent studies;
- Lanny indicated that 410 and 441 are done as IS because Rodney has too many courses and need to hire a faculty to lighten his load (see email);

- Rodney listed in his email (below) that some of the IS courses are required because students were at a distance, so having an online 410 & 441 would be good; &
- Microeconomics has been taught by Arts & Science faculty which would be good for business majors to have more exposure to different academic disciplines and faculty.

If I have misunderstood anything or you want to discuss this further, let me know.

Ex. 138, p. 2, Ex. 139, p. 2. She also checked the “not approved” box and signed below it on the last page of Ridenour’s proposal to develop coursework for that course (“ECNS 201/202-901”) which had been approved and signed off by Shearer-Creman and Pease of the College of Education, Arts & Sciences and Nursing and by Bachmeier of Extended University. Ex. 138, last page, Ex. 139, last page. Thus, as of 5:20 p.m., Wednesday, April 17, 2013, Dean Kegel, Dean Shearer-Creman and Dean Bachmeier had all been notified that the provost had disapproved Ridenour teaching ECNS 201-901 during the summer of 2013.

31. On the morning of April 30, 2013, Dean Bachmeier met with Provost Templeton in her office to discuss summer course enrollment. Bachmeier began “trying to make the case” that eight enrolled students for any summer course should justify scheduling that course. He had concerns that Templeton might be thinking of requiring a larger “number,” so that any course with an enrollment of eight or fewer students would be taken off the summer schedule. As he marshaled his arguments in favor of using eight as the required number of enrolled students to justify scheduling a summer class, Templeton began to stroke the hair on his forearm with her fingertips.² Bachmeier asked her to “please stop.” Templeton then told him that the “number” would be nine and the meeting was over. This was his first notice to her that he considered her touching of him unwelcome and inappropriate.³

32. Later that morning, Provost Templeton and Dean Shearer-Creman came to Dean Bachmeier’s office about travel forms related to costs incurred by another faculty member, Dr. Curtis Smeby, as part of a recruiting trip. Smeby was in Shearer-Creman’s College. The concern was whether Bachmeier’s Extended

² Dean Strizich testified about an instance of Provost Templeton putting one hand on his neck and the other on his biceps, and rubbing his back and arm. He testified that at the time, he and Templeton were having a disagreement, and that he believed that she was stroking him “to make everything all right,” as “her way of calming the waters and making me settle down.” The context of the touching of Dr. Bachmeier on April 30, 2013, appears analogous.

³ Templeton did not remember this interaction with Bachmeier and said decisions about summer class would not have occurred this late in the Spring.

University or Shearer-Creman's College would pay for the costs, and the entry that would have addressed that concern had not been filled in by Bachmeier. He indicated that he would pay for the costs. Templeton left the two of them in Bachmeier's office, to confirm all the particulars of the travel costs and to complete the form. Bachmeier testified that Templeton said during that meeting that he might be subjected to discipline over the incomplete form. Templeton denied that discipline had come up during the meeting and testified that Shearer-Creman was the person with concerns about whose budget would bear the burden of the costs. Bachmeier testified that Shearer-Creman was not concerned about the costs, because she already knew that he would cover the costs out of his budget. Whether through Templeton or any other agent or employee, MSU-N did not take any adverse action against Bachmeier regarding the Smeby travel forms.

33. The 2013 summer contracts were due by close of business April 30, 2013, pursuant to the CBA. Dean Bachmeier delivered the contracts to Provost Templeton on April 30, 2013, and she used a signature stamp to sign them and deliver them on time. When she reviewed copies of the contracts more closely the next morning, she discovered that she had stamped her signature of approval on a contract for Assistant Professor Ridenour to teach ECNS 201-901, the accounting course that Templeton had expressly disapproved of Ridenour teaching, notifying Bachmeier, Kegel and Shearer-Creman of her explicit disapproval on April 17, 2013. E.g., Finding No. 30.

34. After making her May 1, 2013, discovery about the ECNS 201-901 contract, Templeton went to Bachmeier's office and chastised him for what appeared to her to be a deliberate attempt to slip in a summer school course she had expressly disapproved among the ones that had been approved, to get her "approval" for that disapproved summer class.

35. On May 1, 2013, at 10:51 a.m., Dean Bachmeier sent an email to Provost Templeton, apologizing for submission, for Templeton's approval, of the Ridenour contract to teach the accounting class, and offering an explanation for submitting the contract for her signature after receiving her express disapproval of Ridenour teaching that course:

My apologies. Since Rodney was on the schedule to teach Microeconomics when the summer schedule was approved at Deans/Chairs, I took this later message to mean you weren't going to approve additional pay for Rodney to develop micro when he should be spending his time developing accounting classes, not that he should be pulled from the course. Since the form was created for approval of a stipend and we never had a formal process to approve specific courses for online delivery, I

guess in my mind what was at issue here was only the stipend.
Just let me know what you'd like me to do.

Ex. 139, p. 2.

36. At first reading, this explanation sounds plausible, but in light of the language of Templeton's express disapproval of Ridenour teaching ECNS 201-901 in the summer of 2013, provided to Bachmeier two weeks before, and the way Templeton expressly disapproved Ridenour's proposal to develop coursework for that course ("ECNS 201/202-901"),⁴ the explanation really was not credible.

37. On May 1, 2013, at 1:40 p.m., Provost Templeton sent Deans Kegel, Shearer-Creman and Bachmeier, together with Ridenour and Pease as well as Kathy Jaynes in HR, another email about on-line development of ECNS 201:

There appears to have been a gap in communication on the ECNS 201 course. I did not give approval for this course to be developed on line by Rodney for the reasons listed below in the email³ – see also attached denial.⁴ The CBA indicates that faculty are hired for a specific discipline and may not cross over to another (although dated, it is what we follow). I have asked Kathy, Dean and Chair of EASN to locate another individual to teach the ECON course. I will keep you updated.

38. On May 1, 2013 at 6:15 p.m., Provost Templeton sent Dr. Bachmeier a reply to his May 1, 2013 10:51 a.m. apologetic email, to notify him that he should "[c]onsider our conversation this morning concerning allowing a faculty member to develop and offer a course that I specifically did not approve" to be a "verbal warning" for disobeying Templeton's directive disapproving Ridenour teaching that class. The remainder of that email is equally ice cold, and Templeton sent herself a copy of her email to Bachmeier, which she then forwarded to Human Resources to document her verbal warning. Ex. 139, p. 1.

39. Chair Pease referred during his testimony to this problem with Provost Templeton refusing to approve Ridenour teaching the summer economics class. Pease was talking about some difficulty he had in July 2013 getting approval from Templeton to hire a new member of the nursing faculty. The new member was the product of a search process and was vetted by the search committee, but Templeton, according to Pease, kept blocking the hiring, saying:

⁴ Cf. Ex. 138, last page, Ex. 139, last page.

. . . [T]hat there was an accreditation issue, that it was an issue that she wasn't qualified, that she didn't have OB experience. She was saying that – It was every reason in the possible book that she could come up with. And every time we would give an answer to it, this is why she is able to teach, this is why it's not an accreditation issue, this is why – and every time we'd give an example, she would come back at us again and give another reason why she couldn't. So she was pushing us off on this process. Lisa O'Neil came and talked to me and said, She is stopping us from being able to hire her, and we need to hire her ASAP.

Tr. I, 195:1-14. In the context of his problem with Templeton in July 2013, Pease cited the problem in May 2013, with Templeton refusing to approve Ridenour, as a similar situation in which the provost was obstructing the conduct of business for administrators who had complained about her (Bachmeier in April/May 2013, and Pease in July 2013). Without any finding of whether Templeton's "obstruction" of the hiring of a new member of the nursing faculty in July 2013 was justified, the evidence in this record did not establish that Templeton's opposition to Ridenour teaching ECNS 201-091 was unjustified.

40. Dean Bachmeier was very concerned on April 30 and May 1, 2013 about Provost Templeton's sudden disciplinary moves toward him. He thought she had first tried to generate a problem for him on the same day he asked her not to touch him, with the question about who was paying for Professor Smeby's trip. He felt he had resolved that question. The very next day, Provost Templeton confronted him and accused him of surreptitiously obtaining her signature on a contract for Professor Ridenour to teach a summer class in economics which she had not approved, and then she later rebuffed his apology with an email noting that her confrontation was a verbal warning (formal oral discipline). Ex. 139, p. 1. Dr. Bachmeier testified that, contrary to what Provost Templeton said, prior approvals had been obtained and there was no reason for Provost Templeton to obstruct the process, let alone to impose discipline upon him:

Q And this is the day after – one day after you told her to stop touching you.

A Yes.

Q And she's reprimanding you in writing –

A Yes.

Q – but calling it an oral, verbal warning, if you will?

A Yes.

Q And what is she reprimanding you for?

- A She is reprimanding me for issuing a contract to Rodney Ridenour to teach microeconomics.
- Q And what does Dr. Templeton say is the basis for the discipline?
- A She wrote, “Dean Kegel never approved development of the econ course, and when I copied him in the e-mail below he called to ask why he was not” – he had not “been kept in the loop since Rodney was his faculty member. Your attendance at the Deans/Chairs/Director meetings is to keep the academic deans” informed “on what their faculty are developing.”
- Q Okay. So this e-mail is from Dr. Templeton to you and cc'd to herself, right?
- A Correct.
- Q And what's the subject line in the e-mail?
- A Economics 201, Principles of Microeconomics, Online Development.
- Q And is this a true and accurate copy of the e-mail that you received from Dr. Templeton on May 1st, 2013, Randy?
- A Yes, it is.
- MS. DAVIES: I see this is an exhibit that's not been admitted. At this point, I would move for its admission.
- MS. HAMMILL: No objection.
- MS. DAVIES: Thank you.
- THE HEARING OFFICER: Exhibit 139 is admitted.
(Respondents' Exhibit 139 was admitted.)
- Q (By Ms. Davies) So is – the reprimand is for allowing Rodney Ridenour -- I don't think his name is mentioned specifically, is it?
- A Just the first name, Rodney.
- Q Okay. And who is she referring to?
- A Rodney Ridenour.
- Q Had you kept Dean Kegel in the loop?
- A Yes. Absolutely.
- Q And had you actually presented a proposed summer course schedule to the Deans' and Chairs' meeting?
- A Yes, I did.
- Q And was Rodney Ridenour's teaching of Economics 201 approved?
- A Yes, it was.

Q Did you feel like this was a fair reprimand?
A Absolutely not.
Q Had Dr. Templeton, herself, signed the contract for Rodney Ridenour to teach the class?
A She did the day before.
Q And now she was disciplining you for giving it to her to sign.
A Yes.
Q After she signed it.
A After she signed it and after the faculty member signed it.
Q When you say “the faculty member,” do you mean Rodney?
A Yes.
Q So you signed it.
A I did.
Q You gave it to Dr. Templeton.
A I did.
Q She signed it.
A Yes.
Q Rodney signed it.
A Yes.
Q And the next day you're reprimanded.
A Yes.
Q The day after you told her to stop touching you.
A Correct.
Q Following this discipline, did Dr. Templeton attempt to find a new or different professor to teach the Econ 201 class?
A She did.
Q And what became of that?
A Eventually, I believe it was within a week, Dr. Limbaugh sided with me that Dr. Ridenour should be the one to teach the course and the professor that Dr. Templeton arranged for, we should pay him also because we had made the offer to him – or she had made the offer to him.
Q Take a peek at Exhibit 11, please, Randy.
A Okay.
Q And what is this a copy of?

A This is a copy of an e-mail that I sent to Dr. Limbaugh explaining the situation and his response to me directing me –

Q Let's look at his response.

A Okay.

Q What's the date of his response to you?

A May 9th.

Q And what's the subject line of his response?

A Economics 201.

Q And what does the first line read?

A “Please tell Mr. Ridenour that he will be teaching the course.”

Q And what does the second line read?

A “Please inform the Billings professor that we will no longer need her to teach the course due to a confusion on campus, but that we want to honor the verbal commitment made by the Provost, so we will compensate her, but at the standard adjunct rate of \$1,800.”

Q So does line two refer to Dr. Templeton’s hiring of a second teacher to teach the Econ 201 class?

A Correct.

Q And then the third line.

A “You will need to work with Kathy to identify how best to pay her, since we're paying a teaching stipend and she's not teaching.”

Q So in the end, Dr. Limbaugh approved the contract for Dr. Ridenour to teach.

A He did.

Q The very contract that was the basis of your discipline.

A He did.

Q Now, prior to April 30th of 2013, by that point, you’d been at Northern for how long?

A Eleven years.

Q Eleven years?

A Roughly.

Q Had you ever been disciplined in the 11 years you’d been there prior?

A One time.

Q And now within 24 hours what?

A Two, and both bogus.

- Q What was going through your mind while you're going through this discipline?
- A I knew she was building a case to terminate me.
- Q And how did you feel about that?
- A I was terrified. This is my home. My entire life. My wife and six children, this is our only income. There are not jobs in Havre, Montana – there are not professional jobs in Havre, Montana, that pay what we get paid here. There is no other opportunity.
- Q There are no other universities here in Havre, are there?
- A No.
- Q So what did you do? Did you hire a lawyer?
- A I contacted an attorney later that week; yes.
- Q And why did you do that?
- A Because I had no faith in the internal system.
- Q Did you go to Kathy Jaynes?
- A No, I didn't.
- Q Did you go to Chancellor Limbaugh?
- A No, I didn't.
- Q Did you look at the sexual harassment policies?
- A Not at that time.

Tr. I, 283:2-289:16. There was some truth to Bachmeier's testimony in response to these friendly questions from his counsel. Bachmeier's first rejection of Templeton touching him, April 30, 2013, more likely than not was one causal factor in her very hostile response to both his apology and his far-fetched plea of an innocent "misunderstanding." However, during this friendly questioning, Bachmeier's attorney took him through a series of questions that suggested a totally inaccurate time line for approvals and disapprovals. The last page of Exhibits 138 and 139, the signature page of the "Proposal to Develop Coursework for Online Delivery," for ECNS 201 and 202-901, show Ridenour's approval and signature (dated April 4, 2013), Pease's approval and signature (dated April 5, 2013), Shearer-Creman's approval and signature (dated April 9, 2013), and Bachmeier's approval and signature (dated April 10, 2013). Thereafter, Templeton's disapproval and signature were added on April 17, 2013. Clearly, Templeton did not intend to sign and approve the contract on April 30, 2013, after expressly disapproving it on April 17, 2013. Thus, any implication that it was only because of Bachmeier's April 30, 2013 "please stop" that Templeton blew up about Bachmeier's inclusion of Ridenour's contract in those contracts for her approval was untenable.

41. There was another untenable suggestion in the questions to Bachmeier from his counsel – that Chancellor Limbaugh’s decision to have Assistant Professor Ridenour teach the class after all vindicated Dean Bachmeier’s actions. The evidence was clear that Provost Templeton went forward with a plan to find another instructor for the class. She found another instructor on the MSU-Billings campus, and hired that instructor to replace Ridenour. This created a situation in which two instructors each had reasonable expectations of teaching the class. The chancellor then decided to let the MSU-N instructor, Ridenour, teach the class and to offer the Billings instructor the stipend she would have earned for the class. The Billings instructor graciously declined the stipend and the chancellor had both kept the work within his own faculty and avoided the double expense of paying two instructors for one class. There is no credible evidence that he did this to vindicate Bachmeier’s action of slipping a contract that the dean knew that Templeton had expressly disapproved into a stack of contracts for her to sign.

42. Based upon the substantial and credible evidence of record, it was more likely than not that Provost Templeton was motivated at least in part by retaliatory animus toward Dean Bachmeier when she subjected him to a verbal reprimand on May 1, 2013, for presenting to her on the previous day a stack of summer teaching contracts including the contract for Rodney Ridenour to teach ECNS 201-901. Based upon the same substantial and credible evidence of record, it was more likely than not that her retaliatory animus arose because, on the morning of April 30, 2013, when during their meeting she began to stroke the hair on his forearm with her fingertips, he asked her to “please stop,” which was his first notice to her that he considered her touching him unwelcome and inappropriate.

43. Provost Templeton had a legitimate business reason to subject Dean Bachmeier to a verbal reprimand on May 1, 2013, for presenting her with a stack of summer teaching contracts including the contract for Assistant Professor Ridenour to teach ECNS 201-901, which she had expressly disapproved. However, more likely than not, if Bachmeier had not asked her to stop touching him on April 30, 2013, Templeton would not have reprimanded him on May 1, 2013.

44. After the verbal reprimand on May 1, 2013, Dean Bachmeier’s concerns about his working relationship with his immediate superior led him to authorize his first attorney to send a May 8, 2013, letter to Human Resources for MSU-N alleging sexual harassment by the provost. Kathy Jaynes received the letter and shared it with Chancellor Limbaugh. The two of them met with Provost Templeton on that same day, notified her of the complaint and directed her to refrain from any and all touching of Bachmeier. Also that same day, Jaynes and Limbaugh met with Bachmeier, notifying him that he would now report to the chancellor as his immediate supervisor while investigation of his complaint went forward.

45. Chancellor Limbaugh had seen Provost Templeton touch other employees, and knew from first-hand experience that the provost at least sometimes touched male employees at MSU-N in ways that could be perceived as unduly personal. At a donor event on campus, Templeton rubbed the small of Limbaugh's back, while Limbaugh was talking to someone else. Limbaugh thought the touching was by his wife (who had just walked away from standing beside him). When he discovered it was Templeton touching him, he thought that her touching was inappropriate and it made him feel "very uncomfortable."

46. Because he had assumed direct supervision of Dean Bachmeier, Chancellor Limbaugh did not place Provost Templeton on leave while the internal investigation of Bachmeier's complaint proceeded. Bachmeier believed that thereafter he was excluded from informal meetings in which Templeton participated, to which he otherwise would have been invited. He believed such exclusion interfered with performance of his job duties as Dean of Extended University. He did not prove that any such exclusion was systemic or deliberate, and he did not prove that it actually impaired his performance of his job duties.

47. Dean Bachmeier found Provost Templeton's touching of him to be so unwelcome that it caused him emotional distress and interfered with his performance of his job duties. He felt that it was sexual. His childhood trauma accentuated the unwelcome nature of the touching, and without that trauma the touching would have been far less difficult for him to deal with, either through shrugging it off (as some male employees did) or being able, in the first or second instance, to tell Templeton that her touching made him uncomfortable. Although Bachmeier, experiencing very intense feelings about the unwelcome touching, genuinely believed that Templeton knew it was unwelcome, the evidence of record indicated that she actually did not know it was unwelcome.

48. Following Dean Bachmeier's complaint, multiple complaints of Provost Templeton's allegedly inappropriate conduct (touching of Pease and perhaps others, and a comment to other employees about a vibrator) were made known to MSU-N by Chair Pease and Dean Shearer-Creman, in the context of internal investigation of Bachmeier's complaint. MSU-N did not undertake investigation of those complaints. Templeton had already been told to stop touching Bachmeier (Finding No. 41), and Bachmeier's complaint was already under investigation.

49. Chancellor Limbaugh appreciated the difficult task that Provost Templeton was accomplishing in the process of academic program prioritization, from Fall 2012 through Spring 2013. The negative responses of many members of the MSU-N community to her work did not diminish his appreciation. But he also believed that she, in completing that challenging task, had become abrasive, short, difficult to talk

to and moody. He found that the fear and hostility generated in identifying “non-viable” programs to suspend or to remove permanently from the courses of study at MSU-N had led to a toxic atmosphere, and he came to believe that Dr. Templeton, while not solely responsible for that toxicity, was becoming a contributing factor. Tr. IV, 470:8-471:5.

50. As the internal investigation went forward, both Dean Bachmeier and Provost Templeton dealt with enormous pressure and anxiety. Bachmeier feared that his employer, whose ability to be fair to him he already questioned (see Finding No. 20, *supra*), was going to find no merit in his allegations, and then elect not to renew his annual contract. Templeton was surrounded by attacks regarding her performance as provost, and she could see that her chancellor’s support for her was evaporating. Beyond any doubt, both of them experienced grave anxiety over possible loss of their current jobs and irreparable damage to their respective reputations and careers.

51. Randy Bachmeier filed his discrimination and retaliation complaints against MSU-N and Rosalyn Templeton with the Montana Department of Labor and Industry on May 30, 2013. The internal MSU-N investigation was not yet complete, and no action had yet been taken by MSU-N except for changing Dean Bachmeier’s supervision from Provost Templeton to Chancellor Limbaugh and giving Templeton verbal directions not to touch Bachmeier.

52. Dean Bachmeier did not at any time seek treatment, counseling or health care advice regarding his feelings about Provost Templeton’s touching of him, his emotional distress or his blackouts. He feared that “once I open that door, it's going to be a floodgate, and I don't – I was afraid I would not be able to make it to this day [referring to the hearing itself on his sexual harassment and retaliation claims]. I was afraid I would quit.” In his lifetime work experience nobody except Templeton had ever touched Bachmeier in a manner that triggered his childhood memories – in work situations with colleagues, he had “never felt touched in a sexual way other than by Dr. Templeton.” His testimony at the hearing focused upon his fear that if he sought treatment, the process would prove so painful and prolonged that he might give up and quit his job without pursuing his formal complaints through litigation. It is understandable that he would focus upon the present proceeding when he testified in it. The Hearing Officer finds that the evidence of record is sufficient to support a finding that his fear of being overwhelmed once he opened the door to his feelings by seeking treatment also deterred him from seeking treatment of any kind at any time after he told Templeton, “Please stop.”

53. Dean Bachmeier’s attorney objected to MSU-N Human Resource officer Jaynes conducting the internal MSU investigation of his client’s claims. MSU Legal

Counsel Leslie Taylor arranged for Mary Kay Bonilla, MSU Great Falls Human Resources Director and Janell Barber, MSU Equity Specialist, to investigate. Both women had excellent credentials and experience indicating their competence to conduct the investigation. Bonilla and Barber interviewed 16 people, including Bachmeier and Provost Templeton, at MSU-N over approximately seven weeks. MSU-N took Bachmeier's complaint seriously and took appropriate action. MSU-N reasonably relied on the conclusions in that report, Exhibit 102, in taking action addressing the situation after receiving the report.

54. Bonilla and Barber issued their report to MSU-N on July 9, 2013, finding that none of Dean Bachmeier's allegations of sexual harassment and retaliation were supported by what they found during their investigation. That same day, Chancellor Limbaugh sent a brief email to Provost Templeton:

According to the findings as recently issued by the investigating officer, the complaint filed by Dr. Bachmeier "does not rise to the level of sexual harassment."⁵ Therefore, as it is my responsibility to act upon the recommendation contained in the aforementioned report, I strongly encourage you to refrain from any and all touching of any and all fellow employees.

Exhibit 110. No sane professional could have interpreted that email to grant its recipient "discretion to continue to touch employees."⁶ There is no credible evidence that Templeton ever thereafter did touch another MSU-N employee. MSU-N took reasonable action in light of its internal investigation.

55. On August 12, 2013, Chancellor Limbaugh and Provost Templeton had a discussion regarding what Limbaugh considered an unhealthy situation for MSU-N. Limbaugh testified that he spoke to Templeton about "employee perceptions" that Templeton was not welcoming people coming into her office, that she was sending combative e-mails that would tend to generate additional combative e-mails – "kinds of things" that tended to detract from the work environment that the chancellor was trying to build at MSU-N. He listened to her "side of the story," and told her that those particular characteristics and demeanors need to be stopped, for the improvement of the university.

⁵ The report did not find that Provost Templeton's delivery of a verbal warning to Bachmeier on May 1, 2013, was motivated by her retaliatory animus towards him as well as by her legitimate business reason. It appears that the investigators verified the legitimate business reason, and did not further consider whether his resistance to her touching was also part of the cause for the reprimand.

⁶ "[Proposed] Final Decision," Sept. 17, 2014, p. 4.

56. According to Chancellor Limbaugh, eight days later (August 20, 2013), Provost Templeton submitted her resignation, effective January 3, 2014. Templeton testified that she voluntarily resigned because she did not agree with, as she characterized it, the chancellor's very harsh leadership style. She testified that he was "pushing pretty fast, pretty hard," and that forced "all of us" do the same thing. She testified that there were a lot of people forced into either retirement, resigning or leaving campus. She testified that she reassessed what she could actually accomplish and saw that it would be in everybody's best interest if she resigned, and so she did. A further refinement of her departure was later added, pursuant to which MSU-N paid out the rest of Templeton's contract through the effective date of her resignation and she left campus sooner, on or about October 18, 2013. Upon the announcement of Templeton's resignation (Ex. 136), MSU President Waded Cruzado sent a letter thanking her, praising her work on program prioritization, and expressing sadness that Templeton was leaving. Ex. 137.

57. Templeton's resignation created a job opening for provost. In the context of discussing an interim provost, Chancellor Limbaugh testified that he approached Dean Shearer-Creman about serving in that capacity, but that she declined. There is no evidence that any attempts were made to offer the post to any other prospects.

58. During this same time (August 2013), and just a couple of weeks following Dean Shearer-Creman's own complaint (accusing Templeton of using inappropriate and unprofessional language by making a remark about a vibrator) MSU-N HR Director Jaynes sent an email to Chancellor Limbaugh containing only a subject line: "Keep in mind that Randy is not in a union either – professional staff just like Christine [Shearer-Creman]." Limbaugh thanked Jaynes for the "reminder." As already noted herein, Bachmeier and Shearer-Creman, unlike union members, were employed under annual contracts that were renewable at the discretion of MSU-N. Jaynes testified that employees who have no union protection could be non-renewed upon five months' notice. It is remarkable that Jaynes would think Limbaugh would forget this fact. It may indicate that Jaynes harbored some hostility towards Bachmeier. It proves nothing about the chancellor's feelings toward anyone, although the Hearing Officer suspects that Limbaugh's "thanks" extended to Jaynes for the email could have been pro forma courtesy, or even irony.

59. After an internal review amongst its deans and chairs, MSU-N posted an NOV (notice of vacancy) for the position of permanent provost that included a requirement that the candidate be or have been an associate or full professor. This effectively disqualified Dean Bachmeier and any other administrator who had never as an academic progressed through faculty ranks as far as Shearer-Creman had. Whether Dr. Bachmeier had earned "equivalent criteria and qualifications" to those of an associate professor at MSU-N was irrelevant under the 2013 provost

requirement that a candidate “be or have been” an associate or full professor. His experience might have been closer to the 2007 MSU-N Provost Job Description which required an “earned doctorate; record of teaching and scholarship that warrants an appointment in an academic department at the rank of professor,” but there is no evidence that Bachmeier had a record of teaching and scholarship that would have warranted an appointment in an academic department at the rank of professor. The differences between the 2007 and 2013 descriptions of the required qualifications to be considered for the provost job were not retaliatory towards Bachmeier.

60. Dr. Bachmeier sent Chancellor Limbaugh an email expressing interest in the position of permanent provost. Limbaugh sent back an email that confirmed that the academic criteria would remain the same, which essentially meant that Bachmeier would not be eligible for the position. Exhibit 16.

61. After Dr. Bachmeier expressed his interest in the position, Chancellor Limbaugh sent the following email to MSU President Waded Cruzado and MSU Provost Martha Potvin (Ex. 119):

Waded, Martha: FYI. Here’s the notice of vacancy for the provost, as reviewed by all the provost’s direct reports prior to its completion. I’ve asked Kathy Jaynes, the HR Director, to post today.

There’s allegedly a controversy that is about to surface here because I’ve said that the position requires a doctorate and earned tenure. Said controversy is all woven into a pre-existing issue with an employee who has had an ongoing issue with the current incumbent provost. I can discuss confidentially with you via phone if you desire more information.

62. President Cruzado forwarded the email to MSU-N legal counsel Leslie Taylor, who had directed the investigation of Bachmeier’s sexual harassment complaint. After confidential discussions between the MSU President, MSU Provost and counsel, President Cruzado directed the NOV be withdrawn and amended from associate or full professor to set a new minimum requirement of full professor only. This still excluded Dr. Bachmeier from eligibility for the position, just as he had been excluded before the change. Since the change did not alter his lack of eligibility for the position, the change was not retaliatory towards Bachmeier.

63. Dr. Bachmeier applied for the permanent provost position, submitting his application in the evening of October 1, 2013 at 5:31 p.m. to HR Director Kathy Jaynes, who forwarded his application to Chancellor Limbaugh. Approximately 50

candidates applied for the job, and Kathy Jaynes forwarded only Dr. Bachmeier's application to Chancellor Limbaugh.

64. Early the next morning, on October 2, 2013 at 9:19 a.m., Chancellor Limbaugh sent an email to Greg Kegel, the search committee chairperson, to single out Dr. Bachmeier's application and to indicate that Dr. Bachmeier did not meet the minimum criteria for the position. Limbaugh testified that the email he had forwarded to Kegel before should have alerted him that Limbaugh had already informed Bachmeier "you ain't going to be provost."

65. On October 14, 2013, following an inquiry by the search committee as to how broadly or narrowly they should construe the minimum qualification requirements, Limbaugh sent an email response to Kegel directing the committee to strictly construe and enforce the minimum qualifications so as to preclude Dean Bachmeier from qualifying. The committee thereafter did not select Bachmeier as one of the semi-finalists in the screening process. He was not entitled to reach the semi-finalist stage of the screening process, under the express terms of the final NOV, and had not been entitled to reach that stage before the change in the NOV to include a new minimum requirement of being or having been a full professor only.

66. Dr. Bachmeier had correctly suspected that Templeton at least in part was punishing him for starting to resist her touches when she issued her reprimand of him on May 1, 2013. This heightened the anxiety and hypervigilance that had already made dealing with Templeton very difficult for him. When the chancellor singled him out as the candidate for provost who was not qualified and would not be selected, this resulted in severe emotional distress.

67. Discovering that the qualifications for provost excluded him undoubtedly caused Dr. Bachmeier emotional distress. But the specific emotional distress the Hearing Officer is now considering is the emotional distress Bachmeier suffered when it became clear to him that chancellor was singling him out, within the university community (which the evidence seems to indicate was singularly unable to keep personnel information confidential), as the one expressly unqualified candidate for the job of provost.

68. Had MSU-N simply posted the qualifications and then let the search committee do its work, it still would have been painful for Bachmeier, and he would not have been hired for the job, since he did not meet the qualifications. But instead, MSU-N took special care to make sure the search committee would not defy the required qualifications and advance Bachmeier to being a semi-finalist. MSU-N took special care to identify Bachmeier to the search committee, to the administration and to Bachmeier himself – to essentially everyone who was paying attention at all – as somebody who was not a legitimate candidate for the job. There was no justifiable

reason to take that special care. The only possible reason to take that special care was a retaliatory animus towards Bachmeier for resisting what he believed was illegal sexual harassment by Templeton, and Bachmeier was very much aware of that special care and the reason for it.

69. Dr. Bachmeier is entitled to a remedy for the emotional distress suffered when he discovered that he was being targeted and identified as “the guy who doesn’t have the qualifications [and who just incidentally made a discrimination and retaliation claim against the school and the provost],” as well as the emotional distress resulting from Templeton punishing him for starting to resist her touches with her verbal reprimand on May 1, 2013. The sum of \$75,000.00 is reasonable to remedy the emotional distress he suffered because of those two acts.

IV. Discussion⁷

A. Bachmeier’s Claims of Sexual Harassment Fails

The Montana Human Rights Act (“HRA”) and the Governmental Code of Fair Practices Act (“GCFPA”) both prohibit discrimination in the terms and conditions of employment on the basis of sex. Mont. Code Ann. §§ 49-2-303(1)(a) and 49-3-201. Sexual harassment is considered a form of sex discrimination, and a hostile work environment is one form of illegal sexual harassment. *Beaver v. D.N.R.C.*, ¶129, 2003 MT 287, 318 Mont. 35, 78 P. 3d 857; *Stringer-Altmaier v. Haffner*, ¶120, 2006 MT 129, 138 P.3d 419. Bachmeier has alleged a claim of hostile work environment. The substantial and credible evidence of record does not support that claim.

Whether a work environment is “hostile” or “abusive” can be decided only by looking at all the circumstances:

These may include the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance. The effect on the employee's psychological well-being is, of course, relevant to determining whether the plaintiff actually found the environment abusive. But while psychological harm, like any other relevant factor, may be taken into account, no single factor is required.

⁷ Statements of fact in this opinion are hereby incorporated by reference to supplement the findings of fact. *Coffman v. Niece* (1940), 110 Mont. 541, 105 P.2d 661.

Harris v. Forklift Systems, Inc. (1993), 510 U.S. 17, 23, 114 S.Ct. 367, 371, 126 L.Ed.2nd 295, 302-03, quoted, Stringer-Altmaier at ¶21.

To establish his claim of a hostile work environment, Bachmeier must prove that (1) he was subjected to verbal or physical conduct of a harassing nature; (2) that it was unwelcome; and (3) that the harassment permeated the work environment to the point that it was sufficiently severe or pervasive to alter the conditions of employment and create an abusive working environment. Stringer-Altmaier at ¶22; Nichols v. Azteca Restaurant Ent., Inc., 256 F.3d 864, 873 (9th Cir. 2001)

The severity must be both objectively unreasonable and one which the victim subjectively perceives as hostile and abusive. Campbell v. Garden City Plumbing and Heating, Inc., ¶19, 2004 MT 231, 322 Mont. 434, 97 P.3d 546; Nichols, 256 F.3d at 872-73. Further, to be actionable under the Montana Human Rights Act, the sexual harassment must be gender based. Stringer-Altmaier, 2006 MT 129 at ¶ 24. At the same time, proof of sexual desire is not an element of sexual harassment. Campbell, 2004 MT 231 at ¶ 21.

The frequency of Templeton's touching of Bachmeier is disputed and is not altogether clear. Because of the exquisite pain these encounters caused him, Bachmeier may have inadvertently overstated their frequency. Templeton more likely than not understated them in her recollection of only one or two times she touched Bachmeier. Whatever the exact frequency of the touching of Bachmeier, similar touching was not perceived as unreasonably intimate and inappropriate by MSU-N employee subjected to it. It certainly seemed unreasonably intimate and inappropriate to Bachmeier, who was reliving some of the pain of his childhood trauma as the result of the touches. The touching was of substantial subjective severity for Bachmeier.

Other male employees' responses to Templeton's touches ran the gamut from amused indifference through mild annoyance to embarrassed discomfort and on to shame and humiliation. This broad range of responses occurred in the "toxic" atmosphere developing on campus at the time. For example, Shearer-Creman, an unrelenting critic of Templeton, recounted ways in which Norman Pease was tormented by his colleagues about Templeton touching him (there is no evidence that she did anything to protect Pease, whom she supervised, from the teasing of which she was aware). Templeton was not responsible for the derisive hazing of Pease by other members of the administration and/or faculty. Beyond any doubt, Pease would not have found Templeton's touching as difficult as he did find it had his colleagues refrained from adding injury to insult with malevolent and juvenile teasing.

But it was Bachmeier alone who experienced a dark night of the soul because of the ongoing touching by itself, and it was Bachmeier alone who found the touching unreasonably interfered with his work performance. The reason it was Bachmeier alone who suffered so much was because of his childhood trauma, of which Templeton and MSU-N had no knowledge.

Even if subjective severity were by itself enough (which it is not under the law), it cannot be enough when the employer is unaware of it. Bachmeier's hostile environment claim based upon the touching must fail because neither Templeton nor MSU-N had any notice that the touching was unwelcome until April 30, 2013, when Bachmeier first asked Templeton to stop it (which she did) and until May 8, 2013, at which time MSU-N received Bachmeier's internal complaint and instructed Templeton to stop touching Bachmeier while also commencing an investigation. When the investigation found no sexual harassment or retaliation, MSU-N nonetheless gave Templeton a very strong warning that it would be a good idea for her to stop touching employees altogether, and never changed the initial direction she was given to stop touching Bachmeier. Eventually she left her employment with MSU-N, without ever having touched Bachmeier again.

Although the facts are not identical, the Beaver case sufficiently states the applicable law:

The District Court further concluded that Beaver was unable to prevail on her claim of discrimination on the basis of a hostile work environment because she failed to prove that the single incident of sexual harassment, which took place away from the normal workplace, was so severe or pervasive as to alter the conditions of her employment and thus create an abusive working environment. The District Court concluded that DNRC took immediate action to protect Beaver and to prevent further misconduct from Ness. The District Court thus ultimately concluded that Ness's conduct did not create a hostile working environment and that DNRC was not liable under the Montana Human Rights Act, the Government Code of Fair Practices nor Title VII of the Civil Rights Act of 1964.

Beaver at ¶25.

The Montana Supreme Court affirmed on the hostile work environment claim for several reasons. First, the Court affirmed on lack of both subjective and objective severity:

As previously noted, in order for a sexually objectionable environment to be actionable under Title VII, it must be both objectively and subjectively offensive. *Harris*, 510 U.S. at 21-22, 114 S. Ct. at 370, 126 L. Ed. 2d at 302. Based upon our review of Beaver's testimony,⁸ the District Court correctly concluded that the work environment at DNRC was not subjectively objectionable to Beaver, and thus, cannot have been considered to be the type of hostile or abusive environment actionable under Title VII.

Regarding the objective offensiveness of the workplace environment, the District Court found that the incident occurred away from the employees' normal work place, that, upon receiving notice of the incident, DNRC took immediate action to protect Beaver and to prevent further misconduct by Ness, that Beaver never saw Ness at work again, and that there was no other evidence of sexual misconduct.

Beaver at ¶¶48-49.

In light of *Harris*, Bachmeier's failure to prove objective severity is fatal to his sexual harassment claim. Templeton's conduct, albeit it included repeated touches of Bachmeier over a period of years, was far less egregious than the single assault upon Beaver, by her supervisor, after he had succeeded in luring her into sharing a hotel room with him on a trip. There was not as much objective severity to Templeton's touching of Bachmeier, because it was stopped immediately upon notice that it was unwelcome, and it fell far short of sexual assault.

Because there was no hostile work environment in Beaver, the Montana Supreme Court affirmed dismissal of Beaver's claims against her supervisor. *Id.* at ¶51. The same reasoning is applicable here. Neither Provost Templeton nor MSU-N had any reason to know that Bachmeier was suffering severely from Templeton's touching. It was not so obviously outrageous that she should reasonably have known it was unwelcome. Once he asked her to stop, she stopped. Once he filed a complaint, MSU-N removed him from her supervision. Once the unwelcomeness of the touching was disclosed, the touching stopped, and therefore there never was any touching that could contribute to a hostile work environment for which MSU-N was responsible. An anonymous request to direct the provost to stop her inappropriate

⁸ Beaver's testimony – that the conditions of her employment were unchanged after the assault as compared to before the assault – was quoted immediately before ¶25.

touching, with no formal complaint of inappropriate touching submitted through the established channels for complaints of sexual harassment, simply was not sufficient notice to require sooner action by MSU-N.

B. Some of Bachmeier's Claims of Retaliation Did Involve Adverse Action

Bachmeier also made claims of retaliation for opposing the sexual harassment discrimination and for filing the HRB sexual harassment complaint. The basic elements of his retaliation claims require proof that (1) he engaged in protected activity; (2) after which MSU-N took adverse action against him and (3) there was a causal link between the adverse action and the protected activity. Beaver at ¶71.

Bachmeier engaged in protected activity, by “opposing any act or practice made unlawful by the act or code; and filing a charge, testifying, assisting or participating in any manner in an investigation, proceeding or hearing to enforce any provision of the act or code.” Admin. R. Mont. 24.9.603(1)(c) and (d). Before filing any complaint, Bachmeier's April 30, 2013, resistance to Templeton's touching was opposing an act or practice that he reasonably believed was made unlawful by the act or code. The same is true of filing his internal complaint with MSU-N. By the time the chancellor singled him out as the one uniquely unqualified applicant for the provost position, Bachmeier had both opposed an act or practice that he reasonably believed was made unlawful by the act or code and had filed a charge and was participating in an investigation to enforce the act or code.

Bachmeier was not required to prevail on his claim of sexual harassment in order to establish retaliation. A retaliation claim is separate and distinct from and may succeed without proof of the sexual harassment, provided that Bachmeier's claim of sexual harassment was within the scope of the statutory prohibitions by the HRA or the GCFPA against sexual harassment. See, e.g., *Howell v. North Central College* (N.D. Ill., E. Div. 2004), 331 F. Supp. 2d 660, 663:

. . . . The court allowed that a retaliation claim might be valid even if the discrimination or harassment at issue were not sufficiently severe to implicate Title IX's protections, but emphasized that “the complaint must involve discrimination that is prohibited by [the statute].” [*Hamm v. Weyauwega Milk Products, Inc.*, 332 F.3d 1058 (7th Cir. 2003)] 320 F. Supp.2d at 720 (quoting *Hamner*, 224 F.3d at 707)[*Hamner v. St. Vincent Hosp. and Health Care Center*, 224 F.3d 701(7th Cir. 2000)]. That means the complaint “cannot be without legal foundation, but must concern the ‘type of activity that, under

some circumstances, supports a charge of sexual harassment.”
Hamner, 224 F.3d at 707. . . .⁹

It was clearly established by the evidence adduced that Bachmeier’s sexual harassment claims, even though they failed, concerned the type of activity by Templeton and by MSU-N that under some circumstances could support a charge of sexual harassment.

Over the course of investigation and contested case proceedings involving these complaints and amended complaints, there was a plethora of charges against the respondents, with many of them retaliation charges. At hearing, however, the case was reduced to a much simpler series of retaliation charges – (a) adverse actions by Provost Templeton because Dr. Bachmeier opposed her touching and filed complaints about her touching and (b) adverse actions by MSU-N because Dr. Bachmeier opposed Templeton’s touching and filed complaints about her touching.

Neither Templeton nor MSU-N could have taken any adverse actions against Bachmeier based upon his opposition to Templeton’s touching until they had notice that the touching was unwelcome, until they knew that he opposed that touching. The Hearing Officer found that Templeton first had notice that Bachmeier found her touching of him unwelcome on April 30, 2013. The Hearing Officer found that MSU-N first had notice that Bachmeier found Templeton’s touching unwelcome on May 8, 2013. It was logically, factually and legally impossible for either respondent to retaliate against Bachmeier for his opposition to the sexual harassment he claimed until his opposition to that conduct was known to them. Adverse action by either respondent before that particular respondent knew of Bachmeier’s opposition to the touching could not be causally connected to that opposition.

Any adverse action by Templeton could not possibly be retaliatory unless it occurred after he said to her, on April 30, 2013, “please stop.” Any adverse action by MSU-N could not possibly be retaliatory unless it occurred after MSU-N received Bachmeier’s internal complaint on May 8, 2013. This was before the filing of the complaints of violations of the HRA and GCFPA on May 30, 2013, of which the respondents would have been notified within ten business days thereafter, or by Thursday, June 13, 2013, and thus the May 8, 2013, date is the earliest day upon which MSU-N could have retaliated against Bachmeier.

⁹ Bachmeier’s retaliation claims have validity because although his hostile work environment claim was unproved, it certainly involved the type of activity by his employer that, under some circumstances, would support a charge of sexual harassment, as in Howell. Thus, the reasoning of the federal courts in the cited 7th Circuit cases illuminate what the reasoning in Montana should also be.

The only adverse action that Bachmeier proved Templeton took on or after April 30, 2013 was the verbal reprimand of May 1, 2013. The only adverse action that Bachmeier proved MSU-N took on or after May 8, 2013 was the special care taken to establish that Bachmeier was not eligible for the provost position under the 2013 NOV, which occurred after his complaints of violations of the HRA and GCFPA had also been filed with the department on May 30, 2013.

With regard to Templeton's verbal reprimand, she had a legitimate business reason for it. This opened the possibility that MSU-N might be able to avoid liability to Bachmeier, while still being subject to injunctive and other affirmative requirements to prevent any such future retaliation. Admin. R. Mont. 24.9.611 specifically provides that when a charging party proves a respondent engaged in unlawful discrimination or illegal retaliation but the respondent proves the same action would have been taken in the absence of the unlawful discrimination or illegal retaliation, the case is a "mixed motive case." In a mixed motive case an order to refrain from such conduct in the future, together with other conditions, may be imposed to minimize future violations, but the charging party is not entitled to any relief because with or without the retaliatory motive, the respondent would have taken the same action.

That cannot apply in this case, because the Hearing Officer specifically found that Bachmeier proved Templeton would not have administered the verbal reprimand to Bachmeier but for him telling her the day before to "stop it" when she began to stroke the hair on his forearm with her fingertips. MSU-N did not prove the same action would have been taken in the absence of the unlawful discrimination or illegal retaliation, so this is not a "mixed motive" case.

With regard to the special care taken to assure that everyone, including Bachmeier himself, knew that he was ineligible for the provost job in 2013, Bachmeier had offered some "direct" evidence that Chancellor Limbaugh showed retaliatory animus towards him. Dean Shearer-Creman offered testimony under oath that she suggested Randy Bachmeier for interim provost but that Limbaugh told her that it "would not look good" for Bachmeier to serve as the interim provost given his complaint against Templeton, which might arguably manifest retaliatory animus towards Bachmeier. Limbaugh denied ever making such a statement. After observation of both Limbaugh and Shearer-Creman – their demeanor, their testimony and its internal and external consistency, and their apparent interests – the Hearing Officer found Limbaugh's denial more credible than Shearer-Creman's insistence that he said this. But even without any credible direct evidence of retaliatory animus, the elaborate efforts to be absolutely certain that everyone involved with the selection process was made aware that Bachmeier was not eligible

for the provost position established retaliatory animus towards him. Limbaugh's direct statement to Bachmeier that the criteria would remain the same was admittedly intended to make sure Bachmeier knew he was not getting the job. The special care to keep him from being considered for provost was unnecessary and was manifestly hostile towards Bachmeier.

The reason that only the special care constituted an adverse act was that both the 2013 requirements for provost candidates and the 2007 requirements for provost candidates left Bachmeier ineligible. He applied for the job both times, he did not get the job either time. The actual eligibility requirements excluded him from consideration both times. Thus, the changes between the 2007 qualifications and the initial 2013 qualifications, and the changes between the initial 2013 qualifications and the final 2013 qualifications, under all of which he was ineligible, could not be adverse actions against him.

The special care taken to make sure everyone knew he was not eligible, that there could be no questions at all about him being ineligible, tantamount to beating the proverbial dead horse, was an adverse employment action, in singling him out, among all the applicants, as ineligible, and directly telling him so.

C. Damages for the Illegal Retaliatory Acts

The law requires any reasonable measure to rectify any harm, pecuniary or otherwise, to victims of discrimination. Mont. Code Ann. § 49-2-506(1)(b). The department has the clear power and duty to award money for proven emotional distress. *Vainio v. Brookshire* (1993), 258 Mont 273, 280-81, 852 P.2d 596, 601. Damages in discrimination cases are broadly available precisely to rectify all harm suffered, and "once a charging party has established a prima facie case of discrimination and established what is contended to be the damages resulting from this discrimination, the burden then shifts to the defendant to prove by clear and convincing evidence that a lesser amount is proper." *P. W. Berry Co. v. Freese* (1989), 239 Mont. 183, 187, 779 P.2d 521, 523-24 (applying and following *Marotta v. Usery*, 629 F.2d 615 (9th Cir. 1980); *Ostroff v. Employment Exch. Inc.*, 683 F.2d 302 (9th Cir. 1982); *Nanty v. Barrows Co.*, 660 F.2d 1327 (9th Cir, 1981)).

In *Benjamin v. Anderson*, ¶70, 2005 MT 123, 327 Mont. 173, 112 P.3d 1039, the Montana Supreme Court held:

In human rights cases, compensatory damages may be awarded for humiliation and emotional distress established by testimony or inferred from the circumstances. *Vortex Fishing Systems, Inc. v. Foss*, ¶33, 2001 MT 312, 308 Mont. 8, 38 P.3d 836 (citing *Johnson v. Hale* (9th Cir. 1991), 940 F.2d 1192, 1193.

“The standard for emotional distress awards under the Human Rights Act derives from . . . federal case law.” *Trumble v. Glacier Well Services, Inc.*, H.R.B. No. 0081012948, Case No. 923-2009 (2009). “Because of the broad remunerative purpose of . . . civil rights laws, the tort standard for awarding damages should not be applied to civil rights actions.” *Id.* (citations omitted) (internal quotations omitted).

The severity of the emotional distress is the measure of damages appropriate to remedy that distress, which typically depends upon how often and over what period of time the illegal conduct occurred, and, quite frankly, how awful the conduct was. *Wilson v. Catholic Diocese*, Case Nos. 0049011055-0049011010 (2006). Bachmeier had not given notice that that Templeton’s touching of him was unwelcome for over two and a half years. As soon as he gave that notice, the touching ceased immediately. Once he gave notice to his employer that the touching was unwelcome, MSU-N took immediate action by MSU-N to investigate and assure cessation of the touching. Nonetheless, Bachmeier suffered severe emotional distress when, exactly as in his worst fears, he was immediately given a reprimand when he finally resisted Templeton’s touching. He again suffered severe emotional distress when he was subjected to the further humiliation of being identified as the one and only ineligible candidate for the provost position, unlike the events in 2007, when he was not selected for provost but was not singled out for a “shaming” with his colleagues and peers as the only applicant totally and completely unqualified for the job. \$75,000.00 is an appropriate award for Bachmeier being subjected to, and having to endure, severe emotional distress in both these instances, only because he had stood up for his rights to be free from what he experienced as sexual harassment by his supervisor.

V. Conclusions of Law

1. The Department has jurisdiction over this case, pursuant to the provisions of Mont. Code Ann. §49-2-512(1).

2. Charging Party Bachmeier did not present substantial and credible evidence to support his charges of sexual harassment in employment against either Templeton or Respondent MSU-N. Therefore, the department having no power under either the HRA or the GCFPA to take any further action regarding those charges, they must be dismissed.

3. Charging Party Bachmeier presented substantial and credible evidence to support his charges of retaliation against him for opposing sexual harassment in employment, by Templeton on May 1, 2013, when she gave him a verbal reprimand, and by Respondent MSU-N after May 8, 2013, when its chancellor took special care to establish that Bachmeier was not eligible for the provost position under the 2013

NOV. Therefore, pursuant to Mont. Code Ann. §49-2-506(1)(a) through 1(c), the department has mandated and discretionary power to take further action regarding those acts. MSU-N is subject to an order

(1) placing conditions upon its future conduct;

(2) requiring reasonable measures to correct the discriminatory practice found; and

(3) requiring it to satisfy the judgment awarded to Bachmeier to rectify the harm he suffered.

4. Attorney fees and costs are recoverable by the prevailing party herein, in an action in district court, in that court's discretion. Mont. Code Ann. § 49-2-505(8).

VI. Order

1. Judgment is found in favor of MSU-N and against Randy Bachmeier on the charges that MSU-N subjected him to illegal sexual harassment in his employment, and those charges are dismissed with prejudice.

2. Judgment is found in favor of Randy Bachmeier and against MSU-N on the charges that:

(1) MSU-N, as employer of Provost Rosalyn Templeton, is liable for her action on May 1, 2013, within the course and scope of her employment with MSU-N of retaliating against him in his employment, the day after he asked her to stop touching him (thereby opposing and resisting what he deemed sexual harassment), by giving him a verbal reprimand for submitting for her approval a summer course teaching contract she had expressly disapproved early that month, among the summer course teaching contracts she had approved.

(2) MSU-N further retaliated against him in his employment when its chancellor took special care to give notice to Bachmeier and to those of his colleagues and peers involved in the process of selecting the new provost that he was not eligible for the provost position under the 2013 NOV, a notice not given about any other candidate.

3. MSU-N is permanently enjoined from retaliating against any employee who files sexual harassment charges which have potential merit (i.e., are not frivolous).

4. Within six months after the date of this judgment, MSU-N must arrange and provide appropriate training in the law against retaliation barred under the Montana Human Rights Act and the Montana Government Code of Fair Practices

Act for its chancellor and provost, and adopt appropriate rules to assure that such training will be provided promptly to new hires in those two positions who have not received such training within the twelve months immediately before each new hire. MSU-N must consult and be governed by the recommendations of the Montana Department of Labor and Industry, Human Rights Bureau, in selecting the appropriate training and adopting the appropriate rules, and MSU-N must bear the costs of such training and rules.

5. MSU-N must immediately pay to Randy Bachmeier the sum of \$75,000.00 for the emotional distress he suffered by reason of the retaliation found herein, as specified in Finding No. 69 herein.

6. Randy Bachmeier is the prevailing party. Mont. Code Ann. §49-2-505(8).

7. Exhibit 58 is admitted into evidence. Either party can move to redact the names of employees whose personnel issues are discussed therein, submitting with their motion a copy of the exhibit with such redactions, within five (5) business days of issuance of this order. Upon receipt of any such motion and redacted copy, the Hearing Officer will issue a brief order replacing the exhibit with the redacted copy and sealing the original exhibit, subject to the terms of this order.

8. Documents and information sealed pursuant to Hearing Officer orders at any time during these contested case proceedings, up through and including any such orders pursuant to timely motions to redact pursuant to Judgement Paragraph 7, remain sealed unless and until a further order unsealing some or all of such documents and information issues from a tribunal exercising jurisdiction over the question.

Dated: May 13, 2015

/s/ TERRY SPEAR

Terry Spear, Hearing Officer
Office of Administrative Hearings
Montana Department of Labor and Industry

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NOTICE OF ISSUANCE OF ADMINISTRATIVE DECISION

To: Charging Party Randy Bachmeier and his attorneys, Colette Davies, Davies Law PLLC and John Heenan, Bishop & Heenan, and Montana State University – Northern, and its attorneys, Jessica M. Brubaker and Vivian V. Hammill, Office of the Commissioner of Higher Education and Elizabeth L. Griffing, Axilon Law Group PLLC.

The decision of the Hearing Officer, above, which is an administrative decision appealable to the Human Rights Commission, issued today in this contested case. Unless there is a timely appeal to the Human Rights Commission, the decision of the Hearing Officer becomes final and is not appealable to district court. Mont. Code Ann. § 49-2-505(3)(c)

TO APPEAL, YOU MUST, WITHIN 14 DAYS OF ISSUANCE OF THIS NOTICE, FILE A NOTICE OF APPEAL, WITH 6 COPIES, with:

Human Rights Commission
c/o Marieke Beck
Human Rights Bureau
Department of Labor and Industry
P.O. Box 1728
Helena, Montana 59624-1728

You must serve ALSO your notice of appeal, and all subsequent filings, on all other parties of record.

ALL DOCUMENTS FILED WITH THE COMMISSION MUST INCLUDE THE ORIGINAL AND 6 COPIES OF THE ENTIRE SUBMISSION.

The provisions of the Montana Rules of Civil Procedure regarding post decision motions are NOT applicable to this case, because the statutory remedy for a party aggrieved by a decision, timely appeal to the Montana Human Rights Commission pursuant to Mont. Code Ann. § 49-2-505 (4), precludes extending the appeal time for post decision motions seeking relief from the Office of Administrative Hearings, as can be done in district court pursuant to the Rules.

The Commission must hear all appeals within 120 days of receipt of notice of appeal. Mont. Code Ann. § 49-2-505(5).

IF YOU WANT THE COMMISSION TO REVIEW THE HEARING TRANSCRIPT, include that request in your notice of appeal. The original transcript is in the contested case file.