

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

June 6, 2000

Cornelia G. Clark  
Clerk, Court of Appeals  
of Wisconsin

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**No. 99-2328-FT**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT III**

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**NORTHCENTRAL TECHNICAL COLLEGE,**

**PETITIONER-RESPONDENT,**

**v.**

**CENTRAL WISCONSIN UNISERV COUNCIL-NORTH, FOR  
AND ON BEHALF OF THE NORTHCENTRAL TECHNICAL  
COLLEGE FACULTY ASSOCIATION,**

**RESPONDENT-APPELLANT.**

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APPEAL from an order of the circuit court for Marathon County:  
GREGORY E. GRAU, Judge. *Reversed and cause remanded with directions.*

Before Cane, C.J., Hoover, P.J., and Peterson, J.

¶1 PER CURIAM. The Central Wisconsin UniServe Council-North, on behalf of the Northcentral Technical College Faculty Association (Faculty Association) appeals an order mandating Northcentral Technical College (NTC) to

arbitrate the Faculty Association's labor grievance.<sup>1</sup> NTC announced a new credential requirement for faculty members, requiring them to complete eighteen graduate credits in their teaching field within five years. The Faculty Association's grievance alleged that the eighteen-credit rule violated several provisions of their labor contract.<sup>2</sup> NTC rejected the grievance and sought an injunction barring

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<sup>1</sup> This is an expedited appeal under WIS. STAT. RULE 809.17. All statutory references are to the 1997-98 edition unless otherwise noted.

<sup>2</sup> The Faculty Association claimed these provisions of the labor contract affected NTC's actions:

ARTICLE 2 § B.1

No terms and conditions of employment which are mandatory subjects of bargaining applicable on the effective date of this agreement shall be changed during the term of the agreement so as to unreasonably eliminate, reduce, or otherwise detract from any teacher benefit without the mutual consent of both the Association and the Board.

ARTICLE 3 § C.1

Faculty members must maintain their certification under the requirements determined by the Northcentral Technical College District, by the Wisconsin Technical College System, and the Wisconsin State Board of Nursing.

ARTICLE 3 § E.5

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

Side Letter of Agreement, Construction of Weekly Schedules  
B. Standards

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

Additional criteria established by the Wisconsin Technical College System Board and the North Central Association of Colleges and Secondary Schools, Commission on Higher Education, the Wisconsin State Board of Nursing, and other accrediting agencies deemed necessary for the successful

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arbitration. The Faculty Association sought its own injunction mandating arbitration.

¶2 The trial court ordered arbitration only on whether the five-year timetable violated the labor contract. It denied arbitration on whether the eighteen-credit rule itself breached the labor contract. The Faculty Association argues on appeal that the trial court should have ordered arbitration on all issues. In response, NTC argues that the eighteen-credit rule is not arbitrable. In its view, the eighteen-credit rule deals with institutional accreditation and educational policy, matters that it claims are outside the legitimate confines of the labor contract. We agree with the Faculty Association that the eighteen-credit rule is arbitrable. We therefore reverse the order and remand with directions to order arbitration on all issues raised by the Faculty Association's grievance.

¶3 Grievances enjoy a broad presumption of arbitrability. *See Milwaukee v. Milwaukee Police Asso.*, 97 Wis. 2d 15, 20, 292 N.W.2d 841 (1980). The judicial role on determining arbitrability is limited. Courts do not examine whether the grieved conduct breached the contract. *See id.* at 20-22. Rather, they look no further than whether an arbitration clause exists and whether it is susceptible by any reasonable construction to cover the grievance. *See Joint Sch. Dist. v. Jefferson Educ. Assoc.*, 78 Wis. 2d 94, 112, 253 N.W.2d 536 (1977). For example, the contract in *Milwaukee Police* provided that grievances included differences in the "interpretation, application or enforcement" of the contract. *See id.* at 20. The court held that this covered a broad class of disputes, including

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operation of the programs must be complied with, and will take precedence over other standards.

whether the police chief could transfer a detective to patrolman status. *See id.* at 22-23. We review arbitrability rulings de novo. *See Jefferson*, 78 Wis. 2d at 101.

¶4 Here, we conclude that the Faculty Association’s grievance was arbitrable in full. The labor contract in ARTICLE 10 § B.1 defines a “grievance” as a “request for interpretation or claim of a violation of a specific article or section of the professional contract supplement agreement.” Like the arbitration clause in *Milwaukee Police*, this clause is susceptible to an expansive construction. Its all-embracing terms can be read to bring a broad class of disputes within their reach. The eighteen-credit rule is not excluded. We are satisfied that the clause empowers the arbitrator to decide whether the new NTC rule was inconsistent with the labor contract clauses cited by the grievance. We express no opinion on whether the new NTC rule is ultimately controlled by the labor contract. On remand, the trial court shall order arbitration on all issues cited by the grievance.<sup>3</sup>

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<sup>3</sup> The trial court struck down the grievance on the basis of WIS. STAT. § 111.70(1)(a), as read with ARTICLE 2 § B.1 of the labor contract. Section 111.70(1)(a) exempts NTC from engaging in mandatory collective bargaining on “subjects reserved to management and direction of the governmental unit,” except as they affect wages, hours, and conditions of employment. ARTICLE 2 § B.1 bars NTC from changing terms and conditions of employment that are “mandatory subjects of bargaining.” The trial court believed that the 18-credit rule was a “subject reserved to management” and therefore not a mandatory subject of bargaining under § 111.70(1)(a). The trial court then read ARTICLE 2 § B.1 to permit any new rule, such as the 18-credit rule, that the trial court believed would not qualify as a mandatory subject of bargaining under the statute.

The trial court’s analysis confuses the issue of arbitrability with the issue of the contract’s interpretation and application. The issue in the lawsuit is not whether NTC was obligated under WIS. STAT. § 111.70(1)(a) to bargain over the 18-credit rule. Rather, the issue is whether NTC may have agreed to terms in the labor contract that already barred such a rule. The statute may be relevant to the meaning and application of NTC’s labor contract. The trial court may be ultimately proved correct in concluding that ARTICLE 2 § B.1, when read with WIS. STAT. § 111.70(1)(a), empowers NTC to impose the 18-credit rule. That issue, however, is for the arbitrator to determine, not the trial court. The issue is one of interpretation and application of the contract, not of arbitrability. In other words, we cannot determine that the statute and contract conclusively make the 18-credit rule insusceptible to a grievance. Arbitration of that issue is therefore necessary.

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NTC believes that institutional accreditation and educational policy are subjects reserved to management, outside the legitimate confines and concerns of the labor contract. As discussed above, while this argument is not relevant to arbitrability, it may be relevant to whether NTC may impose the 18-credit rule itself. It is up to the arbitrator to decide whether the 18-credit rule deals with institutional accreditation and educational policy. It is also up to the arbitrator to decide whether NTC's interest in institutional accreditation and educational policy gives NTC the power to impose the 18-credit rule. For example, the Faculty Association argues that NTC may have already ceded some control over institutional accreditation and educational policy by virtue of the terms it agreed to in the labor contract. All of these issues, to the extent they arise from the grievance, are for the arbitrator to determine.

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This raises a series of questions that the parties may wish to have the arbitrator resolve:

1. Has NTC ceded its power to impose the eighteen-credit rule by virtue of the labor contract provisions cited in the grievance?
2. Does WIS. STAT. § 111.70(1)(a) supercede the labor contract and preserve NTC's power to impose the eighteen-credit rule, regardless of the provisions of the labor contract?
3. Does NTC have the inherent power to impose the eighteen-credit rule under a duty to safeguard institutional accreditation and educational policy, regardless of the labor contract?
4. Has NTC, either expressly or implicitly, reserved the power under the labor contract to impose rules that directly and substantially promote institutional accreditation and educational policy?

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*By the Court.*—Order reversed and cause remanded with directions.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

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5. Did the parties intend the labor contract to bind NTC's hands on matters essential to institutional accreditation and educational policy?
  6. Does a labor contract violate public policy if it restricts NTC's ability to safeguard institutional accreditation and educational policy?
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