

ND STATE BOARD OF HIGHER EDUCATION

Minutes—September 13, 2006

Conference Call

The State Board of Higher Education met September 13, 2006, via conference call. The Board president called the meeting to order at 3 p.m. Members participating:

Mr. John Q. Paulsen, President	Ms. Pam Kostelecky
Ms. Beverly Clayburgh, Vice President	Mr. Nicholas Rogers
Ms. Sue Andrews	Dr. John Pederson, Faculty Advisor
Mr. Bruce I. Christianson	

Members absent:

Mr. Charles Murphy	Mr. Richie Smith
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Presidents, campus deans, and campus representatives present:

Ms. Laurel Goulding, LRSC	Dr. Sharon Hart, NDSCS
Dr. Gary Hagen, MaSU	Dr. Joe Chapman, NDSU
Dr. David Fuller, MiSU	Dr. Joe McCann, WSC
Dr. Ken Grosz, MiSU-BC	

Staff members present:

Mr. Eddie Dunn, Chancellor/Vice Chancellor for Strategic Planning/Executive Director CTEC
Mr. H.P. Seaworth, General Counsel/Executive Secretary
Ms. Debra Anderson, Public Affairs Director
Ms. Sheila Tibke, SBHE Administrative Secretary/Financial Aid Assistant

Agreement with Dr. Hart

President Paulsen said there have been issues at NDSCS regarding Dr. Hart's leadership. The NDSCS faculty extended a vote of no confidence and Dr. Hart told the faculty she would be leaving. President Paulsen asked Chancellor Dunn and Mr. Seaworth to see if Dr. Hart was interested in an agreement establishing terms under which she would leave. An agreement has been reached and distributed to all Board members.

Chancellor Dunn reviewed the terms of the agreement between Dr. Hart and the SBHE/NDUS. Dr. Hart will resign her position effective at the end of the day September 15, 2006. Beginning September 16, 2006, Dr. Hart will serve as interim executive director of the College Technical Education Council until June 30, 2007, unless she resigns prior to that date.

It was moved by Clayburgh, seconded by Rogers, to approve the reassignment agreement and release between Dr. Hart and the SBHE/NDUS. Andrews, Kostelecky, Rogers, Clayburgh, and Paulsen voted aye. Christianson voted no. The motion carried. Exhibit A.

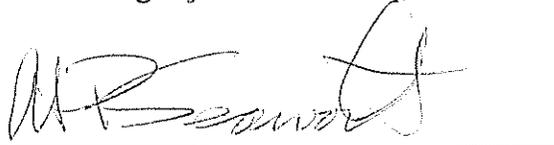
Interim NDSCS President

President Paulsen recommended Dr. John Richman be appointed interim president at NDSCS.

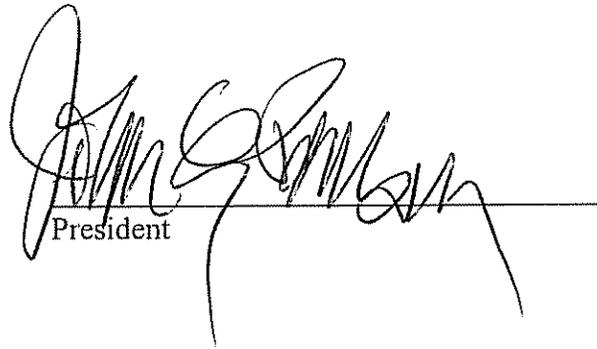
Chancellor Dunn reviewed the interim presidential contract terms. Dr. Richman will serve as NDSCS interim president September 16, 2006, through June 30, 2007, and will also continue to serve as vice president for academic and student affairs at NDSCS.

It was moved by Christianson, seconded by Andrews, to approve the agreement. Andrews, Christianson, Kostelecky, Rogers, Clayburgh, and Paulsen voted aye. The motion carried. Exhibit B.

The meeting adjourned at 4:30 p.m. CT.



Executive Secretary



President

November 9, 2006
Date

AGREEMENT AND RELEASE

The parties to this Agreement are Sharon Hart (Hart), personally and on behalf of Hart's family, heirs, personal representatives and assigns, the North Dakota State Board of Higher Education (Board) and North Dakota University System (NDUS) Chancellor Eddie Dunn (Chancellor).

Hart is employed as the North Dakota State College of Science (NDSCS) President. The Board is the appointing authority and Hart has an employment contract issued by the Board that continues until June 30, 2008. This Agreement establishes terms under which Hart resigns her position as NDSCS President in order to accept a position as the Interim Executive Director of the NDUS College Technical Education Council (CTEC). The Parties agree:

Resignation. Hart resigns her position as NDSCS President, effective at the end of the day on September 15, 2006. Until that date, Hart agrees that any significant personnel or other action under her authority as NDSCS president is subject to the Chancellor's approval. Further, Hart agrees, during the term of her appointment as Interim CTEC Executive Director under this Agreement, to be available for consultation and to provide information concerning NDSCS as the Chancellor may request.

Interim CTEC Executive Director Appointment; Term of Appointment; Compensation. The Chancellor appoints Hart to the position of Interim CTEC Executive Director, effective September 16, 2006 and continuing until June 30, 2007, unless sooner terminated according to this Agreement. Hart accepts this appointment. This is an interim appointment for the specified term and the appointment terminates June 30, 2007 or upon resignation by Hart, if prior to June 30, 2007. Duties and reporting relationships shall be defined in an Interim CTEC Executive Director Position Description approved by the Chancellor. This appointment is subject to Board policies and may be terminated for cause according to governing Board policy. Salary shall be \$123,736 on an annual basis, payable twice monthly, plus annual and sick leave, TIAA/CREF retirement plan contributions (9.5% state and 1.5% employee contribution according to applicable plan), state employee health plan coverage and other fringe benefits provided by law and policy. Hart shall provide her own office space and vehicle/transportation and is entitled to payment of a \$20,000 housing/office allowance and \$11,000 vehicle allowance, on an annual basis and payable twice monthly during the term of this appointment, to cover those expenses. Hart is entitled to payment or reimbursement by NDUS for necessary and authorized travel in connection with her duties according to applicable state law and Board policy, except the \$11,000 vehicle allowance is in lieu of mileage reimbursement for use of her personal vehicle. NDSCS shall provide and pay for a laptop, connection to NDUS computing facilities and cell phone and NDUS shall provide office supplies.

In order to fulfill obligations under Hart's current employment contract at NDSCS and in exchange for Hart's resignation and release, NDSCS shall pay or reimburse NDUS for payment of all compensation paid Hart under this Agreement; further, in the event Hart voluntarily resigns her position as Interim CTEC Executive Director prior to June 30,

2007, Hart is entitled to and NDSCS shall pay a lump sum payment equal to the salary, retirement plan contributions and cost of health plan premium payments under this Agreement for the period from date of resignation through August 31, 2007. If Hart commences other employment prior to July 1, 2007 (excluding only temporary or part-time consulting or other part-time work that does not interfere with job duties as Interim CTEC Executive Director), she will be deemed to have resigned. In the alternative, if Hart does not resign prior to June 30, 2007 and continues to serve as Interim CTEC Executive Director until that date, Hart is entitled to a lump sum payment equal to the salary, retirement plan contributions and cost of health plan premium payments under this Agreement for the period from July 1, 2007 through December 31, 2007. Any lump sum payment due under this paragraph shall be paid within 15 days of resignation or termination.

Unused Annual and Sick Leave. Hart is entitled to carry forward to her NDUS position any unused sick leave accrued at NDSCS. NDSCS shall compensate Hart for any unused annual leave earned at NDSCS as of September 15, 2006 and for any unused annual leave earned in her NDUS position upon termination of her NDUS appointment.

Release. Hart, individually and on behalf of Hart's family, heirs, personal representatives and assigns, fully releases and discharges from all liability for damages, actions, causes of action, costs, attorney fees or other expenses of any kind, NDSCS, the NDUS and the Board and their present or former officers, employees, agents, assigns, insurers and representatives, whether acting in their individual or official capacities. Hart agrees to give up any and all rights or claims against the above-named persons Hart now has to any relief of any kind, whether or not Hart now knows about those rights, arising out of employment at NDSCS or this resignation, including, but not limited to, claims for violation or the North Dakota Human Rights Act, N.D.C.C. ch. 14-02.4; Title VII of the Civil Rights Act, 42 U.S.C. §§ 2000e et seq.; the Age Discrimination in Employment Act, 29 U.S.C. §§ 621 et seq.; the Americans with Disabilities Act, 42 U.S.C. §§ 12101 et seq.; the Fair Labor Standards Act, 29 U.S.C. §§ 201 et seq.; the Employee Retirement Income Security Act, 29 U.S.C. §§ 1001 et seq.; or any other federal or state law. Hart further understands that this release extends to claims against the above-named persons for wrongful discharge, breach of contract, promissory estoppel or breach of an express or implied promise, misrepresentation or fraud, retaliation, infliction of emotional distress, defamation, or otherwise based on any theory, whether developed or undeveloped, arising from or related to employment or separation of employment with NDSCS.

It is further agreed that all rights Hart may possess under N.D.C.C. § 9-13-02 are expressly waived. N.D.C.C. § 9-13-02 provides that “[a] general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him, must have materially affected his settlement with the debtor.”

This release does not extend to rights, remedies, claims or causes of action arising out of acts occurring after the execution of this Agreement and Release. This release does not

apply to, or otherwise impair, any vested rights Hart has under a presently existing employee pension or benefit plan or any other claims that may not be waived by law, including unemployment compensation, workers' compensation and COBRA continuation of health coverage rights.

Hart agrees to not institute, nor authorize any other person or party to institute, any claim or legal proceedings against NDSCS, the NDUS or the Board or their officers, executives, agents, assigns, insurers, or representatives. Although nothing in this Agreement shall be construed to prohibit Hart from filing a charge with the Equal Employment Opportunity Commission, this release shall extend to and prohibit Hart or Hart's family, heirs, personal representatives and assigns, from filing a court action or seeking individual remedies or damages against the above-named persons in any action filed by the Equal Employment Opportunity Commission.

To the extent permitted by law and subject to the provisions of Chapter 32-12.2 of the North Dakota Century Code, the Board, for itself and its present and former members, officers and employees, fully releases and discharges from all liability for damages, actions, causes of action, costs, attorney fees or other expenses of any kind, Hart and her family, heirs, agents and assigns.

Acceptance Period. To the extent the Age Discrimination in Employment Act applies to this Agreement, Hart has the right to have the Agreement open for acceptance for a period of at least 21 days, during which time Hart may consider whether or not to accept this Agreement and seek counsel. Hart agrees that changes to this Agreement, whether material or immaterial, will not restart this acceptance period. Hart asserts that she has had an opportunity to consult legal counsel and specifically waives this 21-day period.

Right to Rescind or Revoke. With respect to potential claims under the Age Discrimination in Employment Act, Hart has the right to revoke this Agreement within seven calendar days of execution of the Agreement. With respect to potential claims under the North Dakota Human Rights Act, Hart has the right to revoke this Agreement within seven calendar days of execution of the Agreement. Hart may exercise the right to revoke this Agreement by delivering or mailing, within the applicable time, written notice of intent to revoke the Agreement to:

H. Patrick Seaworth, General Counsel
State Board of Higher Education
600 East Boulevard Ave. Dept. 215
Bismarck, ND 58505

If Hart exercises any right of rescission or revocation, the Board at its option may either nullify this Agreement in its entirety or keep it in effect as to all claims not rescinded or revoked in accordance with these rescission or revocation provisions.

Entire Agreement. This Agreement contains the entire agreement between the parties and they have no other written or oral agreements or understandings. This Agreement supersedes all prior agreements, whether written or oral, between the parties.

Governing Law. The laws of the state of North Dakota shall govern this Agreement. If any part of this Agreement is construed to be in violation of any law, such part shall be modified to achieve the objective of the parties to the fullest extent permitted and the balance of the Agreement shall remain in full force and effect.

HART ACKNOWLEDGES THAT HART HAS READ THIS ENTIRE AGREEMENT AND HAS HAD AN OPPORTUNITY TO CONSULT LEGAL COUNSEL. HART ENTERS INTO THIS AGREEMENT FREELY AND VOLUNTARILY WHOLLY UPON HART'S OWN JUDGMENT, BELIEF, AND KNOWLEDGE AS TO THE NATURE, EXTENT, EFFECT AND DURATION OF ANY CLAIMS HART MAY HAVE. HART AGREES THAT IN ENTERING INTO THIS AGREEMENT HART HAS NOT RELIED ON ANY STATEMENTS OR EXPLANATIONS MADE BY THE BOARD, NDUS OR THEIR REPRESENTATIVES.

HART:

_____ Date: _____
Sharon Hart

ND STATE BOARD OF HIGHER EDUCATION:

_____ Date: _____
John Q. Paulsen, President

ND UNIVERSITY SYSTEM CHANCELLOR:

_____ Date: _____
Eddie Dunn, Chancellor

NORTH DAKOTA STATE BOARD OF HIGHER EDUCATION INTERIM PRESIDENTIAL CONTRACT

The following contract is offered to you on behalf of the North Dakota State Board of Higher Education and is subject to all applicable Board policies. Job duties and responsibilities shall be those established by law and Board policy and otherwise defined by the Board and Chancellor or in this document.

Name: John Richman

Position: Interim President

Institution: North Dakota State College of Science

Annual Salary: \$123,736 (on an annual basis) plus fringe benefits provided by law and policy and subject to payroll deductions, paid twice monthly in equal installments during the term of appointment.

Term: September 16, 2006 through June 30, 2007.

Special Conditions:

1. This is an interim appointment to serve as NDSCS President until the Board appoints the next NDSCS President and that person takes office, which is expected to be on or about July 1, 2007.
2. You are entitled to a housing/hosting allowance in the amount of \$10,000 (on an annual basis), paid twice monthly (in equal installments) during the term of your appointment.
3. You are entitled to payment of a vehicle allowance in the amount of \$11,000 (on an annual basis), paid twice monthly (in equal installments) during the term of your appointment.
4. You are delegated full authority and expected to fulfill all duties and responsibilities of the NDSCS President as set forth in state laws and Board policies, including SBHE Policy 305.1.
5. It is understood that you will continue to fulfill your duties as NDSCS Vice President for Academic and Student Affairs during this interim appointment and that you may at your discretion make a temporary appointment or appointments to assist you with those duties.
6. It is understood that you will not be a candidate in the search for a new NDSCS President, unless requested by the search committee or the Board.
7. Upon termination of this interim appointment, you are entitled to continue in your current position as NDSCS Vice President for Academic and Student Affairs with present academic appointment and rank under current contract terms, including a salary adjustment or adjustments consistent with annual salary adjustments for other NDSCS administrators, for a term of not less than two years.

Please indicate your acknowledgment and acceptance of this contract by signing and returning one copy to me.

Eddie Dunn, Chancellor

I accept the terms and conditions described above.

Accepted: _____

Date: _____