

MCCC



News

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# Presidents Assault Collective Bargaining

A disturbing pattern of the community college presidents refusing the contractual provision for resolving grievances through the arbitration process has reached a new low. After years of refusing to honor the decisions of arbitrators, college presidents are now challenging the very right of the MCCC to take issues to arbitration.

Since the first MCCC collective bargaining agreement in the early 1970's, binding arbitration has been the agreed upon forum for resolving contractual disagreements. State law prohibits public union members from striking, and arbitration is a remedy to reasonably settle contractual issues. Arbitration is only used

for resolving issues within the contract. It is not permitted for contract negotiations.

The process is not unique to unions; many businesses agree to use arbitration for settling disputes because it is much simpler and less costly than civil court. In fact most credit card issuers require customers to use arbitration to settle their complaints.

Nearly 30 years of contract history had found arbitration to be a way to settle

differences in a reasonable fashion. As the Preamble to the collective bargaining agreement says, "This Agreement has as its purpose the promotion of harmonious relations between the Employer and the Association."

But in 2000, Quinsigamond Community College President Sandra Kurtinitis broke new ground and rejected an arbitrator's decision appealing it to Superior Court. That case involved Article

16.02 preferential treatment to existing MCCC DCE member for a vacant position. The court rendered a mixed decision.

The court did agree that the college violated the contract, but the doctrine of non-delegability gives authority of hiring to the college. However Judge Gants did say that the aggrieved member's rights were violated and that she was entitled to monetary damages.

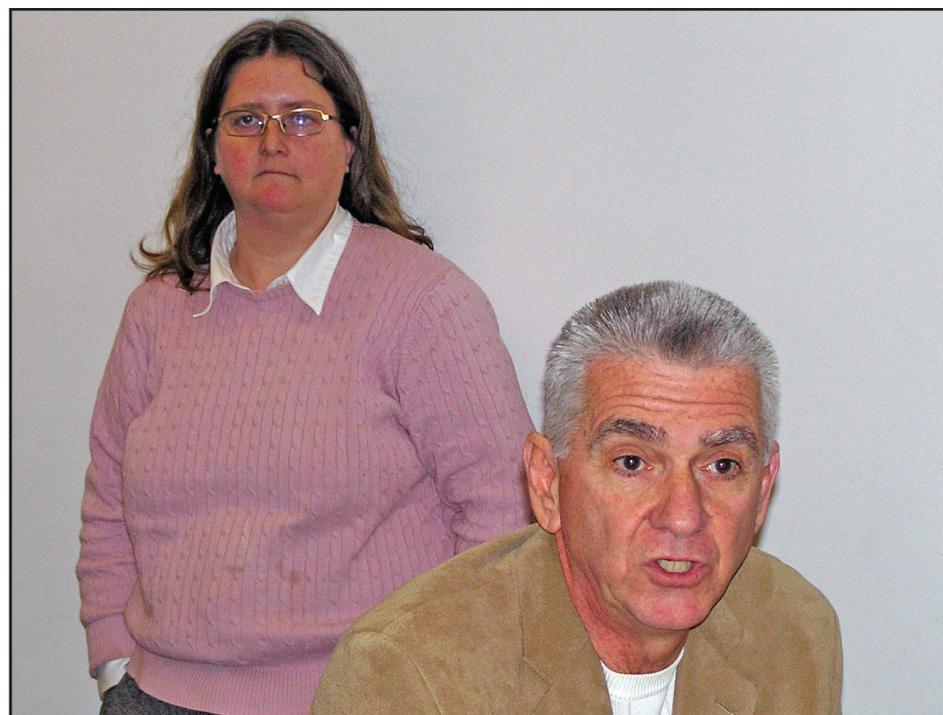
In 2002 the president of Mass Bay Community College dismissed a faculty member for reasons the Union contended were arbitrary, capricious and unreasonable. In 2004 an arbitrator agreed with the Union and ordered that the faculty member be reinstated. The college refused to accept the decision and appealed it to Superior Court. Nine months later the Superior Court upheld the arbitrator's decision. Finally, the incoming college president decided not to appeal because it was "not in the best interests of the college."

The college presidents received another legal setback on Dec. 14, 2010 when Associate Justice Kimberly Budd upheld an arbitrator's decision that was appealed by Roxbury Community College President Terence Gomes. The college had denied tenure to a faculty member, and Arbitrator Marcia Greenbaum agreed that the tenure review process was highly flawed and that the contract provisions were violated. The college was ordered to reinstate the faculty member to his position and that the tenure process should be redone. Certain members of the previous UPP (tenure review) Committee are to be excluded from the process.

Even though Superior Court Associate Justice Budd confirmed the arbitration award and issued a strongly worded decision in favor of the MCCC, Roxbury Community College President Terence Gomes has now decided to continue to fight the Arbitrator's and the Superior Court's decisions to the Appeals Court.

To date, four Motions to Vacate initiated by the presidents have been denied and two more cases are pending in Appeals court.

The latest assault on arbitration occurred on Jan. 14, 2011 when attorneys for



MCCC Day Grievance Coordinator Dennis Fitzgerald explains the seriousness of the community college presidents' attack on the arbitration process, as MTA Consultant Katie D'Urso backs up his points. (Photo by Don Williams)

## Know Your DCE Contract

### Spring 2011

#### Salary Increase-January 2011

DCE faculty will receive a 1.5% salary increase pursuant to the terms of the collective bargaining agreement. The DCE per credit salary schedule is as follows:

Step 1	\$859
Step 2	\$920
Step 3	\$989
Step 4	\$1,038

DCE faculty will move from salary Step 1 to salary Step 2 upon teaching the sixth class and move to Step 3 upon teaching the eleventh class. Step 4 is effective upon attaining 8 years of seniority at the college. New faculty at the college would normally start at Step 1, but may start at Step 2 or 3 of the salary schedule based on degrees,

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# New Members Beware



Don Williams, MCCC  
Communications  
Coordinator

Everywhere we turn there is someone attacking the benefits public employees receive. Under the gun are health insurance, job security, and most significantly, pensions. Conservative think tanks feed the public debate through their surrogate mouthpieces in the press. Governors of both parties are picking up on the trend.

Columnist Jeff Jacoby in the Boston Globe back in early December railed against what he labeled liberal envy and resentment of the wealthy when tax increases loomed for them. Pundits like him raise the bloody flag of class warfare.

But just a few weeks later he incited envy of private sector employees towards public employee benefits. He called it the “haves versus the have-nots.” Statements like these foment internecine class warfare, pitting middle and working class Americans against each other as we fight for the crumbs of a decent life.

Only about 10 percent of private sector employees have defined benefit retirement plans like the Massachusetts State Employee Pension System (SERS), and like most other states’ systems. The others who have pensions (and many have no plan) have 401k-type defined contribution plans. They have to manage the investments themselves, and many have little or no financial expertise. Their retirements are subject to Wall St. fluctuations, and they are understandably very anxious about their futures.

A 2006 documentary on PBS’s Frontline explored the insecurity of 401k plans and how they were never intended to be a sole retirement plan, but only meant as supplemental retirement accounts. The show highlights how the state of Nebraska created a dual pension system

where employees could choose either a traditional plan or a 401k plan. After a 40-year history, the state found that participants in the 401 plan did not have enough in their accounts to retire. The state felt obliged to augment those accounts so people would be able to retire. The show is available to view at [www.pbs.org/wgbh/pages/frontline/retirement/view](http://www.pbs.org/wgbh/pages/frontline/retirement/view).

A pension “reform” bill has been introduced in the Massachusetts legislature by Gov. Patrick, who says he’s doing it to protect public pensions. While it is promised not to affect current participants in the SERS, if you have less than 10 years in the system, you should be very concerned.

When changes like this are proposed they are usually scheduled to avoid people most directly affected to avoid a political firestorm. But politicians look to see what level of employee is likely to catch fire and to keep the spark just below the flash point. If they think you’re not watching, they’ll stick it to you.

This happened to me in the early 1980s. When I started teaching, the retirement contribution rate was 7 percent, and a couple of years later they raised the rate to 9 percent on earnings over \$30,000 for those of us hired in the same year. I was young and not thinking about retirement, and I was making less than the new threshold. I wasn’t paying attention, and by the time I heard about it, it was too late.

The MCCC has become much more vigilant and politically astute since the 80s. Modern communication media has enabled rapid notification to members. But the legislature still lacks transparency, and bills come up and get amended sometimes under the cover of darkness.

But the Union leadership has a lot of challenges to deal with. New members should not sit back and rely on the “old hands” to advance their issues. The threats are very real, and the Union needs every member to be vigilant and active if we are to preserve the hard-won rights we now have. ■

## Write Us



The MCCC News  
welcomes contributions.

### Letters to the Editor

Only submissions by MCCC unit members will be accepted. Letters should be no more than 200 words in length. The author must include name and chapter affiliation, which will be published with the letter. Authors must provide the editor with contact information in the form of either email address, mailing address or telephone number. Letters will be published on a space available basis and may be edited for length and appropriateness. Not all submissions can be published.

### Guest Columns

Guest Columns should be no more than 400 words in length. Columns by authors who are not MCCC members may be accepted. The author’s name and affiliation will be published with the column.

#### Mail to:

Donald Williams  
North Shore Community College  
One Ferncroft Road  
Danvers, MA 01923

#### Or email:

[Communications@mccc-union.org](mailto:Communications@mccc-union.org) ■

# Collective Bargaining Assault . . .

*continued from front page*

the college presidents filed injunctions in Superior Court to prevent the Union from even bringing cases from Mt. Wachusett Community College to arbitration. These cases are scheduled for arbitration hearings on June 2, 2011, and the Union is awaiting the Court’s decision.

The proscribed MCCC grievance process starts at Step 1 with a hearing held at the particular campus, presided over by the college president or the president’s designee. If the issue is between a unit member and their immediate supervisor, then the unit member may receive a favorable decision. But if the grieved situation is because of an action of the president, then it is highly unlikely that the president or designee would rule against that action.

If a resolution is not reached at Step 1, then the case is appealed to Step 2, mediation. This process brings together the griev-

ant with union representatives and management representatives with counsel to meet separately with a mediator who attempts to broker a non-binding resolution to the grievance.

If mediation does not result in a negotiated settlement, then the Union has the option of going to Step 3, arbitration. Taking a case to arbitration is at the sole discretion of the MCCC.

Without arbitration, there is nowhere for the Union to turn for justice if the employer violates the Collective Bargaining Agreement. Few current members were employed in the system before the first contract in 1975, but MCCC Grievance Coordinator Dennis Fitzgerald was. He said that except for a three colleges that had standard contracts with faculty and staff, at every other community college employees had no recourse if they were mistreated.

Despite repeated rebuff from the courts, the presidents continue waste time, money, and the good will of the MCCC

membership by challenging the very underpinnings of the collective bargaining process. ■

## Visit The MCCC Online! <http://mccc-union.org>

(Note: sometimes using www in the address doesn’t work)

### Toll Free Phone: 877-442-MCCC

The MCCC website is the best and most up-to-date source for late breaking developments. Additional documents of interest and import to Day and DCE unit members have been added.

The MCCC Webpage is a valuable resource for MCCC updates, job opportunities and linkage to the NEA and MTA resources available to MCCC unit members.

Calendars of MCCC meetings, and committee assignments may be found there.

Additionally, MCCC events and news are available, as well as “old news” in the form of archived newsletters. Bookmark the site for frequent referral.

# Fighting Injustice with All Necessary Resources



Joe LeBlanc,  
MCCC President

Earlier this week, I found myself in Suffolk County Superior Court. The hearing lasted less than a half hour in the latest outrage against the collective bargaining process. In this instance, the colleges have filed an injunction to prevent a case from proceeding to arbitration.

Speaking for the college presidents, Attorney Carol Wolff Fallon argued that the union is attempting to force the college to create three vacancies, asserting that this is prohibited by state statute. Citing the “non-delegability doctrine,” Atty. Wolff Fallon claimed it would violate public policy to force the college to create three new positions.

In response, our union has filed an unfair labor practice charge against the employer. This complicates matters, according to Atty. Wolff Fallon. The colleges will be further delayed. They will be unable to proceed with the department chair postings. [note: see the front page story for case details.] Management argues the only solution is to stay the arbitration rather than letting the case play out in arbitration as cases have since the 1970’s.

MTA consultant Katie D’Urso sums up our case well: “Attorney Will Evans argued the collective bargaining agreement clearly sets forth procedures

for assigning department chair work and the college violated the contract by precluding faculty members from being eligible for this work that is usually done by faculty. Atty. Evans pointed out that we are not asking for three new positions to be created – the college decided that they needed the three positions and then failed to follow the proper procedures set forth in the contract in assigning the positions to faculty. While the non-delegability doctrine says that only the college can decide to create a new position, legislative history and case precedent clearly state that if the college agrees in collective bargaining to limit itself by setting forth procedures that must be followed in assigning work, the college is bound by those procedures.”

Judge Linda Giles has taken this case under advisement. While state law gives our employer the

right to file an injunction, this doesn’t mean it is the right thing to do.

Our union has not shirked and will not shirk its responsibility to our members. We will continue to confront injustice, and we will use our considerable legal resources whenever it is necessary. We have sued the Commonwealth over adjunct health insurance. We will fight off injunctions.

In coming weeks, we will be taking the fight to the public. Our media campaign, tentatively titled “Strengthening Our Community Colleges: It’s Time the Commonwealth Took Us Seriously” will begin by examining the treatment and overuse of adjunct faculty. By taking this conversation (and others) to the Commonwealth’s streets and courtrooms, we will be helping set the agenda. As a major stakeholder in public higher education, it is only just that we do so. ■

## DCE Over-enrollment Settlement

An amicable resolution was reached at mediation in December over cases at Cape Cod and Springfield Technical Community Colleges where DCE class size maximums were exceeded.

As part of the current DCE contract changes, class sizes were reduced to the same levels as the Day contract: 22 for English Composition, English as a Second Language, Foreign Languages, and remedial/developmental courses and 32 for all traditional didactic courses.

There was a delay in final execution of the contract, and confusion resulted over the effective dates of some provisions. Nonetheless, as per agreement every other college had implemented the new class size limits by the Fall 2010 semester except these two colleges. Even at Cape Cod and Springfield Tech, the failure to observe the new class sizes was limited to one or two specific work areas.

While there was no admission of wrongdoing by the parties and no precedent was set, the Agreement resolving the grievances also resolved a related charge of prohibited practice filed by the Union at the Division of Labor Relations.

The mediated settlement resulted in faculty whose classes exceeded the contractual limits receiving additional compensation of between \$200 and \$750 depending on the type of course and the number of students over the limits.

All campuses should now be observing the new class sizes, however the contract does allow over-enrollments under certain circumstances (Article 13.05). ■

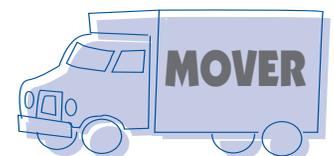


Davide Villani (left) of the CPA firm Alexander, Aronson and Finning, gave an audit report for fiscal year 2009-2010 to the MCCC Board of Directors at their January meeting. He said the audit went very well, labeling it a “clean, unqualified report.” He praised the efforts of the Union officers and the office staff at its record keeping and at cost containment and cost reduction. The Union ended the year with a surplus. He singled out the efforts of Treasurer Phil Mahler (far right). Also pictured are MCCC President Joe LeBlanc and Secretary Gail Guarino. (Photo by Don Williams)

## MOVING?

Please make sure the MCCC has your correct mailing address.

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**1-877-442-MCCC toll free**

or go online at  
[http://mccc-union.org/  
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Karen Carreras-Hubbard of Berkshire Community College (right) and Karen Reidl of Holyoke Community College, who co-chair the Professional Staff Committee, made a report on the committee's work at the January MCCC Board of Directors' meeting. They cited a number of issues of concern including lack of confidential office space for counselors, increasing use of part-time staff who then become full-time without proper search processes, and the lack of salary adjustments for changes of rank. But increases in workload without compensation were a principal concern. They noted that the committee is collecting E-7 workload forms from across the system to research the trends. (Photo by Don Williams)

## Know Your Day Contract

### February 2011

- Feb. 1** Summary Evaluation forwarded to faculty (p.50).
- Feb. 15** First year professional staff evaluation conference (p.42)
- Feb. 20** Course materials returned (p.40)
- Feb. 28** New full and part-time hire list due MCCC

### March 2011

- March 1** Notice of reappointment due to Unit members in their first to fourth years. In fourth year reasons for non-reappointment shall be given in writing, but are grievable only to step 2 and not to arbitration. (p. 37)
  - March 5** Request leave of absence recommendations due (p.26)
  - March 15** Dean's recommendations for Title change due (p.59)
  - March 15** Unit Personnel Practices recommendations for tenure due (p.38)
  - March 17** Evacuation Day Holiday (p.22)
  - March 30** Department Chair evaluations (p.70)
  - March 30** Preferred schedules and course submitted (p.32 )
  - March 31** Department chair vacancies announced (p.55)
- N.B. *Dates may vary depending on the first day of classes. Most of these dates are "last date" standards. In many instances the action can be accomplished before the date indicated. ■*



## MCCC News

<http://mccc-union.org>

### Editor:

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The MCCC News is a publication of the Massachusetts Community College Council. The Newsletter is intended to be an information source for the members of the MCCC and for other interested parties. Members' letters up to 200 words and guest columns up to 400 words will be accepted and published on a space-available basis. The material in this publication may be reprinted with the acknowledgment of its source. For further information on issues discussed in this publication, contact Donald Williams, North Shore Community College, One Ferncroft Road, Danvers, MA 01923. e-mail: [Communications@mccc-union.org](mailto:Communications@mccc-union.org)

## DCE Contract . . .

*continued from front page*

qualifications, and experience. Members are encouraged to become familiar with the schedule so that any error can be easily addressed.

Unit members compensated on an hourly basis shall receive a 1.5% increase to their current hourly rate for assignments effective January 2011.

The laboratory component of a course will be paid at the rate of 1.5:1 (1.5 contact hours per week during a regular semester = 1 credit salary).

Faculty will be paid through the state HRCMS biweekly payroll system. Salary payments should begin approximately four weeks into the semester and then every two weeks thereafter through the end of the semester.

### Reappointment Rights and Seniority

Reappointment rights are effective after teaching five courses over three consecutive fiscal years at the college. These courses do not have to be in the same department. Teaching two or more courses per year in a work area at the college earns one-year seniority. One course in one area and one course in another area in a year provide one-year seniority in each work area. Loss of accrued seniority results after a two-year break in service at the college. Canceled courses do not count toward a break in service.

### Appointment

Faculty with reappointment rights will be provided a Teaching Availability Form. This is to solicit teaching preferences and time availability for the next semester. The form is usually sent and/or submitted electronically. It is important to check

your college email and become familiar with the system used at your college. The college will assume that you are not interested in teaching if the form is not returned in a timely manner.

A tentative appointment for one course shall be assigned first to those unit members with the longest seniority. You should, under normal circumstances, be notified of your assignment five weeks prior to the beginning of classes. You should be given a contract indicating the course(s) and salary to which you have been assigned. Your course must run in the event that an administrator who hires, fires, or evaluates DCE faculty is teaching a course in DCE.

### Course Material

Faculty must submit the course syllabus within one week of the beginning of classes. This should include the items appearing on the course material checklist contained in the collective bargaining agreement. Please note that DCE faculty enjoy academic freedom which provides for professional latitude in fulfilling one's contractual obligations in this regard. An Interaction Plan must also be submitted for distance education courses.

Instructors have the right to choose their text book(s). The exception to this is when it is a departmental selection and DCE faculty are given an opportunity to participate in the decision making process, or when the appointment is made as the semester is to begin.

### Evaluation

Student evaluations are conducted each semester and are conducted during the second or third to the last week of the course. A classroom observation must be

conducted prior to the unit member attaining reappointment rights. Classroom observations can only be conducted after that point for stated written reasons. The evaluator must use the classroom observation form found in the DCE contract.

### Missed Classes

Missed classes must be made-up by four possible means with the approval of the college. One must either schedule a make-up class; add time to the remaining class meetings; assign a paper, project, or a self-directed learning experience which will require a time span equivalent to one class period; or by another method that is proposed by the unit member.

### Maximum Class Size Reduced

Maximum class size was reduced from that of the previous DCE contract. The class size maximum for traditional courses was reduced from 40 to 32 students. The maximum class size for English Composition, English as a Second Language, Introductory Foreign Languages, and remedial/developmental courses was reduced from 30 students to 22.

### Faculty Meetings

DCE faculty will not be required to attend more than one faculty meeting per semester.

The DCE Collective bargaining agreement is available on the MCCC website <http://www.mccc-union.org/> or a copy can be obtained from your local MCCC chapter.

If you have any questions on the DCE contract, call DCE Grievance Coordinator Joe Rizzo at 603-898-6309 / [Grievance-DCE@mccc-union.org](mailto:Grievance-DCE@mccc-union.org) ■