MCCC
Day UNIT
GRIEVANCE TRAINING
&
CONTRACT ENFORCEMENT
MANUAL

Prepared by
Dennis Fitzgerald
MCCC Grievance Coordinator
170 Beach Road, Unit 52
Salisbury, MA 01952
Tel: 978-255-2798 FAX: 978-255-2896
E-Mail: Grievance-Day@MCCC-union.org or MCCCfitzy@comcast.net
Revised 10/1/19

I. UNDERSTANDING A GRIEVANCE

THE GRIEVANCE: A VITAL CONCEPT FOR THE ASSOCIATION MEMBER

A TOOL FOR IMPOVING THE EDUCATIONAL PROCESS BY GUARANTEEING UNIT MEMBERS THE FREEDOM TO PURSUE THEIR ART WITHOUT OBSTACLES

A grievance may arise from one of several such obstacles. One kind of obstacle is a condition that simply makes teaching and professional staff responsibilities difficult to perform, as when the classroom is overcrowded, or the textbooks do not arrive. Another kind of obstacle is created by the intentional or unintentional harassment of the employee by management. Still other obstacles arise when the employee or a group of employees are discriminated against and deprived of certain basic rights and freedoms that are necessary for to excellence in the educational process. ***A Grievance is a process for eliminating obstacles to employees' practice of the profession.***

It is sometimes erroneously charged that grievance representation fosters incompetence. To counter this error, a word about MCCC philosophy is in order. The MCCC considers the employee a first class citizen entitled to ***due process*** in the resolution of charges against that employee, or of complaints that the employee initiates. ***Due process*** does not protect the incompetent. Due process consists of adequate legal representation, trial by an impartial arbitrator, and the right to testimony of witnesses and evidence, the right to cross-examine adverse witnesses, the right to appeal, and the right to be presumed innocent until proven guilty. In this process, the incompetent will be discovered and the competent will be protected. The MCCC does not merely stand on this position: ***The MCCC acts aggressively to insure this process is carried out*** daily in colleges across the state.

The grievance procedure is necessary for educational quality and faculty and professional staff dignity. Each chapter in the MCCC therefore needs a Grievance Coordinator who is prepared to advocate faculty rights aggressively. This involves not only formal grievance procedures, but also various other techniques for crafting solutions to unit member problems. Faculty and professional staff advocates must have the courage to face administrators and insist on equal responsibility for the policies of the college and the laws of the state of Massachusetts. Advocates must be able to articulate the problem, assign responsibility for its solution, and maintain a willingness to work with administrators in reaching an acceptable solution.

Professionals' problems do not solve themselves, nor do they quietly go away. Statewide leadership cannot solve chapter problems for you: The MCCC can help only those who help themselves. Each chapter must assign responsibility for faculty and professional staff advocacy to one of its executive officers and then recruit unit member advocates who are willing to familiarize themselves with local and chapter policies, state laws, and the collective bargaining agreement. These advocates must come from within the ranks of the chapter. Put simply,

Grievances Define The Employment Contract.

DEFINITION OF A GRIEVANCE

WHAT EVERY ASSOCIATION LEADER SHOULD KNOW ABOUT GRIEVANCE HANDLING

IT IS IMPORTANT THAT ASSOCIATION LEADERS UNDERSTAND THE TERMINOLOGY OF GRIEVANCES

Definition of a Grievance: "an allegation by a unit member(s) or by the Association that a specific provision of the Agreement has been breached in its application to the unit member(s) or the Association."

A grievance is a tool for improving the educational process by guaranteeing faculty members the freedom to pursue their art without obstacles. In employment terms, a grievance is a formal means of correcting an injustice being suffered by an educational employee.

A grievance occurs when an administrator or the Board of Higher Education acts or fails to act so that an employee is hurt or feels he or she has been hurt.

The word grievance is an Old French term dating from the 1300's, where it was used mainly to denote the infliction of wrong or hardship on a person by a "grievancer," that is, someone who creates the state of wrong or hardship. Those who complained too much, in the view of their employer were called "grievance-mongers." The term has changed little over the centuries except that it has acquired an additional meaning: used as a noun, it has come to refer to the process of righting a wrong.

PARTIES TO A GRIEVANCE

A ***Grievant*** is a wronged employee who is in the process of seeking relief from the hardship.

Aggrieved is an adjective describing the wronged employee who is processing a grievance. It's also sometimes used as a noun.

Management is an administrator who has created the hardship.

Employer is the Board of Higher Education or any College Board of Trustees as defined in General Laws, Chapter 15A and Chapter 150E or successor as amended or superseded, whichever the case may be as provided in Article XXVI of the Contract.

Association representative is any authorized individual(s) who assists the grievant in seeking proper relief through due process.

COMPLAINT vs. GRIEVANCE

IT IS IMPORTANT THAT ASSOCIATION LEADERS UNDERSTAND THE DIFFERENCE BETWEEN A COMPLAINT AND A GRIEVANCE

Not all complaints are legitimate grievances. An employee may have a quite legitimate complaint, but the hardship may not be grievable, as when the classroom has been vandalized or the air conditioning goes on the blink. Note that both the examples above ***could become grievances*** if, for instance, management does nothing to rectify them. First, the leader checks the accuracy of the story of the would-be grievant, and then determines whether the incident constitutes a violation of one of the items in the checklist of ***Reasons For A Grievance.*** If the alleged violation seems borderline, it should be checked out with more experienced association representatives to determine its validity. A non-grievable complaint may have more to do with personality conflict or acts of nature than with violations of the terms of wages, hours, and working conditions.

⊗ WARNING ⊗

NOT ALL COMPLAINTS ARE GRIEVABLE

UNGRIEVABLE COMPLAINTS ARE OFTEN CALLED "GRIPES" TO DISTINGUISH THEM FORM TRUE GRIEVANCES

BUT MANY COMPLAINTS WHICH DO NOT APPEAR TO BE GRIEVANCES AT FIRST GLANCE DO TURN OUT TO INVOLVE CONTRACT VIOLATIONS WHEN ANALYZED

TYPES OF GRIEVANCES

IT IS IMPORTANT THAT ALL ASSOCIATION LEADERS KNOW THE DIFFERENT TYPES OF GRIEVANCES

Individual Grievances: The most common type of grievance is one that involves an individual employee and his or her immediate supervisor. This being the case, most grievances occur at the college level. Grievances involving individual faculty are referred to as ***individual grievances***.

Class Action Grievances: Unit members, like other employees, are generally categorized or grouped according to their academic fields (Departments, work areas or programs); therefore, it is possible for an injustice to occur which could affect not one, but a number of unit members. A grievance filed under these circumstances is commonly referred to as a ***class action grievance***. Such a grievance would normally be filed for injustices occurring at one or a combination of education levels: department, division, college or system-wide level. This type of grievance is usually handled by the Chapter's Grievance Coordinator or of a system-wide issue by the statewide grievance coordinator.

IT IS IMPORTANT THAT ALL LEADERS UNDERSTAND THE PURPOSE OF GRIEVANCES

The main purpose of the grievance is to **secure quickly a fair solution** to disputes, which arise between employees and management. MCCC members who know how and when to use the grievance procedure will not only guarantee justice for themselves, but will also strengthen the chapter and bring dignity to all educators in the community college system.

SPECIFIC PURPOSES OF THE GRIEVANCE

- Establishes Rights of Employee Through Interpretation of Contracts and the Policies of the Board of Higher Education.
- Protects Rights Clearly Established under Contracts, Policies of the Board of Higher Education, State And Federal Laws or Regulations.
- Assures Equal And Fair Treatment According to Customary College Practice
- Provides Systematic Means of Problem Solution. Sets Forth a Rational Course for a Resolution of a Disagreement
- Requires Administrators and Unit Members to Assemble Facts and Logic to Justify Positions
- Requires Administrators to Justify Action, Which Protects Employees from Arbitrary, Capricious, and Unreasonable Actions, Ill-Temper and Tendency Of Some Supervisors to Impose Their Irritation
- Can Provide High Echelon Administrators with Information About College Conditions, Staff Morale, and Quality of Education

REASONS FOR A GRIEVANCE

IT IS IMPORTANT THAT ASSOCIATION LEADERS KNOW THE REASONS FOR A GRIEVANCE

A grievance occurs when an administrator acts or fails to act so that an employee has been hurt or feels that he or she has been hurt.

The act or failure to act on the part of management may result in a counter action (grievance) on the part of an individual, group of individuals, and/or the chapter. Action on the part of the employee(s) and/or the employee Association would be based on the nature of the injustice.

WAS THE INJUSTICE A RESULT OF:

- A violation of an individual's contract and/or Policies of the Board of Higher Education?
    1. Plain violation of the Agreement
    2. A Dispute over Meaning or Application
    3. A dispute over facts
    4. Equity dispute

- A violation of a past practice?
- Discrimination against an individual or group?
- A violation of state or federal laws?
- Unit determination dispute?
- A charge of prohibitive practice>

SPECIAL NOTE: *It is vitally important that an association leader be able to distinguish which category the grievance falls under and to be able to determine systematically how to approach the problem.*

COMMON CONTRACT VIOLATIONS AND PAST PRACTICE

Plain Violation of the Agreement
This type of grievance may be the result of ignorance, carelessness, error, omission, or the commission of an act known to be contrary to the terms of the Agreement. It is probably the simplest type of grievance to substantiate, since it requires in the simplest form, proof that some act or omission did occur which violates a provision of the contract.
(MCCC Contract - *mccc-union.org/CONTRACTS/Day_2006-2009/Agreement-Day-06-09.pdf)*

Disagreement Over Meaning or Application
In this type of grievance, the facts of an issue are not usually in dispute. The grievance arises from a disputed interpretation of a term or condition of the contract. The following principles of contract language analysis may prove helpful in this type of grievance:

1. Specific language prevails over general language.
2. Clear and unambiguous language usually prevails over past practice.
3. In the absence of specific, or clear or unambiguous language, past practice or evidence of intent of the parties may be the determining factor.

Dispute Over the Facts
In this particular type of grievance, there is no question concerning the terms of the agreement. The issue turns on whether an alleged violation of the agreement did or did not, in fact occur.

Equity Disputes
Cases of this sort are usually based on the Association's claim that an administrator/supervisor has used his discretion unfairly; that is, in an arbitrary, capricious, discriminatory or ***unreasonable*** manner. Claims of supervisory unfairness or unreasonableness are among the most common sources of member grievances; and because the contract usually offers no precise criteria on which to resolve such claims, these types of cases present a real challenge to the association's capability in grievance handling.

Past Practice
This is a grievance based upon a claim that a working condition of a long-standing nature, unchanged by specific agreement language, and not specifically covered in the agreement, has been altered, changed, or ignored by the administration in its actions.

Whistle Blower - The Whistleblower Law requires that an employee "reasonably believe" that a condition poses a risk to public health and safety in order for their "whistleblowing" to be protected. The underlying purpose of whistleblower protection laws is to allow employees to stop, report, or testify about employer actions that are illegal, unhealthy, or violate specific public policies.
A whistleblower case was tried before a jury in Superior Court and the jury found that the Whistleblower Law had not been violated. In essence, the jury found that, while the grievant was sincere in her belief that the continued enrollment of a surgical technology student posed a risk to public health and safety, her belief was not "reasonable" in a legal sense (in other words, given the information she had, it was not reasonable for a person in her position to seek to disenroll the student at that point in time). The grievant was non-reappointed in her fourth year of service and thus, the burden was on the union to prove that she was non-renewed for an unlawful reason, which required showing that each statutory element of a whistleblower violation was met, including whether the grievant "reasonably believed" there was a risk. In denying summary judgment, a Superior Court judge found that, in Paula's case, "reasonable belief" was an open question for a jury to decide. Ultimately, that "judgment call" fell to the jury and they didn't see it as the union did.

Contract Interpretation Notable Quotes

Past Practice - "...It must be demonstrated that a given practice or procedure is really an 'established' one: it is not a procedure about which only a given supervisor and an individual or group of individuals are aware; rather, manager ('the employer') and the union representatives ('the union') know about it and sanction it, or even participate in it. In addition, the arrangement must have some reasonable duration in time, and not be some 'one shot' occurrence, so that one party or the other cannot claim that it was some ongoing procedure which it did not know about." (MCCC vs. Holyoke, Arbitrator Milton Nadworny, October 4, 1991)

Expressio unius est exclusio alterius - A general rule of contract interpretation is: "Expressio unius est exclusio alterius," that is, to express one thing is to exclude another or others. To include a list of items to be "uniformly applied" is expressly to exclude items not on the list, such as enrollment numbers and withdrawal or dropout rates. Applying this principle to the criteria set forth by the parties in their Agreement to be used for tenure review means that members of the UP PC or the administration cannot add to or rely on criteria not included on the list. The parties negotiated what can be considered, and must be considered. If a matter is not on the list, it is not to be considered. Thus, the College's argument that it or the UPPC can consider whatever it chooses in deciding whether to grant or deny tenure, is not supported by the clear and unequivocal language of the ·parties' Agreement. The contract the parties negotiated provides to the contrary·, and as the arbitrator, I am bound by its terms. (MCCC vs. Roxbury, Tenure Denial, Prof. Acevedo, Arbitrator Marcia Greenbaum, July 30, 2009)

The Whole vs. Its Parts - Another relevant rule of contract interpretation is that where possible, effect must be given to all clauses and words in a contract. Put another way, if two interpretations of a provision are possible and one would give meaning and effect to another clause of the contract, while the other would render the other provision meaningless, an arbitrator will rely on the one, which gives effect to all words and provisions. In this case, to accept the College's argument, that only Article XI is relevant to tenure decisions, would render Article 13.01 (3) meaningless. That would be an absurd result, and in effect rewrite the Agreement, which must be read as a whole. (MCCC vs. Roxbury, Tenure Denial, Prof. Acevedo, Arbitrator Marcia Greenbaum, July 30, 2009)

Specific Article Not Referenced - The employer claimed that the grievance should be denied since the evaluation article (13.04) was not referenced as a violation in the initial grievance. The arbitrator opined that the Grid Memorandum of Agreement, by its terms, effectively replaces or supplements, the parallel portions of Article 21 and since the Memorandum of Agreement references the evaluation procedure as the basis for granting the interval increase, it was part of the grievance. **Definition** – Articles not specifically referenced as a violation on the grievance form can still be used as a violation if there is reference to the article within the original article referenced. (MCCC vs. Roxbury, Zero Year, Prof. R. Gray, Arbitrator Marc D. Greenbaum, May 2, 2019)

Late Untimely Challenge - The employer challenged that the grievance was untimely. The arbitrator dismissed this claim because the employer never raised this issue prior to the arbitration hearing. **Definition** – The Grievance Procedure - Article 10 of the contract prohibits new issues being added after the termination of mediation. For the first time, this prohibition was applied to the employer. . (MCCC vs. Roxbury, Zero Year, Prof. R. Gray, Arbitrator Marc D. Greenbaum, May 2, 2019)

Lack of Evaluation – The employer claimed that the lack of a required evaluation that was not grieved is grounds to dismiss the grievance. The arbitrator opined that the evidence conclusively demonstrates that if a scheduled evaluation is not performed, for compensation purposes at least, the employee is deemed to have a satisfactory evaluation. **Definition** – The employer's failure to conduct a required evaluation should have no adverse impact on a unit member. . (MCCC vs. Roxbury, Zero Year, Prof. R. Gray, Arbitrator Marc D. Greenbaum, May 2, 2019)

Appealing an Arbitration Decision - A court reviewing an appeal of an arbitration decision is strictly bound by an arbitrator's findings and legal conclusions, even if they appear erroneous, inconsistent, or unsupported by the record at the arbitration hearing. A matter submitted to arbitration is subject to a very narrow scope of review. Absent fraud, errors of law or fact are not sufficient grounds to set aside an award. Even a grossly erroneous arbitration decision is binding in the absence of fraud. An arbitrator's result may be wrong; it may appear unsupported; it may appear poorly reasoned; it may appear foolish. Yet, it may not be subject to court interference. We are thus bound by the arbitrator's findings and conclusions in this case, no matter the extent to which we may believe that they are "grossly erroneous." City of Lynn v. Thompson, 435 Mass. 54, 61-62 (2001) (internal citations and quotations omitted).

II. PREPARING A GRIEVANCE

IT IS IMPORTANT THAT ASSOCIATION LEADERS DEVELOP BASIC GRIEVANCE ABILITIES

GRIEVANCE BACKGROUND

The Chapter Grievance Coordinator Should Know the Grievance Background:

1. Employee contracts and conditions of employment

2. The college's policies and practices and how they are applied

3. Management
    a. Immediate Supervisor, Deans, Vice President
    b. The college's chief administrator
    c. The Massachusetts Division of Higher Education

4. The college--its assignments, structure, overall problems

5. The higher education professional the coordinator represents

6. Whom to call on for help when needed
    a. Chapter President
    b. Statewide Grievance Coordinator
    c. Chapter's officers

7. Association policies and programs

8. Educational legislation, in a general way

9. Previous grievances and their results

GRIEVANCE SKILLS

The Chapter Grievance Coordinator Should Develop Grievance Skills

1. Ability to get the ***complete*** facts
2. Ability to discuss and argue grievances logically
3. Ability to write grievances clearly, concisely, and completely
4. Ability to take a stand with management or colleague
5. Ability to get the respect of management

Grievance handling demands understanding, imagination, and common sense. At all times, remember that human beings are involved on both sides of a dispute.

GRIEVANCE INVESTIGATIONS

IT IS IMPORTANT FOR ASSOCIATION LEADERS TO KNOW HOW TO INVESTIGATE A GRIEVANCE PROPERLY

The MCCC endorses the policy that it is best for the unit member and MCCC leader processing a grievance together. There are several good reasons for this. The leader is the trained association representative and, therefore, best qualified to present the case to the administration. In addition, if the grievant is present when the grievance is discussed with the administrator, the grievant knows exactly what transpired and won't feel later that, "if I had been there, I wouldn't have been sold down the river." The representative and grievant operating as a team also provide an additional witness for the association who may come in handy in a later step in the grievance process. Most important of all, this policy builds the collective strength of the MCCC. It shows the administration that the members understand the importance of protecting the rights of all faculty through the grievance process. It also demonstrates to the administration that the representative has the support and confidence of the unit member being represented

AVOID

1. Disagreeing with the unit member in the presence of the administration.
2. Telling a unit member to drop a grievance or that the MCCC will not pursue a grievance.
3. Conveying certainty of winning.

INITIAL PREPARATION MEETING

Whether a grievance is won or lost is often determined by how carefully the representative investigates the problem. Therefore, the following must be done:

1. Conduct an interview. Listen carefully to the grievant's statement, writing down all-important data.

2. Ask questions for clarification or additional information.

3. Distinguish between a fact and an opinion.

4. Determine which facts are relevant to the matter under discussion.

5. Review your checklists:

    A. The Reasons For A Grievance
    B. The Difference Between A Complaint And A Grievance

6. Determine whether or not additional information is needed.

7. Assist the grievant in writing a brief grievance statement and review the contract violations.

8. Have the grievants write out their complaints, specifying actions they want the Representative to take, and remedies to be considered by the MCCC representative. Have the grievant sign this statement.

COLLECTION OF INFORMATION

GATHERING SPECIFIC FACTS FOR THE GRIEVANCE CASE:

SOURCES OF INFORMATION

Chapter Records:

MCCC Publications
Minutes of chapter meetings
Past decisions of administration
Chapter files of past grievances
Records of past complaints that did not enter the grievance procedure

College Records:

Faculty member's file
Minutes of Board meetings
College policy and regulations
Absentee records
Salary schedules
Administration bulletins or memos
Article 2.06 Information
Seniority Lists

People Who Might Supply Information:

Witnesses to an act
Colleagues
Administrators
Other college personnel
Chapter leaders who are familiar with past grievances and practices

When requesting information from the employer,

use the following introduction:

The [name college chapter] of MCCC is in the process of preparing the [above-referenced grievance or investigating the above-referenced issue] and in accordance with Chapter 150E, I am requesting that you forward to me the following information regarding _____. This information is relevant to this matter and reasonably necessary in order for the [name college chapter] of the MCCC to carry out its duties as collective bargaining representative. Please forward this information to me prior to [usually 30 calendar days].

INFORMATION ABOUT A GRIEVANT

Seniority:

- Years of teaching or related professional work
- Place on salary schedule (if applicable)

Specific Facts: (Can be determined accurately--significance varies with situation)

- Attendance record
- Medical record
- Classes taught and/or other services performed
- Educational background; degrees and course credit
- Degrees or certificates obtained since entering system
- Accurate and neat records promptly delivered
- Service performed for the college (committees office, internal studies, etc.)
- Service performed for the community

Relevant Information – See Article 2.06 and Training Manual-Page 58

SUBJECTIVE INFORMATION

Subjective Information (Difficult to determine accurately-significance or questionable-matter of judgment)

Personality:

- Amiable toward colleagues
- Amiable toward administrators
- Works well with students
- Stable personality

Character:

- Honest
- Dependable
- Industrious
- Dedicated

Professional Competence:

- Communicates ideas effectively
- Organizes curriculum effectively
- Employs imaginative teaching techniques
- Research history and publications

The MCCC tries to avoid using subjective information to support a grievance, preferring arguments based on written records. However, since the administration may use this type of information, a MCCC leader does well to prepare by checking these same questions. The object here is to avoid being caught by surprise with an unexpected administration argument, even though you may use only part of the information, or none of it, for your own presentation of the grievance. The MCCC does not decide the merits of a grievance based on subjective information, although in some grievances (e.g., evaluation or discipline) this information may be relevant.

IT IS IMPORTANT THAT MCCC LEADERS KNOW HOW TO WRITE A GRIEVANCE

COMPLAINT INVESTIGATION

The association must investigate every complaint to obtain the facts essential for making a proper determination of the most advantageous course to pursue to achieve resolution. In this initial phase, a complaint may be better pursued in some channel other than the grievance procedure. The proper written presentation of a grievance to the administration frequently aids in the quick and successful settlement of the grievance at the earlier steps of the grievance procedure. This initial fact-finding phase is conducted with a view to answering the following six questions:

WHO:	Who are the persons involved in the incident: complainant, witnesses, the administrative authority allegedly faulting the member? Who will stand behind the claim? If no individual is willing or available, does the association wish to grieve in its own name?
WHAT:	What is the real or imagined complaint? What is alleged to have been done or not done? Does the claim involve a violation of a provision of the agreement or the intent of the negotiators? If not, is there an association interest in the subject of the claim?
WHEN:	When did the incident occur? Is it within the time limits of the grievance procedure?
WHERE:	Where is the violation alleged to have occurred? Where is the appropriate level to enter the grievance?
WHY:	Why did it occur? Is it a result of a misunderstanding? Why is such an incident a grievable matter under the terms and conditions of the contract?
HOW:	How is the association affected? Does it have a position regarding the provision allegedly violated? How has the member been affected? How have such matters been resolved in the past in the college and in the system? How should this matter be processed? How many contract violations are involved?

The grievance should be written **clearly, briefly and completely**. Assistance by MCCC chapter and the MCCC Grievance Coordinator should be encouraged, since they will usually have experience. Always make extra copies for the grievant, the MCCC Grievance Coordinator, and the MTA representatives. Keep a careful, written record of all-important details, for your Chapter's records.

IT IS IMPORTANT THAT MCCC LEADERS UNDERSTAND THE IMPORTANCE OF PROPERLY SCREENING AND BRIEFING WITNESSES

- ***Witness Assistance***: Witnesses can most certainly help you win a grievance. But, it's important that they fully understand their role in the case before making a final commitment. Witnesses who volunteer their services one day, then change their minds, can cost you an important case.

- ***Signing a Statement***: Prior to discussing the incident with witnesses, have them write down the facts and any other relevant information about the individuals. It helps to have the witness sign the statement, but this is not essential.

- ***Conferences:*** Prior to all hearings involving witnesses, a conference should be held to explain your grievant's case and what the proceedings will entail. In addition, it's vitally important that you spend time going over questions that might be asked of the witness(s) prior to any examination of the facts.

- ***Resolutions:*** Be sure you fully understand the witness' story. Go over it together until you do and make sure that he or she tells the same story each time. This is not a matter of a witness lying as much as people's memories acting in strange ways. Some people remember more clearly than others do. Some people can tell a story more clearly than others can. Be certain that your witness has a good memory and can repeat the story accurately.

- ***Commitment:*** Be sure that the witness is willing to help you and the person with the grievance all the way up the grievance procedure. Some might say that they saw what happened but refuse to tell it to the administrator.

- ***Truth:*** Make clear to witnesses that you are depending on them to support the case by telling what they know. It is better not to have a witness than to have one upon whom you depend but who later backs down and refuses to testify.

GENERAL RULES

The grievant is usually the first person to be interviewed. The purpose is to obtain as much information as possible to determine the nature and extent of the grievance. This is the time to see all sides of the matter without taking sides, but keeping sight of the primary function of the advocate to assist the aggrieved member. Accuracy and objectivity can be more assured by application of the following general rules:

- Be solicitous to obtain the cooperation of the grievant.
- Maintain an objective attitude.
- Ask specific questions.
- Request relevant evidence.
- Avoid hasty conclusions.
- Avoid personal involvement in the issue.
- Avoid talking about blame, either directly or by implication.
- Do not express preconceived notions, ideas, or conclusions.
- Do not pass critical judgment on the matter.
- Do not commit the association to a course of action.
- When in doubt, advise the grievant to appeal

At times, people will be reluctant to be involved, and witnesses may not come forward voluntarily. As the member's advocate, you will have to search out and positively identify those persons who can furnish information about the incident.

III. PRESENTING A GRIEVANCE

IT IS IMPORTANT THAT MCCC LEADERS KNOW HOW TO PRESENT A GRIEVANCE

RELATIONSHIP WITH MANAGEMENT

Equal Status: It is important that MCCC leaders understand their relationship with management. Although the administrator exercises certain authority over them in their role as an employee in the college, when they meet to discuss grievances, the MCCC leaders act as official representatives of the MCCC and therefore have ***equal status***. They have every right to be treated as an equal as well as the right to full expression on the problem under discussion.

Settlements: Generally, every effort should be made to settle a grievance as close to the dispute as possible. The representatives of both groups have to live with any settlement reached. If they can arrive at one, rather than having it imposed on them from above, both parties will be better off. All agreements must be consistent with the contract.

GRIEVANCE RIGHTS FOR THE UNIT MEMBER

The individual unit member whether a member of the Association or not has the following grievance rights:

- The right to fair representation by the Association.
- The right to grieve directly through the first two steps of the grievance procedure without MCCC representation.
- The right not to file a grievance.
- The right to accept a settlement consistent with the contract.
- The right to refuse a proffered settlement.

GRIEVANCE RIGHTS OF THE ASSOCIATION

- The right to present the Association point of view at all grievance hearings.
- The right to receive in writing the disposition of all cases at each level.
- The right to initiate a grievance on its own behalf or on the behalf of the grievants.
- The right to file a class grievance on behalf of more than one unit member.
- The right to determine whether to go to arbitration.
- The right to continue a grievance when not appealed.
- The right to be present at all grievance discussions and hearings

PRE-HEARING CONFERENCE WITH GRIEVANT

AT ALL LEVELS OF THE GRIEVANCE PROCESS, A PRE-HEARING CONFERENCE SHOULD BE HELD WITH THE GRIEVANT TO UPDATE AND CLARIFY THE STATE OF THE GRIEVANCE AND DEVELOP STRATEGY.

- ***Understanding of Facts***: Be sure that both you and the grievant have a clear understanding of the facts of the case and the remedies that you will request.

- ***Spokesperson:*** Explain to the grievant that, whenever possible, you will speak for the grievant yourself. This gives the grievant a sense of security. It forces an administrator to respond and demonstrates clearly that the administrator is dealing with the Association, not an individual. It also reduces the possibility of an embarrassing foul-up.

- ***Review Procedure:*** Be sure that the grievant understands the procedure to be followed during the hearing.

- **Caucus:** Use caucuses (private discussions away from management when one side or the other leaves the room) to get clarification on disagreements between the grievant and the MCCC representative.

- ***United Front:*** Be sure that you and the grievant are in agreement about the issues to be discussed. A united front is essential during the hearing.

- ***Attitude:*** Be sure that you are approaching the hearing with the proper attitude. Don't carry a chip on your shoulder, and don't anticipate being outsmarted or outwitted.

- ***Objective:*** Remember that the only real objective is a resolution of the grievance which is consistent with the contract and which will satisfy the grievant.

- ***Resolution:*** Try to secure this resolution at the first step whenever possible.

- **Questions:** If you have doubts about a possible resolution, ask for time to consider it and check with the statewide Grievance Coordinator.

THE ACTUAL HEARING

MCCC GRIEVANCE COORDINATORS AND THE GRIEVANTS HAVE EVERY RIGHT TO BE TREATED AS AN EQUAL AS WELL AS THE RIGHT TO FULL EXPRESSION ON THE PROBLEM UNDER DISCUSSION.

- Take a positive position. Don't be timid or apologetic. State your case firmly. Don't create the impression that you are only present to fulfill an obligation. Demonstrate that you have no doubts about the merits of the grievance and the grievant's right to an equitable settlement.

- Control the flow of events in the hearing. Don't let the administrator monopolize the meeting or interfere with your presentation. Don't let the administrator try to sidetrack the real issue or lead you into a discussion of irrelevant topics. Don't allow the introduction of additional complaints against the grievant.

- Never let administrators feel that you are afraid of them. In most cases, there will be some concern on their part about what the Association can do to them. Don't lose this advantage.

- State your case in a calm, firm, positive manner. Avoid displays of temper and empty threats. Disagree with dignity. On the other hand, react indignantly to improper behavior by the administrator.

- Make your intentions clear. There should be no doubt in administrators' minds that you are fully prepared to carry an appeal to Arbitration. On the other hand, they should also understand your willingness to resolve the grievance promptly.

- Always leave the administrator a way out. This cannot be over-emphasized. An administrator who is backed into a corner will resist a solution, no matter how weak the case may be. Provide the opportunity to retreat without loss of dignity. The goal is successful resolution, not the humiliation of the administrator.

ATTENDANCE AT GRIEVANCE MEETINGS

Whenever possible grievance meetings shall be scheduled so as not to interfere with professional responsibilities of individuals involved. If it is necessary to meet with the employer during working hours, the grievant, one (1) Association representative who is a member of the bargaining unit, and necessary witnesses may attend without loss of time or compensation for such meetings. No grievance meetings to which a part-time unit member is a party or a witness shall be scheduled during the part-time unit member's work time unless the President of the College or the President’s designee authorizes such a meeting or has approved an alternate work schedule. The decision to authorize such a meeting during the part-time unit member’s work time shall be made by the President or a President’s designee whose actions are not the subject of the grievance. No part-time unit member shall receive reassigned time with pay.

POST HEARING PROCEDURE

FOLLOW THE GRIEVANCE THROUGH THE ENTIRE GRIEVANCE PROCESS UNTIL A RESOLUTION IS REACHED OR AN ARBITRATION DECISION IS RENDERED.

- Be sure that a decision is received from the President within the allowed time limit. Appeal 10 days from receipt of President's Decision or date it was due whichever is earlier.

- If the decision is unsatisfactory, file the appeal promptly. Delayed grievances mean possible forfeiture. Lengthy delays may also create the impression that you are unconcerned about what they are doing or about the validity of the grievance.

- Keep the grievant fully informed about your activities in his or her behalf. Be sure that you are kept informed of new developments and of new problems.

- Caution the grievant not to discuss the grievance with the administration unless the MCCC representative is present. Make it clear to the administration that this is the MCCC policy. This will reduce the threat of intimidation or harassment. Under Section 5 of Chapter 150E, the grievants have the right to present grievances to management on their own, as long as you are allowed to be there and any resolution does not violate the Contract.

- Be sure that the MCCC chapter Executive Committee, the MCCC Grievance Coordinator and/or president are kept well informed about the progress of the grievance and the arguments used in the presentation.

GENERAL GUIDELINES IN GRIEVANCE PRESENTATION

ANY PSYCHOLOGICAL FACTORS SHOULD BE OF A NATURE TO CREATE EQUALITY. USE POSITIVE THINKING. THINK AND ACT AS AN EQUAL, AND BY YOUR ACTS BE ACCEPTED AS AN EQUAL. MAKE POSITIVE STATEMENTS. DO NOT EXHIBIT A NEGATIVE APPROACH OR A DEFEATIST ATTITUDE. BE A WINNER!

Equal standing can be maintained by understanding the following principles:

- Management is not granting any favor by participating in the process. It has an obligation to participate.
- The time and date of the meeting should be mutually acceptable. If it isn't convenient for the association representative, say so and reschedule it.
- Be at ease. Do not show any greater deference than common courtesy requires.
- Don't be intimidated.
- Do not permit interruptions. This is no time for management to conduct "business-as-usual". If it happens, recess the grievance conference until complete privacy is assured.
- Learn more about the supervisors -- deal with their habits, fears, strong points and weaknesses, and know their reactions to specific problems and how they respond to various approaches.

UNREASONABLE ADMINISTRATOR'S

When dealing with an unreasonable administrator, try to draw fire toward the Association and away from the grievant. The grievant should not suffer harassment as a result of the grievance. The organization is better prepared to repel an administrative attack. It is sometimes possible to manipulate the situation through the choice of remedies sought. A request for a reprimand of the administrator guarantees an avenue for appeal to higher authority. Modifying the actions requested during the hearing may give the appearance of compromise and facilitate a solution. Where several advocates are involved, the "good guy/bad guy" routine seen on many television police programs can sometimes be effective. One representative takes a very firm approach while the other appears sympathetic and offers a compromise position. Some administrators will resolve a grievance rather than face a particular advocate in a hearing. The "piling on" of grievances in cases where there are repeated violations will help convince top administrators that the division administrator is not very trustworthy and/or that a serious problem exists. This may ultimately lead to administrative action to relieve an unacceptable situation.

Reasonable Standard

"But a dilemma arises. As the parties know, I am not a stranger to the environment of higher education, and some personal observations may be excused. In making a professional judgment or in reaching decisions, most college or university administrators attempt to be fair, painstaking, and responsible in applying criteria. But from my experience I also know that a few administrators, imbued with a sense of their prerogatives and their status as 'untouchables', can be heavy handed, autocratic, and sometimes only casually attentive to agreed-upon standards. Their very knowledge that their rights are protected and their decisions are either non-reviewable or reviewable on such a narrow basis as to defy effective proof sometimes breeds this casualness and results in unfair decisions. Stated differently, the judgments made by professionals are not always 'professional' in the true sense of that term. It suggests the problem is more attitudinal than it is one of draftsmanship. As a way of meeting this problem I conclude that by far the best approach is to open the avenue for review not only in Article IV but in other related sections." *Factfinder Healy added the "reasonable" standard in the management rights clause, in all professional judgment decisions, and in other relevant sections of the contract. October 11, 198*4.

RULES FOR PROCESSING GRIEVANCES

- ***Copies***: A copy of all grievances must be sent to the MCCC Grievance Coordinator and the MTA Consultant. Copies of Step One Appeals to Mediation must be sent to the college president and the Community College Counsels Office. The College is responsible for forwarding Step One Decisions and all evidence to the MCCC Grievance Coordinator and the MTA Consultant ant to the Community College Counsel's Office.

- ***Informal Adjustments:*** Whenever possible, unit member(s) and the Association shall first attempt in good faith to adjust their grievances with the immediate supervisor or within the College's administrative structure up to the level of the President of the College or his/her designee. ***Do not let this informal period exceed 30 days from the date the grievance occurred or was discovered.***

- ***The Record***: The grievance record consists of grievance forms, all evidence, a copy of the agreement and a copy of each decision.

- ***Resolutions:*** Any adjustment of a grievance shall be consistent with the terms of this Agreement.

- ***Retaliation***: No reprisals of any kind shall be taken against any faculty member for participation in any grievance.

- ***Information:*** It is agreed that both parties will share **equal disclosure of any information** necessary for the processing of any grievance or complaint. The Appeals Court upheld an arbitrator's award ordering school district to provide union with names of students whose statements were used against a teacher in a disciplinary investigation. The underlying Superior Court decision has a very good discussion of why student records law, student privacy rights, or FERPA do not prohibit release of student identities at the investigation stage. (Note: school district did provide names of students at arbitration; grievance concerned refusal to provide the names at the initial stages of the investigation.)

- ***Withdrawal***: A grievance may be withdrawn at any step. However, if in the judgment of the Executive Committee of the Association the grievance affects the welfare of the faculty or the professional staff, the grievance may be continued to be processed as a grievance of the Association.

- ***Grievant's & Association's Rights:*** Individual faculty members have the right to file individual grievances through the first two steps of the grievance process. The adjustment of such grievances shall take place in the presence of an Association representative. Such representative shall have access to all records and proceedings. The adjustment of such grievances shall not be inconsistent with the terms of this Agreement.

- ***Chapter/System-wide Grievances***: The Association has the right to file and process grievances on behalf of the faculty and the professional staff at large.

- ***Arbitration:*** The Association has the exclusive right to initiate arbitration of a grievance.

- ***Time Limits:*** Dates in the grievance procedure shall be understood to be maximum. Every possible attempt shall be made to respond to the grievance as expeditiously as possible. Maximum dates may be extended by agreement of the parties. ***Informal discussions do not automatically extend time limits.*** If the Administration or the Board does not respond within the stated period of time, it shall be understood that the grievance has been denied. If the Association or the Grievant does not pursue the grievance within the stated period of time, it shall be understood that the grievance has been withdrawn.

- ***Mediation Time Limits*** – Although the contract states that mediations shall be conducted within 40 calendar days after filing, the parties have mutually agreed to extend this time limit to accommodate the mediation schedule. Three mediations are scheduled on one Monday each month and mediators are booked one year in advance.

- ***S*end copies of grievance to the MCCC Grievance Coordinator and the MTA Consultant**

POSSIBLE FORFEITURE

CONSEQUENCES FOR THE GRIEVANT WHO MISSES A FILING DEADLINE

Unit members must comprehend the consequences of inaction.
For example, a letter of reprimand placed in a unit member's file, if not grieved in a timely fashion, will probably have to be accepted as a factual and permanent part of the unit member's employment record no matter how harsh or unjustified the reprimand may be.

ROLE OF CHAPTER GRIEVANCE COORDINATOR

IT IS IMPORTANT THAT EACH CHAPTER HAVE A GRIEVANCE COORDINATOR

It is important for every chapter to select a Grievance Coordinator. The main responsibility of the grievance coordinator should be to act on all grievances submitted in writing. In addition, the grievance coordinator should handle the following tasks:

- **Monitor** all grievances at the college, which could have a bearing on the chapter's overall operation.
- **Report** at the chapter's membership meetings and executive Committee meetings on the progress of pending grievances and resolved cases.
- Keep an accurate and up-to-date **file** on all grievances won and lost.
- Provide **confidential consultation** to all colleagues who ask for help with a problem.
- **Publish** a regular bulletin or report on grievance activities.
- Provide **assistance** to the MCCC Grievance Coordinator for all grievances appealed to Step Two and Arbitration.
- Attend **MCCC Grievance Committee** meetings.

DO'S AND DON'TS OF GRIEVANCE HANDLING

⊗ **DON'T SHORT-CIRCUIT THE GRIEVANCE PROCEDURE**

⊗ **DON'T LOSE YOUR TEMPER**

⊗ **DON'T BLUFF OR THREATEN**

⊗ **DON'T PERMIT STALLING**

⊗ **DON'T HORSE TRADE**

⊗ **DON'T ARGUE WITH THE GRIEVANT IN FRONT OF THE ADMINISTRATION (USE CAUCUSES FOR THIS)**

⊗ **DON'T JUDGE, DEFEND**

√ **DO STICK TO THE FACTS**

√ **DO LISTEN CAREFULLY TO WHAT OTHERS SAY**

√ **DO ATTEMPT TO SETTLE GRIEVANCES AT THE LOWEST STEP**

√ **DO KEEP THE GRIEVANT INFORMED ABOUT THE PROGRESS OF THE GRIEVANCE**

√ **DO REPRESENT THE MEMBER**

√√√√ MCCC⇒⇒⇒BRINGING DIGNITY TO MASSACHUSETTS COMMUNITY COLLEGE FACULTY AND PROFESSIONAL STAFF

STEP ONE
COLLEGE PRESIDENT

30 calendar days to file Grievance Form X-G1
Mailed Certified Return Receipt or
Hand deliver with date stamp on copy
Copies To MCCC Grievance Coordinator, & MTA Consultant
(Informal Discussions do not extend 30-Day Time Limit)

President's Decision – Form X-G4
30 calendar days for both a hearing and a decision.
If unresolved, denied, or no decision
within 30 days of filing grievance, appeal to

⇓

STEP TWO
MEDIATION APPEAL

10 calendar days to file appeal
Dismissal Grievances Filed Directly at Mediation
Mail Appeal Form X-G5 certified return receipt to address on **Form X-G5** or
FAX Form X-G5 with transmission report as receipt
to OCCC at 1-781-275-2735
Send Additional Copies by regular mail to
College President, MCCC Grievance Coordinator, & MTA Consultant

MEDIATION

It takes at least 40 calendar days for mediation date.
(Usually takes longer depending on the number
of cases on the mediation docket)
If unresolved

⇓

STEP THREE
ARBITRATION APPROVAL REQUEST

10 calendar days to request arbitration – Form X-G8
Send request to Dennis Fitzgerald, 170 Beach Road, Unit 52, Salisbury, MA 01952

MCCC ARBITRATION CERTIFICATION

40 calendar days for MCCC for MTA to File a Demand for Arbitration or Extend Time Limits

1. The parties may extend time limits in writing by mutual agreement.
2. It is the responsibility of the grievant to process all grievance forms in a timely fashion.
3. In the event that the administration falls to comply with any of the provisions of the grievance procedure including time limits, the grievant(s) may add this allegation as an additional count if the grievance is appealed to Mediation. If the grievant(s) chooses not to appeal the original grievance to Mediation, then the grievant(s) may file a procedural grievance at Step Two.

Grievance Forms can be downloaded at MCCC Web Page
https://mccc-union.org/day-contract-and-forms/

NON-GRIEVABLE SECTIONS OF CONTRACT
1/2 Time Family Leave With Full Benefits
Additional Full Year Family Leave Without Pay
Health and Welfare Benefits
Dependent Care Assistance Plan
1/2 Time Parental and Child Care Leave With Full Benefits
Additional 12 Months Parental and Childcare Leave
Additional Part-time Parental and Childcare Leave
Denial of Part-time Unit Member's Adjusted Work Schedule To Attend Grievance Hearing
Non-reappointment and Reasons In The First Four Years
Professional Staff Flexible Schedules
Professional Staff !0/12ths Option
Post Tenure Review Decision, Procedure, and Subsequent Evaluation Unless Disciplinary Action
Classification Appeals Committee Decisions
Decision Not To Extend Usage of Vacation Leave Over Accrued 50 Days
NON-ARBITRABLE - ALL ABOVE NON-GRIEVABLE PLUS
Affirmative Action and Discrimination
Basis For Retrenchment
Any Incident Which Occurred or Failed To Occur Prior To Ratification

SYSTEM-WIDE GRIEVANCE PROCEDURE-FLOW CHART & TIME LIMIT

SYSTEM-WIDE/COMMISSIONER OF HIGHER EDUCATION GRIEVANCE PROCEDURE

COMMISSIONER

30 calendar days for MCCC President or designee to certify system-wide applicability and to file a grievance at the Commissioner's Level.

10 calendar days for the Commissioner of Higher Education to determine system-wide applicability or applicable to the Board of Higher Education

⇓ **If yes**

50 calendar days from original filing date for a decision

⇓

10 If denied, 10 calendar days to file for mediation.

⇓

10 If not resolved, 40 calendar days to file Demand for Arbitration

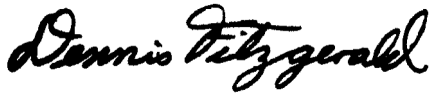
⇓ **If no**

14 calendar days to file at Step One

SUMMARY

As you have probably gathered from reading this manual, grievance handling can be very complex. Yes, grievances can be complicated; but if you carefully review your contract on the subject prior to engaging in any official action, you can be the expert in short order. If you carefully analyze the grievance with the person(s) involved and have them put every detail in writing, you will be on your way to success. Remember, the vast majority of grievance cases are settled at the college level; therefore, if you can present a strong case, it's very likely that the grievance will be resolved to the grievant's satisfaction. If the grievance is not resolved at college level, contact the statewide grievance coordinator for advice and/or assistance. Sharing ideas with others in grievance matters will usually produce the needed strategy for a resolving case.

Good Luck.



MCCC Day Unit Grievance Coordinator

IV. CHAPTER 150E

PROHIBITED PRACTICE CHARGE

Section 10 of Chapter 150E
Of the
Massachusetts Public Employee Collective Bargaining Law

"It shall be a prohibited practice for a public employer or its designated representative to:

1. Interfere, restrain, or coerce any employee in the exercise of any right guaranteed under Chapter

2. Dominate, interfere, or assist in the formation, existence, or administration of any employee organization.

3. Discriminate in regard to hiring, tenure, or any term or condition of employment to encourage or discourage membership in any employee organization.
   N.B. *To establish* a *prima facie case of discrimination based on protected activities, the charging party must produce evidence to support each of the following elements: 1) the employee engaged in protected activity, 2) the employer knew of this activity, 3) the employer took adverse action against the employee, and 4) the adverse action was motivated by the employer's desire to penalize or discourage the protected activity.*

4. Discharge or otherwise discriminate against any employee because he has signed or filed an affidavit, petition, or complaint or given any information or testimony under this chapter, or because he has formed, joined, or chose to be represented by an employee organization.

5. Refuse to bargain collectively in good faith with the exclusive representative as required in section six. ***Repudiation*** *- A public employer's deliberate refusal to implement or to abide by the unambiguous terms of an agreement constitutes a repudiation of the agreement in violation of the Law. To establish that an employer acted deliberately, a union must show that the employer engaged in a pattern of conduct designed to ignore the parties' collectively bargained agreement.* ***Transfer of Work*** *- The commission has consistently held that a public employer must bargain with the exclusive representative of its employees before transferring work traditionally performed by bargaining unit employees to personnel outside the unit. city of Quincy, 15 MLC 6 1239, 1240 (1988); Town of Danvers, 3 MLC 1559, 1576 (1977). To prove that the employer unlawfully transferred work outside the bargaining unit, the charging party must show that 1) the employer transferred unit work to non-unit personnel, 2) the transfer of work had an adverse impact on either individual employees or on the bargaining unit itself, and 3) the employer did not provide the exclusive bargaining representative with prior notice of the decision to transfer the work and an opportunity to bargain. City of Gardner, 10 MLC 1218, 1219 (1983); city of Boston, 6 MLC 1117, 15 1126 (1979).*

6. Refuse to participate in good faith in the mediation, fact-finding and arbitration procedures set forth in sections eight and nine."

The general purposes are to prevent retaliation against employees and to curb the zeal of the employer in opposing the unionization of its employees. If you believe that an administrator at your college has violated Chapter 150E by committing an unfair labor practice, contact the MCCC Grievance Coordinator.

Transfer of Bargaining Unit Work

BrCC Director of Tutoring 6.29.18

The issue in this case is whether the Board of Higher Education (Employer) violated Section 10(a)(5) and, derivatively, Section 10(a)(1) of G.L. c.150E (the Law) by failing to bargain in good faith with the Massachusetts Community College Council (Union) over the decision to transfer duties from the Coordinator of Tutoring position held by Ronald Weisberger at Bristol Community College to non-unit personnel at Bristol Community College (College) without first providing the Union with prior notice and an opportunity to bargain to resolution or impasse over the decision and its impact.

Section 10(a)(5) of the Law requires a public employer to give the exclusive collective bargaining representative of its employees prior notice and an opportunity to bargain before transferring bargaining unit work to non-bargaining unit personnel. The CERB holds that the transfer of bargaining unit work to non-bargaining unit members is a violation of Section10(a)(5) and, derivatively, Section 10(a)(1) of the Law.

Thee Step Process

To determine whether a public employer has unilaterally transferred bargaining unit work to non-unit personnel, the union must establish that: (1) the employer transferred bargaining unit work to non-unit personnel; (2) the transfer of unit work to non-unit personnel had an adverse impact on individual employees or the unit itself; and (3) the employer failed to give the union prior notice and an opportunity to bargain over the decision to transfer the work, and the impacts of that decision.

1. Unlawful Transfer of Weinberger's Duties

Shared Work - Employer argues the qualitative data analysis was share work. Shared work is work that bargaining unit employees share with non-unit employees prior to the transfer. When work is shared by bargaining unit members and non-unit employees, the CERB has determined that it will not recognize the disputed work as exclusively bargaining unit work Instead, the CERB looks to whether there has been a calculated displacement of bargaining unit work to determine if a transfer has occurred.

The Hearing Officer stated that the record shows that Weisberger exclusively performed the duty of qualitative data analyses prior to 2014. He stopped performing this duty completely in 2014, and neither he nor any other unit employee has performed it since that time. There is no evidence that Weisberger ever shared this duty with any employees inside or outside of the unit. The Hearing Officer could not find that the duty of producing qualitative data analyses was shared, nor can I find that there was a calculated displacement of that work because no one in the unit had performed the work since 2014.

The E-7 showed that the Employer transferred nearly all of Weinberger's duties and responsibilities to Argotsinger as Director of Tutoring and Academic Support.

2. Adverse Impact

The Hearing Officer found that the Employer's reliance on the increase of bargaining unit members and positions after December 21, 2015 is inapposite to whether the transfer of Weinberger's duties had an adverse impact on the unit. This is because the Employer's addition of new bargaining unit positions did not mitigate the permanent loss of unit work experienced by the unit after the Employer promoted Argotsinger to Director in December of 2015. Thus, the Employer's December 21, 2015 transfer of bargaining duties outside of the unit resulted in an adverse impact on the unit based on the lost opportunity to perform the work.

3. Notice and Opportunity to Bargain

lt is undisputed that the Employer failed to provide the Union with prior notice and an opportunity to bargain over the transfer. The Union did not become aware of the change until October 26, 2015, at the earliest (when the Employer posted the job notice for the position of Director of Tutoring and Academic Support), or December 21, 2015, at the latest (when the Employer promoted Argotsinger). Because the Employer failed to notify the Union and bargain over the transfer prior to implementation, the Hearing Officer found that the Union has satisfied it burden of proving that the Employer unilaterally transferred bargaining unit work in December of 2015.

CONCLUSION

The Employer violated Section 10(a)(5) and, derivatively, Section 10(a)(1) of the Law when it transferred the following ten duties from the Coordinator of Tutoring position to non-unit personnel at the College in December of 2015 without providing the Union with prior notice and an opportunity to bargain to resolution or impasse over the decision and its impacts: (1) supervising the site coordinator; (2) making hiring recommendations; (3) coordinating with College deans to determine supplemental instruction; (4) submitting tutor payroll to the appropriate Dean; (5) producing quantitative data analyses on student success, retention and persistence rates; (6) training and supervising peer tutors; (7) writing grants; (8) preparing and submitting monthly reports for content-tutoring activities; (9) working with faculty to develop content-based tutoring; and (10) participating in College committees related to content- based tutoring. However, the Employer did not violate the Law when it transferred qualitative analysis and budgetary duties from the Coordinator of Tutoring position to .non-unit personnel in 2014 and March of 2015.

REMEDY

The CERB fashions remedies for violations of the Law by attempting to place charging parties in the position they would have been in but for the unfair labor practice. The traditional remedy where a public employer has unlawfully refused to bargain over a decision to transfer unit work is an order to restore the status quo ante until the employer has fulfilled its bargaining obligations, and to make all affected employees whole for any economic losses they may have suffered. restore the five duties that it transferred outside of the bargaining unit to the position of Director of Tutoring and Academic Support on December 21, 2015, until it has fulfilled its bargaining obligation with the Union. However, the Hearing Officer declined to order a make whole remedy because there is no evidence of an economic loss.

Section 3 of Chapter l50E
Of the
Massachusetts Public Employee Collective Bargaining Law

PROFESSIONAL EMPLOYEES

A "professional employee" is engaged in work that meets all of the following criteria:
Predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work.

- Involving the consistent exercise of discretion and judgment in its performance.
- Of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time.
- Requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual or physical processes.

In cases involving groups of employees where some, but not all, possess the stated educational requirements, the DLR looks at whether a majority of the employees in the title possess the requisite education. If they do, the DLR presumes that this level of education is actually needed to perform the job and confers professional status even on those employees who do not possess the requirements. Conversely, if a majority of employees do not have the level of education stated, the DLR concludes that the work does not require the use of advanced knowledge.

Section 3 of the Law specifies that professional employees may not be included in a bargaining unit with non-professional employees unless the majority of the professional employees vote for inclusion in the unit.

TECHNICAL EMLOYEES

Although technical employees have some of the characteristics of professional employees, they do not meet the specific requirements for qualification as a professional employee. To determine whether an employee is technical, the DLR considers the following factors:

- Specialized training and knowledge.
- Performing work of a predominantly intellectual character requiring the use of independent judgment.
- Higher levels of skill and pay.
- In most cases, licensing or certification by a state or private agency.

The Association may seek a clarification or amendment of the recognized or certified bargaining unit whenever the employer hires an employee to a new position outside of the bargaining unit. The parties have agreed to an alternate dispute resolution process.
The CAS Resolution and Member Integration Process for the MCCC Day Unit In Day Contract.

Case Study
Commonwealth Employment Relations Board
(CERB - RCC 2018.03.28 CERB)

BHE & AFSCME & MCCC
AFSCME Petition to Accrete Help Desk Technicians (HDT)
at Roxbury Community College

MCCC Petition to Retain Help Desk Technicians (HDT)
at Roxbury Community College

The CERB conducts a three-part analysis to determine whether accretion is the appropriate procedural vehicle to add employees to a unit without having an election.

Three Step Process

1. The first part of the test considers whether the position at issue was covered by the original certification or recognition. If the same position existed when the unit first formed and was not included in the unit, the CERB will not accrete that title into the unit.

2. If that inquiry is inconclusive, the CERB next examines whether the parties' subsequent conduct, including bargaining history, discloses that the parties considered the position to be included in or excluded from the existing bargaining unit. Under this part of the test, the CERB examines the parties' subsequent conduct, including bargaining history, to determine whether they considered

3. If the second part of the analysis is inconclusive, the CERB finally examines whether the position shares a community of interest with other positions in the existing bargaining unit. If the CERB determines that a community of interest exists, it will accrete the petitioned-for employee into the existing bargaining unit.

In this case, the first prong of the CAS analysis is inconclusive because the HDT title did not exist when AFSCME's unit was first certified in 1976. The second prong is inconclusive as between AFSCME and the BHE because the record reflects no bargaining history between AFSCME and the BHE over the unit placement of the HDT. Critically, however, the second prong is conclusive as between the MCCC and the RCC, because the MCCC and the BHE have agreed to include the HDT in the MCCC's bargaining unit in 1999, and there is no evidence and no party argues that the HDT positions at RCC have changed since the classification was first included in MCCC's unit. Rather, the duties performed by the RCC HDTs comport in all material respects with the 1999 Classification Specification for this title. AFSCME's unit where position was neither newly-created nor changed and was included in the recognition clause of a different union's bargaining unit.

Unless there is evidence that an existing bargaining unit is inappropriate as a matter of law, the CERB will not remove an existing, unchanged title from a bargaining unit merely because it may not be the most appropriate unit or because an alternative unit exists that may be more appropriate.

Here, the evidence shows that the HDT shares a community of interest with both units, insofar as they have similar skills, functions, working conditions and work contact. There is no evidence and no party claims that the HDT is a managerial or confidential employee within the meaning of Section 1 of the Law, or that HDT's presence creates intra-unit conflicts that render its continued placement in the MCCC inappropriate. Further, although the HDT is required to possess only an associate degree while all other titles in the MCCC unit at RCC are required to possess a bachelor's degree or higher, this does not render its presence in the MCCC unit inappropriate as a matter of Law, particularly where AFSCME's unit is comprised of titles that do not require any college degree at all.

Thus, where the HDT title is neither newly-created nor changed, and has been appropriately included in the MCCC's bargaining unit for nearly twenty years, a CAS petition is not the appropriate vehicle to accrete this title to AFSCME's unit.

In so holding, we distinguish cases where a union has filed an accretion petition seeking to represent a *newly created* or *materially-changed* position that has been placed in a bargaining unit represented by a different union. In cases where the second union has intervened in the petition, the CERB will place the disputed position in the unit with which it shares the greater community of interest.

Conclusion

Based on the foregoing, we dismiss AFSCME's petition to accrete the HDT title into its unit in Case No. CAS-16-5027 and grant the MCCC's petition in CAS-16-5211 to retain the title in its unit.

WEINGARTEN: RIGHT TO REPRESENTATION

The NLRA's protection of concerted activity includes the right to request assistance from union representatives during investigatory interviews. This was declared by the Supreme Court in 1975 in NLRB vs. J. Weingarten, Inc.. The rights announced by the Court have become known as Weingarten rights. It allows your union steward to serve as a witness to prevent a supervisor from giving a false account of the conversation; object to intimidation tactics or confusing questions; help an employee to avoid making fatal admissions; advise an employee, when appropriate, against denying everything, thereby giving the appearance of dishonesty and guilt; warn an employee against losing his/her temper; discourage an employee from informing on others; and revise extenuating factors.

Under the Supreme Court's Weingarten decision, the following rules apply to investigatory interviews:

1. The employee can request union representation before or at any time during the interview.
2. When an employee asks for representation, the employer must choose from among three options:
    a. Grant the request and delay questioning until the union representative arrives;
    b. Deny the request and end the interview immediately;
    c. Give the employee a choice of having the interview without representation or ending the interview.

If the employer denies the request for union representation and continues the meeting the employee can refuse to answer questions.

Weingarten rights guarantee *a unit member the right to request a union representative during an* ***investigatory*** *interview:*

1. Where the unit member has a reasonable expectation that discipline may result.
2. Where the purpose of the meeting is to investigate allegedly inadequate work performance or misconduct.
3. Where the purpose of the meeting is to elicit facts to determine whether or not discipline is warranted or to support a disciplinary decision.
4. Where a unit member is required to explain or defend his/her conduct, which could affect his/her working conditions or job security.

In all of the above, a unit member must request a union representative to be present in order to invoke Weingarten Rights. The employer does not have the responsibility to ask the unit member if the unit member wants a union representative present.

Weingarten rights are not guaranteed*:*

1. Where the meeting is to discuss work instructions, training, evaluations, etc.
2. Where the purpose of the meeting is to inform the unit member of a disciplinary decision.
3. Where the employer has clearly and overtly assured the unit member prior to the interview that no discipline or adverse consequences will result.
4. Where the flow of information is one way.

Chapter Leadership's Responsibility for Weingarten Representation

The chapter leadership is responsible for providing Weingarten representation for all complaints and investigations including but not limited to: Article 2.02 complaints, student grievances and/or complaints against unit members, grade appeal complaints, Policy on Affirmative Action, Equal Opportunity & Diversity complaints, and Title IX of the Education Amendment Act of 1972 complaints.

Weingarten Card

"If this discussion could in any way lead to my being disciplined or terminated, or affect my personal working conditions, I respectfully request that my union representative or grievance officer be present at this meeting. Until my representative arrives, I choose not to participate in this discussion."

DUTY OF FAIR REPRESENTATION (DFR)

Chapter 150E, Section 10(b)

It shall be a prohibited Practice for any employee organization to interfere, restrain, or coerce any employer or employee in the exercise of any right guaranteed under this chapter.

The association will be faced with many decisions as it processes grievances from initial filing toward arbitration. The threshold determination, of course, is to decide which complaints merit certification for arbitration. After step II of the grievance process, the association must choose whether to arbitrate the grievance, to accept a decision, or to settle. These decisions must be made carefully and rationally to avoid breaching the duty of fair representation. The duty of fair representation means that the association may refuse to file or process a grievance for any number of reasons so long as they are valid; it may not arbitrarily refuse to process a meritorious grievance or decline to proceed to arbitration because of hostility to the grievant or irrelevant considerations. The obligation of the exclusive bargaining agent is to represent the interests of all employees fairly and impartially. Thus, while no employee has a right to have his or her grievance processed or taken to arbitration if the association determines, in its discretion, that it lacks merit, still the association may not arbitrarily refuse to process or go to arbitration for a meritorious claim. Impartiality and objectivity can be more likely assured by application of the following rules:

1. Association decisions to arbitrate a grievance, to accept a decision, or to settle must be made carefully and rationally.

2. The association may not act toward an individual or group of employees in a manner that is arbitrary, discriminatory or in bad faith.

3. The association is obligated to represent and protect the interests of all employees fairly and impartially.

4. The association must avoid arbitrary or perfunctory handling of grievances.

NOTABLE DUTY OF FAIR REPRESENTATION (DFR) QUOTES

The Division of Labor Relations dismissed DFR charges against union for declining to arbitrate layoff/transfer case. The Union fully assisted charging the party at each step of grievance process but didn't take her case to arbitration after she indicated that she had resigned rather than accepted transfer. This case is a textbook case of how a union can do everything right and still have to defend itself against DFR charges.

"In this case, Farrell was not satisfied with the manner in which the Union represented her throughout the grievance process. However, the parties' written submissions show that the Union fulfilled its duty of fair representation to Farrell by advancing her interests regarding her grievance and her employment status. The facts indicate that the Union processed Farrell's grievance in the same manner as other unit members' grievances. Specifically, the Union met with Farrell in advance of the grievance meetings, reviewed her options, allowed Farrell to review and approve the Level Four grievance prior to filing, and represented her after the grievance meetings. The evidence does not reflect that the Union ever acted hostile toward Farrell or treated her irrationally. Rather, the parties' submissions indicate that the Union complied with the grievance procedure outlined in Article IV of the Agreement and its own procedures related to processing grievances. The Union investigated Farrell's claims, welcomed Farrell's input, pursued the grievance through Level Four of the grievance process, and communicated with Farrell throughout the grievance process. Moreover, the Union was successful in having Farrell reassigned to the Royalston Elementary School pursuant to Farrell's expressed preference. Finally, the Union made a reasoned judgment not to pursue Farrell's grievance to Level Five of the grievance process due to her resignation and her statement to R. Harris that "I'm out of here. It's over." Based on these facts, the Board concludes that the Union did not act in a manner that was arbitrary, perfunctory, unlawfully motivated, or demonstrative of inexcusable neglect.

For all the foregoing reasons, Farrell has not alleged sufficient facts to support her claim that the Union violated its duty of fair representation. Accordingly, the Board does not find probable cause to believe that the Union violated Section 10(b)(1) of the Law in the manner alleged and dismisses Farrell's charge." (Commonwealth of Massachusetts Division of Labor Relations – MUPL-4545 - Athol Teacher's Association vs. Farrell – May 21, 2008)

"Even if a union's decision not to pursue a grievance is a poor decision, it will not violate the law provided there was reasonable basis for making it." (Local 285 SEIU, MLC1760)

NOTABLE DUTY TO BARGAIN QUOTE

A public employer violates M.G.L. Ch. 150E sec. 10(a)(5) and 10(a)(1) if it unilaterally changes an existing condition of employment or implements a new condition of employment involving a mandatory subject of bargaining without first giving notice to the union and the opportunity to bargain to resolution or impasse. To establish a unilateral change violation, a charging party must show that:
1) the respondent has changed an existing practice or instituted a new one;
2) the change affected employee wages, hours, or working conditions and thus implicated a mandatory subject of bargaining; and
3) the change was implemented without prior notice and an opportunity to bargain.

LAWS THAT PROTECT EMPLOYEES

Title VII of the Federal Civil Rights Act of 1964

This is a very broad law, protecting employees of any organization which has 15 or more workers from discrimination in hiring, firing, salary or any of the terms, conditions or privileges of employment. The discrimination, which is prohibited, is any based on race, sex religion, color or national origin. The Equal Employment Opportunity Commission enforces the law. Since 1972 it has applied to employees of state and local governmental bodies, including school systems.

Federal Equal Pay Act

This law requires a school to pay a woman the same wage a man receives if they are doing equal work on jobs requiring equal skill, effort and responsibility, performed under similar working conditions. The law is enforced by the wage and hour division of the United States Department of Labor. Since 1972 it has applied to teachers.

State Anti-discrimination Laws

All of the New England states have statutes similar to Title VII, prohibiting discriminatory employment practices and providing for enforcement by a state agency. Our major state anti-discrimination statute is M.G.L. 151B which in wording is very similar to Title VII. The Massachusetts Commission Against Discrimination enforces the law.

Title IX of the Federal Amendments of 1972

This law prohibits discrimination "on the basis of sex" in educational institutions which receive Federal assistance (with some exceptions). It extends to discrimination in employment.

State maternity leave law

Massachusetts has a statute (Chapter 149, Section 105D) which guarantees at a minimum an 8-week unpaid maternity leave to certain employees who give notice of their intent to return. The same or a similar job must be available when the employee returns.

Regulations pursuant to that statute state that pregnancy related disabilities shall be treated as any other disability under an employer's disability or sick leave plan.

Americans with Disability Act (ADA)

Section 504 of the Rehabilitation Act protects persons with disabilities. State Constitution and State Law also apply in this area.

Family Medical Leave Act (FMLA) & PFML

FMLA is a complicated Federal Law regarding unpaid leave for certain types of family and medical leave. Paid Family Medical Leave

State Equal Pay Statute

M.G.L. c 149, section 105A requires that Employers not discriminate between the sexes in the payment of wages for work which is comparable in content, skill, effort, responsibility, and working conditions.

Age Discrimination
Federal and state laws also protect against age discrimination.

Fair Information Practices
Chapter 149, Section 52C as well as Article 5 of the Contract require the employer to provide access to personnel files at each college.

Occupational Safety and Health Act – OSHA
M.G.L. c 44 - Public employers shall provide public employees at least the level of protection provided under the federal Occupational Safety and Health Act of 1970, 29 U.S.C. 651 et. seq., including standards and provisions of the general duty clause contained in 29 U.S.C. 654.

The OSH Act gives workers the right to safe and healthful working conditions. It is the duty of employers to provide workplaces that are free of known dangers that could harm their employees. This law also gives workers important rights to participate in activities to ensure their protection from job hazards. Employers have the responsibility to provide a safe workplace. **Employers MUST provide their employees with a workplace that does not have serious hazards and must follow all OSHA safety and health standards.** Employers must find and correct safety and health problems. OSHA further requires that employers must try to eliminate or reduce hazards first by making feasible changes in working conditions – switching to safer chemicals, enclosing processes to trap harmful fumes, or using ventilation systems to clean the air are examples of effective ways to get rid of or minimize risks – rather than just relying on personal protective equipment such as masks, gloves, or earplugs. The relevant contract article the provides for safe working conditions is Article 2.03

Massachusetts General Law chapter 149, section 148 – Payment of Vacation and Comp.Time
Vacation pay owed to an employee "under an oral or written agreement" is considered the same as other "wages." M.G.L. c. 149, § 148 (2004). That same section also states, "any employee leaving his employment shall be paid in full on the following regular pay day." Id. Therefore, the statute appears to state that **vacation pay** that is earned pursuant to an agreement between the employer and employee must be paid to those terminating their employment regardless of whether the termination of the employment was voluntary or forced. An advisory opinion issued by the Massachusetts Attorney General in 1999 stated the same conclusion. See "An Advisory from the Attorney General's Fair Labor Division on Vacation Policies," Advisory 99/1 (1999) ("Employees who have performed work and leave or are fired, whether for cause or not, are entitled to pay for all the time worked up to the termination of their employment, including any earned, unused vacation time payments."). **Compensatory time** that is similarly earned by employees would likely be treated as "wages" as well, under this interpretation, since it is also acquired "under an agreement" between the employer and employee. M.G.L. c. 149, § 148 (2004).

Pregnancy Discrimination Act (PDA) & FMLA

The federal Pregnancy Discrimination Act (PDA) should serve to prevent the College from forcing the unit member to take maternity leave earlier than she would prefer. Under the PDA, 42 U.S.C. § 2000e(k) (1978), which amended Title VII of the Civil Rights Act of 1964, an employer cannot discharge or otherwise adversely affect an employee because she is pregnant, has an abortion, or gives birth to a child. It also requires employers to treat pregnancy related disabilities and illnesses the same as any other illness or temporary disability, for purposes of medical verification, availability of pay, accrual of seniority and other benefits, insurance. coverage, entitlement to promotions. The purpose of the PDA is:

> *"Pregnant women who are able to work must be permitted to work on the same conditions as other employees; and when they are not able to work for medical reasons, they must be accorded the same rights, leave privileges and other benefits, as other workers who are disabled from working."*

Under the FMLA, an employee is eligible to take up to 12 weeks of unpaid leave for, among other reasons, the birth or adoption of a child, provided that (i) she has been employed for at least 12 months by the employer from whom she is requesting leave, and (ii) she has worked for at least 1,250 hours for that employer during the previous 12-month period. However, while the federal Family Medical Leave Act may impact the length of an employee's pregnancy leave, its provisions do not dictate when an eligible employee must commence leave. Here, if the unit member has worked more than 1,250 hours, she would be eligible to invoke the FMLA, but it would not impact when she would be able to take pregnancy leave. Even if the unit member is not eligible to take leave under the FMLA, she may take eight weeks after the birth of her child under the Massachusetts Maternity Leave Act, and may still leave at a time convenient for her, as long as she provides at least two weeks notice. G.L. c. 149, § 105D.

Whistle Blower - The Whistleblower Law requires that an employee "reasonably believe" that a condition poses a risk to public health and safety in order for their "whistleblowing" to be protected. The underlying purpose of whistleblower protection laws is to allow employees to stop, report, or testify about employer actions that are illegal, unhealthy, or violate specific public policies.

A whistleblower case was tried before a jury in Superior Court and the jury found that the Whistleblower Law had not been violated. In essence, the jury found that, while the grievant was sincere in her belief that the continued enrollment of a surgical technology student posed a risk to public health and safety, her belief was not "reasonable" in a legal sense (in other words, given the information she had, it was not reasonable for a person in her position to seek to disenroll the student at that point in time). The grievant was non-reappointed in her fourth year of service and thus, the burden was on the union to prove that she was non-renewed for an unlawful reason, which required showing that each statutory element of a whistleblower violation was met, including whether the grievant "reasonably believed" there was a risk. In denying summary judgment, a Superior Court judge found that, in Paula's case, "reasonable belief" was an open question for a jury to decide. Ultimately, that "judgment call" fell to the jury and they didn't see it as the union did. NB-In order for this case to get to a trial by jury, the union attorney had to argue against a Summary Judgment Motion and a Motion for a Directed Verdict

LAW THAT PROTECTS STUDENTS

Family Educational Rights and Privacy Act (FERPA)

The Family Educational Rights and Privacy Act ("FERPA") provides for the withholding of federal funds from educational Institutions that have "a policy or practice of permitting the release of education records ... of students without written consent of their parents." Much like FERPA, Massachusetts has enacted legislation and regulations protecting "student records." See G.L. c. 71, § 34D and 603 C.M.R. § 23.01 *et seq.* "Student records" consist of "the transcript and the temporary record, including all information ... concerning a student that is organized on the basis of the student's name or in such a way that the student may be individually identified, and that is kept by the public schools of the Commonwealth."

Release of Complaint Information vs. FERPA– "…the Union asserted that in order to effectively represent its members facing disciplinary hearings, the identity of all witnesses, including students, is necessary. Without such information, the Union had no opportunity to evaluate credibility or bias of the witnesses. Finally, the Union argued that there was nothing in the relevant external law that either allows or requires the concealment of student names." The Appeals Court upheld arbitrator's award ordering school district to provide union with names of students whose statements were used against a teacher in a disciplinary investigation. The underlying Superior Court decision has a very good discussion of why student records law, student privacy rights, or FERPA do not prohibit release of student identities at the investigation stage. Note: school district did provide names of students at arbitration; grievance concerned refusal to provide the names at the initial stages of the investigation. (*Boston School Committee v. Boston Teachers Union – 2006)*

V. STUDENT COMPLAINTS

INTRODUCTION

We have seen a number of problematic investigations arising out of student complaints. We offer the following recommendations for proceedings when you are approached by a unit member who is confronted by a student complaint and the threat of an investigation. The chapter leadership is responsible for providing Weingarten representation regarding student complaints against unit members. If the student complaint results in any disciplinary action, contact the MCCC Grievance Coordinator to investigate filing a grievance. Below are examples of actions taken by administrators in processing student complaints:

- Refusal to provide a copy of student's written statement to the unit member.
- Requests that the unit member attends a meeting on very short notice.
- Instructions to unit members to provide written responses to administrator's "interrogatories."
- Failure of administration to communicate written complaints to the unit member within 14 days.
- Misleading the unit member into thinking that a meeting with administrator is somehow "off the record" when the administrator is in fact *building a record.*
- Allowing students an indefinite period in which to formalize a complaint. If the student implements the student grievance procedure, then the complaint must be filed no later than 30 calendar days following the end of the instructional period.
- Standard of Proof – When deciding upon a grievance, the standard of proof shall be "fundamentally fair and reasonable."
- Each party is allowed to examine witnesses only through the Student Grievance Committee

SAFE ASSUMPTIONS FOR UNIT MEMBERS
ABOUT SEXUAL HARASSMENT COMPLAINTS

- Student Complaints are favored
- Covert Investigations Permitted
- Low Threshold for Finding Sexual Harassment

NOTABLE RELEASE OF INFORMATION QUOTE

RELEASE OF STUDENT COMPLAINT – "…the Union asserted that in order to effectively represent its members facing disciplinary hearings, the identity of all witnesses, including students, is necessary. Without such information, the Union had no opportunity to evaluate credibility or bias of the witnesses. Finally, the Union argued that there was nothing in the relevant external law that either allows or requires the concealment of student names." The Appeals Court upheld arbitrator's award ordering school district to provide union with names of students whose statements were used against a teacher in a disciplinary investigation. The underlying Superior Court decision has a very good discussion of why student records law, student privacy rights, or FERPA do not prohibit release of student identities at the investigation stage. (Note: school district did provide names of students at arbitration; grievance concerned refusal to provide the names at the initial stages of the investigation.)

PRELIMINARY ISSUE: CONFIDENTIALITY

Because conversations between you and the unit member are not confidential or privileged, it is possible that you could be asked to testify in some later proceeding about the content of such conversations. For this reason, when providing Weingarten representation, we suggest that you **NOT** ask the unit member for an account of what happened. Instead, we recommend that you explain to the unit member that there is no privilege and that you will be asking only very limited questions.

QUESTIONS TO ASK

- **What are the student's allegations?**
- **What is the student looking for?**
- **What is the administration looking for?**
- **What documents has the unit member received in connection with the complaint?**
- **Has the unit member spoken with anyone else or written any response?**

More often than not, under the stress of the circumstances, members make statements that worsen their positions. Seek assistance from the MCCC Grievance Coordinator and the MTA Consultant and give the unit member the following advice:

ADVICE TO THE UNIT MEMBER

- **Advise the member not to speak to anyone about the matter, not to write any responses, and to refrain from giving copies of any written responses that may have already been prepared.**
- **Advise the member that allegations of physical contact or stalking may lead to criminal charges. In that case, contact the MCCC Grievance Coordinator and the MCCC President immediately.**

EXTERNAL INVESTIGATION

- Find out if the student has gone outside the college, e.g. To court or the Office of Civil Rights.

- If any outside agency has already been brought into the matter, call MTA consultant immediately to see if an attorney can be assigned before going any further.

Is this purely an internal investigation?

INTERNAL INVESTIGATION

- Ask for a postponement of any meeting until after you have received a copy of the student's written statement and any other documents and have had time to review it with the member.

- In any meeting with an administrator, try to limit what you and the unit member say by staying with the five questions listed on the preceding page.

- Determine if the accused unit member has copies of all documents filed or prepared in connection with this matter. If not, request the documents and time to review them.

- Determine the nature of this meeting or investigation, i.e., , under what procedure is this meeting being conducted and what step of the procedure is this? Always object to any procedural irregularities.

- It is important to ascertain the dates when the alleged problems arose. In many instances, the students have waited too long before bringing complaints, or the administration has waited too long in pursuing them. If you see that this has happened, object to this and ask that the investigation be terminated at once.

- If the unit member is asked to answer questions, either orally or in writing, request time for the unit member to consult with the chapter representative before responding.

- Although there have been very serious complaints about conduct outside the class and about non-verbal conduct, almost all the complaints concern statements made the unit member in class. Point out to the administration that the investigation may be an infringement of academic freedom and First Amendment rights.

STUDENT GRIEVANCE PROCEDURE TIMELINES

The Student Grievance Procedure may be used for complaints concerning alleged abridgement of student rights as stated in the College's Student Handbook and/or Policy Guide. The Student Grievance Procedure may not be used for complaints alleging sexual harassment or discrimination. If a complaint involves a grade dispute, a student shall process the complaint in accordance with the Student Grievance Procedure, even if the student alleges that a grade was improper because of discrimination. The chapter leadership is responsible for providing Weingarten rights student grievances filed against unit members.

Mediation - At any Level of the Student Grievance Procedure, either party may request mediation by contacting the Student Grievance Officer (SGO). Mediation shall be mutually agreed upon, and not unreasonably refused by either party. Where practicable, a mediation session shall be conducted no later than thirty (30) days after requested and agreed to by the parties.

Level One - Informal
30 Calendar Days Post Instructional Period
(Orally and Informally to Responding Party)
Responding Party - 10 Days
10 Days to Resolve

Level 2- Step 1
SGO Notifies Parties The Complaint Not Resolved
Formal Written Complaint - 10 Days
To Responding Party - 5 Days
Written Response - 10 Days
Response to Grievant - 5 Days

Level 2 - Step 2
If Not Resolved Within 10 Calendar Days of Notice, Then
Appeal to Supervisor - 10 Days
Supervisor's Decision - 10 Days
Decision to Grievant and Responding Party - 5 Days

Grade Appeals Do Not Go Beyond Level 2 – Step 2

Level 2 – Step 3
Written Request For Hearing Before SGO – 10 Days
SGO Arranges Hearing – 10 Days
All Documents To Committee and Parties With 24 Hours Prior To Hearing
Committee's Findings To SGO – 10 Days Following Hearing
Committee's Findings To Grievant, Responding Party, & President – 5 Days
President's Decision – Accepting, Modifying, or Rejecting Committee's Recommendation - 10 Days

MOA Monitoring Process - *The MCCC May Request and the employer shall provide: 1. The name(s) of any and all faculty members implicated in any and all Grade Appeals at each of the fifteen Community Colleges, when a grade change was the ultimate resolution; 2. The title and number of the course(s) in which the Grade Appeal was filed; 3. If a grade change was implemented, the grade under appeal and the grade ultimately awarded; and 4. The "substantial error or injustice," as defined in the Grade Appeals procedures, that was found to justify the grade change.*

POLICY ON AFFIRMATIVE ACTION, EQUAL OPPORTUNITY & DIVERSITY

Prohibited Conduct includes: Discrimination, Discriminatory Harassment, Gender-Based Harassment, Sexual Harassment, Sexual Violence and Retaliation. These terms and all Protected Class(s)/Classification(s) are defined under the "Definitions" section of this Policy. If any member of the College Community believes that he or she has been subjected to sexual harassment, he/she has the right to file a complaint under this policy, either in writing or orally.

Affirmative Action Informal Complaint Procedure

Where appropriate, the parties to a dispute and/or the Affirmative Action Officer may attempt to reach an informal and prompt resolution of the potential complaint. Informal resolution is encouraged and any of the parties involved may request the intervention of the Affirmative Action Officer to assist in resolving the matter informally. An informal resolution is achieved through open dialogue between the parties that allows for the airing of any misunderstandings or disputed issues. The informal procedure shall not be used in an effort to resolve allegations of sexual harassment or sexual violence.

Affirmative Action Formal Complaint Process

Mediation - At any point during the formal complaint procedure, either party may request mediation by contacting the Affirmative Action Officer. The purpose of mediation is to resolve the dispute to the satisfaction of both parties. Mediation shall be mutually agreed upon by the parties and shall not be used to resolve allegations of sexual harassment or sexual violence. Where practicable, a mediation session shall be conducted no later than thirty (30) days after agreed to by the parties.

Step 1 - Affirmative Action Officer (AAO) Investigation

Student Complaint - 30 Calendar Days Post Instructional Period To File
Employee Complaint - 30 Calendar Days to File
Complaint To Responding Unit Member – 14 Calendar Days
Responding Unit Member's Written Response – 10 Calendar Days
AAO Report of Preliminary Findings - 30 Calendar Days
If Investigation Is Not Complete Within 30 Calendar Days – Updates Every 30 Days
Unit Member's Rebuttals - 10 Calendar Days
AAO Findings of Fact & Recommendations – Where Practicable 7 Calendar Days

Step 2 – President's Review

President's Decision – Accept, Modify, or Reject Findings of Fact
Where Practicable Within 10 Calendar Days
The president's decision is final provided that any corrective action and/or discipline imposed shall be applicable to the MCCC Contract

TIME – Student Grievance and Affirmative Action Complaint Process: The number of days indicated at each level shall be considered as a maximum. All reasonable efforts shall be made to expedite the process, but the President or his/her designee may extend the time limits in extenuating circumstances with notice to both parties in writing, or by mutual written agreement between the Complainant and the Responding Party.

NOTABLE STUDENT GRIEVANCE & AFFIRMATIVE ACTION PROCEDURE QUOTES

"The student grievance procedure is simply an option for students and does not create contractual rights between the faculty and the student. (MCCC vs. N. Essex, Arbitrator James Cooper, April 13, 1992)

"...the Board has the right to adopt policies, rules, regulations, and practices. Clearly the student grievance procedure represents such an exercise of power. Section 4.03 makes grievable and arbitral claims that a policy, rule, regulation, or practice, on its face or in its implementation, is unreasonable or detrimental to an employee's rights." (MCCC vs. Bunker Hill, Arbitrator Mark Irvings, December 23, 1988)

"Where the college made sure that the instructor was never told of the pending grade appeal... By not affording the instructor the opportunity to be present to present her justifications for the grade, and by changing a student's grade without following the requirements of the student grievance procedure, the College unreasonably applied a Board policy, rule, and practice, in violation of Article IV." (MCCC vs. Bunker Hill, Arbitrator Mark Irvings, December 23, 1988)

The thirty (30) day time limit for filing a complaint does not apply because "...the AA Complaint Forms filed by the students were used a matter of convenience and not for the purpose of initiating formal student grievance under the policy."

"...a complaint becomes material that 'would" adversely affect a member's employment status (and will be forwarded to the unit member) when management conducts itself in such a way that suggests that if it finds the complaint valid, then adverse action will follow. Generally, this occurs when management initiates a formal investigation, for the implication is that if the complaint is sound, the unit member is at risk of discipline." (MCCC vs. Mt. Wachusett, Arbitrator Roberta L. Golick, April 2, 1996)

MEMORANDUM OF AGREEMENT – GRADE APPEALS
MCCC AND BHE – EXECUTED APRIL 5, 2013

The Board of Higher Education (the Employer) agrees upon request by the Association President or the President's designee, and in a manner Consistent with the requirements and limitations of FERPA, that in accordance with M.G.L. e, 150E, it shall provide the Massachusetts Community College Council (the Association) with the following information which is relevant and reasonably necessary to monitor the implementation of the Student Grievance Procedure's Grade Appeals provision:

1. The name(s) of any and all faculty members implicated in any and all Grade Appeals at each of the fifteen Community Colleges, when a grade change was the ultimate resolution.

2. The title and number of the course(s) in which the Grade Appeal was filed;

3. If a grade change was implemented, the grade under appeal and the grade ultimately awarded; and

4. The "substantial error or injustice," as defined in the Grade Appeals procedures, that was found to justify the grade change.

This Memorandum of Agreement shall remain in full force and effect unless and until the Employer and the Association agree to modify it.

CONFLICT OF INTEREST LAW

Chapter 268A, s. 6

Section 6. (a) Except as permitted by this section, any state employee who participates as such employee in a particular matter in which to his knowledge he, his immediate family or partner, a business organization in which he is serving as officer, director, trustee, partner or employee, or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment, has a financial interest, shall be punished by a fine of not more than $10,000, or by imprisonment in the state prison for not more than 5 years, or in a jail or house of correction for not more than 2 1/2 years, or both.

Any state employee whose duties would otherwise require him to participate in such a particular matter shall advise the official responsible for appointment to his position and the state ethics commission of the nature and circumstances of the particular matter and make full disclosure of such financial interest, and the appointing official shall thereupon either

(1) assign the particular matter to another employee; or

(2) assume responsibility for the particular matter; or

(3) make a written determination that the interest is not so substantial as to be deemed likely to affect the integrity of the services which the commonwealth may expect from the employee, in which case it shall not be a violation for the employee to participate in the particular matter. Copies of such written determination shall be forwarded to the state employee and filed with the state ethics commission by the person who made the determination. Such copy shall be retained by the commission for a period of six years.

CASE FILE 1 NOTES– HIRING FAMILY MEMBERS *– Unit member should have advised his boss and the ethics commission of the contract and made full disclosure to both his boss and the ethics commission about the fact that he and immediate family members would be receiving payment for their services as supervisors or proctors. His boss would then have had the opportunity to assign the contracting to someone else, take responsibility for the contract himself, or put it in writing that the honoraria was not substantial and therefore not a violation.*

Chapter 268A, s. 7

Section 7. A state employee who has a financial interest, directly or indirectly, in a contract made by a state agency, in which the commonwealth or a state agency is an interested party, of which interest he has knowledge or has reason to know, shall be punished by a fine of not more than $10,000, or by imprisonment in the state prison for not more than 5 years, or in a jail or house of correction for not more than 21/2 years, or both.

CASE FILE 1 NOTES– HIRING FAMILY MEMBERS *– CONTRACT BETWEEN OUTSIDE AGENCY AND COLLEGE - Here, there was a contract between an outside agency and the college and the unit member was a representative. The unit member had an indirect financial interest – via the honoraria – in the contract, which was made by a state agency and in which the state agency was an interested party. While the indirect financial interest arises from payment from the private third party, it is still nonetheless an indirect financial interest that arises out of the existence of the state contract. A full time state employee may not accept part time employment from the private management vendor of a state owned facility. There is an exception under s. 7 that could apply. According*

to the exception, "[t]his section shall not prohibit a state employee from teaching or performing other related duties in an educational institution of the commonwealth; provided, that such employee does not participate in, or have official responsibility for, the financial management of such educational institution; and provided, further, that such employee is so employed on a part-time basis. Such employee may be compensated for such services, notwithstanding the provisions of section twenty-one of chapter thirty."

.

Chapter 268A, s. 23(b)(2)

CASE FILE 1 NOTES– UNWARRANTED PRIVLEGES IN HIRING - Section 23. (b) No current officer or employee of a state, county or municipal agency shall knowingly, or with reason to know: (2) (i) solicit or receive anything of substantial value for such officer or employee, which is not otherwise authorized by statute or regulation, for or because of the officer or employee's official position; or (ii) use or attempt to use such official position to secure for such officer, employee or others unwarranted privileges or exemptions which are of substantial value and which are not properly available to similarly situated individuals.

CASE FILE 1 NOTES*- a state employee knowingly gave proctor jobs to "others" (friends and family. There is an argument such proctor jobs, particularly when they were not awarded as a result of any impartial job search, would be considered "unwarranted privileges". The dollar value of the honoraria were often above $50 (which is what the ethics commission considers "substantial value") and were not available to similarly situated individuals because unit member didn't post the proctor jobs.*

CASE FILE 2 NOTES - *Asking students register for a course so that the course will run with full pay and then students will withdraw during the add/drop period could result substantial value.*

Chapter 268A, s. 23(b)(3)

Section 23. (b) No current officer or employee of a state, county or municipal agency shall knowingly, or with reason to know: (3) act in a manner which would cause a reasonable person, having knowledge of the relevant circumstances, to conclude that any person can improperly influence or unduly enjoy his favor in the performance of his official duties, or that he is likely to act or fail to act as a result of kinship, rank, position or undue influence of any party or person. It shall be unreasonable to so conclude if such officer or employee has disclosed in writing to his appointing authority or, if no appointing authority exists, discloses in a manner which is public in nature, the facts which would otherwise lead to such a conclusion.

CASE FILE NOTES*- This is the "catch all" appearance of impropriety provision. Usually this can be remedied with a simple disclosure form but obviously that did not happen in this case.*

VI. ARTICLES OF THE CONTRACT

RECOGNITION AND APPENDIX A – ARTICLE 1

MCCC DAY UNIT

Unit Members Who Have Contractual Rights Under The Day Contract

Full-time Faculty
Full-time Professional Staff
Part-time Day Unit Faculty
Part-time Professional Staff
Part-time Day Unit Faculty Who Transferred to DCE

STATUTORY CRITERIA

Section 3 of the Law Requires that the Commission proscribe rules, regulations, and procedures for the determination of appropriate bargaining units which provide for:

Stable and Continuing Labor Relations
Community of Interest
Efficiency of Operations and Effective Dealings
Safeguarding the Rights of Employees to Effective Representation

A "professional employee" is engaged in work that meets all of the following criteria:
Predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work.

- Involving the consistent exercise of discretion and judgment in its performance.
- Of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time.
- Requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual or physical processes.

In cases involving groups of employees where some, but not all, possess the stated educational requirements, the DLR looks at whether a majority of the employees in the title possess the requisite education. If they do, the DLR presumes that this level of education is actually needed to perform the job and confers professional status even on those employees who do not possess the requirements. Conversely, if a majority of employees do not have the level of education stated, the DLR concludes that the work does not require the use of advanced knowledge.
Section 3 of the Law specifies that professional employees may not be included in a bargaining unit with non-professional employees unless the majority of the professional employees vote for inclusion in the unit.

Without waiving statutory rights to process disputes over proper unit classification with the Division of Labor Relations, the parties agree to attempt resolution of as many disputed positions as possible following the procedures outlined in this Agreement. There has been in increase in number full-time and part-time day positions being posted or filled without unit status. The MCCC needs your assistance in ensuring that all faculty and professional staff positions receive unit status. Please review the following CAS Petitions, Unit Determination Guidelines, CAS Checklist, and Factfinder Ryan's Report to determine if a non-unit position should be in the unit. Chapter 150E - Professional Employees.

PRECEDENT CAS PETITIONS

Tech Prep CAS-3058

Tech Prep Project Director/Coordinator at CCCC, NSCC
Services High School Students
Grant Funded
Initiates Hiring Process
Does not Formulate Policy
Community of Interest
Different Funding Source Does Not Undermine Existing Community of Interest
MLRC Prefers Largest Practical Unit (Broad over Small & Fragmented)

Curriculum Development Specialist CAS-3107

Community Service Program
Center For Business and Industry
DCE Funded
Community of Interest
Different Funding Source Does Not Undermine Existing Community of Interest
MLRC Prefers Largest Practical Unit (Broad over Small and Fragmented)

Help Desk Technician

Were the HDT title is neither newly-created nor changed, and has been appropriately included in the MCCC's bargaining unit for nearly twenty years, a CAS petition is not the appropriate vehicle to accrete this title to AFSCME's unit.

In so holding, we distinguish cases where a union has filed an accretion petition seeking to represent a *newly created* or *materially-changed* position that has been placed in a bargaining unit represented by a different union. In cases where the second union has intervened in the petition, the CERB will place the disputed position in the unit with which it shares the greater community of interest.

Conclusion

Based on the foregoing, we dismiss AFSCME's petition to accrete the HDT title into its unit in Case No. CAS-16-5027 and grant the MCCC's petition in CAS-16-5211 to retain the title in its unit.

CAS CHECKLIST & PREPARATION
History of the position

- Is it a newly created job (new program or new duties in an existing program)?
- Is it an existing job with a new title?
- Is it a different combination of duties?
- How long has the position been filled and by whom?
- When did the union first become aware of the position?
- Is the position listed in the **Classification Study** and/or **Article I – Appendix A**?
- Is the position identified as MCCC unit in **Factfinder Ryan's Report**?
- Is the position identified as MCCC unit in the MOA - ***CAS Resolution & Member Integration Process for the MCCC Unit?***
- Is the position on the Full-time and Part-time list of positions recognized as unit positions by the parties?
- Was the position in existence at the time of earlier MLRC Certifications?

REASONS TO EXCLUDE.
Is the job managerial or confidential?

Policy Role

Collective Bargaining Preparation or Conduct

Independent Judgment, Appellate Responsibility

Reporting Relationship

System-Wide Responsibility

Confidential to Any of the Above

REASONS TO INCLUDE
Is the position faculty or professional staff?

Community of Interest

Faculty or Professional Staff Duties

Common Supervision

Relationship Among Employees (interchange or contact)

Work Environment

Classification Job Specifications

.

UNIT DETERMINATION GUIDELINES

IF IDENTIFIED AS UNIT

1. ***Existing Unit Position*** - All existing unit job postings shall be consistent with the job titles, the job specifications, and the pay grades in the Classification Study and Article I-Appendix A of the Contract.

2. ***New Unit Title*** – If an MCCC position is a new **full-time** title not covered by the Classification Study, the college will include on job postings for vacancies the temporary collective bargaining job title listed in Article I, Appendix A and supplemented by additional titles added by the classification study, which the college determines most nearly fits the position with the words "pending and subject to the outcome of the classification study determination." The salary rate or pay grade for the position will be that for the existing job title, and shall be included with the words: "pending and subject the outcome of the classification study." **Part-time** hourly positions shall include the collective bargaining title from Appendix A and additional titles added by the classification study that the college determines most nearly fits the position. (See MOA November 11, 2002)

IF IDENTIFIED AS NON-UNIT

1. Review the position to determine if it is a professional position, i.e., requires Bachelor's, Master's, and/or specialized license or certification, or if it is performing unit work.

2. Review Article I-Appendix A titles and the Classification Study to determine if the position exists in the unit.

3. Review Article I-Appendix A titles and the Classification Study to determine if the position is similar to the titles that exist in the unit.

4. Review ***Factfinder Ryan's CAS October 27, 2007 Report*** to determine if the position matches or is similar to the titles recommended to be in the unit by Factfinder Ryan.

5. Review **List A of the *CAS Resolution & Member Integration Process For The MCCC Day Unit*** to determine if the position matches or is similar to the titles on List A

IF THE NON-UNIT POSITION SHOULD BE UNIT

CAS RESOLUTION & MEMBER ACCRETION PROCESS

Without waiving statutory rights to process disputes over proper unit classification with the Division of Labor Relations, the parties agree to attempt resolution of as many disputed positions as possible following the procedures outlined below. The parties agree to utilize these procedures to resolve disputes over unit placement of faculty and professional staff, with the objective of swiftly, efficiently, and fairly resolving disputes over membership in the bargaining unit.

1. Submit a written request to the Employer (HR) to accrete the position of group of positions in the bargaining unit.

2. The representative of the employer shall discuss the status of the position with the Union's Representative within 30 days.

3. If not resolved within 30 days, then the Union Representative shall submit an Appeal to the CAS Committee.

4. If the position is not resolved at the CAS Committee, then the parties shall submit the position to a neutral mediator either at the December or May mediation. If not resolved in mediation, then the mediator shall render a final and binding decision

Written Request to Accrete
⇓
30 Days for Employer's Decision
⇓
If no, Submit Appeal to CAS Committee
⇓
If not Resolved, Submit Position To Mediation
⇓
If not Resolved, Mediator Makes Binding Decision

Within the CAS agreement, it states: "Positions that have full responsibility or authority to supervise, evaluate, and determine discipline of bargaining unit employees, shall not be accreted into the bargaining unit."

MCCC PROFESSIONAL STAFF CLASSIFICATION SPECIFICATIONS

For Classification Specification for each job title go to

http://www.mass.edu/forfacstaff/classificationspecs/classspecs-mccc.asp

- Professional - Not Managerial, Not Clerical
- Degree - Not Determining Factor For Inclusion - The parties agree that, while on the whole, professional bargaining unit positions require a post-secondary degree, in some cases, a particular technical course of study or training and experience shall substitute for a post-secondary degree.
- Community Service Positions
  - Academic & Non-Academic Services - Credit or Non-Credit
    - Senior Citizens Programs
    - K-12 Services
    - Job Readiness Services
    - Business Recruiters
    - Disability Services For Community
    - Adult Services
    - Vocational Instruction
    - Displaced Worker Services
    - Upward Bound (Not Seasonal)
    - Links, Project Go, & Gear Up Programs
- DCE & Grant Funded
- Curriculum Development
- Implements Policy (Not Formulating Policy)
- Directs Recreational Programs
- ABE Instructors, Services, Support
- Tech Prep Services To High School Students
- Registered Nurses
- Tutors With Degrees
- Services For International Clients
- Student Newspaper Coordinators
- Career Specialist For High School Students
- Grant Writers

NON-UNIT

- Managerial – The Parties agree that positions that have full responsibility or authority to supervise, evaluate, and determine discipline of bargaining unit employees.
  - Significant Role In Determining Policy
  - Contract Administration/Negotiator
  - Appellate Responsibility
  - Hire and Fire
- Seasonal Short Term Employees
- Casual Employees - One-time Basis - No Return
- Summer Camps, Upward Bound
- Clerical
- Academic & Non-Academic Services
- Work Study Student Tutors
- Short Term
- No Degree

PROFESSIONAL STAFF CLASSIFICATION TITLES
http://www.mass.edu/forfacstaff/classificationspecs/classspecs-mccc.asp

Job Code	Title	Grade	Action Date	Action
HB1402	Academic Coordinator	6		
HB1051	Academic Counselor	5		
HB0601	Admissions Coordinator	6	10/2/05	Created
HB1181	Admissions Counselor	3		
HB1905	Assessment Assistant	3		
HB1100	Assessment Officer	4		
HB1132	Assist Coordinator Student Activities	3		
HB1203	Assistant Librarian	3		
HB1430	Assistant Registrar	2		
HB1210	Biology Laboratory Technician	2	7/1/07	Grade 1 to 2
HB1109	Career Development Counselor	4		
HB1108	Career Placement Counselor	3		
HB2100	Career Services Representative	2		
HB1161	Career/Veterans Affairs Counselor	4		
HB1820	Community/Outreach Counselor	3		
HB1208	Coordinator Academic Computing	6		
HB1528	Coordinator Alternative Studies	6		
HB1446	Coordinator Career Plan & Placement	6		
HB1316	Coordinator Cooperative Education	4		
HB1648	Coordinator Returning Adults Center	5		
HB1208	Coordinator Academic Computing	6		
HB1121	Coordinator Athletics	6		
HB1196	Coordinator College Graphics	3		
HB1148	Coordinator Disability Services	6		
HB1227	Coordinator Fine Arts Center	6		
HB0602	Coordinator Financial Aid	6	7/1/07	Grade 5 to 6
HB1143	Coordinator Forensic Lab	6		
HB1124	Coordinator Health Services	6		
HB1111	Coordinator Instructional Tech	7		
HB1088	Coordinator Learning Resources	5		
HB0603	Coordinator Library Services	6	9/4/05	Created
HB1226	Coordinator Multi-Cultural Coordinator	5		
HB1116	Coordinator Student Activities	5		
HB1232	Coordinator Student Assessment	6		
HB 0604	Coordinator of Transfer and Articulation	6	11/20/08	Created
HB1248	Coordinator TV Programming	3		
HB1128	Disabilities Counselor	5	11/20/08	Created
HB2122	Enrollment Counselor	3		
HB1049	ESL Skills Specialist	4		
HB1155	Financial Aid Assistant	2		
HB1069	Financial Aid Counselor	2	9/4/05	Created
HB2306	Fitness Center Coordinator	2		
	GED Testing Center Chief Examiner - HCC		3/31/11	
HB1084	Grants Writer	4		
HB1190	Health Care Counselor	3		

HB1630	Help Desk Technician	2		
HB1218	Instructional Support Tech	2		
HB1242	Lead Teacher/Children Center	3	7/1/07	Grade 1 to 2
HB2140	Learn Disabilities Specialist/Transition	6	8/31/08	Grade 2 to 3
HB1119	Learn. Specialist Disabilities Services	5	11/25/07	
HB1106	Learning Specialist	5	11/25/10	Replaced
HB1114	Librarian	5		
	Literacy Coach - BHCC		1/2010	
HB2014	Literary Specialist/Adult Education	4		
	MCAS Coordinator-HCC		7/1/10	
	MCAS Recruitment and Internship Specialist - HCC		7/1/10	
	MCAS Teacher/Tutors - HCC		7/1/10	
HB1608	Programmer	4		
HB1607	Programmer/Analyst	5		
	Publication Specialist - HCC		3/31/11	
HB1118	Publications Coordinator	2		
HB1142	Recruitment Counselor	3		
HB1135	Reference Librarian	5		
HB0401	Science Division Safety Officer/Biology Laboratory Technician	4	7/5/09	
HB1125	Senior Academic Counselor	6	7/5/09	
HB1120	Senior Admissions Counselor	4		
HB1192	Senior Financial Aid Counselor	4		
HB1614	Senior Programmer	6		
HB1104	Senior Special Programs Coordinator	5		
HB1212	Senior Staff Assistant	3		
HB1639	Senior Technical Specialist	6		
HB1112	Special Programs Coordinator	4		
HB1404	Senior Community/Outreach Counsel.	4		
HB1147	Senior Learning Specialist/Critical Thinking	6		
HB1160	Staff Assistant	2		
HB2220	Student Activity Officer	2		
HB1244	Teacher/Children Center	2	7/1/07	Grade 1 to 2
HB1122	Technical Services Librarian	5		
	Tech Prep Project Assistant - HCC		8/1/10	
	Tech Prep Transition Coordinator - HCC		8/1/10	
HB1158	Technical Specialist	5		
HB1126	Transfer Counselor	5		
HB1826	Travel Agent Program Coordinator	2		
	Veterans Representative - HCC		7/1/10	

NOTIFICATION OF COMPLAINTS – ARTICLE 2.02

Within 14 Days
Send or Communicate

In accordance with Article 2.02 of the Contract, the administration shall within 14 calendar days is to send or communicate to a unit member any written complaint or material which the administration believes would adversely affect that unit member's employment status.

WHAT MUST BE SENT AND WHEN:

Written Complaint within 14 calendar days after received by the administration

Material will be sent or communicated within 14 days only after the administration determines the complaint is valid and believes it **would** adversely affect employment status. The material evokes something more expansive than written documents such as videos, drawing, tape recording, observations, etc.

NOTABLE COMPLAINT QUOTES

"The word 'material' in its familiar context evokes something more expansive than written documents. In everyday usage, the word suggests substance without regard to its composition. Words on a page are of course 'material,' but so are videos and drawings and tape recordings and a host of other things that, depending on their contents, would adversely affect a unit member's employment status." (MCCC vs. Mt. Wachusett, Roberta Golick, April 2, 1996)

"As I see it, a complaint becomes material that 'would' adversely affect a member's employment status when management conducts itself in such a way that suggests that if it finds the complaint valid, then adverse action will follow. Generally, this occurs when management initiates a formal investigation, for the implication is that if the complaint is sound, the unit member is at risk of discipline. ...On the premise that oral complaints alone would not have adversely affected the professor's employment status -- the fact is that once the complaints were reduced to writing, the College would have had the prerogative to commence an investigation and take appropriate adverse action, so long as it notified [the grievant] of the written complaints within fourteen days of their receipt." (MCCC vs. Mt. Wachusett, Roberta Golick, April 2, 1996)

RELEASE OF COMPLAINT – "…the Union asserted that in order to effectively represent its members facing disciplinary hearings, the identity of all witnesses, including students, is necessary. Without such information, the Union had no opportunity to evaluate credibility or bias of the witnesses. Finally, the Union argued that there was nothing in the relevant external law that either allows or requires the concealment of student names." The Appeals Court upheld arbitrator's award ordering school district to provide union with names of students whose statements were used against a teacher in a disciplinary investigation. The underlying Superior Court decision has a very good discussion of why student records law, student privacy rights, or FERPA do not prohibit release of student identities at the investigation stage. Note: school district did provide names of students at arbitration; grievance concerned refusal to provide the names at the initial stages of the investigation. (*Boston School Committee v. Boston Teachers Union – 2006)*

SAFETY – ARTICLE 2.03
OCCUPATIONAL SAFETY AND HEALTH ACT (OSHA)

In accordance with Article 2.03 Safety, unit members shall not be required to work under unsafe working conditions whenever such conditions have been brought to the attention the President of the College. In the past, it has been very difficult to link this article to state and federal laws because the federal Occupational Safety and Health Act (OSHA) did not apply to public employees. When safety grievances were filed, we had to link the safety issue to a diminishment of facilities (Article 3), a prohibited practice for interferences with administration of the employee organization (Chapter 150E), or discrimination for creating an actionable hostile work environment (MCAD). However, there is a significant change in the Law that allows us to apply OSHA standards when filing a safety grievance.

Workers' Rights under the OSH Act

The OSH Act gives workers the right to safe and healthful working conditions. It is the duty of employers to provide workplaces that are free of known dangers that could harm their employees. This law also gives workers important rights to participate in activities to ensure their protection from job hazards. This booklet explains workers' rights to:

- File a confidential complaint with OSHA to have their workplace inspected.
- Receive information and training about hazards, methods to prevent harm, and the OSHA standards that apply to their workplace. The training must be done in a language and vocabulary workers can understand.
- Review records of work-related injuries and illnesses that occur in their workplace.
- Receive copies of the results from tests and monitoring done to find and measure hazards in the workplace.
- Get copies of their workplace medical records.
- Participate in an OSHA inspection and speak in private with the inspector.
- File a complaint with OSHA if they have been retaliated against by their employer as the result of requesting an inspection or using any of their other rights under the OSH Act.
- File a complaint if punished or retaliated against for acting as a "whistleblower" under the additional 21 federal statutes for which OSHA has jurisdiction.
- A job must be safe or it cannot be called a good job. OSHA strives to make sure that every worker in the nation goes home unharmed at the end of the workday, the most important right of all.

Employer's Responsibility

Employers have the responsibility to provide a safe workplace. **Employers MUST provide their employees with a workplace that does not have serious hazards and must follow all OSHA safety and health standards.** Employers must find and correct safety and health problems. OSHA further requires that employers must try to eliminate or reduce hazards first by making feasible changes in working conditions – switching to safer chemicals, enclosing processes to trap harmful fumes, or using ventilation systems to clean the air are examples of effective ways to get rid of or minimize risks – rather than just relying on personal protective equipment such as masks, gloves, or earplugs.

Employers **MUST** also:

- Prominently display the official OSHA poster that describes rights and responsibilities under the OSH Act. **This poster is free and can be downloaded from www.osha.gov.**
- Inform workers about hazards through training, labels, alarms, color-coded systems, chemical information sheets and other methods.
- Train workers in a language and vocabulary they can understand.
- Keep accurate records of work-related injuries and illnesses.
- Perform tests in the workplace, such as air sampling, required by some OSHA standards.
- Provide hearing exams or other medical tests required by OSHA standards.
- Post OSHA citations and injury and illness data where workers can see them.
- Notify OSHA within 8 hours of a workplace fatality or within 24 hours of any work-related inpatient hospitalization, amputation or loss of an eye.

INFORMATION DUE	*DUE/RCVD*
ARTICLE 11 PT DAY UNIT SENIORITY LISTS	**15-Aug**
PT Faculty by Department/Program/Work Area	
PT PS by Work Area	
PT Day Faculty to DCE Transfers	
ARTICLE 19 FULL-TIME SENIORITY LISTS	**15-Oct**
FT Faculty Seniority by Dept. & College-Wide*	
FT PS Seniority by Work Area & College-wide	
*Faculty who have taught 8 sections in multiple depts/work areas have college-wide seniority in those work areas.	
ARTICLE 2.06 INFO	**15-Oct**
Payrolls	
Number of Vacant/Filled FT Positions	
Enrollment Figures by Program	
All Job Postings(Unit & Non-Unit)	
New FT Unit Members	**15-Oct**
Names	
Starting Date	
Funding Source	
Rank	
Address	
Home Telephone Number	
Specific Course Assignments	
All Part-time Unit Members	**15-Oct**
Names	
Salary	
Anticipated Number of Hours Per Sem. or Yr. Or Percent of full-time Equivalent	
Address	
Home Telephone Number	
Benefit Status	
Specific Course Assignments	
New FT Unit Members	**28-Feb**
Names	
Starting Date	
Funding Source	
Rank	
Address	
Home Telephone Number	
Specific Course Assignments	
All Part-time Unit Members	**28-Feb**
Names	
Salary	
Anticipated Number of Hours Per Sem. or Yr. Or Percent of full-time Equivalent	
Address	
Home Telephone Number	
Benefit Status	
Specific Course Assignments	

INFORMATINON DUE	*DUE/RCVD*
ARTICLE 16 UNIT POSTINGS & 1/5/04 MOA	**3 Days of Posting**
FT & PT Day Unit Postings Including	
Duties	
Classification/Appendix A Title*	
Qualifications	
FT Salary Range or PT Salary Rate	
FT PS Pay Grade	
Effective Date	
Closing Date	
Unit Status	
***NB MOA 1/5/04** - All FT & PT Titles Must Be An Established Title in the Classification Study and/or Appendix A (See Titles Tab)	

CLASSIFICATION APPEALS MOA - M002 & M004	**30 Days of Hire**
Name	
College	
Department	
Hire Date	
Classification Points by Category	
Date Classified	
Total Points Awarded	
Classification Title	
Pay Grade	
Point Value	
Classification Salary	
Hire Salary	

Mail To MTA and MCCC

Consultant for Higher Education/MCCC-DAY, MTA,
2 Heritage Drive, 8th Floor, Quincy, MA 02171

Dennis Fitzgerald
MCCC Grievance Coordinator
170 Beach Road, Unit 52 Salisbury, MA 01952

New Information 2018-2021 Contract	**7 days of hire**
New Unit Members, Names, Home Address, Home Phone To Local Chapter Within 7 Business Days Of Hire	

Send All Day Unit Information Electronically in Microsoft Excel™ or Microsoft Word™ To

daycontractinfo@mccc-union.org

The webmaster maintains a page which is exclusively for college personnel in human resources and payroll offices
http://mccc-union.org/HR

REASONABLE RULES

The traditional rule is that management has the right to formulate and enforce rules as part of its right to direct the workforce, maintain efficiency and insure the health and safety of employees. Management's rights, however, are limited my any provision in the contract and by enforceable past practice.

In addition, college rules must be reasonable. This reasonableness rule requires that the rule is reasonably related to a legitimate function and objective of management. The rule of reasonableness goes further and requires the rule to be reasonable on its face and in its application.

The MCCC Contract states that all management's rights and functions, except those that are clearly and explicitly abridged by the specific terms of this Agreement, shall remain vested with the Employer.
But the Contract also states that it is understood that the matters contained in this Article are not subject to the grievance and arbitration procedures in this Agreement, *except as to the limitation stated in this Agreement or unless it can be shown that in the exercise of these rights the Employer acted unreasonably and to the detriment of employee rights. (Emphasis Added - Article 4.03)*

NOTABLE MANAGEMENT'S RIGHTS QUOTE

THE REASONABLE STANDARD

"But a dilemma arises. As the parties know, I am not a stranger to the environment of higher education, and some personal observations may be excused. In making a professional judgment or in reaching decisions, most college or university administrators attempt to be fair, painstaking, and responsible in applying criteria. But from my experience I also know that a few administrators, imbued with a sense of their prerogatives and their status as 'untouchables', can be heavy handed, autocratic, and sometimes only casually attentive to agreed-upon standards. Their very knowledge that their rights are protected and their decisions are either non-reviewable or reviewable on such a narrow basis as to defy effective proof, sometimes breeds this casualness and results in unfair decisions. Stated differently, the judgments made by professionals are not always 'professional' in the true sense of that term.

It suggests the problem is more attitudinal than it is one of draftsmanship. As a way of meeting this problem I conclude that by far the best approach is to open the avenue for review not only in Article IV but in other related sections." *Factfinder Healy added the "reasonable" standard in the management rights clause, in all professional judgment decisions, and in other relevant sections of the contract. October 11, 198*4

The tests of "reasonableness" which are most frequently invoked by arbitrators include whether the rule in question violates any part of the Contract; whether it materially changes a past practice or working condition; whether it is related to a legitimate business objective of management; whether it is arbitrary, capricious or discriminatory; and whether it is reasonable. *Union Sanitary District, 79 LA 193 (BNA, 1982)*

A decision is "reasonable" or not "unreasonable if it is not excessive or extreme and reflects sound judgment. (The grievant vs. N.Shore CC, Wooters, 7/1/16)

MAINTENANCE OF RECORDS – ARTICLE 5

Each Community College shall maintain an official personnel file for each unit member, which shall be the personnel file consulted when making all personnel decisions and recommendations. Each College shall maintain a grievance file separate from the official personnel file.

Requirements

- 1 Personnel File
- 1 Grievance File
- Right to Review
- Documents Forwarded to Unit Member within 7 Days
- Right to Submit Rebuttals
- Confidentiality Maintained
- Log Maintained – Date + Name
- Must be Consulted for All Personnel Actions
- Grievance Files Are Not Part of the Personnel File

NOTABLE PERSONNEL FILE QUOTES

Multiple Files - "The college in keeping more than one personnel file is in violation of article 5. Division Chairpersons may retain a copy of documents they author, but such copies may only be kept in subject matter files and these files may not be consulted for the purposes of making any personnel decisions." (MCCC vs. N. Essex, Arbitrator Marc Irvings, August 7, 1989)

File Review Required - "...the agreement clearly requires such an examination (of the file) prior to discipline. Even if the grievant's personnel file had been commendable, there was just cause to issue the suspension based solely on the events." (MCCC vs. N. Essex, Arbitrator James Cooper, April 13, 1992)

File Review Required - "... the Employer violated Article 5.01 by failing to consult the personnel file for the Grievant. This point is open and shut. Article 5.01 is mandatory. The personnel file 'shall' be consulted when making all personnel decisions." (Transfer Arbitration, MCCC vs. Bunker Hill, Arbitrator Michael C. Ryan, August 9, 1994)

Outside Material Should Be Memorialized in File - "...there must be enough in the personnel file to justify a negative decision, but information outside that file may also be taken into account. Article 5 says merely that the official personnel file is the file to be 'consulted' when making personnel decisions; it does not say that only material in that file can be consulted. On the other hand, it does not make sense to interpret Article V so as to permit a negative decision on the basis of nothing or virtually nothing in the file. It would be the unusual case where the summary evaluation form itself would be insufficient to support a personnel decision; in those cases, the employer will simply have to take the trouble to memorialize sufficient negative information which, when added to the summary evaluation form information, provides a basis for a negative decision. (MCCC vs. STCC, Arbitrator Howard Sacks, August 29, 1985)

Personnel File vs. Hearsay/Chatter- There is the need for consistency/uniformity in the tenure process, as required by Article 13.01. In accordance with that requirement, candidates for tenure release their files to the Committee for consideration. It is what contained in that file that is the subject of the Committee's deliberations and discussions, not matters outside the file. It is important to note that hearsay and so-called "chatter," which go beyond the file, have not been approved by the applicant, and should not be considered by the UPP Committee. There is good reason for this. Statements outside of the official personnel file cannot be rebutted by the tenure candidate, particularly when the applicant does not even know of such allegations. A tenure candidate has the right to be considered based on the contents of the official personnel file, not unsupported statements unknown to the applicant. In this case, hearsay and chatter not included in the official file played a large role in the decision-making process. Prof. Acevedo was not given a chance to rebut this hearsay as he was unaware the UPPC was even considering it. It is unreasonable and arbitrary for such hearsay to play a part in a tenure decision, which should be based on the contractual criteria, and the official record before the UPPC. (MCCC vs. Roxbury, Tenure Denial, Prof. Acevedo, Arbitrator Marcia Greenbaum, July 10, 2009)

Personnel File & Contractual Criteria - Enrollment numbers and withdrawal rates are simply not listed contractual criteria. Nonetheless, they seem to have played a big role in the Committee's recommendation to deny tenure. If the parties wanted to make enrollment and/or withdrawal rates part of the criteria for tenure review, they could have done so. The fact is that they did not. Therefore, no matter how valid a consideration a Committee member or administrator may think such factors to be, it was unreasonable for the UPPC to go beyond the contract and rely on these items in deciding not to recommend tenure. Similarly, it was not appropriate for the administrators up the line from the Vice President to the Board of Trustees to endorse a decision to deny tenure that was based upon those non-contractual considerations. It should be noted that not everything in a tenure file may be considered by a UPPC in a tenure review. If something is included in the file that is not mentioned in the list of contractual criteria, [in Article 13] e.g., the student enrollment numbers on the student evaluation forms, that information, while related to the numbers on the student evaluations, is not to be treated as one of the criteria, even if it is in the file. Thus, the UPPC must review the file, but rely only on the elements that relate to the contractual criteria. (MCCC vs. Roxbury, Tenure Denial, Prof. Acevedo, Arbitrator Marcia Greenbaum, July 10, 2009)

PERSONNEL FILE CHECKLIST

Name_____ Date_____

The college is required to consult the official personnel file when making all personnel decisions and recommendations. In addition, any documents placed in the file since the last evaluation becomes part of the summary evaluation and is weighted 15%. It is extremely important that every unit member review the personnel file at least once per year by making an appointment with the appropriate college office. Unit members shall be sent a copy of any material placed in the file within seven (7) days and shall have the right to file a statement in response to any written documents placed in the file. The college is required to maintain the confidentiality of the official personnel file. Please use this checklist as a guide to ensure that your personnel file is complete.

	Document	Present	Missing
	All Unit Members		
1	Sign-in sheet indicating names of individuals who reviewed the file, the date, and the reason.		
2	Resume		
3	Application		
4	Appointment Letter		
5	Annual Contracts/Appointment Letters - Years 1 - 6		
6	Tenure Appointment Letter		
7	Personal Data Classification Updates/Points		
8	Salary Increase Explanation Sheets		
9	Recommendations, Letters of Appreciation, etc. from students, administrators, and the community		
10	Sabbatical Leave Applications/Recommendations Form IX-1		
	Professional Staff		
11	PS – Original Classification Compensation - Form - M004		
12	PS – Pay Grade Upgrades		
13	PS - Annual Position Descriptions - Form E-7		
14	PS - Summary Evaluations & Components Forms E-5, E-4 (If Assigned), E-8		
	Faculty		
15	Faculty - Original Classification Compensation - Form - M002		
16	Faculty - Summary Evaluations & Components Forms E1-E6 *All course materials should be returned to faculty and should not be included in personnel files for faculty evaluated after 1981.*		
17	Faculty – Change of Rank Letters		
18	Faculty – Dept. Chair/Program Coordinator Peer Evaluations – Form XX-1 or Form XX-2		
19	Faculty - Dept. Chair/Program Coordinator Evaluations completed by supervisor on March 30.		

Joint Endorsement

- Principles and Standards of Academic Freedom
- Promote Public Understanding and Support of Academic Freedom
- Agreement on Procedures to Assure Academic Freedom
- Free Search of Truth an Exposition

Rights and Entitlements

Full Freedom to
Study
Discuss
Investigate
Teach
Exhibit
Perform
Publish
Research
Select Classroom Materials
Express Political Belief and Affiliation

Responsibilities

Preserve Intellectual Honesty
Respect the Free Inquiry of Associates

NOTABLE ACADEMIC FREEDOM QUOTES

Unilateral Change in Student's Grade - "...by not affording the instructor the opportunity to be present to present her justifications for the grade, and ...by changing a student's grade without following the requirements of the student grievance procedure, the College unreasonably applied a Board policy, rule, and practice, in violation of Article IV" *(MCCC vs. Bunker Hill, Arbitrator Mark Irvings, December 23, 1988)*

"The assessment of a student's performance, the determination of whether a student satisfied the announced requirements of a course, are fundamental aspects of teaching. They are an inherent part of the academic rights and responsibilities of a faculty member. Article VII emphasizes that the entire college community depends on the protection of academic freedom as it pertains to the teaching function. It recognizes that if the academic freedom to assign grades based on intellectual honesty and the furtherance of truth and knowledge is threatened, all students, faculty members, and administrators will suffer." *(MCCC vs. Bunker Hill, Arbitrator Mark Irvings, December 23, 1988)*

"...the Board has the right to adopt policies, rules, regulations, and practices. Clearly the student grievance procedure represents such an exercise of power. Section 4.03 makes grievable and arbitral claims that a policy, rule, regulation, or practice, on its face or in its implementation, is unreasonable or detrimental to an employee's rights (changing an assigned grade and infringing upon the grievant's academic freedom)." *(MCCC vs. Bunker Hill, Arbitrator Mark Irvings, December 23, 1988)*

The academic freedom article requires that a teacher have "full freedom" in selection of his/her "classroom materials". The language of Article XIII establishes that tests are indeed defined by these parties as part of classroom materials. The college did violate Article VII of the Contract by requiring that students pass an "exit exam". *(MCCC vs. Massasoit, Arbitrator Richard Higgins, December 19, 1996)*

Course Materials - "...under the Final Examination Policy, the administration is not intervening in the course material, it is not indicating the weight that a final exam must have in the overall course grade. In addition, the administration is not intruding in Professor Carlos' selection of course material. Moreover, the policy does not even require that a faculty member must give a final exam as it permits in the alternative, a 'final assessment.' The Final Exam Policy states that there must be a final assessment and/or exam given to the student but it specifically leaves the form of assessment and/or exam to be 'at the discretion of the instructor.' The vesting of this discretion preserves a faculty member's academic freedom." *(MCCC vs. Bristol, Arbitrator Gary Altman, July 8, 2002)*

Work Made For Hire – Work for hire is either 1) work prepared by the employee within the scope of his or her employment, or 2) a work specially commissioned and agreed in writing between the parties to be a work for hire. The Employer or other person for whom the work was prepared is considered the author for purposes of title, and, unless the parties have expressly agreed otherwise in a written instrument signed by them, owns all of the rights comprised in the copyright. (Copyright Act of 1976. 17 U.S.C. §201) The MCCC Contract lacks any reference to ownership for the colleges and, instead, emphasizes academic freedom; therefore, a professor would likely have copyright ownership of his own work. Because the collective bargaining agreement does not include a copyright policy, an effort by the college to control ownership of royalties form written works by professors on sabbatical would constitute a change in a condition of employment and a mandatory subject of bargaining. *(MTA legal opinion 6/9/04)*

Student Attendance - Federal regulations regarding student financial assistance do not require institutions of higher education to take attendance, instead they set out different reporting requirements for institutions that are or are not required to do so. For example, the applicable regulation, which requires institutions to report students who fail to satisfy the attendance requirements for their loan mandates that institutions required to take attendance report the date of withdrawal as the last recorded day of attendance. However, institutions "not required to take attendance" are, in most cases, instructed to report the date of withdrawal as "(t)he date, *as determined by the institution,* that the student began the withdrawal process prescribed by the institution," or "(t)he date, *as determined by the institution,* that the student otherwise provided official notification to the institution, in writing or orally, of his or her intent to withdraw." The regulations state that institutions are required to take attendance if "an outside entity (such as the institution's accrediting agency or a State agency) has a requirement, as determined by the entity, that the institution take attendance." These regulations alone do not require that institutions of higher education in Massachusetts keep records of student attendance.

Lastly, even if an institution of higher education were required to maintain student attendance records due to yet-to-be unearthed state requirement, it would be the institution's responsibility, not the faculty. The procedures for compiling such records and who performs that task are bargaining issues. The college cannot unilaterally impose on the faculty that they take student attendance.

The federal and state statutes and regulations do not specify policies or procedures for taking attendance for those higher educational institutions obligated to take student attendance. It bears reiteration, the aforementioned federal regulation, standing alone, does not require a higher education institution whose students are receiving federal loan assistance to take student attendance unless an institution's accrediting agency or state agency obligates them to do so. (*MTA Legal, Salini, 2010.08.16*)

SICK LEAVE – ARTICLE 9

Entitlement

Faculty -10 Days Per Academic Year
Prof. Staff - 15 Days Per Year
No Credit for Periods of Less Than 1 Full Month's
Sick Leave Benefits May Be Extended
20% Buyback at Retirement

Usage

Incapacitated – Form
Contagious Disease
Illness of Husband, Wife, Child, Parent, or Immediate Household (7 Days)

Requirements

Sole Discretion of the President (Grievable - Reasonable Standard)
Notification by Unit Member's Physician's Certification May Be Required Within 7 Days

Sick Leave Bank

Automatic Member, but May Opt Out by October 30
1 Day Initial Contribution
Additional 1 Day if Bank < 50
5 Days Without Pay Required to Draw on Bank
Same Criteria as Regular Sick Leave

FMLA – Family Medical Leave Act

12 Weeks FMLA Leave Runs Concurrently with Sick Leave for Serious Illness

Forms Can Be Downloaded at
https://mccc-union.org/day-contract-and-forms/

1. Request for Medical Leave that may be protected as FMLA or as a request for contractual sick leave.
2. Instructions to Health Care Provider
3. Fitness-For-Duty Certification

Bereavement Leave

7 Consecutive Work Days
Death of Spouse, Domestic Partner, Child, or Step Child
4 Consecutive Work Days
Death of grandparents, parent of either spouse, grandchildren, stepparent, stepbrother, stepsister, brother, sister, of a unit member subject to this Agreement, or of a person living in the immediate household
2 Consecutive Work Days
Death of Brother-in-Law or Sister-in-Law

REASONABLE ACCOMMODATION

EEOC regulations define "reasonable accommodation" to include modifications or adjustments to the work environment, or to the manner or circumstances under which the position held or desired is customarily performed, that enable an individual with a disability who is qualified to perform the essential functions of that position." 29 C.F.R. § 1630.2(o) (1)(ii). In its explanation of regulations issued pursuant to the ADA, the EEOC has explained that "the employer providing the accommodation has the ultimate discretion to choose between **effective** accommodations." Equal Employment Opportunity for Individuals with Disabilities, 29 CFR Part 1630, 56 FR 35726-01, 35,749 (July 26, 1991) (emphasis supplied). The accommodation must, however, be effective. "Ineffective modifications are not accommodations." UPS Supply Chain Solutions, supra at 1110.

"[O]nce an employee requests an accommodation ..., the employer must engage in an interactive process with the employee to determine the appropriate reasonable accommodation." Zivkovic v. S. Cal. Edison Co., 302 F.3d 1080, 1089 (9th Cir.2002).

This interactive process "requires:

(1) direct communication between the employer and employee to explore in good faith the possible accommodations;

(2) consideration of the employee's request; and

(3) offering an accommodation that is reasonable and effective."

An employer's obligation to engage in an interactive process does not cease after an initial accommodation is made. Rather, "the employer has a continuing obligation to engage in the interactive process when the employee asks for a different accommodation or where the employer is aware that the initial accommodation is failing." U.S. Equal Empn't Opportunity Comm'n v. UPS Supply Chain Solutions, 620 F.3d

Sick Leave Notable Quotes

Medical Documentation - "The fundamental point is that the College had the right to ask for medical verification and explanation of a disability that prevented the grievant from working either full-time or part-time." (MCCC vs. N. Essex, Arbitrator Milton Nadworny, May 6, 1991)

"...when an employee claims that he or she cannot carry out his or her work tasks and responsibilities, that person's employer has the right to find out whether that is a legitimate, documentable claim. It is not the physician's prerogative to determine the format and structure of his 'certification': that certification is the creature of the Labor Agreement, not the medical profession's. It is the grievant's responsibility to 'prove necessity' for a sick leave, and he unquestionably had the medical resources to meet that responsibility. The college was under no obligation to find a 'company doctor' to examine the grievant." (MCCC vs. N. Essex, Arbitrator Milton Nadworny, May 6, 1991)

Incapacitated - "The Employer's failure to ask the critical question of grievant's capacity/incapacity to perform her duties because of personal illness...was unreasonable." (MCCC vs. Quinsigamond, Arbitrator Paul Dorr, January 30, 1989)

Management Physician - "Management can require examinations by physician chosen by management." (MCCC vs. N. Essex, Arbitrator E. Pinkus, August 19, 1986)

Sole Discretion vs. Incapacitated -"Application of the Employer's broad interpretation of "sole discretion" in this case has the effect of negating clear and explicit contractual language. Once a reasonable determination that a unit member is incapacitated, there is no reserved right to deny access to the contractual benefit either to use sick leave days or access to the Sick Leave Bank." (MCCC vs. Massasoit, Arbitrator Katherine Overton Hogan, December 30, 1994)

FMLA – The 12 weeks of leave provided in FMLA does not supersede the sick leave benefit in the MCCC Contract.

ARBITRATION AWARD
GRIEVANT VS. N. SHORE COMMUNITY COLLEGE
ARBITRATOR GARY WOOTERS – JULY 1, 2016

JUST CAUSE STANDARD

Physician's Estimate of Return to Work & No Just Cause for Dismissal – "In the instant case, there is no doubt that the grievant was disabled and could not perform the function of his job. Each medical submission, however, indicated that he would likely, at some point in the future, be able to return to work. The doctor could not provide as precise an estimate of the time for return as the College desired. This could not be done. As in many serious illnesses, recovery time and duration of disability can only be estimated within a range.
There is no showing here that the College could not have held position open longer. There is no estimate of cost, no evidence of how the programs may have suffered during his absence. Where there was a realistic chance of returning to work within the time limits discussed by his doctor (six months to a year from the start of the period of disability), I find that there was not just cause for the dismissal of the grievant."

WOOTER'S DECISION CONTINUED
REASONABLE STANDARD

Dismissal was Reasonable – "I find that the Union has not met that burden. A decision is "reasonable" or not "unreasonable if it is not excessive or extreme and reflects sound judgment. The reasons given for dismissal are clear. After the grievant had been continuously absent for an extended period and his position was no longer protected by FMLA, the College determined that, for the good of the students, the position needed to be filled by someone able to perform the essential functions of the job. In the College view, the grievant and his medical providers were unable to provide enough certainty about the fact and timing of the grievant's return to justify holding the job for him. [The college] focused almost entirely on the best interest of the students in having the position filled with less regard for the grievant's interests as a tenured staff member. The College had a choice between filling the grievant's position, ending his employment, or adopting a wait and see approach. Choosing to fill the position is not unreasonable under these circumstances."

Limitation on Sick Leave – "Absent a clear contractual restriction, an Employer may terminate an employee who becomes unable to perform the duties of his/her position. I see no such clear limitation in this contract. Nor am I willing to read into the agreement an absolute right for an employee to stay in a position they cannot perform so long as there is sick leave available. In this case, establishing such a right would me that the grievant, or some similarly situated employee, could continue for months or years, assuming renewal of the sick bank, and the College would be unable to fill a necessary function."

FMLA vs. Sick Leave – **"Measuring the duration of entitlement to sick leave by the end of FMLA protection alone would, in my view, be unreasonable.** In this case, the College, which had other reasons for considering the dismissal of the grievant, had to wait for the FMLA protected period to expire to take further steps. The end of the grievant's FMLA protection was not the trigger for his dismissal, but it removed the bar to such action.**"**

REASONALE ACCOMODATION

"Had the grievant and his doctor been able to suggest an accommodation which would allow the grievant to perform the essential functions of his position, and the College failed to give good faith consideration to the request, I could find the decision to dismiss the grievant unreasonable. But, that did not happen."

Appealing an Arbitration Decision - [A court reviewing an appeal of an arbitration decision is] strictly bound by an arbitrator's findings and legal conclusions, even if they appear erroneous, inconsistent, or unsupported by the record at the arbitration hearing. A matter submitted to arbitration is subject to a very narrow scope of review. Absent fraud, errors of law or fact are not sufficient grounds to set aside an award. Even a grossly erroneous arbitration decision is binding in the absence of fraud. An arbitrator's result may be wrong; it may appear unsupported; it may appear poorly reasoned; it may appear foolish. Yet, it may not be subject to court interference. We are thus bound by the arbitrator's findings and conclusions in this case, no matter the extent to which we may believe that they are "grossly erroneous." City of Lynn v. Thompson, 435 Mass. 54, 61-62 (2001) (internal citations and quotations omitted).

12 Months Paid Leave Includes:

1. First 8 Weeks Paid Leave
    a. Includes 10 days paid leave subsequent to birth of a child or placement of a child in a home through adoption or foster care. These days are not part of accrued leave – Free Days
    b. Where an eligible employee and his/her eligible spouse are both employees of the College they shall jointly be entitled to a combined total of not more than ten (10) days paid leave under the provisions of this section.
    c. Remainder of 8 weeks - Accrued sick and vacation leave days may be used.

2. Remainder of 12 Months - Accrued sick leave and vacation leave days may be used, but 2 weeks of accrued sick leave or vacation leave may be reserved.

3. If accrued paid time is exhausted which could include reserved time, then remainder of 12 months leave is unpaid.

Entitlement and Notice - A unit member who is employed by the Board and who has given notice, when possible, at least fourteen (14) days prior to the unit member's anticipated date of departure for the purposes of 1) the birth of a child, or 2) the placement of a child in foster care with a unit member, or 3) the placement of a child under the age of eighteen, or under the age of 23 if the child is mentally or physically disabled, for adoption with the unit member who is adopting or intending to adopt the child, is entitled to the leave provisions above.

Same Sex Married Couples - All of the language in the MCCC Contract applies to same-sex married couples to the same extent that it applies to opposite-sex married couples.

Adjustments in Leave - Adjustments in the duration of the leave may be made by the president of the college or the president's designee to ensure that such leave is least disruptive to the instructional process of students.

½ Time Leave - The president of the college may grant a unit member a half-time leave with full benefits; however, such decision is not grievable.

Disabilities - Disabilities caused or contributed to by pregnancy, abortion, miscarriage, childbirth, and recovery therefrom shall be treated like any other temporary disability. A female unit member who is employed by the Board and who has given notice, when possible, at least three (3) months prior to the unit member's anticipated date of departure is entitled to be absent from such employment for a period certified by the unit member's physician due to disabilities caused or contributed to by pregnancy and recovery therefrom. Sick leave, including qualifying leave under the sick leave bank provisions of this agreement, may be utilized for any period of disability.

Pregnancy Discrimination Act (PDA) & FMLA

The federal Pregnancy Discrimination Act (PDA) should serve to prevent the College from forcing the unit member to take maternity leave earlier than she would prefer. Under the PDA, 42 U.S.C. § 2000e(k) (1978), which amended Title VII of the Civil Rights Act of 1964, an employer cannot discharge or otherwise adversely affect an employee because she is pregnant, has an abortion, or gives birth to a child. It also requires employers to treat pregnancy related disabilities and illnesses the same as any other illness or temporary disability, for purposes of medical verification, availability of pay, accrual of seniority and other benefits, insurance coverage entitlement to promotions. The purpose of the PDA is:

"Pregnant women who are able to work must be permitted to work on the same conditions as other employees; and when they are not able to work for medical reasons, they must be accorded the same rights, leave privileges and other benefits, as other workers who are disabled from working."

Under the FMLA, an employee is eligible to take up to 12 weeks of unpaid leave for, among other reasons, the birth or adoption of a child, provided that (i) she has been employed for at least 12 months by the employer from whom she is requesting leave, and (ii) she has worked for at least 1,250 hours for that employer during the previous 12-month period. However, while the federal Family Medical Leave Act may impact the length of an employee's pregnancy leave, its provisions do not dictate when an eligible employee must commence leave. Here, if the unit member has worked more than 1,250 hours, she would be eligible to invoke the FMLA, but it would not impact when she would be able to take pregnancy leave. Even if the unit member is not eligible to take leave under the FMLA, she may take eight weeks after the birth of her child under the Massachusetts Maternity Leave Act, and may still leave at a time convenient for her, as long as she provides at least two weeks notice. G.L. c. 149, § 105D.

DOMESTIC VIOLENCE LEAVE

Abuse and/or Abusive Behavior – See Article 9.01K

The parties agree to comply with the Massachusetts Domestic Violence Leave Act of 2014 as the same may be amended. The parties recognize and agree that should the Domestic Leave Act of 2014 be amended or repealed in whole or in part by any Act of the General Court and signed by the Governor, then the following provisions shall be amended or repealed, in whole or in part, in accordance with the Act passed by the General Court and signed by the Governor.

Notice of Leave– Advance notice except for cases of imminent danger - 3 work days notice that leave was taken. Notice could be given by unit member, family member, counselor, clergy, shelter worker, health care worker, legal counsel, or other professional.

If Unscheduled Absence

1. College may not take negative action
2. Documentation required within 30 days

Leave – Up to 12 months Leave:

1. 3 days of paid leave in no less than increments of 2 hours
2. Additional 12 months of accrued sick leave or sick leave bank days
a. Sick leave bank days apply if a member
b. Waiver of 5 days off payroll
3. Additional 6 months unpaid leave

Leave Eligibility if:

1. Unit member or unit member's family is a victim of abusive behavior.
2. Unit member
a. Needs medical attention, counseling, legal assistance, housing;
b. Seeks protective order;
c. Attends court appearance, attends custody hearings;
d. Meets with law officials; or
e. Other issues directly related to abusive behavior.

Documentation Provided – 30 Days

1. Protective Order,
2. Court, Provider, or Public Agency Letterhead,
3. Police Report,
4. Admission of Guilt or Conviction,
5. Medical Documentation, or
6. Sworn Statement

Confidentiality of Documentation Maintained Unless

1. Requested by Unit Member
2. Court Order
3. Federal or State Law
4. Law Enforcement Investigation
5. Safety Issues

Holiday Pay for Full-time Unit Members

New Year's Day, Martin Luther King Day, President's Day, Patriot's Day, Memorial Day, Independence Day, Labor Day Columbus Day, Veteran's Day, Thanksgiving Day, Christmas

Saturday and Sunday Holidays

Whenever any holiday falls on a Sunday, such holiday shall be deemed to fall on the day following. Whenever any holiday falls on a Saturday, unit members shall, where possible, be given the preceding Friday off without loss of pay, or if said day off cannot be given due to the operational needs of the college, the unit member shall be given the Monday following the Saturday off without loss of pay. In making assignments related to any Saturday holidays, the President or President's designee will take into account unit member preferences. Where two or more unit members have expressed the same preference, unit seniority will determine the day worked. Holiday assignments under this provision may be adjusted by mutual agreement between the College President or his or her designee, and the Chapter President.

RETIREMENT

Sick Leave Buyback

Faculty and professional staff who plan to retire will receive 20% sick leave buyback upon retirement. Also, upon the death of a unit member an amount equal to 20% of the value of the unit member's unused sick leave shall be paid to that unit member's estate. The method of calculating the daily rate of pay used in determining sick leave buyback for faculty is based on 160 days in an academic work year and for professional staff is based on 260 days in the work year. The methods of calculating sick leave buyback are as follows:

Annual Salary - To determine annual salary, multiply the biweekly amount on the last payroll advice slip by 26.

Sick Days - To determine the number of sick days, divide the number of sick leave hours on the last payroll advice slip by 7.5.

FACULTY

Faculty Sick Leave Buyback Amount = (Annual Salary) divided by (160) times (the number of sick days at retirement) times (.20)

In addition, faculty who retire on May 31 and begin receiving their retirement checks beginning in June are also paid the remainder of their annual salary for the months of June, July, and August.

Faculty Pay – Faculty who retire at the end of this academic year will remain on the payroll until August 28, 2011.

PROFESSIONAL STAFF

Prof. Staff Sick Leave Buyback Amount = (Annual Salary) divided by (260) times (the number of sick days at retirement) times (.20)

Vacation Payout For Professional Staff

Professional Staff retirees shall be paid an amount equal to the vacation allowance as earned but not granted in the vacation year prior to such retirement.

Early Retirement Incentive

Any unit member who has served at least ten (10) years in the Community College System, who is eligible to retire under the retirement system of the Commonwealth of Massachusetts, who is at least fifty-five (55) years of age as of the anticipated date of retirement, and who notifies the college president in writing the intent to retire not less than one (1) year in advance of the retirement date shall be eligible to receive the following early retirement incentive:. **Please note that some community college presidents accept unit member's letters of the one year advance notice of the intent to retire and then allow unit members to retract the intent to retire within the year. The procedure that allows for the retraction of a letter of intent is not a contractual right, but is discretionary on the part of the college president. Of course, if a college president does allow for the retraction of an intent to retire, it must be uniformly applied for all unit members within the college.**

NB - Tax Sheltered Annuity Plan - 403B plan *(Sick Leave Buyback + Vacation Pay)*

Effective June 29, 2006, the BHE established a new policy that allows retiring MCCC unit members to defer their 20% sick leave pay and their vacation pay into a Tax Sheltered Annuity Plan (4.03B plan). This can only be done at retirement and the deferral must be made within 2.5 months of separation of service. Per IRS regulations, there are limits on the amount of money that can be deferred by each employee. See your human resource office for more information about this tax savings policy.

Early Retirement Incentive as a Percentage of Salary

Age on Date of Retirement	Retirement Date Last Fiscal Day of				
	May-August	September	October	November	Dec.-April
55-60	30.0%	25.0%	20.0%	15.0%	10.0%
61	25.0%	20.8%	16.7%	12.5%	8.3%
62	20.0%	16.7%	13.3%	10.0%	6.7%
63	15.0%	12.5%	10.0%	7.5%	5.0%
64	10.0%	8.3%	6.7%	5.0%	3.3%

Payment shall be made after the date of retirement and may be spread over a period not to exceed twelve (12) months as determined by the President of the College or the President's designee.

Maximum Payment ***(Retirement Incentive + Sick Leave Buyback ≤ 70% of salary)***

The early retirement incentive and the sick leave buyback together shall in no case exceed seventy percent (70%) of the retiree's salary as of the date of the retiree's retirement.

TAX SHELTERED ANNUITY PLAN FOR SICK LEAVE BUY BAC ANDVACATION LEAVE PAY

June 29, 2006

Effective immediately, the BHE has established a new policy that allows retiring MCCC unit members to defer their 20% accumulated sick leave pay and their vacation leave pay into a Tax Sheltered Annuity Plan (a 403(B) plan).

This can only be done upon retirement. The payment/deferral must be made within 2.5 months of separation of service. Employees who take advantage of early retirement are not eligible for this deferral because of the delay in payment of the sick and vacation leave accrual. Per IRS regulations, there are limits on the amount of money that can be deferred by each employee.

If you have made plans to retire or are thinking about retiring, please see your human resource office for more information about this tax savings policy.

Creditable Service for Sabbatical Service Taken After July 29, 1991

Types of Sabbaticals	Creditable Service
1/2 year at full pay	1 Year
1/2 year with 1/2 workload at full salary	1 Year
1 full year at 1/2 workload at full salary	1 Year
1/2 year at 1/2 workload at 1/2 salary	½ Year
1 full year at 1/2 workload at 1/2 salary	½ Year
1/2 year at 1/2 salary	½ Year

NB: Unit members taking sabbaticals prior to July 29, 1991 are granted a full year of creditable service.

Cap on Post Retirement Earnings - Massachusetts General Law c. 32, § 91(b) sets two limits on retiree earnings when a unit member is "employed in the service of Commonwealth.

In most cases, if you retire and then go work in the private sector you will not have any income restrictions (income limits do apply for disability retirees). However, there are restrictions for working in the public sector in Massachusetts. Public Sector refers to any state, city, town, county or municipal employment within Massachusetts. The State Retirement Board recently updated its policies to address this issue. Current law allows a member to work a maximum of 960 hours per year or the difference between the current salary of the position you retired from and your pension. With recent legislation, after you have been retired a full calendar year, you can also earn an additional $15,000 above the dollar amount maximum but you are still limited to 960 hours per year.

These guidelines work for most retirees. For example, if a member retires with an annual pension of $25,000 per year and the current salary of the position they retired from is paying $45,000, then that member can earn up to $20,000 per calendar year in the public sector or, if they have been retired at least a full calendar year, they can earn up to $35,000 ($20,000 plus an additional $15,000)

1) **Time limitation**: 960 hours in a calendar year.
2) **Earnings limitation** (for superannuation retirees): On a calendar year basis, any person who has been retired and who is receiving a pension or retirement allowance, from the commonwealth who has been retired and/or employed in the service of the commonwealth, county, city, town, district or authority is subject to the following earning limit cap: The retiree's post-retirement earnings cannot exceed the difference between the salary being paid for the position from which the member retired, and the amount of his or her annual pension.
3) After the member has been retired for at least one full calendar year (one full January-through-December year), this earnings limit is increased by $15,000 (see below).

Pension + Post-Retirement Work ≤ Salary at Retirement + $15,000

Requests will be reviewed on a case-by-case basis. Go to mass.gov/retirement to view the full policy.

Tuition Remission for Retired or Former Employees - Retired or former employees shall not be eligible for tuition remission, however, the spouse and dependent children of retired, former, or deceased employees may retain eligibility under certain conditions as stated below:

A. If an eligible employee retires while a child or spouse is enrolled in a program of study or degree program, the spouse or child may complete such program with tuition remission, provided that enrollment is continuous.

B. If an eligible employee who has completed at least five (5) years of full time equivalent service dies, the surviving spouse and children shall be eligible to enter and/or complete one full program of study or degree program with tuition remission. The term "program" as used in this Section B and the above Section A shall include, but not be limited to, any program of study begun at a Community College and continued without interruption through the bachelor's degree at a State College or University.

C. If an eligible employee leaves the employment of public higher education under conditions other than those described in A and B above while a spouse or child is enrolled in a course/program, the spouse or child may complete the semester already begun. At the end of the semester his/her eligibility for tuition remission terminates.

Creditable Service Buybacks

Veterans' Creditable Service

Chapter 32 §4 (h)
Any member in service who qualifies as a Veteran according to *Chapter* 32§I can purchase up to four years of creditable service for his or her military service. Chapter 468 of the Acts of 2002 amended the law removing the requirement that a member in service have ten years of creditable service in order to purchase military service credit.

Peace Corps

Chapter 468 *of the Acts of 2002*
Members who served as volunteers in the Peace Corps are eligible to purchase up to 3 years of this service only if they completed 10 or more years of membership service as a public school teachers or public school guidance counselor.

The cost to purchase this time is an amount equal to the contributions the member would have paid into the retirement system had they been a member during their volunteer service based upon the annual salary the member received in the first year of membership service after that volunteer service.

03 Service

Chapter 324 of the Acts of 1973
Those individuals performing 03 services are considered to be contract workers, or consultants and shall not be considered employees of the Commonwealth for the purposes of retirement under the contributory retirement system for public employees. The only 03 service which is eligible to be bought back is that which was rendered prior to August 17, 1973.

03 Creditable Service Law – Section One of Chapter 161 of the Acts of 2006
The 03 creditable service law went into effect on October 17, 2006, and applies to current state employees who completed one or more years of 03 (contract/consultant) service in jobs similar to the state positions for which they were eventually hired. Members must have opted for the State Retirement Plan to be eligible. G. L. c. 32 § 4(1)(s) authorizes eligible members of the State Retirement System to purchase for creditable service up to four years of prior state contract service that had been paid for out of an "03" subsidiary account: if this prior service immediately preceded the establishment of membership in the State Retirement System; if the job description for the prior service was substantially similar to the job description of the job that established membership; and, if the member already has ten years of creditable service with the State Retirement System at the time of seeking this creditable service. The Law further states "upon completion of the [buy-back] payments, the member shall receive the same credit for the period of previous service as a contract employee as would have been allowed if the service had been rendered by the member as a state employee."

The Division of Administrative Law Appeals (DALA) has rendered two decisions that state eligible unit members who seek creditable service under G.L. c. 32, § 4(1)(s) for contract service as a full-time Instructor at a community college that preceded the employment full-time with membership in the same job, is entitled to have creditable service calculated using a nine months-academic year and not a twelve months-calendar year.

The process for buyback involves:

1. Submission of the completed 03 Buyback Form,
2. A request for confirmation of your years of service by the State Retirement Board to the employer where such service was performed,
3. A determination of your eligibility for this credit by this Board, and
4. An official notification sent to you of that decision.
5. If eligibility has been approved, you have 180 days to purchase the service in a lump sum or 180 days to set up an installment plan with this Board to purchase such service.

Though the law applies to employees currently vested in the State Retirement Plan, Chapter 161 will also be applicable to employees in the State Retirement Plan once they become vested - complete 10 years of service. At that point, such employees could apply for eligibility for the provisions of this law, using the forms in place at that time.

Creditable Service Policy of November 16, 2001

If you were not an 03 employee but are seeking retirement credit for related work for the state at less than full-time capacity, apply for eligibility of retirement credit under the Creditable Service Policy of November 16, 2001. Under this policy, current employees of the state retirement system who worked at least half-time but less than full-time prior to January 28, 1993, will be credited with full-time creditable service for such employment. No buyback of this time is necessary. If approved, full-time credit is automatic.

CET

If the individual was employed under the CETA program by a city or town, they are responsible for providing the Buy Back Department with official documentation of the dates of their employment and the salary that they received. If the individual was employed under the CETA program by the state, then the appropriate agency is responsible for date and salary information.

The cost to purchase this time is an amount equal to that which would have been withheld as regular deductions from the member's regular compensation for such period had the individual been a member of the State Retirement System during this period plus interest.

Out-of-State Teaching Time

Chapter 32, §3(4)

Any member who is employed in a teaching position or as a principal, supervisor or president in a school or college is eligible to buy back service rendered in another state for time that they were a teacher, principal, supervisor or superintendent in any public day school college.

Also included in this law are those individuals who were employed in an overseas dependent school conducted under the supervision of the Department of Defense of the United States' government and in the public schools of the Commonwealth of Puerto Rico. The maximum credit allowable for this time is five years of the maximum credit of ten years for out of state teaching service.

Right to a Termination Retirement Allowance.

If your position is either eliminated, abolished or if you are laid off or terminated you may qualify for a so-called Section 10 allowance provided you have at least 20 years of creditable service and meet other requirements. Pension is calculated both as Section 10 (1/3 of three year average plus annuity) or superannuation whichever is higher amount is given.

Credit for Teachers for Nonpublic School Service (aka Nun's Bill)

Chapter 32. *§3(4A)*

Members who previously taught pupils or acted as an administrator in a nonpublic school prior to January I, 1973 are eligible to purchase this service for retirement purposes.

Credit is not allowed if the member is eligible to receive retirement benefits from the nonpublic school system in which he or she served or if this service is covered by Social Security. The member must submit a copy of his or her "Earnings or Benefit Estimate Statement" which can be obtained from the Social Security Administration.

The number of years of nonpublic school teaching time a member is entitled to buy back cannot exceed the number of years of teaching service in Massachusetts with a maximum of 10 years.

Elected Officials

Chapter 32, §4(1)(o)

Selectman, Alderman, City Councilor or School Committee Members are the only elected officials that are allowed to purchase creditable service in this capacity. In order to be eligible, these individuals had to have been elected prior to January I, 1986 and had to have received no compensation for this service. The cost to purchase this time is a sum equal to the amount which would have been paid into the system during the period if the position had been compensated at the rate of $2,500 per year plus interest.

Intermittent Police Officers & Call Fire Fighters

Chapter 32. *§4(2)(b)*

Members who served as Intermittent Police Officers and Call Fire Fighters are eligible to buy back up to five years of time served in this capacity.

These individuals must show proof that they were on the city or towns list of Intermittent Police Officers or Call Fire Fighters and were eligible for assignment to duty.

This intermittent call service had to have been followed by appointment of the individual as a permanent member of the tire department in order for it to be credited.

Library Trustee

Chapter 32, *§4(1)*

Any member who served as a library trustee for a city or town, in a position in which he or she received no compensation, may be eligible to purchase credit for this time.

The cost to purchase this time is a sum equal to the amount which would have been paid into the system during the period if the position had been compensated at the rate of $2,500 per year plus interest.

Educational Collaborative

Chapter 32, §4(1)

Members are eligible 10 purchase creditable service for time served as an employee of III educational collaborative prior to the state takeover of these agencies.

The Buy Back Department has a list of the Collaboratives which were taken over by the state and are eligible for this type of buy back.

Part-time, Provisional, Temporary, Temporary Provisional, Seasonal or Intermittent

Chapter 32, *§4(2)(c)*

According to an administrative regulation approved by the Board, individuals are not allowed to purchase creditable service for time which was not full time service for at least six consecutive months, was not followed immediately by membership service and occurred after September of 1993. This includes service which was considered to be part-time, provisional temporary, temporary provisional, seasonal or intermittent.

Part-time employees will only receive credit for service based on the number of hours worked in proportion to a regular workweek.

Also included in this category are members who were employed as substitute teachers prior to 1993. In order to purchase this service, they are required to provide documentation of the number of days they were employed and the salary earned.

ORP (Optional Retirement Plans)

Those teachers who opted out of the State Retirement System and joined an Optional Retirement Plan waived their rights 10 buy back this time when they had their accounts transferred. These individuals are not eligible to buy back the service that transferred to ORP or purchase the service for the period when they were contributing directly to ORP.

Take Over By the Commonwealth - *Chapter* 32, *§4(d)* Any person who becomes a member by reason of being taken over by the Commonwealth (Quasi) shall be credited with the service had it been rendered as a member of the State Board of Retirement.

Madden Decision

The Madden Decision is not applied to time that is bought back. In order to qualify for this time, individuals had to have been members in the system during such part-time service and cannot have refunded the money for such period.

Accidental Disability Retirement: To qualify for an Accidental Disability Retirement you must suffer an illness or injury while in the performance of your duties (work related). Accidental Disability Retirement is calculated at 72% of the member's salary on the date of injury or the last 12 months working average plus annuity. Eligibility is immediate and the pension is not federally taxable.

Ordinary Disability Retirement: To qualify for an Ordinary Disability Retirement you must suffer an illness or injury that keeps you from performing your duties at work. To qualify for an Ordinary Disability, you must have at least 10 years of full-time creditable service. Non-veterans will have their age raised to 55 and have their retirement calculated under regular retirement. Veterans receive 50% of the last year's salary average under option A. The Ordinary Disability pension will be federally taxable.

Disability Retirement applications require approval from both the State Board of Retirement and the Public Employee Retirement Administration Commission (PERAC).

See:http://www.mass.gov/treasury/searchresults.html?output=xml_no_dtd&client=massgov&proxystylesheet=massgov&ie=UTF-8&sort=date%3AD%3AL%3Ad1&oe=UTF-8&q=creditable+service&site=CTREx&x=21&y=11

Professional Staff on 10/12ths Contracts - To avoid loss of creditable service, salary should be paid over 12 months, but Retirement Board may challenge 12 months creditable service. Effective 1/28/93, Regulation 941 CMR 2.03(2) mandates $10/12^{ths}$ employees are part-time and receive 10/12ths creditable service. However, the Retirement Board calculates 10/12ths salary by annualizing salary of the three years of highest compensation (MGL c.32, Section 5(2)(a).

GRIEVANCE PROCEDURE-FLOW CHART & TIME LIMITS

STEP ONE
COLLEGE PRESIDENT
30 calendar days to file Grievance Form X-G1
Mailed Certified Return Receipt or
Hand deliver with date stamp on copy
Copies To MCCC Grievance Coordinator, & MTA Consultant
(Informal Discussions do not extend 30-Day Time Limit)

President's Decision – Form X-G4
30 calendar days for both a hearing and a decision.
If unresolved, denied, or no decision
within 30 days of filing grievance, appeal to

⇓

STEP TWO
MEDIATION APPEAL
10 calendar days to file appeal
Dismissal Grievances Filed Directly at Mediation

Mail Appeal Form X-G5 certified return receipt to address on **Form X-G5** or
FAX Form X-G5 with transmission report as receipt
to OCCC at 1-781-275-2735
Send Additional Copies by regular mail to
College President, MCCC Grievance Coordinator, & MTA Consultant

MEDIATION
It takes at least 40 calendar days for mediation date.
(Usually takes longer depending on the number
of cases on the mediation docket)
If unresolved

⇓

STEP THREE
ARBITRATION APPROVAL REQUEST
10 calendar days to request arbitration – Form X-G8
Send request to Dennis Fitzgerald, 170 Beach Road, Unit 52, Salisbury, MA 01952

MCCC ARBITRATION CERTIFICATION
40 calendar days for MCCC for MTA to File a Demand for Arbitration or Extend Time Limits

1. The parties may extend time limits in writing by mutual agreement.
2. It is the responsibility of the grievant to process all grievance forms in a timely fashion.
3. In the event that the administration falls to comply with any of the provisions of the grievance procedure including time limits, the grievant(s) may add this allegation as an additional count if the grievance is appealed to Mediation. If the grievant(s) chooses not to appeal the original grievance to Mediation, then the grievant(s) may file a procedural grievance at Step Two.

SYSTEM-WIDE GRIEVANCE PROCEDURE-FLOW CHART & TIME LIMIT

SYSTEM-WIDE/COMMISSIONER OF HIGHER EDUCATION GRIEVANCE PROCEDURE

COMMISSIONER

30 calendar days for MCCC President or designee to certify system-wide applicability and to file a grievance at the Commissioner's Level.

10 calendar days for the Commissioner of Higher Education to determine system-wide applicability or applicable to the Board of Higher Education

⇓ **If yes**

50 calendar days from original filing date for a decision

⇓

10 If denied, 10 calendar days to file for mediation.

⇓

10 If not resolved, 40 calendar days to file Demand for Arbitration

⇓ **If no**

14 calendar days to file at Step One

NON-GRIEVABLE SECTIONS OF CONTRACT

1/2 Time Family Leave With Full Benefits
Additional Full Year Family Leave Without Pay
Health and Welfare Benefits
Dependent Care Assistance Plan
1/2 Time Parental and Child Care Leave With Full Benefits
Additional 12 Months Parental and Childcare Leave
Additional Part-time Parental and Childcare Leave
Denial of Part-time Unit Member's Adjusted Work Schedule To Attend Grievance Hearing
Non-reappointment and Reasons In The First Four Years
Professional Staff Flexible Schedules
Professional Staff !0/12ths Option
Post Tenure Review Decision, Procedure, and Subsequent Evaluation Unless Disciplinary Action
Classification Appeals Committee Decisions
Decision Not To Extend Usage of Vacation Leave Over Accrued 50 Days
Direct Deposit Exemptions
Tuition Waiver Policy

NON-ARBITRABLE - ALL ABOVE NON-GRIEVABLE PLUS

Affirmative Action and Discrimination
Basis For Retrenchment
Any Incident Which Occurred or Failed To Occur Prior To Ratification

Notable Grievance Procedure Quotes

Mandatory Meetings - The requirement of procedural compliance is not limited to time limits; 10.02B broadly declares that failure to comply with "any provisions of this Article" shall be deemed a waiver of the right to proceed with the grievance. The grievance procedure is initiated when a bargaining unit member files a grievance at Step One. Article 10.04 then mandates that the president or his designee *"shall* meet with the grievant . . . and *shall* within thirty (30) calendar days. . . render a decision." If after meeting with the grievant the president denies the grievance, or if the president fails to meet with the grievant and/or issue a decision within thirty days of the grievance submission, the grievant has ten calendar days to appeal to Step Two. The time limits can be extended by mutual agreement or an oral agreement confirmed in writing. These provisions impose obligations on both the president and the grievant. The president must attempt to set up a timely Step One meeting, but if he does so, the grievant must cooperate and attend the scheduled meeting. Failure to do so represents noncompliance with the provisions of the article and results in a waiver. A grievant cannot simply decline to participate in a mandatory meeting scheduled "for the purpose of resolving the grievance" and then appeal the grievance to mediation. By refusing to do so and to participate in such meetings, the grievance failed to comply with the provisions of Article X. He thereby waived his "rights to seek resolution of the grievance under the terms of this Article." He had no right to simply proceed to Step Two and his grievances are therefore inarbitrable. (MCCC/MBCC/Panse vs. Mass. Bay Community College, November 30, 2017, Arbitrator Mark Irvings)

Specific Article Not Referenced - The employer claimed that the grievance should be denied since the evaluation article (13.04) was not referenced as a violation in the initial grievance. The arbitrator opined that the Grid Memorandum of Agreement, by its terms, effectively replaces or supplements, the parallel portions of Article 21 and since the Memorandum of Agreement references the evaluation procedure as the basis for granting the interval increase, it was part of the grievance. **Definition** – Articles not specifically referenced as a violation on the grievance form can still be used as a violation if there is reference to the article within the original article referenced. (MCCC vs. Roxbury, Zero Year, Prof. R. Gray, Arbitrator Marc D. Greenbaum, May 2, 2019)

Late Untimely Challenge - The employer challenged that the grievance was untimely. The arbitrator dismissed this claim because the employer never raised this issue prior to the arbitration hearing. **Definition** – The Grievance Procedure - Article 10 of the contract prohibits new issues being added after the termination of mediation. For the first time, this prohibition was applied to the employer. . (MCCC vs. Roxbury, Zero Year, Prof. R. Gray, Arbitrator Marc D. Greenbaum, May 2, 2019)

Lack of Evaluation – The employer claimed that the lack of a required evaluation that was not grieved is grounds to dismiss the grievance. The arbitrator opined that the evidence conclusively demonstrates that if a scheduled evaluation is not performed, for compensation purposes at least, the employee is deemed to have a satisfactory evaluation. **Definition** – The employer's failure to conduct a required evaluation should have no adverse impact on a unit member. . (MCCC vs. Roxbury, Zero Year, Prof. R. Gray, Arbitrator Marc D. Greenbaum, May 2, 2019)

Evaluation Includes a Zero Year – The employer claims that the year following the tenure year is, in effect, a zero year and unit members must wait until the 4th year following tenure to be evaluated; therefore, no grid increase will be given until September of the 4th year. The arbitrator opined that the contract language is silent on the question whether the first review free year counts as one of the three years in the evaluation cycle or whether that cycle does not commence until after that first post-tenure year. If the parties intended to exclude the first post tenure year, one would expect to find language consistent with that intention. There is none and neither logic or experience suggest that such an intention should readily be implied. The arbitrator opined that the controlling contract language is more fully consistent with the Union's view. (MCCC vs. Roxbury, Zero Year, Prof. R. Gray, Arbitrator Marc D. Greenbaum, May 2, 2019)

AUTHORITY OF AN ARBITRATOR – ARITCLE 10

VS.

NON–DELEGABILITY DOCTRINE

BACKGROUND– Since the certification of the MCCC in 1976, the union and the employer have engaged in good faith negotiations to define working conditions for MCCC unit members. The parties acknowledged that the application of these negotiated contracts could be challenged and the parties developed a grievance process for this purpose. The parties acknowledged the authority of an arbitrator to decide these grievances and to make final and binding awards with appropriate remedies. In addition, unions and union members depend on the contract to define job–related rights and have traditionally pursued enhancing the discretion and authority of arbitrators in interpreting these rights. Since 1976, the MCCC has been successful in narrowing the list of issues in which arbitrators have no authority to arbitrate:

- Incidents, which occurred prior to the ratification date of a contract.
- Failure to appoint in the first four years of employment.
- Affirmative Action/Discrimination
- Basis for retrenchment

The courts and unions have recognized that a limited judicial review is desirable in order to enhance stability and reliability of a contract. Under M.G.L. c. 150C, §11, the scope of review by the courts is very narrow and is limited to whether an arbitrator:

- Committed Fraud
- Exhibited Prejudice or Partiality
- Exceeded the Arbitrator's Powers
- Refused to Hear Evidence which Prejudiced the Rights of a Party

MOTIONS TO VACATE – From 1976 to 1994, the employer recognized the authority of an arbitrator to make final and binding awards with appropriate remedies. However, in 1994, the employer filed its first motion to vacate an arbitration award arguing that an arbitrator exceeded his authority in awarding reinstatement of a retrenched unit member. (Davis – Retrenchment – Roxbury Community College) The employer applied the nondelegability statute, M.G.L. c. 15A, §22 to support its position. This statute was originally written for K–12, but there was no restriction on its application to higher education. The presidents have exploited the original concept of the statute and have been successful in applying the statute to higher education. In the 1996 Davis case, the Supreme Judicial Court affirmed the judgment of the Superior Court to vacate the arbitrator's award insofar as the award ordered the grievant's appointment to a full–time faculty position; and the SJC remanded the case to the arbitrator for a calculation of the amount of damages without reinstatement.

UNION APPEALING AN ARBITRATION AWARD - [A court reviewing an appeal of an arbitration decision is] strictly bound by an arbitrator's findings and legal conclusions, even if they appear erroneous, inconsistent, or unsupported by the record at the arbitration hearing. A matter submitted to arbitration is subject to a very narrow scope of review. Absent fraud, errors of law or fact are not sufficient grounds to set aside an award. Even a grossly erroneous arbitration decision is binding in the absence of fraud. An arbitrator's result may be wrong; it may appear

unsupported; it may appear poorly reasoned; it may appear foolish. Yet, it may not be subject to court interference. We are thus bound by the arbitrator's findings and conclusions in this case, no matter the extent to which we may believe that they are "grossly erroneous." City of Lynn v. Thompson, 435 Mass. 54, 61-62 (2001) (internal citations and quotations omitted).

MOTIONS TO VACATE

The above-referenced decision opened the floodgates for the employer to file the following **motions to vacate** arbitration decisions:

1. **Motion to Vacate Affirmed** – Retrenchment arbitration award reinstating Davis was affirmed. *(RCC-Retrenchment– Article 19 - June 20, 1996).*
   Impact - Management has non-delegable right to abolish positions, to create positions, not to create positions.

2. **Motion to Vacate denied** - Arbitration award appointing Kiefson-Roberts as a transfer candidate was denied because of timeliness. *(RCC-Transfer-Article 17 – September 26, 1996)*
   Potential Impact – Management's non-delegable right to appoint and to determine and assess academic qualifications

3. **Motion to Vacate Affirmed & Remanded** - Arbitration decision appointing transfer candidate Dyer-Duguay to vacant position was affirmed. *(QCC-Vacancy-Article 16 – November 27, 2000)*
   Impact – Employer has the non-delegable right to appoint and to determine and assess academic qualifications, right to hire personnel who possess qualifications. Although Justice of Superior Court Ralph D. Gants agreed with the arbitrator that the decision of the college president was "procedurally so flawed," the court upheld the motion to vacate, but remanded the case back to the arbitrator for an alternative remedy of damages.

4. **Motion to Vacate Affirmed & Reversed**- Arbitrator's decision to overturn dismissal, restoring unit member to appointment pool, and paying unit member for lost pay was affirmed. Superior Court vacated the arbitration award to reinstate the terminated DCE employee. The Appeals Court reversed the lower court's decision and upheld the arbitrator's award (2004*). (Salem State-DGCE Contract – September 15, 2004)*
   Potential Impact - Erosion of due process rights and just cause.

5. **Motion to Vacate Denied** - The arbitrator's award that voided the dismissal and ordered Panse's reinstatement, along with backpay was denied *(Mass. Bay - Dismissal-Article 15 - September 14, 2005).*
   Potential Impact - The College filed a motion to vacate the award contending that the arbitrator exceeded his authority in violation of G. L. c. 150C, § 11 (a)(3) because the law prohibits institutions of public higher education from delegating dismissal decisions involving faculty members to the arbitration process. In this respect, despite the statutorily articulated public policy in favor of arbitration, the College submits that certain areas are reserved for the exclusive judgment of educational administrators and cannot be delegated by way of a collective bargaining agreement.

   The college's s motion for judgment on the pleadings to vacate the arbitration award was denied, and the union's motion to confirm the arbitration award is affirmed. This case is further remanded to the arbitrator for a calculation of the amount of damages, if any, to be awarded to Panse for the College's violation of the Collective Bargaining Agreement. *(September 14, 2005– Superior Court Judge Macdonald – see Notable Quote on next page)*

6. **Motion to Vacate -** On April 2, 2009, the employer filed in Superior Court an Application to Vacate/Modify the final and binding arbitration award. The employer claims that the arbitrator by 1) ordering the appointment of the grievant to a position, 2) substituting his judgment for that of the President of the College, 3) awarding monetary damages, 4) finding the grievant best qualified, and 5) intruding into areas exclusively reserved to the College, exceeded his authority in violation of M.G.L. 15A, § 22, and the arbitration award must be vacated under M.G.L. c. 150C, §11(a)(3).
Motion to Affirm – The Union's position is that the parties negotiated a contract that defines the procedures for the selection of unit members for vacant positions and negotiated a grievance process that allows the union to challenge professional judgment decisions. Since the college presidents bound themselves to follow these certain contractual procedures with respect to appointment and failure to comply with those procedures was properly grieved and found by an arbitrator to be arbitrary, capricious, and unreasonable, then the arbitrator certainly acted within his authority to make a finding and award.
Decision - The Superior Court affirmed the arbitrator's award, but on appeal to the Appeals Court, the Appeals Court remanded the matter back to the arbitrator to determine what, if any, damages are due to Grievant for the College's breach of the agreement. On remand, Arbitrator Irvings issued a decision finding that grievant is not entitled to any monetary damages. While the Arbitrator affirmed his ruling that Holyoke Community College violated the contract by hiring someone who did not meet the minimum posting requirements, he held that Grievant is not entitled to damages since another finalist had a superior right to the position. The Arbitrator interpreted the decision of the Appeals Court as barring him from disturbing the College's determination that the other finalist was better qualified than the Grievant, given that other finalist satisfied all the posting requirements even though the appointee did not. *(Hebert – HCC – Irvings Award - March 2, 2009) Appeals Court ordered remand back to arbitrator for damages.)*

7. **Motion to Vacate – Tenure Denial – Arbitration Award – July 12, 2013 - RCC**
The arbitrator's award that reinstated the grievant who was denied tenure and terminated to his position as Associate Professor in the Social Sciences Department immediately, and made the grievant whole with full back pay, benefits, and seniority to date of reinstatement. The arbitrator voids the terminal contract and remanded the tenure decision back to the college excluding certain individuals from the tenure review process *(July 10, 2009, Roxbury – Denial of tenure and termination).*

MCCC v. Board of Higher Ed/Roxbury Community College, SJC-11250. The SJC affirmed the decision of the Appeals Court finding the arbitrator's award to be non-binding on the College. Relying on language in the contract that "[t]he granting or failure to grant tenure shall be arbitrable but any award is not binding," the SJC found that the parties' framing of the dispute as "the manner in which Acevedo was denied tenure" did not change the fact that, in the end, the failure to grant tenure was the issue. In writing the decision, the SJC does affirm the general principle that employers may bind themselves to follow certain procedures prior to making tenure decisions and be subject to binding arbitration, but the SJC concludes that this particular employer did not. The arbitration decision was upheld, but the SJC ruled that the award in not enforceable pursuant to the language of the MCCC Contract.

NON-DELEGABILITY IMPACT AND TREND

IMPACT and TREND–***Motions to vacate and the subsequent court decisions could have a negative impact on appropriate remedies awarded by arbitrators regarding the following articles of the MCCC contract:***

- Article 11 – Appointment
- Article 11 – Tenure
- Article 14 – Promotion
- Article 15 – Termination and Dismissal
- Article 16 – Vacancies
- Article 17 – Transfer
- Article 19 – Retrenchment

NOTABLE NON-DELEGABILITY QUOTES

"Here, under the CBA, the College bound itself to dismiss employees only upon a demonstration of just cause. As a result, the issue of whether just cause existed for Professor Panse's termination was within the ambit of the arbitrator's authority. (Finding that where a collective bargaining agreement prohibited an employee from being terminated without just cause, the decision whether termination without just cause took place falls within the ambit of the arbitrator's authority). Thus, I conclude that the arbitrator's conclusion as to the absence of just cause, on this record, must be respected.

Certainly, G.L. c. 15A, § 22 empowers officials at community and state colleges to appoint and dismiss members of their faculties. However, where such officials have negotiated away much of the substance of that authority, they are not in a position thereafter to assert that the grievance mechanism--itself a product of collective bargaining--is not lawfully available to review their decisions then circumscribed by the terms of a collective bargaining agreement. Here, the arbitrator could determine whether the College had just cause to terminate Professor Panse, order the College to pay Panse damages for its violation of the agreement, and order the College to reinstate Panse as a faculty member in the biotechnology department." (Superior Court, Justice D. Lloyd Macdonald, September 14, 2005, Panse vs. MBCC)

Full-time Types of Appointments

Regular 1-Year Appointments

Tenure Appointments (Year 7)

Temporary Appointments-Substitute for a unit member on leave or whose employment ended prior to the completion of the year

Faculty Contract Year – 9/1 to 5/31

Professional Staff Contract Year - 7/1 to 6/30

Full-Time Non-reappointment

In Years 1 - 4, Without Cause & Reasons Non-grievable
Non-reappointment Notice Provided by March 1

In Year 5 - Just Cause – Non-Reappointment Notice by October 15
Just Cause Begins After Reappointment For 5th Year Received March 1 of 4th Year

Probationary Period for Unit Professional Staff
3 and 6 Month Probationary Period

Notwithstanding any other provisions of the Agreement to the contrary, unit professional staff shall be subject to a six-month probationary period commencing upon the effective date of their initial appointment. During this probationary period an employee may be terminated without cause. If a full-time unit professional staff member is terminated prior to the third month anniversary, the member will receive one (1) month notice prior to separation. If terminated on or after the third month anniversary, but prior to the six-month anniversary, the member will receive three (3) months notice prior to separation.

Violation of notice requirements shall constitute reappointment for 1 year.

Dismissal – Just Cause Standard & Arbitrary, Capricious, or Unreasonable

Dismissal Prior to Expiration of Contract
FT Unit Members have
Just Cause and Due Process Protection

NOTABLE APPOINTMENT QUOTES

Probationary Period - "It is true that Section 11.02.B states that non-reappointments of employees in the first through third years shall be without cause, except for the written notice requirement, and that the non-reappointment decision shall not be subject to the grievance procedure. Had the College given timely notice of non-reappointment, [the grievants] would have had no recourse." (MCCC vs. N. Shore, Arbitrator Mark Irvings, December 1, 1989)

McNair Funds - "If the parties believed these employees [McNair Funded 03 employees] were excluded from Article XIX pursuant to Section 1.01, there would have been no basis or rationale for granting them seniority rights. The Association and the Board have always regarded the employees [McNair Funded 03 employees] as covered by Article XI." (MCCC vs. N. Shore, Arbitrator Mark Irvings, December 1, 1989)

Intermingling of Funds: "Since the College elected to support the ESL [grant funded & McNair 03 funded] program with regular maintenance funds, these people could no longer be called grant employees [Article XI and Article XIX applies]" (MCCC vs. N. Shore, Arbitrator Mark Irvings, December 1, 1989)

Probationary Period - "...the parties agreed that neither the reasons nor the decision [to non-reappoint a regular appointment unit member within the first three years of employment shall be subject to the grievance procedure. The Board has wide latitude. If the decision is made to non-reappoint an employee in his/her first three years of service, and notice of the decision is properly given, then the employee would have 'no recourse'. Thus, when proper notice is given, employment ends at the end of that contract, regardless of reason." (MCCC vs. N. Shore, Arbitrator John Van Dorr, January 24, 1991)

RETURNING ADMINISTRATORS

Administrators Returning To The Unit

Returning Administrator - Any administrator who was once in the MCCC day unit can return to the unit as long as there is "no adverse impact on present unit members." For example, no present unit member (Day Unit - FT/PT faculty or FT/PT Professional Staff) can be nonreappointed, retrenched, have a last minute adverse assignment change, or have some other adverse impact because of a returning administrator. There is no time limit for this right to return. For example, an administrator can be out of the unit for 1 year or as many as 20 years and they have the same right to return unless the contract language changes. (Art. 11.04)

At the option of the President of the College, an appointment to the unit for a returning administrator can take place in one of three ways:
1) The administrator can return to the college with prior seniority and must be classified based on the criteria for unit members.
2) The administrator can relinquish all prior accrued seniority and be placed on the salary schedule at a salary and rank determined by the President of the College.
3) An acting/interim administrator shall be placed on the salary schedule in accordance with #1 above provided the salary is not less than the salary of the unit member prior to assuming the acting/interim administrative appointment.

Administrator with no Right to Return - An administrator who has never been in the unit has no right to a unit position and must apply for a vacant and posted position like any other applicant. In this case, priority of consideration is given to equally best qualified day unit members. (Art. 16)

TENURE APPOINTMENT – 7th Year

Eligibility
- 6 Full Years in Unit
- 3 Years in Current Job
- Other Than Unsatisfactory Evaluation

Eligibility Notice
- October 1 of 6th Year

Review
- March 15th - Supervisor & UPPC
- April 15th - Appropriate VP
- May 1st - President
- May 20th - Tenure Notice
  - $ 10 Points - Every 3rd Year Evaluation
  - Evaluation (9th Yr) - Money Follows Semester After Evaluation

Tenure Appointment – 7th Year

Unit members on non-state appropriated funding are not eligible to receive tenure.

Notable Tenure Process Quotes

MCCC vs. Roxbury, Acevedo Tenure Denial, Arbitrator Marcia Greenbaum, 7/30/09)

Low Enrollments & High Withdrawal Rates - The testimonies of the UPPC members suggest that Prof. Acevedo was denied tenure because he had low enrollment rates and high withdrawal rates and this was a result of his imposing high standards on students, some of whom either chose not to take his course or dropped his course shortly after enrolling because they feared the course work was hard or he was a "hard grader. Enrollment numbers and withdrawal rates are simply not listed contractual criteria. Nonetheless, they seem to have played a big role in the Committee's recommendation to deny tenure. If the parties wanted to make enrollment and/or withdrawal rates part of the criteria for tenure review, they could have done so. The fact is that they did not. Therefore, no matter how valid a consideration a Committee member or administrator may think such factors to be, it was unreasonable for the UPPC to go beyond the contract and rely on these items in deciding not to recommend tenure. Similarly, it was not appropriate for the administrators up the line from the Vice President to the Board of Trustees to endorse a decision to deny tenure that was based upon those non-contractual considerations. (MCCC vs. Roxbury, Tenure Denial, Prof. Acevedo, Arbitrator Marcia Greenbaum, July 30, 2009)

Motion to Vacate – Tenure Denial – Arbitration Award – July 12, 2013 - RCC

MCCC v. Board of Higher Ed/Roxbury Community College, SJC-11250. The SJC affirmed the decision of the Appeals Court finding the arbitrator's award to be non-binding on the College. Relying on language in the contract that "[t]he granting or failure to grant tenure shall be arbitrable but any award is not binding," the SJC found that the parties' framing of the dispute as "the manner in which Acevedo was denied tenure" did not change the fact that, in the end, the failure to grant tenure was the issue. In writing the decision, the SJC does affirm the general principle that employers may bind themselves to follow certain procedures prior to making tenure decisions and be subject to binding arbitration, but the SJC concludes that this particular employer did not. The arbitration decision was upheld, but the SJC ruled that the award in not enforceable pursuant to the language of the MCCC Contract.

Personnel File vs. Hearsay/Chatter- There is the need for consistency/uniformity in the tenure process, as required by Article 13.01. In accordance with that requirement, candidates for tenure release their files to the Committee for consideration. It is what contained in that file that is the subject of the Committee's deliberations and discussions, not matters outside the file. It is important to note that hearsay and so-called "chatter," which go beyond the file, have not been approved by the applicant, and should not be considered by the UPP Committee. There is good reason for this. Statements outside of the official personnel file cannot be rebutted by the tenure candidate, particularly when the applicant does not even know of such allegations. A tenure candidate has the right to be considered based on the contents of the official personnel file, not unsupported statements unknown to the applicant. In this case, hearsay and chatter not included in the official file played a large role in the decision-making process. Prof. Acevedo was not given a chance to rebut this hearsay as he was unaware the UPPC was even considering it. It is unreasonable and arbitrary for such hearsay to play a part in a tenure decision, which should be based on the contractual criteria, and the official record before the UPPC. (MCCC vs. Roxbury, Tenure Denial, Prof. Acevedo, Arbitrator Marcia Greenbaum, July 30, 2009)

Personnel File & Contractual Criteria - It should be noted that not everything in a tenure file may be considered by a UPPC in a tenure review. If something is included in the file that is not mentioned in the list of contractual criteria, e.g., the student enrollment numbers on the student evaluation forms, that information, while related to the numbers on the student evaluations, is not to be treated as one of the criteria, even if it is in the file. Thus, the UPPC must review the file, but rely only on the elements that relate to the contractual criteria. (MCCC vs. Roxbury, Tenure Denial, Prof. Acevedo, Arbitrator Marcia Greenbaum, July 30, 2009)

Missing Information & Uniform Application - The Committee members made some incorrect assumptions, which they relied on in deciding not to recommend tenure. A decision was made based on a belief that Prof. Acevedo's file was "missing" some things and therefore incomplete. His previous Dean apparently did not fill out a Summary Evaluation for two of the four years he supervised him. Yet it appears that Prof. Acevedo was penalized for this and allegedly, "missing" logs, and not given an opportunity to cure the faulty assumption of the UPPC members. He was not told that the UPPC considered his file to be incomplete; nor was he afforded an opportunity either to produce those allegedly "missing items" or to explain that they never existed and that is why they were not in the file. Another person being considered for tenure at that time (not identified) also had some things missing from her file, but she was allowed to produce those for the Committee's consideration, and was granted tenure. Prof. Acevedo was not permitted this courtesy afforded to another applicant by this same UPPC. Thus, there was no equal treatment or "uniform application" as required by the contract. This too is unreasonable and arbitrary. (MCCC vs. Roxbury, Tenure Denial, Prof. Acevedo, Arbitrator Marcia Greenbaum, July 30, 2009)

Expressio unius est exclusio alterius - A general rule of contract interpretation is: "Expressio unius est exclusio alterius," that is, to express one thing is to exclude another or others. To include a list of items to be "uniformly applied" is expressly to exclude items not on the list, such as enrollment numbers and withdrawal or dropout rates. Applying this principle to the criteria set forth by the parties in their Agreement to be used for tenure review means that members of the UP PC or the administration cannot add to or rely on criteria not included on the list. The parties negotiated what can be considered, and must be considered. If a matter is not on the list, it is not to be considered. Thus, the College's argument that it or the UPPC can consider whatever it chooses in deciding whether to grant or deny tenure, is not supported by the clear and unequivocal language of the ·parties' Agreement. The contract the parties negotiated provides to the contrary·, and as the arbitrator, I am bound by it terms. (MCCC vs. Roxbury, Tenure Denial, Prof. Acevedo, Arbitrator Marcia Greenbaum, July 30, 2009)

Whole vs. Its Parts - Another relevant rule of contract interpretation is that where possible, effect must be given to all clauses and words in a contract. Put another way, if two interpretations of a provision are possible and one would give meaning and effect to another clause of the contract, while the other would render the other provision meaningless, an arbitrator will rely on the one which gives effect to all words and provisions. In this case, to accept the College's argument, that only Article XI is relevant to tenure decisions, would render Article 13.01 (3) meaningless. That would be an absurd result, and in effect rewrite the Agreement, which must be read as a whole. (MCCC vs. Roxbury, Tenure Denial, Prof. Acevedo, Arbitrator Marcia Greenbaum, July 30, 2009)

Summary and Conclusion - In summary, the tenure evaluation process for Prof. Acevedo was unreasonable, arbitrary and capricious and violated the contract. The process followed by the UPPC members not only affected their recommendation to deny tenure, but also infected the recommendations of others, including Dr. Mercomes, who not only relied on the flawed decision of the UPPC, but also the rescinded evaluation. Her recommendation, in turn affected the tenure decision of Dr. Gomes, who passed his recommendation on to the Board of Trustees. Thus, it had an impact up the chain of command. (MCCC vs. Roxbury, Tenure Denial, Prof. Acevedo, Arbitrator Marcia Greenbaum, July 30, 2009)

In conclusion, the UPPC members were not properly educated about the tenure process and the specific criteria to be used to evaluate candidates. The members were not told to keep hearsay, chatter and innuendo out of the process, and the process was replete with those matters. The UPPC made negative assumptions about "missing" documents without giving Prof. Acevedo an opportunity to cure the alleged defects (when another tenure applicant was permitted to do so). The UPPC members applied criteria not specifically noted in Article XIII as much of the basis for their decision to recommend denying tenure to Prof. Acevedo. It is fundamentally unfair to apply unknown criteria in making a tenure determination, which is the most important decision in an academic career. The process was tainted by the inclusion of the 2005-2006 Summary Evaluation, which was withdrawn after it was relied on in the first tenure vote. It was also questionable to include a Summary Evaluation for 2006-2007 by Dean Seyon that had been grieved before the UPPC started its deliberations, but yet was still included in the official personnel file. The parties should have made a decision regarding the status of this document before it was given to the UPPC. (MCCC vs. Roxbury, Tenure Denial, Prof. Acevedo, Arbitrator Marcia Greenbaum, July 30, 2009)

Motion to Vacate – Tenure Denial – Arbitration Award – July 12, 2013 - RCC
MCCC v. Board of Higher Ed/Roxbury Community College, SJC-11250. The SJC affirmed the decision of the Appeals Court finding the arbitrator's award to be non-binding on the College. Relying on language in the contract that "[t]he granting or failure to grant tenure shall be arbitrable but any award is not binding," the SJC found that the parties' framing of the dispute as "the manner in which Acevedo was denied tenure" did not change the fact that, in the end, the failure to grant tenure was the issue. In writing the decision, the SJC does affirm the general principle that employers may bind themselves to follow certain procedures prior to making tenure decisions and be subject to binding arbitration, but the SJC concludes that this particular employer did not. The arbitration decision was upheld, but the SJC ruled that the award in not enforceable pursuant to the language of the MCCC Contract.

PART-TIME APPOINTMENT RIGHTS

PART-TIME SENIORITY

PART-TIME PROFESSIONAL STAFF ALL PURPOSE LEAVE & SICK LEAVE

ARTICLES 9 AND 11

Appointment Rights

In 3rd Consecutive Year
Satisfactory Evaluation
↓
Greatest Seniority
↓
UNLESS
Insufficient Assignment

Part-time Faculty Seniority

2 Courses in One Year = 1 Year Seniority
&
2 Courses in Different Work Areas = 1 Year Seniority in Both Areas

0 Courses Taught in 2 Years = Break in Service
&
Loss of Seniority

Part-time Professional Staff Seniority & All Purpose Leave Hours

Maximum Hours = 1949
0 to 224 Hours = 0 Seniority & 0 Leave Hours
225 to 900 Hours = ½ Year Seniority & 15 Leave Hours
>900 Hours = 1 Year Seniority & 22.5 Leave Hours
Contact HR Every July 1 to Obtain All Purpose Leave Accrual for Upcoming Year

Part-time Unit Members Sick Leave Hours
Effective July 1, 2015 or from the date of hire if after July 1, 2015.

Faculty accrual of paid sick leave hours is
0.051230 times the number of hours worked since July 1, 2015.

Prof. Staff Sick accrual of paid sick leave hours is
057692 times the number of hours worked since July 1, 2015

Contact HR every July 1 for Accrual of Paid Sick Leave Hours

College Closing

Whenever a College is closed due to inclement weather or other emergency situations, a part-time professional staff member will be paid for the hours that the unit member missed due to the closure; unless, for grant-funded employees, the terms of the grant do not permit such payment.

For a "reasonable assurance" to exist, the educational institution must establish that the claimants have been given a bona fide offer of employment in the next academic period. An offer of employment will not be considered bona fide if only the possibility of work exists. A possibility of work, as opposed to a reasonable assurance, exists if the conditions under which the individual would be employed are not within the educational institution's control **AND** the educational institution cannot provide evidence that such claimants *normally* perform services in the following academic year or term. BUT if the educational institution can establish a pattern, showing that the individual is likely to be reemployed in the second academic period, then a reasonable assurance exists.

Notably, DUA acknowledges: "For many years DUA policy has been to approve benefits for adjunct professors when their continued employment in the next ensuing academic year or term is contingent upon enrollment or financing, without regard to the actual likelihood of the claimant's being reemployed. DUA has recently become aware that this position is contrary to established guidance from the United States Department of Labor." (The federal guidance the memo refers to is in a 1986 Advisory from the DOL, "Unemployment Insurance Program Letter No. 04-87.") We will have to delve more deeply into the employee's subjective expectation/belief in the likelihood of re-employment. Clearly, we also need to focus on "irregularities" in their past pattern of employment, did they ever lose a course before after being told they would have it? Were they aware that other colleagues had lost courses?

FACULTY WORKLOAD – ARTICLE 12

INSTRUCTIONAL HOURS

Didactic: 29-31 Instructional Hours Depending on Preps.
Non-Didactic: 29-33 Instructional Hours Depending on Preps.
50 Minute Contact Hours

WORK DAY

Upon Mutual Agreement – Classes On or After 4 PM and As Late As 5 PM

PREPARATIONS

Mutual Agreement Required For
>3 Preps Per Semester or >5 Preps Per Academic Year
Excessive Preps Require Mutually Agreed Reduction in
College Service, Advising, and/or Office Hours.
(Reduction may be waived at sole discretion of faculty.)

COURSE TYPE	MULTIPLYER X CREDITS
Didactic 1st Section	1.33
Didactic Subsequent Sections	0.67
On-Line or Hybrid 1st Section	1.33
On-Line or Hybrid 2nd Section	1.00
On-Line or Hybrid 3rd or Greater Sections	0.67
Lab-Like or Clinical 1st Section if 2 or > Contact Hrs.	2.00
Lab-Like or Clinical 2nd Section No Assistant if 2 or > Contact Hrs.	2.00
Lab-Like or Clinical 2nd Section With Assistant	1.00
Team Taught Didactic 1st Section	0.67
Team Taught Didactic Subsequent Section	0.33
Team Taught Lab-Like or Clinical	1.00
Mediated	0.33
Individualized Instruction	0.33

NON-INSTRUCTIONAL HOURS = 11 HOURS

OFFICE HOURS

4 Office Hours over 4 Days & 1 On-Line Office Hour & Discretionary > 1 On-line Office Hour

NON-INSTRUCTIONAL WORLKLOAD

College Service – 4 Hours
Student Advising – 3 Hours = 14-19 Advisees *(Advisees may be scheduled during office hours)*

REDUCTION MANDATED IN 11 HOURS OF NON-INSTRUCTIONAL HOURS IF

>31 Didactic Instructional Hours/Week
>33 Non-Didactic Instructional Hours/Week

REASSIGNED TIME

Reassigned Time = Twice Credit Hour Reduction
1 Office Hour Reduced for Each 3 Credit Reduction

INSTRUCTIONAL AND REASSIGNED HOURS

29 – 35 Hours Per Week
With Reduction in Non-Instructional Work if
>31 Didactic Instructional Hours/Week
>33 Non-Didactic Instructional Hours/Week and/or
>3 Preps/Semester or >5 Preps/Academic Year

CLASS SIZE AVERAGES

32 - Standard Class
28 – Approved Writing or Critical Thinking
22 – English Composition, ESL, Introduction to Foreign Language, Remedial & Developmental Courses

College Service – FT Faculty

On the last day of classes, it is required that all full-time faculty submit *College Service Activities (Form XIII-E5)*. On October 15 and February 15, faculty are required to submit a list of college service activities (upper part of Form XIII-E5). In the middle of the form under #2, faculty should list the activities with specific date(s) of participation (if applicable). The "if applicable" language applies to activities that are on-going during a semester and no specific date can be determined. A summary of college service activities is required. College service activities include:

1. Serving as advisor to student activities;
2. Serving on governance, ad hoc, college standing committees, system-wide task forces or committees, or labor-management committees;
3. Preparing grant proposals;
4. Participating in college, division, department or other related college meetings and/or activities;
5. Participation in the improvement and development of academic programs and resources, including recruitment.
6. Serving as a department chair/coordinator pursuant to Article XX and college-wide coordinators.

If faculty received ***reassigned time*** to perform ***non-instructional activities*** such as curriculum development, department chair work, professional development activities, or administrative (non-managerial) duties, then these activities should be listed on the *College Service Activities (Form XIII-E5)*. If there is a report associated with the above-referenced activity, then the report should be attached to the *College Service Activities (Form XIII-E5)*.

Instructional Work

If faculty received ***reassigned time*** to perform ***individualized instruction and/or tutoring*** services, then these activities should be incorporated in the workload calculations on the Workload Form under the section for ***Instructional hours for individualized instruction.*** Individualized instruction and/or tutoring can be performed in faculty offices or in learning centers.

Student Advising – FT Faculty

On the last day of classes, full-time faculty are required to submit a *Student Advisement Log – Form XIII-E4* including student's name, program, date of conference, and recommendation/purpose.

Reassigned Time

Number of Non-Instructional Hours = Twice Credit Hour Reduction
Proportional Reduction in Office Hours of 1 Office Hour For Each 3 Credit Hours
1 Course (20%) to 4 Courses (80%) Reduction

Department Chair Work Outside The Academic Year

$40/hr. If mutually agreed for Department Chair work between commencement and 1st day of fall classes, winter intersession, & spring vacation.

FACULTY PERSONAL DAYS AND SICK LEAVE
Beginning Jan. 1, 2012**, -** Personal Days Per **Calendar Year**
If Hired Prior to July 1, 2012 – 3 Personal Days
If Hired On/After July 1, 2012 – 2 Personal Days
Sick Days – 10 Per Academic Year

CRITICAL THINKING INTENSIVE COURSES

(Maximum – 28 Students)

Definition: Critical thinking is the process of purposeful, self-directed judgment. This process improves the quality of thinking and decision-making through reasoned, systematic consideration of context, concepts, methods and evidence.

Criteria: A critical thinking course will have (A) components of formally-stated assessments and strategies specifically designed to promote at least two (2) of the following objectives and (B) a process by which the course's critical thinking components will be assessed by the instructor and factored into the student's course grade.

Objectives:
(The following are process objectives, which reflect thinking processes, as distinguished from content objectives.)

At the completion of the course students will be better able to:

- Evaluate and interpret the meaning of the textual material.
- Support a thesis with evidence appropriate to position and audience.
- Organize and connect ideas.
- View situations from different perspectives.
- Compare and contrast source material so that analysis can be made and theories can be proved or disproved.
- Draw inferences, suppositions, and conclusions from source materials.
- Perform a medley of solutions to a possible problem and present those solutions in a logical, coherent manner.
- Differentiate between fact and fiction, concrete and abstract, theory and practice.
- Make estimates and approximations and judge the reasonableness of the result.
- Apply quantitative and/or qualitative techniques, tools, formulas and theories in the solution of real-life problems and recognize when to apply those techniques, tools, formulas, and theories.
- Interpret data presented in tabular and graphical form and utilize that data to draw conclusions.
- Use quantitative relationships to describe results obtained by observation and experimentation.
- Interpret in non-quantitative language relationships presented in quantitative form.
- Apply the scientific method including methods of validating the results of scientific inquiry.

FACULTY CALENDAR

End of 1st Week	Office hours posted at end of first week of class
End of Drop/Add	Course materials distributed to students and to supervisor before end of drop/add period
9/30	Course/Schedule preference to supervisor
10/1	Tenure eligibility list distributed
10/1	Sick leave bank open
End 5th Week	Supervisor shall return course materials to faculty members by end of fifth week
10/15	Notice or Non-reappointment in 5th year of later – requires just cause
10/15	College service plan to supervisor
10/30	Last day to opt out of sick bank
10/31	Course/Schedule preference to faculty
11/21	Unit Personnel Practices Committee established
12/1	Sabbatical proposals for fall semester to supervisor
12/5	Sabbatical proposals for fall semester forwarded to committee
Last Class	Last day fall semester can end & faculty submit college service and student advisement form on last day
1/1	Personal days benefit begins. 3 days if hired prior to 7/1/12. 2 days if hired after 7/1/12
1/15	Sabbatical recommendations for fall semester from committee & supervisor to dean
Spring Classes Begin	Classes begin at some colleges
1st Day	Faculty office hours to supervisor on first day of classes
End of 1st Week	Office hours posted at end of first week of class
End of Drop/Add	Course materials distributed to students and to supervisor before end of drop/add period
2/1	Summary evaluation returned
2/1	Sabbatical recommendations for spring semester from president to board
2/10	Summary evaluation rebuttals due 7 work days after evaluation
2/15	College service plan to supervisor
End 5th Week	Course materials returned
2/28	New full and part-time hire list due and 7 business days after hire
2/28	Course/Schedule preferences to Supervisor
3/1	Notice of non-reappointment is due in 1st four years
3/15	Dean's recommendations for title change
3/15	Unit Personnel Practices Committee recommendations for tenure
3/30	Department chair evaluations
3/30	Preferred schedules and course submitted
3/31	Department chair vacancies announced
3/31	Course/Schedule to faculty
4/15	Dean's tenure recommendations
4/15	Title changes announced
4/30	Fall assignments to faculty & fulltime schedules to chapter
5/1	President's tenure recommendations and sabbatical approvals for Fall\ to faculty
Last Class	Last Day of classes Faculty submit college service and student advisement form (date varies)
6/1	Sabbatical proposals for spring semester to supervisor
6/15	Sabbatical proposal for spring semester forwarded to committee
7/15	Sabbatical recommendations for spring semester from committee & supervisor to dean
8/31	Sabbatical recommendations for spring semester from president to board
10/31	Sabbatical approvals for spring semester to faculty

PROFESSIONAL STAFF WORKLOAD

Customary Workweek - 37.5 Hours - Monday-Friday - 8 a.m. - 5 p.m.

Work Schedule - The President of the College or the President's designee shall consider as advisory written notice from the professional staff member as to that professional staff member's preferred work assignment if received on or before June 1st prior to the fiscal year(s) covered by this Agreement. The President of the College or the President's designee shall notify the professional staff member in writing of that professional staff member's work assignment no later than July 1. Such work assignment shall be consistent with the needs of the College.

Travel Time - Time spent commuting from job site to job site within the workday is considered time worked. Time spent commuting to and from home to job site is not considered time worked

3 Days Off Campus Per Fiscal Year

1/2 Day or Greater

Day After Thanksgiving Required Day Off

Article 12.04C6 - A professional staff member may request 3 off-campus days per calendar year for participation in off-campus activities. These activities are outside those assigned as part of the regular professional staff workload. These days are basically free days for professional staff to be off campus doing some related work. There is no reporting requirement. One of these off-campus days must be the day after Thanksgiving. These days may be granted in half-day segments or greater. Such requests shall not be unreasonably denied.

Compensatory Time - 1.5 Hours for Each Hour Over 37.5 Hours/Week – 75 Hour Cap – Payment If > 75 Hours. The use of this time shall be subject to mutual agreement between the professional staff member and the President of the College or the President's designee. The parties recognize the need to grant requests for use of compensatory time. Requests for the use of compensatory time shall be granted unless the college president or the president's designee determines that it is impractical to do so because of work schedules, emergencies, or the operational needs of the college. The President or the President's designee shall use reasonable efforts to ensure that an employee requesting compensatory leave is granted such leave. Under no circumstances will the compensatory time for an individual member exceed 75 hours. Compensatory time earned in excess of 75 hours shall be paid to the professional staff member at the professional staff member's regular rate of pay. (Regular Hourly Rate of Pay = Biweekly X 26 / 260 / 7.5 X Hours > 75)

15 Sick Days Per Each Year of Service

5 Personal Days Per Calendar Year

Vacation Leave Per Fiscal Year

Effective January 1, 2020 - Vacation Leave Per Fiscal Year

< 1 Year = no more than 20 days
1 – 7 years = 22 days
8 – 11 years = 23 days
12 – 19 years = 24 days
20 or more years = 25 days

Carry Over of Vacation Days

Effective July 1, 2019, unit members may carry over 375 hours (50 days) from year to year, but not more than 1 year.
By June 2021, unused vacation days over 375 hours (50 days) are converted to sick.
After June 2021, unused vacation days over 375hours (50 days) shall be forfeited.

12 Month Contract with Discretionary & Non-Grievable 10/12ths Option

No Traditional Discipline Instructional Responsibilities May Be Assigned

PROFESSIONAL STAFF WORKLOAD/EVALUATION WEIGHTS

Work Performance - 33.5 Hours - 75% of Evaluation

Form E-7

Job Description
Objectives
Activities/Methods

College Service - 4 Hours - 10% of Evaluation

Advisor to Student Activities, Governance, Committees, Grants, Department Meetings, Program Review and Development, Labor-Management Committees, System-wide Committees

Advising (may be assigned)

<8	1 hr/wk	8-13	2 hrs/wk
14-19	3 hrs/wk	20-25	4 hrs/wk
26-31	5 hrs/wk	32-37	6 hrs/wk
38-43	7 hrs/wk		

Development of the E-7

1. Go to http://www.mass.edu/foremployees/classificationspecs/classspecs-mccc.asp and download the specifications for your specific classification title. Please note that you may have an in-house title in addition to your official classification title. Both should be listed on the E-7 under Job Title.

2. The E-7 Form can be downloaded at https://mccc-union.org/day-contract-and-forms/

3. Incorporate into the E-7 the specific specification items from the downloaded specifications that you perform. These should be listed under Job Description Item (Goal) using Roman Numerals.

4. Under each Job Description Item, list the *mutually agreed* to objectives using Capital Letters. Note that these objectives are listed only *if mutually agreed* to between the unit member and the immediate supervisor.

5. Under each Objective (if not mutually agreed and not listed, then under each Job Description Item) list the specific Activities/Methods you intend to utilize to accomplish each Job Description Item. Use Arabic Numerals as you list these items.

6. The E-7 shall be completed, forwarded to a professional staff member, and placed in the personnel file within 30 days of a professional staff member's first appointment and by July 1 of subsequent appointments. During the year, changes in the E-7 may be requested by the unit member and/or the immediate supervisor. If there are proposed changes in the E-7, the supervisor shall meet with the professional staff member. If substantive and ongoing duties are modified and/or added to the E-7, the E-7 shall be rewritten within 30 days of this meeting. Remember that you will be responsible for the completion of the E-7 and the E-7 should reflect a 37 1/2 hour workload. If there are additions to the existing E-7, then items should be deleted to be in compliance with a 37 /12 hour workload. If there are no changes in the E-7 from year to year, an E-7 shall be placed in the file for each year with the appropriate dates for that particular E-7.

7. The E-7 is the basis for the summary evaluation. The Summary Evaluation is due February 1 of the first appointment and by June 1 thereafter.

NOTABLE WORKLOAD QUOTES

Part-time Course Load - "...absent exceptional circumstances, no part-time faculty member would be assigned more than three courses. ...it is understood that we are referring to three three-credit courses, and the intent was to prevent assigning a workload that would be arguably construed as full-time." *(Andrew Scibelli, Chairman, President's Council - December 2, 1987)*

Course Preferences - " Advisory (course preferences) can very simply mean that preferences should be implemented unless a Division Chair or other academic administrator has substantive knowledge that assignments of courses and schedules have been tainted by prejudice, politics, or other violations of academic freedom--or, or course, if student enrollments do not conform to expectations, or it staff changes take place. The Division Chairperson may not alter the preferred courses and schedules unless those alterations are based upon changes in enrollment, changes in staffing, unfairness in procedures used by the department, poor teaching evaluations, or other tangible and objective professionally-based causes." "…that faculty members have the right to submit their proposed class schedules for the following semester, which schedules are to be given fair and significant consideration."(MCCC vs. Holyoke, Arbitrator Milton Nadworny, October 4, 1991)

PS Customary Workday - Arbitrator Michael Ryan opined that the critical question in this grievance concerns the meaning of the word "customary" and whether it sets an absolute outside limit on the start and end time of work hours. Arbitrator Ryan stated that a customary limit is not synonymous with an absolute schedule limit. The parties could have expressed the starting and ending times as a binding and absolute limit had they omitted the word "customary." Instead, they added the word customary, however, creating a necessary implication that these specific times were not an absolute.
N.B. Based on the Arbitrator Ryan's analysis of the contract language and the dicta in his decision, colleges have the authority to assign hours outside the customary 8-5 workday. After a careful reading of the decision, the MCCC believes however there are limitations to this authority: 1) Most unit members should continue to have the majority of their work schedule within the customary hours of 8-5. 2) New postings requiring evening work should clearly indicate that requirement on the job posting. 3) If the colleges are planning to alter existing hours of unit members outside of the 8-5, Monday-Friday workweek, they are obligated to bargain over the impact of this decision. MCCC vs. Bunker Hill Community College, Arbitrator Michael Ryan, April 14, 2002.

Computer Assisted Instruction (CAI) vs. Mediated Learning - The employer argued that CAI courses are mediated courses and faculty receive 1 hour of prep time rather than 4 hours of prep time as in a traditional lecture course**.** The arbitrator stated that the based on the following evidence, **CAI courses are not mediated**: 1) Department is responsible for adopting text book, 2) Materials from texts are used for homework, 3) Faculty engage in 1:1 substantive interactions with students, 4) Faculty hold mini-lectures, 5) Faculty have to be prepared to answer questions on all modules, 6) Faculty have to be prepared (or possibly more prepared) than faculty teaching a traditional lecture, 7) Faculty have regular communication with students via email after class, 8) The published generated exams are used in both traditional courses and CAI version, 9) The past practice at the college and 10) There was no evidence offered to contradict the testimony of Fitzgerald and Mahler that other colleges consider CAI courses as didactic. (Harvey M. Shrage, Math Dept. vs. Bristol CC, 3/2/16)

Professional Staff Whose Regular Day Off Is A Holiday - *Whenever any holiday falls on a Sunday, such holiday shall be deemed to fall on the day following. Whenever any holiday falls on a Saturday, unit members shall, where possible, be given the preceding Friday off without loss of pay, or if said day off cannot be given due to the operational needs of the college, the unit member shall be given the Monday following the Saturday off without loss of pay. In making assignments related to any Saturday holidays, the President or President's designee will take into account unit member preferences. Where two or more unit members have expressed the same preference, unit seniority will determine the day worked. Holiday assignments under this provision may be adjusted by mutual agreement between the College President or his or her designee, and the Chapter President. (2015-2018 Contract)*

FACULTY EVALUATION – ARTICLE 13
FACULTY WEIGHTS AND COMPONENTS

Full-time Faculty	
Student Evaluation	25%
Course Materials	15%
Classroom Observation	25%
Student Advisement	10%
College Service	10%
Personnel File	15%

FACULTY EVALUATION FORMS
Evaluation Forms Can Be Downloaded at
https://mccc-union.org/day-contract-and-forms/

Completed by Immediate Supervisor
Course Materials-5th Week
Classroom Observation-Fall Semester
Summary Evaluation-February 1

Completed by Unit Member
Course Materials-Prior to End of Add/Drop
College Service Plan-Oct 15 & Feb 15
College Service Activities-Last Day of Classes - Brief Summary Required

Student Advisement Log-Last Day of Classes

Completed by Students
Student Evaluation Instrument-By 1st Week in December

DUPLICATION OF MATERIALS – All course materials are returned to unit members in evaluation years and in non-evaluation years. Duplication of course materials is prohibited without the unit member's permission.

TENURED UNIT MEMBERS - Evaluations will be conducted **every third year,** but student evaluations are compiled in non-evaluation years for faculty review only.

STUDENT EVALUATIONS - Questions 1-4 on the University of Washington form are the only questions used to calculate the median score for each class in the summary evaluation. Administrators may use questions 1-22 (1-13 for form J) on the University of Washington student evaluation form to make comments in faculty evaluations. Administrators may not use decile Rank on the University of Washington form for any purpose

DISTANCE ED STUDENT EVALUATIONS - The online student evaluation form (http://mccc-union.org/distanceedagreement.htm) is used for the first two times a day Distance Ed course is taught but will only be used for the information of the faculty member and will not be used for purposes of evaluation until 3rd time taught. Other evaluation forms are also posted on the above-referenced web page.

COLLEGE SERVICE Faculty Only - Not later than October 15 for the fall semester and February 15 for the spring semester a faculty member shall submit a list of college service activities proposed to be undertaken during the semester. The list of completed college service activities is due on the last day of classes each semester and a brief summary of activities is required

PROFESSIONAL STAFF WORKLOAD/EVALUATION WEIGHTS

Evaluation Forms Can Be Downloaded at
https://mccc-union.org/day-contract-and-forms/

Work Performance - 33.5 Hours - 75% of Evaluation

Form E-7

Job Description
Objectives
Activities/Methods

College Service - 4 Hours - 10% of Evaluation

Advisor to Student Activities, Governance, Committees, Grants, Department Meetings, Program Review and Development, Labor-Management Committees, System-wide Committees.

Advising (may be assigned)

<8	1 hr/wk	8-13	2 hrs/wk
14-19	3 hrs/wk	20-25	4 hrs/wk
26-31	5 hrs/wk	32-37	6 hrs/wk
		38-43	7 hrs/wk

Full-time Professional Staff - Weights

Work Performance	75%
College Service	10%
Personnel File	15%

Frequency of Evaluation

1st Year - February 1 & June 1
2nd - 6th Years - June 1
7th Year with Tenure – No Evaluation During 1st Year of Tenure
Every Third Year Thereafter

Work Assignment

Notice of Preferred Work Assignment Submitted – June 1
Work Assignment Notification – July 1
14 Days Advance Notice of Regular and Ongoing Change in Work Schedule

Summary Evaluation – Form E8

First Appointment – February 1
Thereafter – June 1
7 Work Days to Respond
14 Calendar Days – Post Evaluation Conference & Reasons

Basis for Evaluation

Form E7 - Position Description/Activities Developed
(Objectives - If Appropriate & Mutually)
30 Days from Beginning of Appointment - Thereafter Every July 31
If Additional Substantive and Ongoing Changes, Then E-7 Rewritten Within 30 Days

College Service – Form E5
Student Advisement (If assigned) – E4
Dec. 30 & May 30

TENURED UNIT MEMBERS – Summary Evaluation will be conducted every third year.

Date	Professional Staff Requirement
6/1	Sabbatical proposals for January to supervisor
6/1	Preferred work assignment letter is submitted each year to supervisor
6/1	E-8 Summary Evaluation is due - seven (7) working days to respond
6/7	E-8 rebuttals due
6/15	Sabbatical proposal for January forwarded to committee
7/1	Notification of work assignment from supervisor. 14 calendar days notice of regular and ongoing changes.
7/1	Off Campus Days - 3 days off campus per fiscal year are granted for activities outside of those assigned.
	Off Campus Days may be taken in increments of a half-day or more.
	Off Campus Days are free days for PS and no reporting of activity is required.
	Day after Thanksgiving is a required Off-Campus Day
7/1	Upon Appointment and thereafter, the E-7 developed and serves as the basis of evaluation for the year.
7/1	Unused vacation days in excess of 375 hours (50 days) may carry over for one (1) year
	At end of payroll period of June 2021, vacation days over 375 hours (50 days) converted to sick leave
	After June 30, 2021 and at the last pay period in December each year, vacation days over 365 hours(50 days) are forfeited
7/15	Sabbatical recommendations for January from committee & supervisor to dean
10/1	Sick leave bank open
10/1	Tenure eligibility list distributed
10/15	Notice or Non-reappointment in 5th year of later – requires just cause
10/30	Last day to opt out of sick bank
10/31	Sabbatical approvals for January semester to professional staff
Nov	Day after Thanksgiving - 7.5 hours must be used as one of the 3 off campus days.
12/1	Sabbatical proposals for July to supervisor
12/5	Sabbatical proposals for July semester forwarded to committee
12/30	E5 - Six-month list and summary of college service is due to supervisor (4 hours is the requirement).
12/30	E-4 - If student advising is assigned, the log is due to supervisor by 5/30.
1/1	After June 30, 2021 and at the last pay period in December each year, vacation days over 365 hours(50 days) are forfeited
1/1	Personal days - 5 days per calendar year beginning January 1 of each year
1/15	Sabbatical recommendations for July from committee & supervisor to dean
2/1	Sabbatical recommendations for July from president to board
2/1	New hire evaluation
2/28	New full and part-time hire list due MCCC an within 7 business days of hire
3/1	Notice of non-reappointment is due by March 1 in 1st four years.
5/1	President's tenure recommendations
5/1	Sabbatical approvals for Fall to professional staff
5/30	E5 - Six-month list & summary of college service due to supervisor (4 hours is the requirement)
5/30	If student advising is assigned, the log is due to supervisor

Travel Time - Time spent commuting from job site to job site within the workday is considered time worked. Time spent commuting to and from home to job site **is not** considered time worked.

Compensatory Time, Vacation Time, and Sick Time 1 ½ hours are granted for each hour worked over 37 ½ hours per week with cap of 75 hours. Comp Time over 75 yours is paid. Payment of unused vacation and comp. time are paid upon separation from the college.

Evaluation Cycle	**New Employee Classification**
Year 1 - February 1 and June 1 Years 2-6 - June Year 7 - Tenure (No Evaluation) 8 Year 9 - Evaluation and every 3rd year on June 1	10 days of hire - Submit classification points (data form) 30 days of hire - HR forwards proper classification 60 days to appeal if points are incorrect

DAY UNIT PART–TIME FACULTY EVALUATION

Student Evaluation - Each Semester
Course Materials - Each Course
Classroom Observation - Once Every 3 Appointments
Personnel File Review
Summary Evaluation - Every 3rd Appointment
OFFICE HOURS NOT REQUIRED

DAY UNIT PART-TIME PROFESSIONAL STAFF WORKLOAD & EVALUATION

Process

E-7 Due Within 21 Days of Appointment
If Substantive and On-going Changes, Then New E-7 Within 21 Days
Tentative Assignment With 4 Weeks Notice

Basis For Evaluation

E-7
Total Job Performance
Conformance with Assigned Workload
Effective Assistance to Students, Faculty, and Staff
Student Advising, If Appropriate
College Service
File Review

Time Table

Log of College Service and Student Advisement Due
45 Days Prior To Completion of Appointment
Evaluation Completed 21 Days Prior to Completion of Appointment
Reasons Provided If Requested
7 Working Days to Respond

COLLEGE CLOSING

Whenever a College is closed due to inclement weather or other emergency situations, a part-time professional staff member will be paid for the hours that the unit member missed due to the closure; unless, for grant-funded employees, the terms of the grant do not permit such payment.

PART-TIME DAY UNIT MEMBERS SALARY INCREASES

Effective July 1, 2018 = 2.0% - Minimum $28.86 per hour
Effective July 1, 2019 = 2.0% - Minimum $29.44 per hour
Effective July 1, 2020 = 2.0% - Minimum $30.03 per hour If No Grid Implemented

NOTABLE EVALUATION QUOTES

With the addition of the review of the personnel file (15%) as part of the summary evaluation, the following 3 notable quotes no longer apply:

Professional Development - "The College has no right to include either directly or indirectly professional development [in the evaluation]. " (MCCC vs. Board of Regents/Berkshire Community College, May 24, 1984; Board of Regents Training Manual, February 13, 1985, Page 6)

Community Service - "Community Service is not evaluated and cannot be considered as college service for evaluation purposes." (Board of Regents Training Manual, June 1981, Page 8 and February 13, 1985, Page 6)

37 Hour Workload - "Performance evaluation is an evaluation of a unit member's 37 hour workload." (Article 12 and Article 13; MCCC vs. Bristol Community College, C. Lapointe Resolution, May 26, 1987.

Rating System - "Any rating system implemented in the evaluation process is a violation of the contract." (MCCC vs. Board of Regents, Decision of James Litton, June 12, 1986)

"The weights are quantitative measurement of an overall qualitative evaluation process. The weights accorded to each component should be reflected in the summary evaluation by how much emphasis is given to each component as stipulated in Article 13.02B5. For example, student evaluations are accorded 30% weight. If a unit member's student evaluations are unsatisfactory, the summary should note this but if other components are good, this should not result in an overall unsatisfactory evaluation. Also, there may be justifiable reasons for the results, such as the difficulty or nature of the course." (Management Training Manual, 6/23/81)

"The arbitrator concurs, as submitted by the Employer, that the weights are guidelines. He disagrees, however, that they are not susceptible to strict accounting. The mandatory expression of specific weights assignments in Section 13.02,B,5 mandatory reallocable in accordance with Section 13.05, persuades the Arbitrator the parties did intend to require evaluators to specifically narrow and focus their summary evaluations of each component as well as the overall Summary Evaluation rather than express their judgments in general terms which could be subject to broad interpretations."(T. Role, 1/29/90)

"This contract does not contain a mathematical formula into which the 'weight' of each component and some attributed score for each component are inserted and the result compared against a pre-agreed minimum for a satisfactory rating." (R. Higgins, 10/6/99)

Student Evaluation Key – Another mistaken assumption was made with regard to the student evaluation scores and what they meant. In addition, the UPPC did not have the key, or, if some members did have it, they substituted their own individual judgments for the "key". Also, they assumed that Dean Seyon's synopsis of the student evaluation scores was correct when in fact there were a number of prejudicial errors. One Committee member determined that a 4.0 is not so great even though the College considers a 3.4 to fall between good and very good. She testified, "I don't necessarily agree that a 3.4 is between good and very good." The College has set forth a key or code to be used in interpreting student evaluations. [5=excellent, 4=very good, 3= good, 2= fair, 1=poor, and 0=very poor] Members of a UPPC cannot substitute their judgment for this, lest it result in inconsistent application. The key is there to give meaning to the scores and to provide for some consistency. This is not to say that the parties could not have decided that in order to be granted tenure, a candidate must have all student evaluation scores above a certain level, e.g., a 3.0 or a 3 .5 or a 4.0. However, the

parties did not negotiate such requirement. They used a key that set forth what was good, very good and excellent. For a UPPC to apply a different standard to the student evaluation scores is to defeat the

purpose of uniform application, as required by the contract. Suffice it to say that neither the parties nor the contract has applied a standard that to be granted tenure an applicant has to have an average student evaluation score of 4.0 (per class) or better, as suggested by Committee members who did not think that a "4" was "that great. *(MCCC vs. Roxbury, Acevedo Tenure Denial, Arbitrator Marcia Greenbaum, July 30, 2009)*

Personnel File & Contractual Criteria - It should be noted that not everything in a tenure file may be considered by a UPPC in a tenure review. If something is included in the file that is not mentioned in the list of contractual criteria, e.g., the student enrollment numbers on the student evaluation forms, that information, while related to the numbers on the student evaluations, is not to be treated as one of the criteria, even if it is in the file. Thus, the UPPC must review the file, but rely only on the elements that relate to the contractual criteria. The UPPC members applied criteria not specifically noted in Article XIII as much of the basis for their decision to recommend denying tenure to Prof. Acevedo. It is fundamentally unfair to apply unknown criteria in making a tenure determination, which is the most important decision in an academic career. *(MCCC vs. Roxbury, Acevedo Tenure Denial, Arbitrator Marcia Greenbaum, July 30, 2009)*

CHANGE IN RANK – ARTICLE 14

Rank change - September Payroll - Advance to the same interval # on the new rank's grid. Effective on first payroll in academic year in which rank becomes effective - **September Payroll**.

Requirements (hired after 6/14/00)
Assistant - Bachelor's Degree
Associate - Master's Degree
Professor – Master's plus 30, Double Masters, C.A.G.S
+
Eligible for Consideration
2 Years in Rank as of September 15
+
Total Experience In Years per Degree Achieved
Asst. Prof. → 4(PhD), 5(MA+15), 6(MA)
Assoc. Prof. → 6(PhD), 7(MA+15), 8(MA)
Prof. → 8(PhD), 9(MA+30), 9(Double MA)
Total experience computation is in Article 14

or

Requirements (hired before 6/14/00)
Assistant – Master's Degree
Associate - Master's Degree
Professor – Master's
+
Eligible for Consideration
2 Years in Rank as of September 15
+
Experience In Years
Asst. Prof. → 4(PhD), 5(MA+15), 6(MA)
Assoc. Prof. → 6(PhD), 7(MA+15), 8(MA)
Prof. → 8(PhD), 9(MA+15), 10(MA)

+

PROFESSIONAL JUDGMENT DECISION

Additional Qualifications - Professional Judgment
At Least One of Four Criteria
↓
Significant Relevant Professional Development
Significant College and Community Service
Top 20% Student Evaluations in Most Recent 2 Successive SE
Highly Effective Instructional Performance

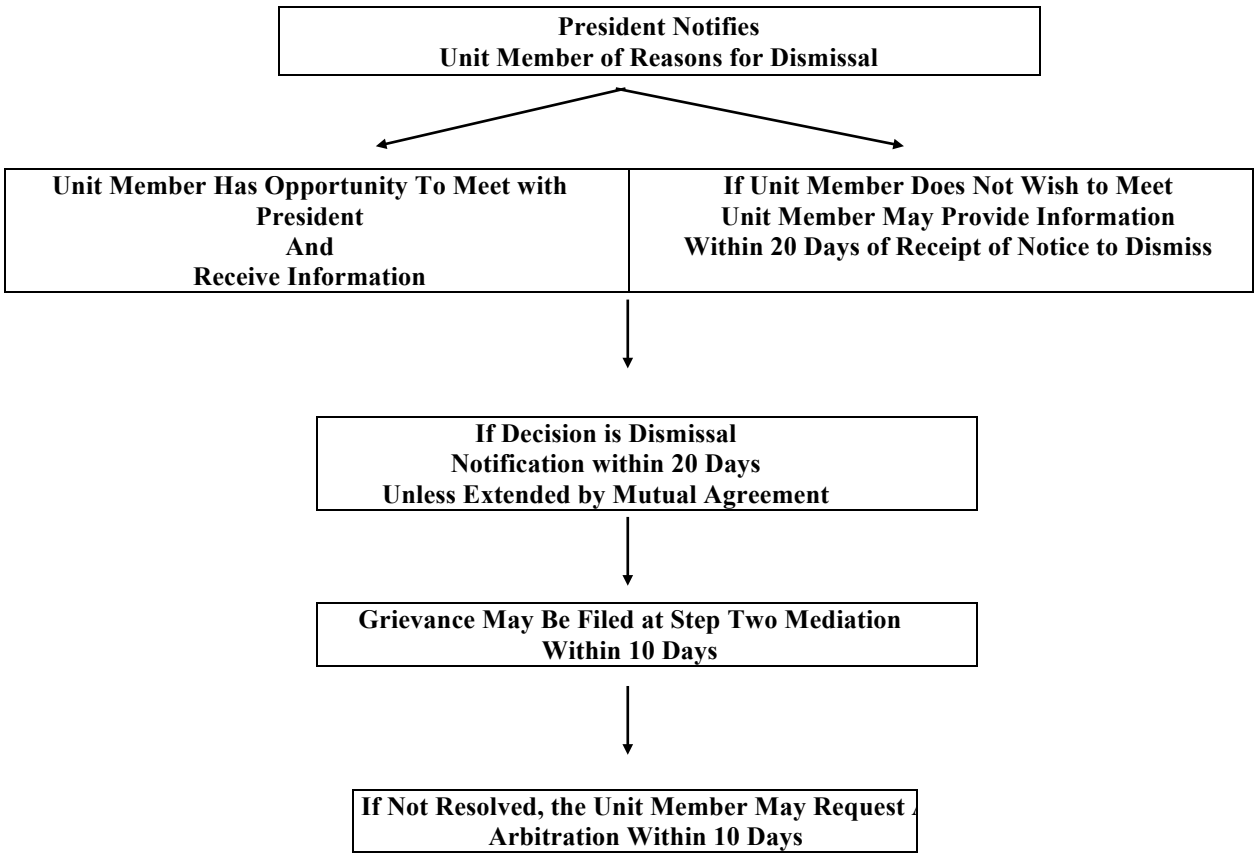
Timetable
Eligible - 2 Years in Rank as of 9/15
Automatically Considered
Dean's Recommendation - 3/15 of Third Year
President's Decision - 4/15 of Third Year
Title - 4/15 of Third Year in Rank or 9/1 of Fourth Year
Money – 9/1 of Fourth Year

1) Faculty with less than a Bachelor's may meet requirement through an equivalency of 2 years of directly related experience.
2) The president of the college may waive the time in rank and/or education and experience criteria requirement.

Dismissal

Discharging of a Unit Member for Just Cause Prior to The Expiration of a Contract Shall not be Invoked Except Through Due Process

Dismissal Procedure

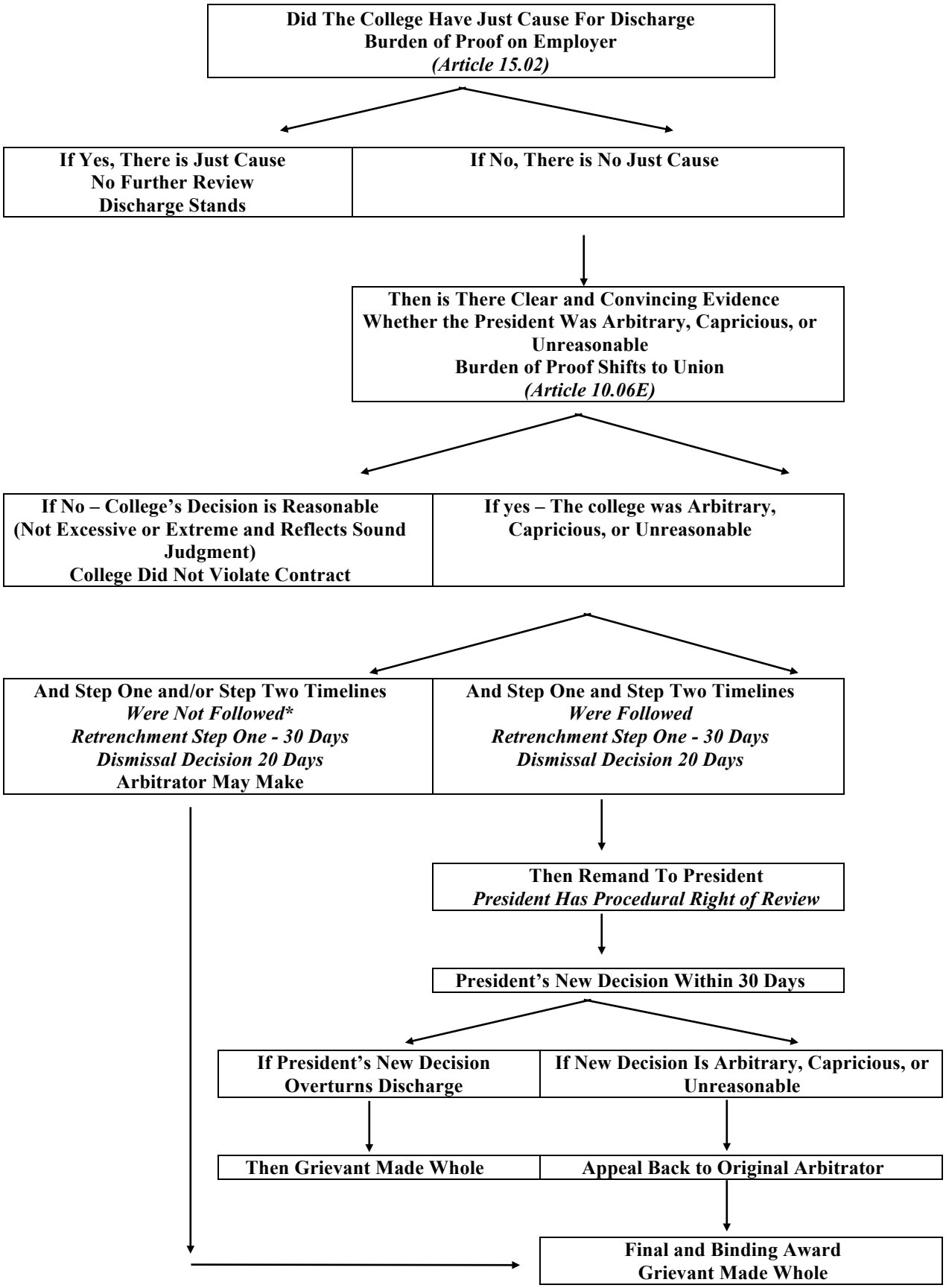


Discipline

Nothing in this Article shall preclude the Employer or its representatives from disciplining unit members by means less than discharge, including but not limited to suspension with or without pay, provided that such discipline shall be for just cause; and provided further that a unit member who is suspended without pay shall upon written request be entitled to a hearing within fourteen (14) calendar days after receipt of such request and to back pa in the event the suspension is reversed.

Appealing an Arbitration Decision - [A court reviewing an appeal of an arbitration decision is] strictly bound by an arbitrator's findings and legal conclusions, even if they appear erroneous, inconsistent, or unsupported by the record at the arbitration hearing. A matter submitted to arbitration is subject to a very narrow scope of review. Absent fraud, errors of law or fact are not sufficient grounds to set aside an award. Even a grossly erroneous arbitration decision is binding in the absence of fraud. An arbitrator's result may be wrong; it may appear unsupported; it may appear poorly reasoned; it may appear foolish. Yet, it may not be subject to court interference. We are thus bound by the arbitrator's findings and conclusions in this case, no matter the extent to which we may believe that they are "grossly erroneous." City of Lynn v. Thompson, 435 Mass. 54, 61-62 (2001) (internal citations and quotations omitted).

STANDARD OF REVIEW IN DISMISSAL AND RETRENCHMENT ARBITRATIONS



NB If the arbitrator determines that the Step One or Two Decision was not issued within applicable time limits, the arbitrator may in the arbitrator's first decision provide a binding award.

The Seven Tests of Just Cause

The basic principle underlying disciplinary procedures is that the employer must have "just cause" for imposing discipline. The MCCC Contract states, "…discipline shall be for just cause." Arbitrators define this standard even in the absence of contractual definition as follows:

1. Notice

Did the employer give the unit member forewarning or foreknowledge of the possible or probable disciplinary consequences of the unit member's conduct?

2. Reasonable Rules And Orders

Was the employer's rule of order reasonable?

3. Investigation

Did the employer, before disciplining the unit member, make an effort to discover whether the unit member's did in fact violate a rule or order of the employer?

4. Fair Investigation

Was the employer's investigation fair and objective?

5. Proof

Did the investigation produce substantial evidence of the unit member's misconduct?

6. Equal Treatment

Has the employer applied its rules, orders, and penalties even–handedly and without discrimination?

7. Penalty

Was the discipline in this case reasonable related to the seriousness of the offense, especially in light of the unit member's record of service with the employer? Was there progressive discipline?

Due Process

The MCCC considers the employee a first class citizen entitled to **due process** in the resolution of charges against that employee, or of complaints that the employee initiates. **Due process** does not protect the incompetent. **Due process** consists of adequate legal representation, trial by an impartial arbitrator, the right to testimony of witnesses and evidence, the right to cross-examine adverse witnesses, the right to appeal, and the right to be presumed innocent until proven guilty**.**

NOTABLE JUST CAUSE QUOTES

Standard of Review Two Tier Process - In this Arbitrator's opinion, Article 15.02 of the Agreement expressly gives bargaining unit members a substantive protection against discharge unless there is just cause for the discharge. However, Article 10.06 E gives a College President the procedural right to review his or her original decision to discharge a unit member if an arbitrator concludes that there was no just cause for the discharge and, based on clear and convincing evidence, the arbitrator further finds that the decision of the College President was arbitrary, capricious or unreasonable. Giving effect to both Article 10.06 and Article 15.02, this Arbitrator must determine initially whether [the] College had just cause to discharge Professor [Stinson.] If so, no further review is necessary. However, if the Arbitrator finds that there was no just cause for her discharge he then must determine, based on clear and convincing evidence, whether [the] President…was arbitrary, capricious or unreasonable in deciding to discharge [the] Professor…. If the Arbitrator finds that [the] President's… decision was arbitrary, capricious or unreasonable then Article 10.06 E requires that the matter be remanded to [the] President for her review. This is the standard mandated by the parties' collective bargaining agreement, in this Arbitrators opinion. (MBCC v. Stinson Arbitrator Michael Ryan; September 12, 2010 and QCC. v. Didzbalis, Robert O'Brien, Arbitrator, April 3, 2000).

Two-Tier Process - No Just Cause, But Reasonable – No Remedy - Other arbitrators, considering the relationship of Article 15.02 and Article 10.06 E have determined that they create a multilayered framework for analysis of the dismissal of a unit member. Consequently, in deciding this case, I apply the "two-tiered" approach adopted by several arbitrators including Arbitrator Ryan, whose award was supplied with the Briefs in this case. Under that analysis, in a dismissal, the arbitrator must first determine if there was just cause for the dismissal at Article 15.02. If so, the matter is denied. If not, under Article 10.06 E, the arbitrator is to determine if the action of the President or his designee was arbitrary, capricious or unreasonable. By shifting both the standard and the burden of proof, this analysis can produce seemingly inconsistent results. Thus, the Ryan Award found no just cause, but no clear and convincing evidence that the dismissal was unreasonable. [In this case] There was no just cause to discontinue the employment of the grievant. There is no clear and convincing evidence that the decision to terminate the grievant's employment was arbitrary, capricious or unreasonable. The College did not violate the agreement by denying the grievant access to personal sick leave or the sick leave bank. *(It focused almost entirely on the best interest of the students in having the position filled with less regard for the grievant's interests as a tenured staff member.)* That aspect of the grievance is denied. There is no remedy ordered. (The grievant vs. NSCC – Dismissal and Denial of Sick Leave, Arbitrator Wooters, July 1, 2016)

Two Tier-Process - No Just Cause, But Reasonable – No Remedy - In sum, I conclude that the Grievant's dismissal did not violate the collective bargaining agreement. The dismissal was not supported by just cause because he was not given fair notice of the training requirement necessary to retain his employment within the BMW program. Nonetheless, it has not been demonstrated by clear and convincing evidence that the decision to dismiss the Grievant was arbitrary, capricious, or unreasonable under these difficult circumstances. *(Retain the grievant, but lose the BMW Program because BMW determined that the grievant would no longer be affiliated with BMW)*. Therefore, there can be no remedy. (MBCC v. Stinson Arbitrator Michael Ryan September 12, 2010)

Notice "In order to hold a tenured professor accountable for performance deficiencies, the professor must be on clear notice of what is expected of him before discipline can be appropriate. The fact that the grievant was discharged in the middle of litigation against the College raises the possibility that the grievant's firing was related to the litigation. The performance charges were unsupported by prior notice to the grievant or the usual evaluation procedures. Although Rotation II in the spring of 2002 had some difficulties, these problems were not so egregious as to form a basis to terminate this tenured professor without any prior discipline or other efforts by the administration to solve the problems with the course. After reviewing all of the evidence, I conclude that the College did not have just cause to terminate the grievant." (Stutz, November 2004, Panse vs. MBCC)

Notice and Guilt "It is well established in arbitral jurisprudence that one element of establishing just cause is whether the employee was guilty of the conduct for which he was charged. Another element is whether, if guilty, the employer had put the employee on notice that such conduct would lead to discipline. Arbitrator Peace opined that the grievant had not received progressive discipline with respect to any of the matters set forth in the charges that were the basis for Dr. Jackson's dismissal." (Peace, September 12, 2005, Jackson vs. MBCC)

Release of Information **– "…**the Union asserted that in order to effectively represent its members facing disciplinary hearings, the identity of all witnesses, including students, is necessary. Without such information, the Union had no opportunity to evaluate credibility or bias of the witnesses. Finally, the Union argued that there was nothing in the relevant external law that either allows or requires the concealment of student names." The Appeals Court upheld arbitrator's award ordering school district to provide union with names of students whose statements were used against a teacher in a disciplinary investigation. The underlying Superior Court decision has a very good discussion of why student records law, student privacy rights, or FERPA do not prohibit release of student identities at the investigation stage. (Note: school district did provide names of students at arbitration; grievance concerned refusal to provide the names at the initial stages of the investigation.

Progressive Discipline – Delay in Taking Action - This case involves a long series of events beginning prior to September 26, 2007, and continuing through December 2007 into January 2008….The reason that I have cited this extensive list of events is that the College, for some reason, chose to allow these events to occur without taking independent action on them as they occurred. I acknowledge the College's assertion that they viewed these events as unfolding and they were trying to get their hands around the full scope of events. However, while doing so, new events continued to happen. This presents a problem. For example, if the College now asserts that on October 1 Professor Sergi acted in an inappropriate manner with Dean of Students Flaherty, it was incumbent upon the College to take prompt and immediate action by administering whatever discipline it felt was appropriate.

Management is not free to allow a situation to continue over weeks and months and then, in a single disciplinary action, assert that individual events, known as they occurred, now in retrospect are either worthy of discipline or worthy of consideration in an overall disciplinary action.

Progressive discipline rests on the theory that by taking timely disciplinary action as events occur, the employee is both put on notice that the actions were found to be worthy of discipline, and further notified that continued behavior of that sort will result in more severe discipline. I acknowledge full well that throughout this process, Professor Sergi appeared to believe that her behavior was appropriate under the circumstances. However, I am equally satisfied that as of October 1, 2007, the College, in the form of the Dean of Students, felt otherwise. By failing to take immediate action, based upon its belief that discipline was warranted, the College denied Professor Sergi and the Union the notice that a problem was viewed as existing, and if continued would result in further discipline…By not taking immediate disciplinary action, the College allowed those concerns to continue to be acted out by individuals rather than by the institutions who are parties to [the Contract]. (MCCC vs. Middlesex, Sergi Discipline Arbitrator Richard Higgins, August 28, 2009)

SELECTION COMMITTEES

BACKGROUND

Many unit members will either serve on selection committees pursuant to Article IV A or will apply for transfers pursuant to Article XVII or appointments pursuant to Article XVI.

Several grievances have arisen in which a unit member's transfer and appointment rights have been negatively affected by the actions of other unit members who sit on selection committees.

The following is a summary of the results of research by MTA's Division of Legal Services, of findings by the MCCC Grievance Coordinator and the MTA Consultant, and of arbitration decisions interpreting the collective bargaining agreement. Keep these important points in mind if you are on a selection committee or if you apply for another position in the system.

Unit Members on a Selection Committee

When participating in the selection process, rely on the candidates' application material, the personnel files, and the interviews.

If the candidate is ***applying within the same college***, the candidate's personnel file at that college should be consulted by the administration.

If the candidate ***is applying from another college***, the administration is not required to consult the candidate's personnel file. The candidate has the responsibility to introduce materials from the personnel file into the selection process.

It is advisable to ***avoid*** basing your decisions about a candidate on opinions you have developed outside the selection process.

Statements you make, orally or in writing, as a member of a selection committee are ***discoverable*** in grievances.

The Unit Member as a Candidate

If you are a ***full-time unit member***, write your application letter as a transfer request to the president of the receiving college and send a copy to the president of the college from which transferred is desired. Follow the procedures in Article XVII.

If you are a ***part-time day or DCE unit member***, apply under Article XVI .

Be sure your resume and cover letter point out how your credentials and experience ***match the qualifications and duties/responsibilities*** in the job posting. Take care to point this out in the interviews as well.

Update your personnel file with information about your strengths and contributions to the college. Verify that the administration and selection committees are referring to your personnel file if you are an in-college applicant.

What is a Vacancy?

Step One Decision: "The filling of a new faculty position with an administrator without posting the position constitutes... "no vacancy, a special notice of vacancy, and a reallocation of resources with no funding for the position (MCCC vs. Bunker Hill, Mon O'Shea, 1989)

Above Decision Rejected in Arbitration

"The 'funding' of a position is not some magical circumstance by which someone anoints a position as 'funded'. Funding simply means that someone is performing the duties assigned to a particular position and is getting paid by the Employer. It does not mean that the College 'funds' only that employee and the employee 'owns' those funds. When the College pays someone to perform work assigned to a particular job title, it has funds 'available' for that position. The College simply cannot operate in a vacuum and on the basis of its own definitions." (MCCC vs. Massasoit , Arbitrator James Cooper, November 25, 1992)

Qualifications

"There is nothing in the contract provision, statute or case cited by the College to justify ignoring the express requirements of its own posting. Grievant was best qualified for the sole reason the new appointee (outside candidate) did not meet the minimum requirements stated in the job posting." (MCCC vs. N. Essex, Arbitrator Edward Pinkus, August 3, 1989)

It should be noted that this finding does not limit the College's ability to determine the qualifications that it will seek in the candidates for vacancies. It finds, rather, that having set forth the qualifications that it was going to look for, it had to follow the agreed-upon process to implement the search that it stated it was going to undertake. The College is contractually barred from modifying the parameters that it had itself established. No view is expressed on what is a permissible means of modifying those parameters, other than that such a change may not be unannounced. (MCCC vs. ROXBURY, Arbitrator John Van N. Dorr III, September 25, 1996)

"...the Union has the burden of providing that the grievant was at least 'equally best qualified' ...Upon such a showing, the burden of persuasion and of producing evidence shifts to management to demonstrate that a real reason for its decision existed and, thus, that its conclusion that the grievant was not best qualified, or equally best qualified, was neither arbitrary, capricious nor unreasonable. It is noteworthy that the equality of qualifications at issue is not an exact equality, but rather concerns whether qualifications are approximately or substantially equal. (MCCC vs. N. Essex, Arbitrator Michael Stutz, November 3, 1992)

Rights of Part-time Day Unit Members Transferred to DCE

"While the academic years that Grievant spent in DCE did not add to his bargaining unit seniority, they did not deprive him of bargaining unit status." [Priority of Consideration] (MCCC vs. N. Shore, Arbitrator Tim Bornstein, January 16, 1996)

NOTABLE APPOINTMENT SALARY QUOTES

Above Classification - The parties agree that new hires shall normally be placed at the salary calculated pursuant to the Compensation Structure set forth in the Collective Bargaining Agreement and that such salaries shall not be rounded off. 2) The parties acknowledge that there may be exceptions where the College hires above the Compensation Structure Grid under the conditions set forth in the Classification Study referenced in the Collective Bargaining Agreement. 3) The parties agree that if the College seeks to hire a candidate above the Compensation Structure set forth in the Collective Bargaining Agreement, appropriate exception(s) to the classification structure and rationale supporting the hiring recommendation shall be documented in writing. 4) The documentation shall be placed in the new employee's personnel file and shall be made available to the MCCC upon request in the same time frame consistent with the transmittal of M002/M004 forms for new employees. *(MCCC vs. MBCC, Arbitration Resolution – Non-precedent setting, July 6, 2009)*

Holyoke Above Classification - Holyoke Community College shall make hiring salary determinations in accord with the appropriate classification levels. Exceptions to an initial classification level salary should be specified in a written hiring recommendation memorandum to the College President. The document should also contain a detailed rationale for the enhanced hiring salary. The recommendation and rationale should be made available to the union upon request. *(MCCC vs. HCC, Chapter Salary Equity Grievance, Arbitrator Tammy Brynie, February 13, 2009)*

Quinsigamond Above Classification - New hires shall normally be placed at the salary calculated pursuant to the Compensation Structure set forth in the Collective Bargaining Agreement and that such salaries shall not be rounded off. There may be exceptions where the College hires above the Compensation Structure Grid under the conditions set forth in the Classification Study referenced in the Collective Bargaining Agreement. If the College seeks to hire a candidate above the Compensation Structure set forth in the Collective Bargaining Agreement, appropriate exception(s) to the classification structure and rationale supporting the hiring recommendation shall be documented in writing. The documentation shall be placed in the new employee's personnel file and shall be made available to the MCCC upon request in the time frame consistent with the transmittal of M0021M004 forms for new employees *(Richard Boulanger 6/23/10, QCC Salary Placement)*

AGREEMENT **Executed 1/5/04**

BETWEEN

THE MASSACHUSETTS BORAD OF HIGHER EDUCATION

AND THE

MASSACHUSETTS TEACHERS ASSOCIATION/

MASSASCHUSETTS COMMUNITY COLLEGE COUNCIL

AAA#11 390 2396 01

In full resolution of the above captioned grievance/arbitration regarding posting of system-wide unit positions, the Massachusetts Community College Council/Massachusetts Teachers Association (Association) and the Massachusetts Board of Higher Education (Board),the Community Colleges (Colleges) hereby agree as follows:

1. Colleges will include on job postings for vacancies for MCCC day unit positions the collective bargaining job title for the position, as listed in Article I, Appendix A, and supplemented by additional titles added by the classification study, if a title for the position has been established. Colleges will also include the classification grade number and the designated salary rate or range for that title for full time positions. Part-time hourly position postings will include the collective bargaining title from Appendix A and additional titles added by the classification study that the college determines most nearly fits the position, and posting will include the hourly rate(s).

2. For new MCCC day unit full-time positions for which no title has been established in the classification study, Colleges will include on job postings for vacancies the temporary collective bargaining job title listed in Article I, Appendix A, and supplemented by additional titles added by the classification study, which the college determines most nearly fits the position with the words "pending and subject to the outcome of the classification study determination." The salary rate or pay grade for the position will be that for the existing title, and shall be included with the words: "pending and subject to the outcome of the classification study."

3. New bargaining unit job titles will be classified consistent with the classification study methodology, as described in paragraph 2 of the memorandum of agreement, attached.

4. Consistent with the memorandum of agreement, attached, and understanding of the Colleges and Association, full time unit members assigned new job titles, after they have been classified pursuant to the classification study, and full time unit members assigned job titles which are subject of this grievance, as reflected on the attached list, may appeal their job classification and/or personal data points to the Appeals Review Board if they have not already had the opportunity to do so. Consistent with the memorandum of agreement attached, salary correction will be retroactive to the earliest date at which the correction was appropriate.

5. Upon execution of this Agreement, the Association shall request that AAA Case #11 390 02396 1, posting of system wide unit positions, be put in abeyance. Upon receipt of classification appeal forms by those full time bargaining unit members who wish to appeal and are subject of this grievance, as reflected in the attached list, the Union will withdraw the case from arbitration.

6. This agreement is entered into without any express or implied admission that the Board, the College, their employees, agents, assigns, and/or attorneys, or have violated the Collective Bargaining Agreement or and statutes, laws or regulations.

7. This Agreement shall not constitute any precedent for any other matter, and shall not prohibit the parties from negotiating modifications to this agreement or future agreements through collective bargaining.

ARTICLE 17 – TRANSFER

Arbitrations-Day	Number
Awards	11
Dismissals	9

1. Mass. Bay to Bunker Hill – Gruss – Arbitrator J. Higgins - 1983
Dismissed: 1) Presidents are entitled to notice if an applicant is seeking a transfer. 2) Screening Committee's evaluation of applicants' qualifications meets the elements of "priority of consideration."

2. N. Essex- Lizotte – Arbitrator Pinkus – 1989
Award: 1) College cannot ignore requirements of posting. 2) Personnel file must be consulted.

3. **N. Essex – VanWert – Arbitrator Stutz – 1992** –
Award: 1) The equality of qualifications is not an exact equality, but rather concerns whether qualifications are approximately equal. 2)Process was tainted by improper consideration of an incident that had been settled and should have been removed from the personnel file.

4. Bunker Hill – Bentley – Arbitrator Ryan – 1994
Award: Each Community College is required to consult its personnel file for a unit member employee in making judgments regarding the unit member's application to fill a vacancy.

5. Bunker Hill To Quinsigamond - Therrien – Arbitrator Ryan – 1994
Dismissed: Despite strong paper credentials, a poor performance during an interview is significant enough to determine an applicant not equally best qualified.

6. N. Shore - M. Sherf – Arbitrator Bornstein – 1995
Award: 1) PT day unit members retain day rights when transferred to DCE/day. 2) Personnel file must be consulted.

7. N. Shore - M. Sherf – Arbitrator Bornstein - 1996
Dismissed: "Diversity" and "multiculturalism" are increasingly common notions in today's workplace and these qualifications are not needed to be explicitly stated in a job posting. The college had a legal obligation to embrace affirmative action.

8. Roxbury - Kiefson-Roberts – Arbitrator Dorr 1996
Award: The use of unrevealed criteria as a basis for determining relative qualifications was contractually improper.

9. **Holyoke to Berkshire – Stachowiak - Arbitrator Overton – 1996** ***Dismissed:*** 1) A terminal degree although not a requirement on a job posting can be considered in determining a person's breadth and depth of knowledge in a particular subject matter. 2) Preferred qualifications are proper qualifications to be used in a screening process..

10. Berkshire – Bradway – Arbitrator Bloodsworth – 1998
Dismissed: The college can rely on an undisclosed criterion in the screening process to determine if a candidate's attribute exceeds the basic requirement in a job posting.

11. Massasoit – Johnson– Arbitrator Gosline – 1999

Award: A decision based on an unreasonable and an unfair process based on inaccurate and biased information cannot stand.

12. Massasoit – Davaoli – Arbitrator Ryan – 1999
Award: A decision based on an unreasonable and an unfair process based on inaccurate and biased information cannot stand.

13. Bunker Hill – Dupuis – Arbitrator Garraty – 1999
Award: The lack of evidence of a substantive interview (no uniform questions, no written questions, no notes, no reference checks, no review of recent employment history), combined with the College's failure to vacate the position as ordered, indicates that the College, indeed, go through the motions of a reselection process.

14. Mass. Bay – Willett – Arbitrator Bornstein – 1999
Award: 1) Grievance is arbitrable under the DCE unit contract. It is not arbitrable under the day unit contract. 2) Arbitral precedent under the day contract can be considered in a DCE Grievance filed under Article XVI of the day contract. The analysis of the case under the DCE Contract is essentially identical to the day unit contract. The arbitrator's review is limited to whether the application of the professional judgment of the President was arbitrary, capricious, or unreasonable. 3) Since the grievant's qualifications exceeded or were substantially equal to the appointee in all aspects but one, and the grievant's resume indicated the grievant's qualifications in this one area might meet the required minimum, there was no reasonable basis for not interviewing the grievant.

15. Quinsigamond – Dyer-Duguay – Arbitrator Boulanger – 1999
Award : The Employer's failure to apply selection criteria in the same manner to the grievant as it did to the successful applicant leads to a conclusion that it evaluated the grievant in an arbitrary, capricious and unreasonable manner. The arbitrator stated that 1) all minimum and preferred qualifications must be evaluated as stated on the posting and they were not, 2) the employer failed its obligation to scrutinize the grievant's personnel file to identify the necessary qualifications and experience required by the vacancy. The Arbitrator awarded back pay and the appointment. Superior Court upheld motion to vacate arbitration award in part. The nondelegability doctrine holds that it is the exclusive management prerogative to specify the qualifications necessary for a faculty appointment and to hire personnel. Appointment to a position is a nondelegable authority of the Employer. Court mandated back pay for two years.

16. **Quinsigamond – Mclean – Arbitrator Brown – 1999**
Dismissed: The Employer did not violate the contract when in the Fall of 1997 it did not appoint the grievant to a full-time faculty position in the Hotel/Restaurant Management Program at Quinsigamond Community College. The process was not flawed and the record reflects that the Employer did not abuse its discretion under the negotiated standard for filling vacancies when it deemed the appointee was best qualified**.**

Massasoit – Rosenthal – Arbitrator Cochran – 2000
Award: The Employer violated Articles 4, 16, 17. The selection process was so flawed that the Employer and the Screening Committee acted in an arbitrary, capricious, and unreasonable manner towards the grievant's candidacy, to her detriment**.**
Remedy: Appointment to position and made whole retroactive to September 1, 1997 with interest.

17. Quinsigamond – Malkasian – Arbitrator Bloodsworth – 2003
Dismissed: The College did not violate Article 4 and Article 16 of the Contract by not awarding the Dental Hygiene faculty position in June 2001 to Ann Malkasian. The arbitrator's opinion as to whether or not the two candidates in this case were <u>equally</u> <u>best</u> <u>qualified</u> is irrelevant." (Emphasis added) The

arbitrator opined that here the Academic Vice President made a determination that the unit member from Middlesex was best qualified and this judgment or opinion was supported by substantial evidence and was not otherwise flawed or tainted. The union's case showing that the candidates were equal was hindered when the unit members on the Search Committee refused to testify regarding the search process, the decision to unrank the candidates, and reasons for the rankings/comments on the search committee summary sheets. In the mediation process, the committee members gave their assurances to the grievant that they would cooperate in the grievance process.

18. Bunker Hill – Bernard – Arbitrator Garraty – 2004
Dismissed: The College did not violate Articles 4, 5, and 16.02 of the Contract by failing to appoint the grievant to the 2002 ESL position.
Award: The College did violate Article 4, 5, and 16.02 of the Contract by conducting the selection process in an arbitrary, capricious, and unreasonable manner. The union's remedy of a monetary award was denied.

19. Mt. Wachusettt - DCE – Binder – Arbitrator Cooper – 2006
Securing Information: The college has a fundamental obligation to keep data at least until the expiration of the period for a passed over applicant to file a grievance. The college is forewarned that the union's claim with respect to information should not be sloughed off and in the future data sheets and notes should be secured by the Director of Human Resources at least until the expiration of the period for a passed over applicant to file a grievance.
Interviews: There is nothing which precludes a search committee from relying more heavily on the results of a one hour interview rather than a year-in year-out sustained effort by a teacher who for ten years was consistently rated favorably by her students.

20. Holyoke – Hebert – Arbitrator Irvings - 2009
Award: The arbitrator determined that the College violated the Contract by failing to give priority of consideration to Elizabeth Hebert, a retrenched faculty member who was more qualified than the person hired into the position. Arbitrator Irvings concluded that "to say that the appointee was better qualified than a former tenured assistant professor with over ten years of evaluated experience teaching the target population strains credulity." The arbitrator directed the College to appoint the grievant to a full-time position in the Nutrition Department at the College, retroactive to September 2007 with full back pay and benefits. As an alternative, the arbitrator ordered that Hebert be paid the difference between what she would have earned, if appointed, less interim earnings for each year the position continues to exist.
Motion to Vacate: On April 2, 2009, the employer filed an Application to Vacate/Modify the final and binding arbitration award in Superior Court. The employer claims that the arbitrator by 1) ordering the appointment of the grievant to a position, 2) substituting his judgment for that of the President of the College, 3) awarding monetary damages, 4) finding the grievant best qualified, and 5) intruding into areas exclusively reserved to the College, exceeded his authority in violation of M.G.L. 15A, § 22, and the arbitration award must be vacated under M.G.L. c. 150C, §11(a)(3). MTA Attorney Will Evans has been assigned this case and has filed a motion to confirm the arbitration award and to deny the employer's complaint to vacate the award stating that the arbitration award is well within the arbitrator's authority under the parties' contract. In addition, Attorney Evans 1) requested that the Court schedule a hearing regarding the employer's complaint.

2) filed a motion to strike evidence submitted improperly by the employer after the arbitration hearing was closed, and 3) pursuant to M.G.L c.231, §6C, filed a motion for interest on the monetary damages commencing at the date of the contract breach. It is the Union's position that the parties negotiated a contract that defines the procedures for the selection of unit members for vacant positions and negotiated a grievance process that allows the union to challenge professional judgment decisions. Since the college presidents bound themselves to follow these certain contractual procedures with respect to

appointment and failure to comply with those procedures was properly grieved and found by an arbitrator to be arbitrary, capricious, and unreasonable, then the arbitrator certainly acted within his authority to make a finding and award.

APPEALS COURT

M.G.L. c.l5A, §22 - Non-delegability Doctrine

(Excerpts taken from Civil Action commenced in the Superior Court on April 2, 2009)

An arbitrator exceeds his authority when he intrudes upon decisions that cannot be delegated, but that are instead left by statute to the exclusive managerial control of designated public officials. The Law specifically delegates to the community college administrators the responsibility to "appoint, transfer, dismiss, promote and award tenure to all personnel of said institution" and the Supreme Judicial Court long has recognized that "specific appointment determinations" cannot be delegated to an arbitrator. While a college cannot delegate specific appointment decisions, it can bind itself to the process that is to be used in making such decisions, including the criteria by which the candidates will be judged and these procedures are enforceable. Following these principles, it is beyond the authority of an arbitrator to question the judgment that a college administration exercises in evaluating candidates for a faculty appointment, regardless of whether the applicable collective bargaining agreement can be interpreted as subjecting such issues to arbitration. Put differently, whether a college administration erred in exercising its judgment as to which candidate was best qualified is not an arbitrable issue. Accordingly, to the extent that the arbitrator here substituted his judgment for that of the college administration in making his own evaluation of the job candidates, that decision cannot stand. We are not done, however, because the union argues that the arbitrator's decision can be sustained without intruding upon matters of judgment. Specifically, it contends that the college was not free to choose the appointee over the grievant because the appointee was per se unqualified for the posted position given that she lacked a master's degree (a "required" qualification, as propounded by the college). The college counters that the arbitrator's reasoning lacks an appreciation for how the academic world weighs such credentials. It suggests that being a doctoral candidate with "all but dissertation" (ABO) status is generally considered to provide higher rank than having a mere master's degree, and that its judgment in this regard cannot be second guessed. This argument is not without some force. However, we ultimately conclude that, having drafted its posting expressly to require that candidates have a master's degree, the college is not free to determine that a candidate who had obtained neither a master's degree nor a higher degree nevertheless possessed "better" credentials than one with a master's degree. Having established the minimum job requirements as it did, the college had a good faith obligation to employ them, and it lay within the arbitrator's purview to determine whether the college had done so.

REMEDY: It does not follow, however, that the arbitrator then could appoint grievant an assistant professor against the wishes of the college administration. The cases consistently recognize that arbitrators do not have authority to grant such relief, because it would directly intrude upon the appointment authority left to the exclusive purview of the college administration. Since the college acknowledged at oral argument, if it erred by hiring someone who did not meet the posted job requirements, then the obvious way to address the problem directly would be to start the process again. A new search would give all potential job applicants a fair opportunity to apply (thus mooting the procedural violation), while preserving to the college administration its exclusive authority to determine the hiring needs of the college and to make specific appointment decisions. The court directed that, in the event the college intends to maintain the contested position, the union is entitled to have it reposted, using whichever criteria the college administration determines best serve the college's needs, consistent with its statutory mandates. In addition, it is within the arbitrator's power to award damages for the college's violation of the agreement, so long as the damages were in an amount that would not have the effect of compelling reinstatement. The damages that the arbitrator issued here plainly run afoul of this last proviso. Indeed, the arbitrator recognized that his award could coerce the college to appoint the grievant because doing so would "result in the college

actually getting something for the money it will otherwise have to spend for a purely monetary remedy."

Although full-scale damages plainly exceed the arbitrator's authority, this does not rule out the possibility of the grievant obtaining more limited damages. What, if any, damages might be appropriate is, at this point, far from obvious given that the collective bargaining agreement expressly limits the compensation that an arbitrator can award for a breach of the agreement to "actual damages directly attributable to such breach." Nevertheless, under the cases, the question of damages is one for the arbitrator to resolve so long as he does not exceed his authority.

APPEALS COURT RULING: In light of the foregoing, we reverse the [Superior Court] judgment vacating the arbitrator's award. A new judgment shall enter reversing so much of the arbitrator's award as ordered that the grievant be appointed with full back pay and benefits, or that she receive full pay for each year the position exists. The new judgment also should remand the case to the arbitrator for further proceedings consistent with this opinion.

REMAND DECISION -. On remand, Arbitrator Irvings issued a decision finding that grievant is not entitled to any monetary damages. While the Arbitrator affirmed his ruling that Holyoke Community College violated the contract by hiring someone who did not meet the minimum posting requirements, he held that Grievant is not entitled to damages since another finalist had a superior right to the position. The Arbitrator interpreted the decision of the Appeals Court as barring him from disturbing the College's determination that the other finalist was better qualified than the Grievant, given that other finalist satisfied all the posting requirements even though the appointee did not. *(Hebert – HCC – Irvings Award - March 2, 2009) Appeals Court ordered remand back to arbitrator for damages.*

ARTICLE 18 - NOTICES

In accordance with Article 18 of the Day Unit Contract, all contractual notices, recommendations, reports, and official communications shall be in writing and shall be deemed to be given if delivered by:

- Hand
- Mail Certified Mail, Return Receipt Requested First Class Mail
- Email to the Unit Member's Email Address, Return Receipt Requested
- Facsimile Transmissions

Notice to Employer Required to Opt Out of Email Notification

Unit members may **opt out of email communications** under the following conditions:

- **All Unit Members**
  - Outside of Fall and Spring Semesters, When Off Contract, or When on Leave:
    - By Written Notice to Director of Human Resources and Immediate Supervisor

- **Part-time Unit Professional Staff and Faculty**
  - As above, but also can **opt out for any duration**.
    - By Written Notice to Director of Human Resources and Immediate Supervisor

RETRENCHMENT – ARTICLE 19

- Non-State Funded Full-time Unit Members Excluded

BASIS OF RETRENCHMENT

BONA FIDE

- Financial Reasons
- Discontinuance, reduction or shift in academic emphasis
- Discontinuance, reduction or shift in professional service needs
- Other related programmatic reasons

The basis for retrenchment is not arbitrable, but the rationale supporting the basis and the process is arbitrable.

REQUIREMENTS

- Notification (MCCC President, Chapter President, Unit Member**)**
- Consultation (Meet & Confer, Reasons, Accurate Information)
- Retrenchment Plan
- Utilize Attrition
- Reassignment (Vacancy, Qualified, 8 Section Rule)
- Recall
- Priority of Consideration for System-wide Vacancies

PROCEDURE

Order of Retrenchment in Work Area

1. Part-time Unit Members (Including DCE Work Prior to 4:00 P.M.)
2. Temporary Employees
3. Unit Members by Reverse Seniority

SENIORITY & QUALIFICATIONS

- No Relative Ability (Unit Members Retained Qualified to Teach Remaining Courses)
- Least Senior in Work is Retrenched First (Professional Judgment if Equal Seniority)
- 8 Section Rule ⇒ College-Wide Seniority & No Prorata Accrual of Department Seniority

Relative Ability: "...a relative ability clause, which permits the Employer to retain a junior faculty member if he/she is determined BETTER qualified than a senior member...this is not so (in the MCCC Contract)." Seniority rule on retrenchments may be aborted only when not to do so would prevent the offering of courses in intends to make available to the student body. (MCCC vs. Holyoke, Arbitrator Paul Dorr, November 1, 1991)

***Transfer of Duties*:** "The college has the right to transfer some of a retrenched unit members duties out of the bargaining unit without recalling the retrenched unit member." (MCCC vs. Holyoke, Arbitrator Michael Stutz, October 28, 1991)

***Intermingling of Funds*:** "Since the College elected to support the ESL [grant funded & McNair 03 funded] program with regular maintenance funds, these people could no longer be called grant employees [Article XI and Article XIX applies]" (MCCC vs. N. Shore, Arbitrator Mark Irvings, December 1, 1989)

Exclusion: "...If the decision is made to non-reappoint an employee in his/her first three years of service [whether or not it is a retrenchment], and notice of that decision is properly given, then the employee would have 'no recourse'." (MCCC vs. N. Shore, Arbitrator John Van N. Dorr III, January 24, 1991)

Reassignment: "[The reassignment] clause sets certain conditions for reassignment. First, there must be an 'existing vacancy'. Secondly, the unit member must be 'qualified....as determined by the President... or his/her designee. This time the existing vacancy was a slot ...that was a vacancy, three sections in one department, one in another." (MCCC vs. Holyoke, Arbitrator Paul J. Dorr, November 1, 1991)

"Considering the fact that 4 courses is approximately the normal load of a full-time faculty member, the 13 courses taught by part-time instructors plainly evidence that as least 1 vacancy existed in the Mathematics Department." (MCCC vs. Roxbury, Arbitrator Michael Stutz, May 2, 1993)

Equal Seniority: "...It was clearly reasonable for management to rely upon the evaluations of the grievant and the other two unit members with equal seniority as a basis for the difficult retrenchment decision at issue." (MCCC vs. Holyoke, Arbitrator Michael Stutz, October 28, 1991)

Bumping: "I cannot in good conscience conclude that the parties intended such a result [prorata accrual of department seniority in a second work area] under the circumstances of this case, based on the language itself.... I do not find support for such bumping rights in the collective bargaining agreement." (MCCC vs. Berkshire, Arbitrator Michael Stutz, October 6, 1992)

***Consultation - Meet and Confer*:** "The Union must be provided with an opportunity to scrutinize management's decision and to offer alternatives. In this fashion, the representatives of those most directly affected by the impending retrenchment decisions may provide input to the decision-makers, and be assured that their input will be reasonably considered by management, one on one, across meeting tables." [Organizational charts with new hires and reassignments, and a retrenchment plan that sets our justifications, rationale and timeframes for each of the departments affected was withheld from the Union] (MCCC vs. Roxbury, Arbitrator Michael Stutz, August 2, 1993)

No Grievance Decisions – Binding Award - It was undisputed that the Step One decisions were not issued in a timely fashion. Therefore, I am authorized to provide a binding award. *(MCCC vs. Roxbury, Arbitrator Michael Stutz, August 2, 1993)*

In any event, the Step Two decision was never issued. Dennis Fitzgerald, State-wide Grievance Coordinator for the Union, testified at the arbitration hearing in this matter that no Step Two grievance decision was never rendered by the College. Based upon the above it is appropriate for this arbitrator to determine that the Step One and Two decisions were not issued within the applicable time limits in the grievance procedure. Having so decided, I may make a binding award. *(MCCC vs. Roxbury, Arbitrator Michael Stutz, May 2, 1993)*

New Full-Time Hire Initial Classification

New Hires Submit Data Form within 10 Days of Hire
College Forwards M002-Faculty or M004-PS to New Hire and MCCC
Within 30 Days of Hire
If Hired Above Classification, then Rationale Supplied with M002 & M004

All New Unit Members - Basis for Points

Academic Credentials – Faculty 40, 50, 75
Academic Credentials – Prof. Staff 15, 30, 40, 75
Rank (Faculty) - 20
MCCS Experience – 1 yr. = 8
Seniority – 1 yr. = 8
Outside Experience – 1 yr. = 4 or 8
License and/or Certifications – Each Unit x 3

CLASSIFICATION APPEAL PROCESS

The objective of the Classification Appeals Process is to achieve timely classification and compensation decisions through placement of responsibility for the classification process at the local college and to provide for timely resolution of any appeal of those decisions. The Classification Appeal Process and the Classification Appeals Form 2 is located in the Contract.

Timetable For Appeals

Data Form Submitted by New Hire - 10 Days of Start Date

Point Calculation To Unit Member & MCCC - 30 Days of Start Date
M002 to Faculty & M004 to Professional Staff

Request Point Review - 60 Days of Receipt of Point Calculation
OR
Request Professional Staff Reclassification – Audit

College's Response
Points - 14 Days
Audit - 90 Days

If Denied
Appeal to Committee - 10 Days

If Awarded
Calculation Changes - Effective Date of Hire

Reclassification Changes - Retroactive to first payroll after original request using existing point system in place.

Decision is final and binding and not grievable unless college fails to implement.

MCCC – Placement Structure For New Faculty and Faculty Transfers

Minimum Salary - Bachelor's Degree (or equivalent) – See Table Below Minimum Salary - Master's Degree - See Table Below										
Academic Credentials	* Masters + 30 graduate credit hours or Double Masters or C.A.G.S., MFA, MSW, MA-Clinical Mental Health Counseling			* Masters + 45 graduate credit hours				Doctorate		
Max 75 points	40 points			50 points				75 points		
Professional Ranking	Instructor		Assistant Professor			Associate Professor		Professor		
Max 60 points	0 points		20 points			40 points		60 points		
MCCS Experience	Teaching Position Full-time			Non-Teaching Position Full-time			Teaching Position Part-time			
Max 320 points	1 year = 8 points Maximum years = 40			1 year = 8 points maximum years = 20			Each 3 hour course earns 1 point Maximum credits = 48			
Outside Experience	Elementary (K-6)	Secondary (7-12)		College Level Teaching				Non-teaching Experience		
	Full-time Must be directly related to the teaching field	Full-time		Full-time	Part-time prior to full-time employment			Full-time Must be directly related To the teaching field		
Max 160 points	1 year = 4 points Maximum years = 3	1 year = 4 points Maximum years = 8		1 year = 8 points Maximum years = 20	3 credit hours = 1 point Maximum credits = 48			1 year = 4 points Maximum years = 20		
Seniority Max 320 points	System-wide seniority 10-15-97 1 Seniority Year = 8 points Maximum years = 40									
Performance Evaluation	Each successful 3rd year evaluation as defined by the current evaluation process.									
Max 100 points	10 points (per evaluation) Maximum Allowed= 100 points									
License and/or Certifications	Points awarded = 3 times the unit value in the licensure and certification report					Related but not required in field				
Professional Development	Each 120 Professional Continuing Educational Units or Equivalent 0 points					*Accumulation of credit cannot start until program is developed and approved.* Eligible for incentive every two years				

*Must be part of an academic program of study.

New Hires and Transfer for Faculty

	MA	NO MA	POINTS
YEAR	Minimum Salary	Minimum Salary	Point Val
2018	$45,771	$42,453	$53.95
2019	$45,771	$42,453	$53.95
2020	$45,771	$42,453	$53.95

MCCC - Placement Structure For New FT Professional Staff, Reclassifications, & Transfers*

Academic Credentials Max 75 points	Associates 0 points	Bachelors 15 points	Masters 30 points	* *Masters + 30 graduate credit hours or Double Masters or C. A.G. S., MFA, MSW, MA-Clinical Mental Health Counseling 40 points	Masters +45 50 Points Doctorate 75 points

MCCS Experience Max 320 points	Unit Professional Position Full-time I year = 8 points Maximum years = 40	Teaching Position Full-time I year= 8 points Maximum years = 20	Unit Professional Position Part-time 250 hours= I point Maximum hours = 4,000	
External Experience Max 160 points	Related Experience Full-time 1 year = 8 points Maximum = 20 Years	Elementary (K-6) Full-time 1 year = 4 points Maximum = 3 Years	Secondary (7-12) Full-time I year 4 points Maximum = 8 Years	College Level Teaching Full-time 1 year = 8 points Maximum = 8 Years
Seniority Max 320 points	System-wide seniority 10-15-97 I Seniority Year= 8 points			
Performance Evaluation Mm 100 points	Each successful 3rd year evaluation as defined by the current evaluation process. 10 points (per evaluation) Maximum Allowed= IOU points			
License and/or Certifications	Points awarded = 3 times the unit value in the licensure and certification report	Related but not required in field		
Professional Development	Each 120 Professional Continuing Educational Units or Equivalent 0 points	*Accumulation of credit cannot start until program is developed and approved.* Eligible for incentive every two years		

**Must be part of an academic program of study.

New Hires and Transfers of Unit Professional Staff

	18-Jul		19-Jul		20-Jul	
Pay Grade	Minimum Salary	Point Value	Minimum Salary	Point Value	Minimum Salary	Point Value
2	$40,353	$20.91	$40,353	$21.33	$40,353	$21.33
3	$45,749	$23.70	$45,749	$24.17	$45,749	$24.17
4	$50,705	$26.27	$50,705	$26.80	$50,705	$26.80
5	$56,055	$29.04	$56,055	$29.62	$56,055	$29.62
6	$61,138	$31.64	$61,138	$32.27	$61,138	$32.27
7	$66,464	$34.43	$66,464	$35.12	$66,464	$35.12

*** Reclassification Subject to 20.07**

In the event the classification specification calculation does not provide an increase in salary of at least the difference between the minimum salaries of the two grades, the College shall place any such individual on the salary grid at the amount closest to at least the actual difference between the grades and place a memo in the personnel file.
The unit member's reclassification salary will be calculated using the point system in place at the time of this agreement, or as modified by the parties and shall be effective at the beginning of the payroll period next following the date of the request for reclassification was submitted.

2018 – 2021 SALARY INCREASES

Full-Time Unit Members

Effective July 1, 2018 = 2.0%
Effective July 1, 2019 = 2.0%
Effective July 1, 2020 = 2.0%

Part-Time Unit Members

Effective July 1, 2018 = 2.0% - Minimum $28.86 per hour
Effective July 1, 2019 = 2.0% - Minimum $29.44 per hour
Effective July 1, 2020 = 2.0% - Minimum $30.03 per hour If No Grid Implemented

GRID SALARY INCREASES

1) The faculty grids are rank specific and salaries can be found in the appropriate degree column and interval number. See attachment
2) The professional staff grids are grade specific and salaries can be found in the appropriate degree column and interval number. See attachment
3) Once you find your salary and interval, follow the instructions below that fits your employment category.

Faculty

- **Rank change - September Payroll** - Advance to the same interval # on the new rank's grid. Effective on first payroll in academic year in which rank becomes effective - **September Payroll**.
- **Academic Credentials - September 1 or January 15 Payrolls** - Advance to the same interval # onto the new credential column. **Effective September 1 or January 15** following credential changes. Faculty on Column H will move 2 intervals on Column H if there are two intervals remaining (level 2) or one interval if there is one interval remaining (level 1). If at level 1, then remain at level 1.
- **Tenure - Beginning of 7th Year of Employment -** Advance one interval down on the grid. Effective on first payroll in academic year in which tenure becomes effective. **Effective September Payroll – Beginning of 7th year of employment.**
- **Post-tenure Review - September Payroll** - Advance one interval down on the grid. Effective on first payroll in academic year in which evaluation was completed - **Effective September Payroll following February 1 Evaluation**. Evaluations and grid increases are every third year following the tenure. If on interval 1, then one time payment of 1.25% of salary.

Professional staff

- **4th Appointment - July 1 of 4th Year** - Advance 2 intervals down on July 1 following notice of 4th year reappointment. **Effective July 1 of beginning of 4th year.**
- **Tenure - Beginning of 7th Year of Employment -** Advance 3 intervals down upon tenure appointment or the 7th year of reappointment if not tenure eligible because of non-state appropriated funding source. **Effective beginning of 7th year on July 1.**
- **9th Year - July 1 Following 9th Anniversar**y - Advance 2 intervals down on July 1 following the 9th anniversary of date of hire.
- **Post-tenure review- July Payroll** - Advance one interval down on the grid. **Effective July 1** following June 1 Evaluation**.** Evaluations and grid increases are every third year following the tenure. If on interval 1, then one time payment of 1.25% of salary. \
- **Academic Credentials or Credits - September 1 or January 15 Payrolls** - Advance to the same interval # onto the new credential column. **Effective September 1 or January 15** following credential changes. Professional staff on Column H will move 2 intervals on Column H if there are two intervals remaining (level 2) or one interval if there is one interval remaining (level 1). If at level 1, then remain at level 1.

Reclassification

In the event the reclassification does not provide a salary increase or at least the difference between the minimum salaries of the two grades, the placement on the grid is the amount closest to at least the actual difference between grades.

DMG-MXIMUS
CLASSIFICATION COMPENSATION STRUCTURE
MARKET FACTORS OR DIVERSITY CONCERNS

The proposed compensation structure provides recommended pay ranges for faculty and professional staff. New faculty members should be placed in the pay ranges based on their specific educational credentials and experience. If the community colleges experience recruitment problems due to market conditions or diversity concerns, the community colleges should be allowed to offer salaries up to midpoints of the proposed pay ranges. If the recruitment problem persists, the BHE believes the college presidents should be allowed to offer salaries within the pay ranges that are greater than the midpoints. These exceptions should be fully documented and placed in the new employees' personnel files. Exceptions should be based on the needs of the department, division, college, or the external job market. This recommended policy should allow the presidents the flexibility to attract qualified candidates, especially in a tight labor market. At the same time, the policy would help to impede the development of salary inequities to current employed faculty. Finally, the educational credentials and experience of the present faculty members of a department should also be considered to ensure that a new faculty member adds to the diversity of the department.

Notable Classification Quotes

Placement on Salary Schedule - The parties agree that new hires shall normally be placed at the salary calculated pursuant to the Compensation Structure set forth in the Collective Bargaining Agreement and that such salaries shall not be rounded off. 2) The parties acknowledge that there may be exceptions where the College hires above the Compensation Structure Grid under the conditions set forth in the Classification Study referenced in the Collective Bargaining Agreement. 3) The parties agree that if the College seeks to hire a candidate above the Compensation Structure set forth in the Collective Bargaining Agreement, appropriate exception(s) to the classification structure and rationale supporting the hiring recommendation shall be documented in writing. 4) The documentation shall be placed in the new employee's personnel file and shall be made available to the MCCC upon request in the same time frame consistent with the transmittal of M002/M004 forms for new employees. *(MCCC vs. MBCC, Arbitration Resolution – Non-precedent setting, July 6, 2009)*

Exceptions - Holyoke Community College shall make hiring salary determinations in accord with the appropriate classification levels. Exceptions to an initial classification level salary should be specified in a written hiring recommendation memorandum to the College President. The document should also contain a detailed rationale for the enhanced hiring salary. The recommendation and rationale should be made available to the union upon request. *(Tammy Brynie, February 13, 2009).*

New hires shall normally be placed at the salary calculated pursuant to the Compensation Structure set forth in the Collective Bargaining Agreement and that such salaries shall not be rounded off. There may be exceptions where the College hires above the Compensation Structure Grid under the conditions set forth in the Classification Study referenced in the Collective Bargaining Agreement. If the College seeks to hire a candidate above the Compensation Structure set forth in the Collective Bargaining Agreement, appropriate exception(s) to the classification structure and rationale supporting the hiring recommendation shall be documented in writing. The documentation shall be placed in the new employee's personnel file and shall be made available to the MCCC upon request in the time frame consistent with the transmittal of M002 or M004 forms for new employees *(Richard Boulanger 6/23/10, QCC Salary Placement)*

SAVINGS CLAUSE – ARTILCLE 25

MID-CONTRACT NEGOTIATIONS

(Which Can Also Be Done In The Course Of Successor Negotiations)

A. Impact Bargaining

1. Negotiations over the impacts on mandatory subjects of bargaining caused by an exercise of a management right, e.g., a reorganization or an addition of a new program (subject to governance and other contractual restrictions).

2. Negotiations over the impacts of a change in a mandatory subject of bargaining caused by an action taken by an entity other than the employer, e.g., congress, the legislature, and the GIC.

B. Decisional Bargaining

If the employer contemplates removal of bargaining unit work, the employer has the right to implement a change unilaterally if impasse is reached and would not have to go through mediation and fact-finding before implementing.

C. Contract Modifications.

Both sides may voluntarily agree to amend the contract during the term of the contract, but neither side has to enter into such negotiations until the expiration of the contract.

Caveat:
In these situations, where the parties might wish to change something in the contract, e.g., the customary work day or work week, I believe that on impasse the employer is not free to implement a change unilaterally, but is required to abide by the existing language in the contract. It might be advisable to explain that to the employer before entering into such talks.

E. Post-Execution Matters:

E.g., computing the amounts needed to fund economic provisions of the contract, working out final language and details for implementing educational needs, implementation of classification monies, determining classification appeals, etc.

ZIPPER CLAUSE IN MID-CONTRACT NEGOTIATIONS

No Zipper Clause – Where there is no zipper clause, case law clearly establishes that parties have a continuing duty to bargain, upon request, about all mandatory subjects never bargained nor embodied in the terms of the collective bargaining agreement. The employer may not implement a unilateral change in uncovered mandatory subjects without offering an adequate opportunity to bargain.

Zipper Clause – A zipper clause preserves the terms of the contract by relieving the parties of their obligation to bargain prospectively about new subjects during the term of the contract. A zipper clause in not a waiver and therefore does not authorize an employer to unilaterally implement changes with regard to mandatory topics of bargaining. In the existing contract the zipper clause is Article XXV – Savings Clause.

DISTANCE EDUCATION
Day Contract

Distance Education Definition
Instruction, Education, and Training
Separated by Space or Time
May Utilize Technology to Facilitate Learning

Types of Distance Education Courses
On-line
Hybrid
Teleconference
Any Other Instruction Consistent With Definition

Intent
Not Intended to Reduce or Eliminate
Course Offerings or Reduce Unit Positions

Participation
Voluntary

Evaluation
No Evaluation for 1st or 2nd Offering
Thereafter Evaluation Consistent With Day Contract Procedures and Timetable (See Article 13)
Distance Education Student Evaluation – Form DE-3
Distance Education Course/Instructional Materials Checklist – Form DE-1
Asynchronous Classroom Observation – Form DE-4
***(See Forms @ http://mccc-union.org/CONTRACTS/DistanceEd/Forms*.pdf)**

Class Size
Maximum of 25 Students for First Two Offerings
Thereafter Contract Language Applies
Some Colleges Have Acceptable Lower Maximums

Course Assignment
Interaction Plan on File with Dean – Form DE-2
(See Form @ http://mccc-union.org/CONTRACTS/DistanceEd/Forms.pdf)
Part of Regular Day Workload and Day Salary
Not a Separate Prep

Negotiable Adaptation Compensation

And/or

Regular Day Workload	Stipend
Course Reduction	If No Workload Reduction, then minimum of $500 Per Credit
Reduction in Non-Instructional Activities	With Workload Reduction Minimum of $250 Per Credit

College Use
After 2nd Time Taught
If Developer Waives Right to Teach Course & Course Is Taught By Someone Else,
Then $500 Stipend For 3 Years
May Renew For Additional 3 Years

Sold Commercially
50/50 Split
After Cost Of Marketing, Commercialization, Legal Fees, or Other Related Costs

Cost Savings
Options Menu

Options	Eligibility, Duration, Requirements	Waivers	Bonus	Tuition Waiver
Early Retirement Incentives	**Eligibility:** 1) Must be eligible to retire. 2) Unit members 65 or older will be treated as though they are 64 for the retirement bonus. 3) Unit members 54 or younger will be treated as though they are 55 for retirement bonus 4) Any unit who gave notice of retirement and who will retire in the fiscal year after the option will be offered the same incentives	1) 1 year notice requirement waived 2) 70% cap waived for combination of incentive and 20% sick leave buy back 3) 10 year service requirement in community colleges waived	1) Some bonus offered above contractual incentives (e.g. bonus or payment of sick days) 2) In addition to or in lieu of #1 above, some guarantee of reemployment. 3) Deferral of payment possible.	Tuition remission will be certified if applied for prior to effective date of retirement
Unpaid Leaves Of Absence	**Duration:** 1) 6 months, 1 year, or more than 1 year at the option of the college. 2) Extensions may be granted if requested no later than 60 days prior to expiration of leave and college will respond within 30 days prior to expiration of leave.	Six years length of service requirement waived	Some bonus - Examples: 1) Payment of entire amount of group rate for health benefits for 6 months, or 2) Amount equivalent to the number of sick days or vacation days that would accrue in 6 months.	Tuition remission will be certified if applied for prior to effective date of leave
Cost Savings Sabbatical	**Duration:** 1) 1 full year at ½ pay 2) ½ year at ½ workload and ½ salary 3) 1 full year at ½ workload and ½ salary 4) 1 semester or full year at other reduced workload options with proportional reductions in salary may be offered.	1) Six years continuous service waived 2) Committee recommendation process waived 3) Return requirement may be waived 4) Report requirement waived if retirement is at end of sabbatical.	None	No Impact
Reduced Work Week	**Duration:** 1) Less than 37 ½ hours and greater than 20 hours 2) Extensions may be granted if requested no later than 60 days prior to expiration of leave and college will respond within 30 days prior to expiration of leave. 3) Indefinite number of renewals	None	None	No Impact
10/12 *ths* Option	Indefinite Period - Pay should be over 12 months - see 10/12ths benefits options below.	None	None	No Impact
Calendar Changes	1) Consultation and notice to Chapter President and MCCC President 2) No loss of pay 3) Flexibility in use of vacation days, personal days, compensatory time, remaining 2 off campus days	None	None	No Impact

Cost Savings Options Benefits Chart

Options	GIC	Creditable Service	Impact
Unpaid Leaves of Absence	Employee pays 100% of the premium cost or college may pay entire amount of group health insurance rate for 6 months	No creditable retirement service for any time off-payroll	1) No leave accruals unless offered as a bonus - see unpaid leaves above. 2) No accrual of seniority
Reduced Work Week	No Impact	Creditable service will be prorated	1) Pro-rated accrual of sick, vacation, and personal days. 2) Holidays are prorated based on holidays that fall on a scheduled workday. 3) Seniority accrues as if working full-time
Ten-month – Paid over 10 months	Employee pays 100% of the premium cost for the two months off-payroll.	To avoid loss of creditable service, salary should be paid over 12 months, but Retirement Board may challenge 12 months creditable service. Effective 1/28/93, Regulation 941 CMR 2.03(2) mandates $10/12^{ths}$ employees are part-time and receive 10/12ths creditable service. The Retirement Board calculates 10/12ths salary by annualizing salary of the three years of highest compensation (MGL c.32, Section 5(2)(a).	Receive 10/12ths accrual of benefits but annualized salary.
Ten-month Pay spread over 12 months	No Impact	10/12ths creditable service will accrue and 10/12ths salary will be annualized for retirement base-see above.	Receive 10/12ths accrual of benefits and salary.
Cost Savings Sabbaticals (Partial work year with partial pay)	No Impact	Creditable service will be prorated for sabbaticals after June 29, 1991. *See Page 73*	1) Full year of service eligibility for classification points, seniority, tenure, title changes, etc. 2) Vacation accrual is prorated based on actual non-sabbatical employment.

NB - Cost savings options were negotiated during the budget crises of 1994 and continue to be part of the contract (see pages 114-116 of the Contract). Each option contains a minimum of several mandatory components from which colleges can pick and choose to offer MCCC unit members. No college is obligated to offer any of these options, but if an option is offered, the components of that option are mandatory. Any option that allows college discretion in determining, for example, amount of bonuses, must be offered uniformly either in terms of dollars or in terms of a formula to all unit members at the college. Options must be made available to unit members during a window period as determined at each college and no proposals will be accepted after the deadline. All options are at the unit member's instigation and all options are fully grievable and arbitrable in accordance with Article X of the Contract.

VII. EXECUTION DATES – ALL CONTRACTS

CONTRACT PERIOD	EXECUTION
1976	1 Year Contract
1977-1980	October 15, 1978
1980-1983	June 1, 1981
1983-1986	December 7, 1984
1986-1989	June 16, 1987
1990-1993	March 6, 1991
1995-1998	February 29, 1996
1998–1999	June 30, 1998
1999–2002	June 14, 2000
2002–2003	August 29, 2002
2003–2006 1 Year Extension Not Funded	September 12, 2005
2006–2009	October 4, 2006
2009-2010 1-YR Extension	September 18, 2009
2010-2013	September 18, 2009 MOA Executed July 15, 2010 364 Payout Ratified 7/22/10
2013-2015	Contract Executed 5/26/11 MOA Executed 5/1/2012
2015-2018	Executed 2/15/16 MCCC Ratified 3/23/16
2018-2021	Executed Fall 2019 MCCC Ratified 6/27/19