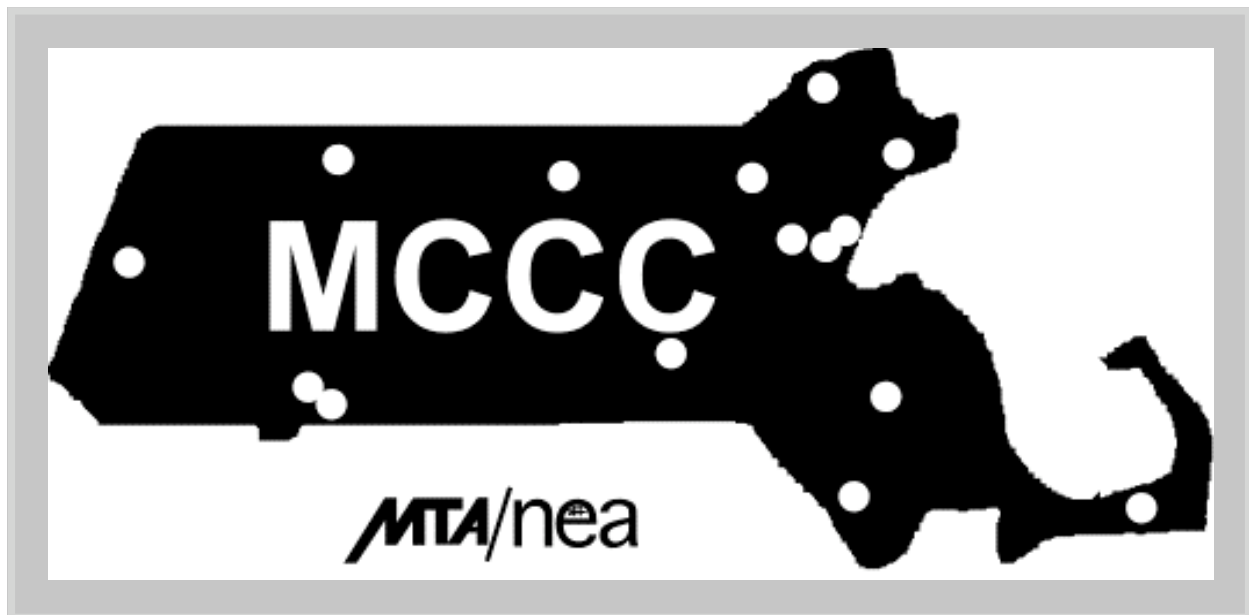
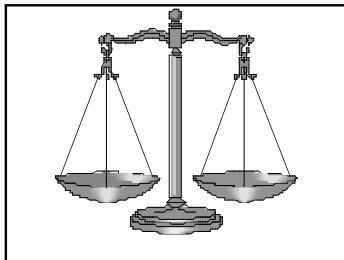


MCCC DAY UNIT

CONTRACT ENFORCEMENT MANUAL FOR UNIT MEMBERS



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I. ANSWERS TO YOUR QUESTIONS

What Is a Grievance?

In the simplest terms, a grievance is a claim that the employment contract has been violated. A grievance can be any problem that arises relating to your employment in the college.

The MCCC contract defines a grievance as:

"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 or the Association."

The association has a fiduciary responsibility to members of the negotiating unit to assure that the group agreement is adhered to. The end of negotiation does not signal a rest period of one or more years until a new contract is to be negotiated. A grievance raises the question: Are we following our rules? The only parties that can ultimately settle this kind of question are the parties that formulated these rules.

What are Grievance Procedures?

A grievance procedure is a system of appealing administrative actions affecting a unit member or a group of unit members to a higher authority. The appeal system provides the unit member with an objective, contractually agreed on procedure for resolving job-related disputes and/or problems that arise in the event of misunderstandings, misinterpretations or down right animus.

Who are the Parties to a Grievance?

The direct parties to the negotiated agreement are the Division of Higher Education and the MCCC. The employer executes the terms of the contract; the association polices these actions. When necessary, the grievance procedure is used to ensure compliance.

How Do I Pursue a Grievance?

You should first discuss the matter with your Grievance Chairperson and/or a member of the Grievance Committee so that he/she can advise you on the best course of action. If you decide to file a grievance, you should start by arranging a meeting with your immediate supervisor or within the college administration structure up to the level of the president of the college. The purpose of this meeting is to informally discuss the problem and to attempt to resolve it.

What Happens If the Matter is Not Resolved Informally?

If you do not get the problem resolved to your satisfaction, then you have the option of processing your grievance through the first two steps of the grievance procedure.

Are There Time Limits on Filing a Grievance?

Timeliness is of the essence in grievance processing. A grievance must be filed within thirty (30) calendar days after the grievant knows or should have known of the act or conditions on which the grievance is based. To meet this deadline, it is imperative that all grievances be investigated expeditiously. Failure to comply with the specified time limits can result in a waiver of the right to file a grievance. If additional time is required, make a written request for an extension of time limits.

How Can the MCCC Assist Me if I have a Grievance?

The association's position in processing grievances is one of advocacy, speaking in behalf of the member's cause and utilizing association resources to secure a remedy for his employment concern. However, in its advocacy the association must keep in mind the diversity of interests potentially affected by a grievance such as:

1. The interest of the association as an organization;
2. The future interest affected by the rule-making aspects of grievance adjustment;
3. The present interests of unit members who may gain or lose from the adjustment of the grievance;
4. The interests of the aggrieved individual who claims he/she has been damaged by the employer's failure to perform its contractual obligation.

The key figure in securing compliance with the terms and conditions of the negotiated agreement is the association grievance coordinator who observes, reports, investigates, and processes grievances. The coordinator is attuned to the individual and collective intents and desires of the members of the association. All of his activities are carded out in anticipation of protecting the rights afforded by the agreement individually to each member and collectively to the association. The grievance coordinator will advise and assist you before the grievance is filed and at each step of the formal grievance procedure. If you have a problem that might possibly necessitate use of the grievance procedure, contact the MCCC/MTA Grievance Coordinator. (tel 508-746-2533, fax 508-746-5258, email mcccfitzy@comcast.net)

What is the Chapter Grievance Committee?

The Chapter Grievance Committee is responsible for advising grievants, representing the grievant at a formal hearing and assisting grievants in the writing of formal grievance. Some chapters use the Chapter Executive Committee as the Grievance Committee.

What is the Association's Duty of Fair Representation?

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 - Mediation of the grievance, the association must decide 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 interest 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, the association may not arbitrarily refuse to process or go to arbitration for a meritorious claim.

What is the MCCC Grievance Committee?

The MCCC Grievance Committee has the responsibility of determining whether or not a grievance will be certified for arbitration. The MCCC Grievance Committee is made up of one grievance officer from each chapter and the statewide Grievance Coordinator is chairperson of the Committee.

What is Mediation?

Mediation is Step II of the grievance process. The parties have a list of neutrals who will assist the parties and the grievant in resolving the grievance. Mediation is an informal, off-the-record process in which the parties are free to disclose to the mediator the essence of the dispute without injuring their case if mediation is unsuccessful and the case goes to arbitration.

What Is Grievance Arbitration?

Binding arbitration is an important ingredient of an effective grievance process. It affords the possibility of the adjudication of persisting grievance disputes by an impartial third party. As a result, arbitrators are selected by both parties and expenses are shared equally. The Association and the employer authorize the arbitrator to render a binding decision.

What Is the Arbitrator's Authority?

The arbitrator shall have the authority to make a final and binding award on any dispute concerning the interpretation of application of the MCCC contract. The arbitrator's authority in matters, which are arbitrable, is limited to a determination as to whether the provisions set forth in the contract were violated. In matters of professional judgment, the arbitrator shall determine whether the application of such to the grievant has been arbitrary, capricious or unreasonable. The arbitrator shall have no authority to arbitrate an incident occurring prior to the execution of the contract, non-reappointment in years 1-3, affirmative action/discrimination and/or the basis for retrenchment.

What Can I Do if the President of the College or His/Her Designee Does Not Follow the Grievance Procedure?

Immediately, the grievant should appeal his/her grievance to step II-Mediation of the grievance procedure. In the event that the administration fails 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 Step Two. If the grievant(s) chooses not to appeal the original grievance to Step Two, the grievant(s) may file a procedural grievance at Step Two – The Chancellor.

What is an Unfair Labor Practice?

The Massachusetts Collective Bargaining Law is one of a handful, which identifies unfair labor practices by employers or employee groups. Those identified closely resemble the National Labor Relations Act and are called prohibited practices rather than unfair labor charges. These regulations exist for the general purposes of protecting those rights guaranteed under the law from the occasional devious employer, to ensure that bargaining is conducted in good faith and hopefully to promote some harmony and sophistication in collective bargaining in the Community College System. In accordance with Chapter 150E, Section 10 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 150E.
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.
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.

What are the Laws that Protect Unit Members Against Sex Discrimination?

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 law is enforced by the Equal Employment Opportunity Commission. 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 law is enforced by the Massachusetts Commission Against Discrimination.

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)

FMLA is a complicated Federal Law regarding unpaid leave for certain types of family and medical leave. FMLA does not supercede contractual rights.

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.

II. ASSOCIATION AND UNIT MEMBER RIGHTS

RIGHTS OF 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.

WEINGARTEN: RIGHT TO REPRESENTATION

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, 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.

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.

III. ARTICLES OF THE CONTRACT

ARTICLE 1 – APPENDIX A

CHAPTER 150E, Section 3

UNIT DETERMINATION PETITIONS - CHAPTER 150E

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. There has been an 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 follow these guidelines and checklist when positions are posted and/or filled without unit status or designated "non-unit" by the administration:

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

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)

CAS 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 Position*** – If an MCCC position is a new title not covered by the Classification Study, the MCCC will be consulted prior to implementing a new classification title, the job specifications, and the pay grade.

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. Discuss the unit status of the position at MACER and inform the administration that the position should be MCCC unit.
5. If the non-unit status is rescinded, it must be classified into the Classification Study as stated above.
6. If the non-unit status is not rescinded, contact the MCCC Grievance Coordinator to initiate the process for challenging the position.

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 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 of Professional Staff Duties

Common Supervision

Relationship Among Employees (interchange or contact)

Work Environment

Classification Job Specifications

FACTFINDER'S CAS REPORT – OCTOBER 27, 2007

UNIT

- Professional - Not Managerial, Not Clerical
- Degree - Not Determining Factor For Inclusion
- 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
 - 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

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*)

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. If a unit member requests assistance regarding a student complaint, immediately contact the MCCC Grievance Coordinator and the MTA Consultant and review the following document.

Below are examples of actions taken by administrators in processing student complaints:

PROBLEMS

- 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
- No Time Limits for Filing Complaints
- Covert Investigations Permitted
- Low Threshold for Finding Sexual Harassment

STUDENT GRIEVANCE & AFFIRMATIVE ACTION COMPLAINTS

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. For allegations of sexual harassment or discrimination, the College's Affirmative Action Procedure is the mechanism for resolution.

STUDENT GRIEVANCE PROCEDURE TIMELINES

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

Appeal to Level 2 - 10 Days
Formal Written Complaint - 10 Days
To Responding Party - 5 Days
Written Response - 10 Days
Response to Grievant - 5 Days

Level 2 - Step 2

Appeal to Supervisor = 10 Days
Supervisor's Decision - 10 Days
Decision to Grievant and Responding Party - 5 Days

(Complete Procedure will be emailed upon request)

AFFIRMATIVE ACTION COMPLAINT PROCEDURE TIMELINES

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 Party – 14 Calendar Days
Responding Party's Written Response – 15 Calendar Days
AAO Report of Preliminary Findings - 30 Calendar Days
Rebuttals - 10 Calendar Days
AAO Findings of Fact & Recommendations - 7 Calendar Days

Step 1 – President's Review

President's Decision - 10 Calendar Days

Complete BHE Policy On Affirmative Action

(<http://www.mass.edu/shared/documents/affirmative%20action/CCAffirmativeAction.pdf>)

NOTABLE STUDENT GRIEVANCE 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)

RELEVANT INFORMATION – ARTICLE 2.06

CHECK LIST OF INFORMATION DUE TO MCCC

<i>ITEM</i>	<i>DUE/RCVD</i>
ARTICLE 11 PT SENIORITY LISTS	15-Aug
PT Faculty	
PT PS	
PT Day to DCE Transfers	
ARTICLE 19 SENIORITY	
FT Seniority Lists (Faculty, PS, College-wide)	15-Oct
ARTICLE 2.06 INFO	15-Oct
Payrolls	
Number of Vacant/Filled FT Positions	
Enrollment Figures	
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	
New FT Unit Members	28-Feb
Names	
Starting Date	
Funding Source	
Rank	
Address	
Home Telephone Number	
Specific Course Assignments	
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	

<i>ITEM</i>	<i>DUE/RCVD</i>
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	
ARTICLE 16 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	30 Days of Hire
New Hire Classification Point Calculations M002 OR M004	
Name	
Coilege	
Department	
Hire Date	
Classification Points by Category	
Date Classified	
Total Points Awarded	
Classification Title	
Pay Grade	
Point Value	
Classification Salary	
Hire Salary	

RIGHTS AND RESPONSIBILITIES OF THE EMPLOYER – ARTICLE 4

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 by 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, 1984*

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)*

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
- Must be Consulted for All Personnel Actions
- Grievance Files Are Not Part of the Personnel File

NOTABLE PERSONNEL FILE QUOTES

“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)

"...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)

“... 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)

"...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 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 <i>All course materials should be returned to faculty and should not be included in personnel files for faculty evaluated after 1981.</i>		
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.		

ACADEMIC FREEDOM – ARTICLE 7

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-Checklist Form E2

Express Political Belief and Affiliation

Responsibilities

Preserve Intellectual Honesty

Respect the Free Inquiry of Associates

NOTABLE ACADEMIC FREEDOM QUOTES

"...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

"...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 from 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)

SICK LEAVE – ARTICLE 9

Entitlement

Sick Days per Month for Faculty
10 Days Per Academic Year

Sick Days per Month for Prof. Staff
15 Days Per Year

No Credit for Periods of Less Than
1 Full Month's Employment

Sick Leave Benefits May Be Extended

20% Buyback at Retirement

Usage

Incapacitated

Contagious Disease

Illness of Husband, Wife, Child, Parent, or Immediate
Household (7 Days)

Requirements

Sole Discretion of the President
(Reasonable Standard)

Notification by Unit Member

Physician's Certification May Be Required Within 7
Days

Sick Leave Bank

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

NOTABLE SICK LEAVE QUOTES

“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)

“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 can require examinations by physician chosen by management.” (MCCC vs. N. Essex, Arbitrator E. Pinkus, August 19, 1986)

“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 Kathrine Overton Hogan, December 30, 1994)

TAX SHELTERED ANNUITY PLAN FOR SICK LEAVE BUY BACK AND VACATION 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.

MATERNITY & ADOPTIVE LEAVE

PAID LEAVE AND SICK LEAVE

If **Only One** Parent is Employee of the Commonwealth

Birth

Father

10 Days **Paid** Leave (Subsequent to Birth) - 9.01J

10 Days **Sick** Leave - (Consecutive) 9.01A3d

Mother

10 Days **Paid** Leave (Subsequent to Birth) - 9.01J

5 Days **Sick** Leave - (3-Months Notice) 9.02B

Adoptive

Father or Mother

10 Days **Paid** Leave (Subsequent to Placement) – 9.01J

If **Both** Parents are Employees of Commonwealth

Birth

Mother & Father

10 Days **Joint Paid** Leave (Subsequent to Birth) - 9.01J

Father

10 Days **Sick** Leave - (Consecutive)- 9.01A3d

Mother

5 Days **Sick** Leave - (3-Months Notice) - 9.02B

Adoptive

Father or Mother

10 Days **Joint Paid** Leave (Subsequent to Placement) - 9.01J

ARTICLE 10 - 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.

POSSIBLE FORFEITURE: 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, permanent part of the unit member's employment record, no matter how harsh or unjustified the reprimand may be.¹

¹ The employee has a right to place rebuttal statements in the personnel file, but this tactic is no substitute for successfully grieving and getting the negative material expunged.

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 not 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.

Notable Past Practice Quote

“...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)

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
(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

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, 119 Rocky Pond Road, Plymouth, MA 02360

MCCC ARBITRATION CERTIFICATION

40 calendar days for MCCC to certify arbitration

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 the grievant(s) may file a procedural grievance at Step Two.

AUTHORITY OF AN ARBITRATOR – ARTICLE 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 three 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.

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 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 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 arbitration decision appointing 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 arbitrator’s decision to overturn dismissal, restoring unit member to appointment pool, and paying unit member for lost pay was **affirmed** (Salem State-DGCE Contract – September 15, 2004). 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).
Potential Impact - Erosion of due process rights and just cause
5. **Motion** to vacate 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*)

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)

FT APPOINTMENTS – ARTICLE 11

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 Is 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

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

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) - Snapshot (10th Yr) - \$ (11th Yr)

Tenure Appointment – 7th Year

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

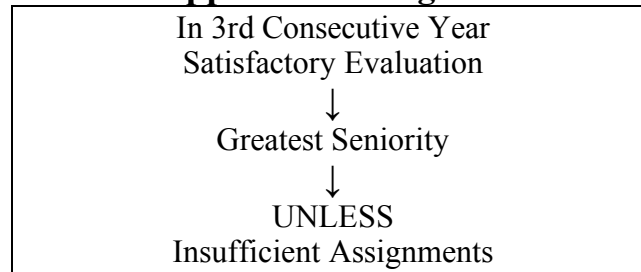
PART-TIME APPOINTMENT RIGHTS

PART-TIME SENIORITY

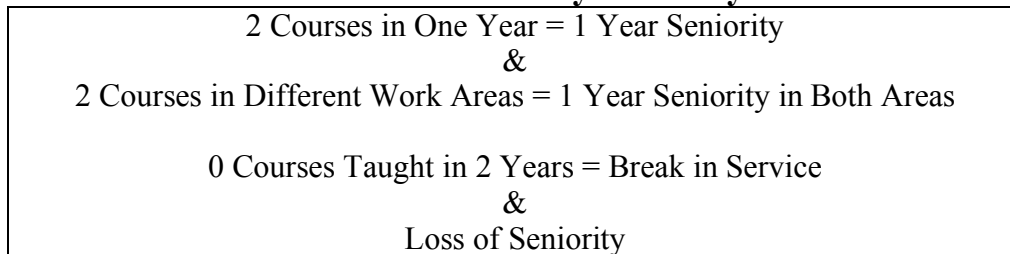
PART-TIME PROFESSIONAL STAFF ALL PURPOSE LEAVE

ARTICLES 9 AND 11

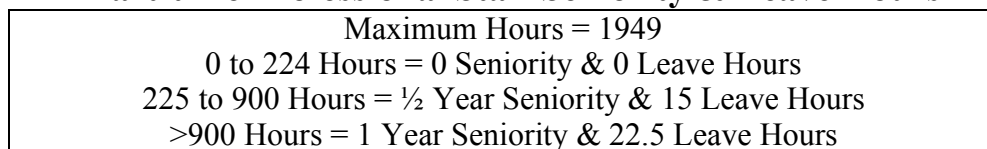
Appointment Rights



Part-time Faculty Seniority



Part-time Professional Staff Seniority & Leave Hours



NOTABLE APPOINTMENT QUOTES

“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)

“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)

"..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)

FACULTY WORKLOAD – ARTICLE 12

INSTRUCTIONAL HOURS

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

PREPARATIONS

Mutual Agreement Required For
>3 Preps Per Semester
>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.)

NON-INSTRUCTIONAL HOURS = 11 HOURS

OFFICE HOURS

4 Office Hours over 4 Days

NON-INSTRUCTIONAL WORKLOAD

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

STANDARDS

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
>5 Preps/Academic Year

CLASS SIZE

32 - Standard Class
28 – Approved Writing or Critical Thinking (See P. 39)
22 – English Composition, ESL, Introduction to Foreign Language, Remedial
and Developmental Courses

ACADEMIC YEAR

September 1 to May 31
2 Personal Days Per Calendar Year
10 Sick Days Per Academic Year

Critical Thinking Requirements

http://mccc-union.org/CONTRACTS/Day/Critical_Thinking.pdf or see page 39

Workload Form & 2006-2009 Contract

<http://mccc-union.org/daycontract.htm>

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. In the lower part of the form under #3, a few immediate supervisors have requested documentation that evidences participation in the college service activities. If this request was made, it should have been done at the beginning of the semester in order to give faculty time to compile documentation as the activity is performed. 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

\$35/hr. If mutually agreed for Department Chair work between commencement and 1st day of fall classes, winter intersession, & spring vacation.

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 students 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.

PROFESSIONAL STAFF WORKLOAD

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

3 Days Off Campus Per Fiscal Year
1/2 Day or Greater
Day After Thanksgiving

Compensatory Time
1.5 Hours for Each Hour Over 37.5 Hours/Week

15 Sick Days Per Year

3 Personal Days Per Calendar Year

Vacation Leave Per Fiscal Year
 < 1 year = 2 days per month
 1 – 6 years = 22 days
 7 – 16 years = 23 days
 17 – 24 years = 25 days
 25 years or > = 30 days

Unused Vacation Days over 480 (64 days) are converted to sick leave at the end of last pay period in April and October.

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

No Traditional Discipline Instructional Responsibilities May Be Assigned

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
38-34	7 hrs/wk		

Frequency of Evaluation
1st Year - February 1 & June 1
2nd - 6th Years - June 1

NOTABLE WORKLOAD QUOTES

Workload is Arbitrable.

"...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*)

“ 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 if 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.” (*MCCC vs. Holyoke, Arbitrator Milton Nadworny, October 4, 1991*)

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.*

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

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
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/CONTRACTS/DistanceEd/Forms.pdf>) 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.

COLLEGE SERVICE - 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.

PROFESSIONAL STAFF EVALUATION

WEIGHTS AND COMPONENTS

ARTICLE 13

<u>Full-time Professional Staff - Weights</u>	
Work Performance	75%
College Service	10%
Personnel File	15%

Professional Staff Evaluation Process

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)

Beginning of Appointment - Thereafter Every July 1

College Service – Form E5

Student Advisement (If assigned) – E4

Dec. 30 & May 30

POSITION DESCRIPTION (Form E-7) – Position Description is developed at the pre-evaluation conference and can be requested by either party each year and is mandated if there are proposed changes.

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

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

PROFESSIONAL STAFF CALENDAR

January

- 3 Personal days benefit begins with calendar year.

February

- See Evaluation Cycle Year 1 below

March

- Notice of reappointment is due by March 1 in 1st four years. Non-Reappointments are not grievable during this probationary period.

April

- Unused vacation days in excess of 480 hours (64 days) are converted to sick leave at end of last pay period in April and again in October.

May

- E5 - Six-month description of college service due to supervisor by 5/30 (4 hours is the requirement)
- E4 - If student advising is assigned, the log is due to supervisor by 5/30.
- Graduation - If required to attend, graduation should be included in E-7. If graduation is during the evening or on weekend, then compensatory time is required – see below.

June

- E8 - Summary Evaluation by supervisor is due by June 1. (7 working days to respond to supervisor's evaluation and 14 days for post-evaluation conference and reasons)
- Preferred work assignment letter is submitted each year to supervisor by June 1.
- Develop E-7 with supervisor. The E-7 serves as the basis of evaluation for the year. E-7 includes job description item (goals), objectives (if mutually agreed), and activities/methods.

July

- Annual "Points" are usually paid based on snapshot as of October 15th.
- Notification of work assignment is due on July 1 from supervisor.
- Off Campus Days - 3 days off campus are granted for activities outside of those assigned. Off Campus Days may be taken in increments of a half-day or more. 3 off campus days begin with fiscal year – See November.

October

- Notice of reappointment in 5th year is due by October 15th. Non-reappointment at end of 5th year requires "just cause."
- Annual "Points" are usually paid on July 1 based on snapshot as of October 15th.
- Unused vacation days in excess of 480 hours (64 days) are converted to sick leave at end of last pay period in October and again in April.

November

- Day after Thanksgiving - 7.5 hours must be used as one of the 3 off campus days.

December

- E5 - Six-month description of college service is due to supervisor by 12/30 (4 hours is the requirement).
- E-4 - If student advising is assigned, the log is due to supervisor by 5/30.

Compensatory Time – 1 ½ hours are granted for each hour worked over 37 ½ hours per week .

Evaluation Cycle	New Employee Classification
Year 1 - February 1 and June 1	10 days of hire - Submit classification points (data form)
Years 2-6 - June 1	30 days of hire - HR forwards proper classification
Year 7 - Tenure (No Evaluation)	Year 2 and after - monitor points for October 15
Year 8 - No Evaluation	snapshot
Year 9 - Evaluation and every 3 rd year on June	

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

PART-TIME PROFESSIONAL STAFF EVALUATION

Basis of Evaluation

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

Annual Work Performance Evaluation

Week 2 - Job Description To PS Unit Member
Evaluation Completed 1 Month Prior to Completion of Contract
Reasons Provided If Requested
7 Working Days to Respond

NOTABLE EVALUATION QUOTES

~~"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) — If professional development material is in personnel file, it may be considered pursuant to the 99-02 Contract mandating review of personnel file.

~~"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) If community service material is in personnel file, it may be considered pursuant to the 99-02 Contract mandating review of personnel file.

~~"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) — If material outside of 37 hours is in personnel file, it may be considered pursuant to the 99-02 Contract mandating review of personnel file.

"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)

CHANGE IN RANK – ARTICLE 14
ELIGIBILITY REQUIREMENTS

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
+
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)

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
Snapshot - 10/15 of Fourth Year
Money - 7/1 of Fifth Year

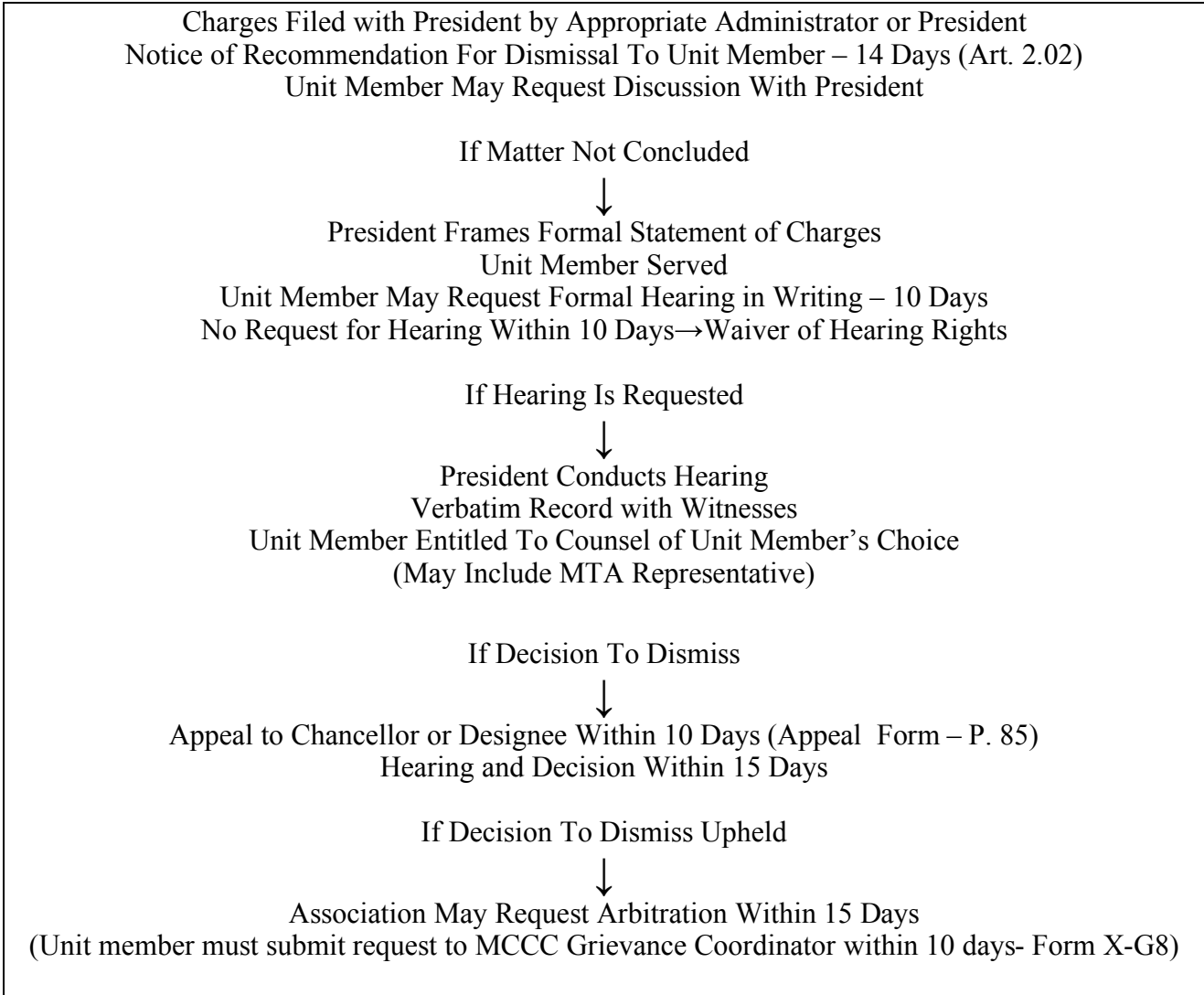
Faculty with less than a Bachelor's may meet requirement through an equivalency of 2 years of directly related experience.

DISMISSAL - DISCIPLINE & JUST CAUSE – ARTICLE 15

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.

STEP ONE APPEAL TO CHANCELLOR

For the Board Use _____
Year: _____
Board No: _____

TO: Chancellor of the Division of Higher Education
 Commonwealth of Massachusetts Division of Higher Education
 One Ashburton Place
 Boston, Ma 02108

FROM: Grievant _____

Grievance Issues

I hereby appeal the Step One Decision of the President of
 _____ Community College.

 Signature Date

 Home Address

 Telephone Number

cc: Dennis Fitzgerald, MCCC Grievance Coordinator, 119 Rocky Pond Road, Plymouth, MA 02360

Katie D'Urso, MTA Consultant for Higher Education, MCCC/MTA 20 Ashburton Place,
 Boston, MA 02108

College President

N.B. This appeal must be filed within ten (10) calendar days after receipt of the Step One Decision.

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

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.)

VACANCIES & TRANSFERS –ARTICLE 16 & 17

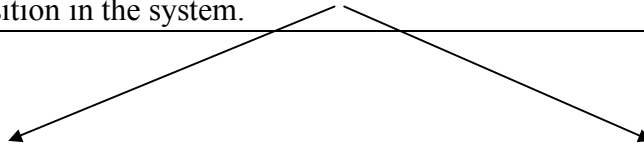
SELECTION COMMITTEES

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.

NOTABLE TRANSFER & VACANCY QUOTES

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)

AGREEMENT **Executed 1/5/04**
BETWEEN
THE MASSACHUSETTS BOARD OF HIGHER EDUCATION
AND THE
MASSACHUSETTS TEACHERS ASSOCIATION/
MASSACHUSETTS 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.

ARBITRAL PRECEDENT - FILLING OF VACANCIES

ARTICLE 17 - TRANSFER

COLLEGE	GRIEVANT	ARBITRATOR	YEAR	ARBITRATION DECISION
1. Mass. Bay to Bunker Hill	Gruss	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	Pinkus	1989	Award: 1) College cannot ignore requirements of posting. 2) Personnel file must be consulted.
3. N. Essex	VanWert	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	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	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	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	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.

COLLEGE	GRIEVANT	ARBITRATOR	YEAR	ARBITRATION DECISION
8. Roxbury	Kiefson-Roberts	Dorr	1996	<i>Award:</i> The use of unrevealed criteria as a basis for determining relative qualifications was contractually improper.
9. Holyoke to Berkshire	Stachowiak	Overton	1998	<i>Dismissed:</i> 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	Bloodsworth	1998	<i>Dismissed:</i> 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	Gosline	1999	<i>Award:</i> A decision based on an unreasonable and an unfair process based on inaccurate and biased information cannot stand.
12. Massasoit	Davoli	Ryan	1999	<i>Dismissed:</i> It is not unreasonable for the College to decline to interview the grievant because the grievant's qualifications did not meet a preferred qualification.
13. Bunker Hill	Dupuis	Garraty	1999	<i>Award:</i> 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.
4. Mass. Bay	Willett	Bornstein	1999	<i>Award:</i> 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.

COLLEGE	GRIEVANT	ARBITRATOR	YEAR	ARBITRATION DECISION
15. QCC	Dyer-Duguay	Boulanger	1999	<i>Award</i> : 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. QCC	McLean	S. Brown	1999	<i>Dismissed</i> : 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.
17. Massasoit	Rosenthal	Cochran	2000	<i>Award</i> : 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. <i>Remedy</i> : Appointment to position and made whole retroactive to September 1, 1997 with interest.

COLLEGE	GRIEVANT	ARBITRATOR	YEAR	ARBITRATION DECISION
18. QCC	Malkasian	Bloodsworth	2003	<p>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 best 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 <u>best qualified</u> 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.</p>
19. Bunker Hill	Bernard	Garraty	2004	<p>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.</p> <p>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.</p>

COLLEGE	GRIEVANT	ARBITRATOR	YEAR	ARBITRATION DECISION
20. Mt. Wachusett DCE	Binder	Cooper	2006	<p>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. (Arbitrator Cooper, May 31, 2006, DCE Arbitration – Appointment to Vacant Position)</p> <p>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</p>

Arbitrations-Day	Number
Awards	10
Dismissals	9

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

NOTABLE RETRENCHMENT QUOTES

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)

ARTICLE 21 – SALARY

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

All Unit Members - Basis for Points (see pages 102 & 103)

Academic Credentials – Faculty 40, 50, 75
Academic Credentials – Prof. Staff 15, 30, 40, 75
Rank (Faculty) - 30
MCCS Experience – 1 yr. = 8
Seniority – 1 yr. = 8
Outside Experience – 1 yr. = 4 or 8
License and/or Certifications – Each Unit x 3
http://mccc-union.org/CONTRACTS/Day_2006-2009/Cert-Licens.pdf

New Faculty

Hire Date	Base BA	Base MA	Points
07/1/06	\$36,256	\$39,089	\$50.849
07/1/07	\$37,344	\$40,262	\$52.376
07/1/08	\$38,464	\$41,470	\$53.947

Faculty Hired Prior to 7/1/06

Last Update	Base BA	Base MA	Points
04/1/06	\$35,200	\$37,950	\$49.368

New Professional Staff

Hire Date	Pay Grade	Minimum	Point \$ Value	Hire Date	Pay Grade	Minimum	Point \$ Value
7/1/06	2	34,462	\$19.705	7/1/07	2	35,496	\$20.296
	3	39,070	\$22.341		3	40,242	\$23.011
	4	43,303	\$24.759		4	44,602	\$25.502
	5	47,870	\$27.371		5	49,306	\$28.192
	6	52,212	\$29.855		6	53,778	\$30.750
	7	56,760	\$32.455		7	58,463	\$33.429
<i>Hired Prior To 7/1/06</i>							
Hire Date	Pay Grade	Minimum	Point \$ Value	Last Update	Pay Grade	Minimum	Point \$ Value
7/1/08	2	36,560	\$20.905	4/1/06	2	\$33,458	\$19.131
	3	41,449	\$23.701		3	\$37,932	\$21.690
	4	45,940	\$26.267		4	\$42,024	\$24.038
	5	50,786	\$29.038		5	\$46,476	\$26.574
	6	55,391	\$31.637		6	\$50,691	\$28.985
	7	60,217	\$34.432		7	\$55,107	\$31.510

Salary Increases for all Full-time Unit Members

Increases: 7/1/06 = 3% 7/1/07=\$813.58+Points x \$52.37 7/1/08 =\$838+Points x \$53.947

Part-time Unit Members

Part-time Professional Staff - September 1, 2008 - Minimum \$22.65
Part-time Faculty – September 1, 2008 – 4%

APPENDIX A & CLASSIFICATION TITLES

PROFESSIONAL STAFF CLASSIFICATION TITLES (2/4/08)

AUTHORIZED CLASSIFICATION TITLE	GRADE
Academic Counselor	5
Senior Academic Counselor	6
Academic Coordinator	6
Admissions Counselor	3
Enrollment Counselor	3
Recruitment Counselor	3
Senior Admissions Counselor	4
Admissions Coordinator	6
Assessment Assistant	3
Assessment Officer	4
Coordinator of Student Assessment	6
Student Activity Officer	2
Assistant Coordinator of Student Activities	3
Coordinator of Student Activities	5
Assistant Librarian	3
Librarian	5
Librarian/Technical Services	5
Reference Librarian	5
Coordinator of Library Services	6
Assistant Registrar	2
Biology Lab Technician	2
Career Services Representative	2
Career Placement Counselor	3
Career Development Counselor	4
Career/Veterans Affairs Counselor	4
Coordinator Career Planning & Placement	6
Community/Outreach Counselor	3
Senior Community/Outreach Counselor	4
Coordinator of Academic Computing	6
Coordinator of Alternative Studies	6
Coordinator of Athletics	6
Coordinator of College Graphics	3
Coordinator of Cooperative Education	4
Disabilities Counselor	5
Coordinator of Disability Services	6
Coordinator of Fine Arts Center	6
Coordinator of Forensic Lab	6
Health Care Coordinator	3

Coordinator of Health Services	6
Coordinator of Instructional Technology	7
Coordinator of Learning Resources	5
Coordinator of Multi-Cultural Center	5
Coordinator of Returning Adults Center	5
Coordinator of Television Programming	3
ESL Skills Specialist	4
Financial Aid Assistant	2
Financial Aid Counselor	2
Senior Financial Aid Counselor	4
Coordinator of Financial Aid	6
Fitness Center Coordinator	2
Grants Writer	4
Help Desk Technician	2
Instructional Support Technician	2
Teacher/Children's Center	2
Lead Teacher/Children's Center	3
Learning Specialist Disability Services	5
Learning Specialist	5
Learning Disabilities Specialist	6
Senior Learning Specialist/Critical Thinking	6
Learning Specialist/Adult Education	4
Programmer	4
Senior Programmer	4
Publications Coordinator	2
Special Programs Coordinator	4
Senior Special Programs Coordinator	5
Staff Assistant	2
Senior Staff Assistant	3
Technical Specialist	5
Transfer Counselor	5
Travel Agent Program Coordinator	2

MCCC PROFESSIONAL STAFF CLASSIFICATION SPECIFICATIONS

For Classification Specification for each job title go <http://www.mass.edu/hr/> click **Classification Specifications click [Unit Professional Staff Classification Specifications](#) (Massachusetts Community Colleges) click on specific classification job title**

OR

<http://www.mass.edu/foremployees/classificationspecs/classspecs-mccc.asp>

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

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 - 30 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.

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

**Massachusetts Community College – Compensation Structure
Full-Time Teaching Faculty**

Minimum Salary - Bachelor's Degree (or equivalent) - \$36,256(06) - \$37,344(07) - \$38,464(08)					
Minimum Salary - Master's Degree - \$39,089(06) - \$40,262(07) - \$41,470(08)					
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				
<i>License and/or Certifications</i>	Points awarded = 3 times the unit value in the licensure and certification report			Related but not required in field http://mccc-union.org/CONTRACTS/Day_2006-2009/Cert-Licens.pdf	
Professional Development	Each 120 Professional Continuing Educational Units or Equivalent 0 points			<i>Accumulation of credit cannot start until program is developed and approved.</i> Eligible for incentive every two years	

* Must be part of an academic program of study.

Value of each point:

April 1, 2005 \$49.368
July 1, 2006 \$50.849
July 1, 2007 \$52.376
July 1, 2008 \$53.947

Last Update

4/1/06
With MA \$37,950 Points \$49.368
With BA \$35,200 Points \$49.368

Massachusetts Community College - Placement Structure

Unit Professional Staff

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 1 year = 8 points Maximum years = 40		Teaching Position Full-time 1 year= 8 points Maximum years = 20		Unit Professional Position Part-time 250 hours= 1 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 1 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 1 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) Allowed= IOU points Maximum				
License and/or Certifications	Points awarded = 3 times the unit value in the licensure and certification report		Related but not required in field http://mccc-union.org/CONTRACTS/Day_2006-2009/Cert-Licens.pdf		
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.

Hire Date	Pay Grade	Minimum	Point \$ Value	Hire Date	Pay Grade	Minimum	Point \$ Value
1-Jul-06	2	34,462	\$19.705	1-Jul-07	2	35,496	\$20.296
	3	39,070	\$22.341		3	40,242	\$23.011
	4	43,303	\$24.769		4	44,602	\$25.502
	5	47,870	\$27.371		5	49,306	\$28.192
	6	52,212	\$29.855		6	53,778	\$30.750
	7	56,760	\$32.455		7	58,463	\$33.429
	1-Jul-08	2	36,561		\$20.905	Last Update 4/1/06	2
3		41,449	\$23.701	3	\$37,932		\$21.690
4		45,940	\$26.267	4	\$42,024		\$24.038
5		50,785	\$29.038	5	\$46,476		\$26.574
6		55,391	\$31.673	6	\$50,691		\$28.985
7		60,217	\$34.432	7	\$55,107		\$31.510

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 insure that a new faculty member adds to the diversity of the department.

Minimum/Maximum Salary Ranges and Point Values For MCCC Unit

Thru July 1, 2006

As of July 2, 2006

Professional Staff

<u>Grade</u>	<u>Point</u>			<u>Point</u>		
	<u>Minimum</u>	<u>Maximum</u>	<u>Dollar Value</u>	<u>Minimum</u>	<u>Maximum</u>	<u>Dollar Value</u>
1	\$28,984.00	\$42,027.00	\$16.573	\$29,854.00	\$43,288.00	\$17.070
2	\$33,458.00	\$48,514.00	\$19.131	\$34,462.00	\$49,969.00	\$19.705
3	\$37,932.00	\$55,001.00	\$21.690	\$39,070.00	\$56,651.00	\$22.341
4	\$42,042.00	\$60,960.00	\$24.038	\$43,303.00	\$62,789.00	\$24.759
5	\$46,476.00	\$67,390.00	\$26.574	\$47,870.00	\$69,412.00	\$27.371
6	\$50,691.00	\$73,502.00	\$28.985	\$52,212.00	\$75,707.00	\$29.855
7	\$55,107.00	\$79,905.00	\$31.510	\$56,760.00	\$82,302.00	\$32.455

As of July 1, 2007

As of July 1, 2008

Professional Staff

<u>Grade</u>	<u>Point</u>			<u>Point</u>		
	<u>Minimum</u>	<u>Maximum</u>	<u>Dollar Value</u>	<u>Minimum</u>	<u>Maximum</u>	<u>Dollar Value</u>
2	\$35,496.00	\$51,468.00	\$20.296	\$36,561.00	\$53,012.00	\$20.905
3	\$40,242.00	\$58,351.00	\$23.011	\$41,449.00	\$60,102.00	\$23.701
4	\$44,602.00	\$64,673.00	\$25.502	\$45,940.00	\$66,613.00	\$26.267
5	\$49,306.00	\$71,494.00	\$28.192	\$50,785.00	\$73,639.00	\$29.038
6	\$53,778.00	\$77,978.00	\$30.750	\$55,391.00	\$80,317.00	\$31.673
7	\$58,463.00	\$84,771.00	\$33.429	\$60,217.00	\$87,314.00	\$34.432

Thru July 1, 2006

As of July 2, 2006

Faculty

<u>Degree</u>	<u>Point</u>			<u>Point</u>		
	<u>Minimum</u>	<u>Maximum</u>	<u>Dollar Value</u>	<u>Minimum</u>	<u>Maximum</u>	<u>Dollar Value</u>
Bachelors	\$35,200.00	\$81,251.00	\$49.368	\$36,256.00	\$83,689.00	\$50.849
Masters	\$37,950.00	\$84,701.00	\$49.368	\$39,089.00	\$87,242.00	\$50.849

As of July 1, 2007

As of July 1, 2008

Faculty

<u>Degree</u>	<u>Point</u>			<u>Point</u>		
	<u>Minimum</u>	<u>Maximum</u>	<u>Dollar Value</u>	<u>Minimum</u>	<u>Maximum</u>	<u>Dollar Value</u>
Bachelors	\$37,344.00	\$86,200.00	\$52.376	\$38,464.00	\$88,786.00	\$53.947
Masters	\$40,262.00	\$89,859.00	\$52.376	\$41,470.00	\$92,555.00	\$53.947

SAVINGS CLAUSE – ARTICLE 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 factfinding 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 is 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.

IX. 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