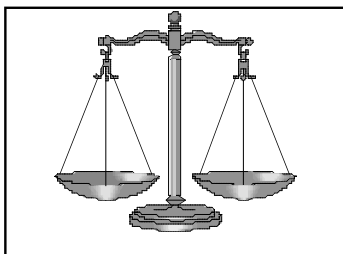


# **MCCC DAY UNIT**

## **GRIEVANCE GUIDE ANSWERS TO YOUR QUESTIONS**



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*Dear Colleague:*

*Contract negotiation is only half of the responsibility of securing unit members' rights. The other half involves the rigorous policing and enforcement of the contract by the MCCC local and its chapters on a day-to-day system-wide and college-level basis. The terms and conditions of our contract are not self-enforcing.*

*The agreement between the parties means little unless administrative compliance can be secured through effective grievance administration. Because of this, a working knowledge of the grievance procedure is vital to all unit members. If you feel your contractual rights have been violated, I strongly urge you to make full use of the grievance procedure. Contact your chapter grievance officer or me, and you will receive immediate assistance.*

*It's your contract - enforce it!*

*Sincerely,  
Dennis Fitzgerald*

***MCCC Grievance Coordinator***

## **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 [mcccfitz@comcast.net](mailto:mcccfitz@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, both parties select arbitrators 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 are the Rights of a 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.

## **Do I have the Right to be Represented by the Union?**

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.

## **What are the 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.

### **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 supersede 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.

## What are the Steps in the Grievance Process?

### **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.