

NEWSLETTER

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DCE NEGOTIATIONS GOES TO FACTFINDING

On December 14, 1988, mediation began for the continuing education contract. After nearly two years of negotiations, the mediator, Nancy Peace, was called back to the table to mediate unresolved issues. Mediation was unsuccessful and impasse was declared. Though it appeared at times throughout negotiations that union and management were close to agreement on some major issues, management's desire to change the certification (explanation of who comprises the unit as defined by the Labor Relations Commission) and exclude an unnamed number of employees from the protection of the collective bargaining unit, class size, evaluation (student signatures on evaluation), management's demand for a "comprehensive" evaluation which would "include but not be limited to all material in the personnel file . . .", no arbitability for reappointment, and salary left the Union with no where to go. The MCCC has been meeting weekly during the break to prepare for factfinding as it is expected to begin within a month. Mark L. Irvings has been appointed factfinder.

COMMISSION ORDERS HEARING FOR CHANGE IN INSURANCE COVERAGE

When it was learned that the state was planning to change insurance carriers from Blue Cross/Blue Shield to John Hancock, the MTA, on behalf of the higher education segments, filed a charge with the Labor Relations Commission on June 1, 1988. The charge alleged that the Board of Regents had engaged in a prohibited practice in violation of Massachusetts General laws Chapter 150E for failure to bargain what the impact of the change of insurance carriers would have on its employees.

On December 22, 1988, the Labor Relations Commission issued a Complaint of Prohibited Practice against the Board of Regents alleging the following [in summary]:

That the Board of Regents is a public employer, and the Union is the exclusive bargaining representative.

In March, 1988 the Union employees received notice that the Commonwealth was replacing Blue Cross/Blue Shield with John Hancock Mutual Life Insurance Company, and the Union demanded to bargain over the decision to change carriers.

On July 1, 1988, the Regents implemented the change in carriers without bargaining to impasse or resolution with the Union, and this decision to change health insurance carriers and its impact upon employees' terms and conditions of employment are **mandatory subjects of bargaining.**

Since April 5, 1988, or thereabouts, the Regents have failed and refused to bargain with the Union, and the Regents have failed and refused to provide the Union with the information it requested.

The Complaint issued from the Labor Relations Commission alleges all of the violations which the Union charged — unilateral change in insurance carrier, refusal of the Regents to bargain in good faith with the Union over the impact of this change on the employees terms and conditions of employment, the Regents refusal to provide information to the Union, and by the alleged conduct of the Regents, the Regents have "derivatively interfered with, restrained and coerced its employees in the exercise of their rights guaranteed under the law, in violation of Section 10(a)(1) of the Law." The Commission has scheduled an expedited hearing on these Complaints on March 1, 2, and 3, 1989.

Margery E. Williams, an MTA attorney, did a superb job presenting this case to the Commission.

HIGHER EDUCATION CONFERENCE IN ORLANDO

NEA's annual Higher Education Conference will be held at the Marriott Hotel in Orlando, Florida, from February 24-26. This year's conference, with keynote speaker, NEA President, Mary Hatwood Futrell, will focus on "Shaping the Future of Higher Education: The Role of Faculty and Staff." Special emphasis will be on the development of academic partnerships between public schools and college faculty. Some of the panels will cover university budgets, research issues, early retirement plans, support for women faculty, and programs to encourage minority enrollment. On Thursday, February 23 there will be a training session for local Association higher education presidents, a meeting of the National Council on Higher Education, and an NEA Budget Committee hearing.

Anyone interested in attending should contact the NEA Office of Higher Education in Washington, D.C. (202) 822-7162. Registration for the conference is \$75.

DUKAKIS MEETS WITH HIGHER EDUCATION

On Saturday, January 7, 1989, Governor Dukakis met in his office with selected regents, trustees, college presidents, MTA representatives, and community college, state college, and university local presidents. This meeting was one of many the Governor was having with the various agencies throughout the state. The Governor discussed his tax program and the conflict with the CLT (Citizens for Limited Taxation) coalition and the High Tech Council. The Governor's concern is one of cutting spending or raising revenues. According to MCCC President, James Rice, who attended the meeting, "This issue will be consuming a good deal of ink in the local newspapers in the coming months, and the MTA will be involved in coordinating the efforts of the public higher education sector as this battle takes shape."

BACKGROUND

In May, 1987, Brenda Robinson was an assistant professor at Bunker Hill Community College and since 1977, a member of the Behavioral Science Department. She was also responsible for the supervision of a Human Services Internship course which was required for all students in the Human Services program. During the spring of 1987, Professor Robinson informed her division chair, James Ware, that she would be taking a job at the end of the semester at the College of Staten Island in New York. She submitted a request to use either personal leave or accumulated sick leave to cover a professional day and graduation, both which she would miss. Prior to her leaving on May 12, she left her New York home and work telephone numbers and addresses with the offices of the president, academic dean, personnel, and registrar, as well as with a number of individual faculty members.

Robinson also notified her students that all materials for the internship were due by noon, May 11. One of the students in the course had had problems from the beginning of the semester in terms of satisfactory and timely completion of his internship responsibilities. He was, however, due to graduate in May, and he had been nominated for a President's Leadership Award, which carried with it a scholarship. Since Robinson was concerned that the student was in danger of not passing her course and might not graduate on time, and since she wanted to spare the administration the embarrassment of giving an award and scholarship to a student in such a position, Robinson alerted the president's office concerning the student's precarious position. After meeting with the president's assistant, Robinson left the entire folder concerning the student's work and internship course records with the assistant.

On May 8 the student met with Robinson, and she reviewed the required assignments which were due and had to be turned in by noon, May 11. On May 11 at about 12:30, the student "came in to see Robinson and said that he had left his log for the April 9 to May 7 internship period at home, that he had not had time to go home to get it, and that he was trying to reconstruct it from memory. The student was told to submit what he had and his grade would be based on what he turned in. Late in the afternoon, Robinson turned in her grades and had given the student an 'N', a nonpunitive grade indicating the student received no credit."

That evening, "the student called Robinson at home, said he had completed the log, and asked if he could bring it to her. Robinson replied that she could not read the log that night, that she was going to a party in her honor, and that the following day she was leaving for New York." When he was told he had received an 'N', he insisted that it was unfair. "Robinson replied that she does not give grades, but rather that students earn them based on the published criteria issued during the first week of class, and that the student had completed insufficient work to earn a grade." She also pointed out that "she had an obligation to the other students to insure that grades had some meaning" Later, Robinson had a lengthy conversation with the student's mother as to why he had received the 'N' and that the grade would stand.

The following day the student went to Robinson's Division Chair, James Ware, to complain about his grade, and Ware said he would try to get the student and Robinson together. When Robinson returned Ware's call, and he explained that the student had requested his intervention, "Robinson emphatically stated that she would not change the grade, and recounted how she had discussed the matter completely with the student and his mother." When Ware asked Robinson for her records, she informed him that the information concerning the student was with the president's assistant. Division Chair Ware met with the student a number of times and suggested that the student meet graduation requirements by seeking credit for the internship through a program administered by the College Learning Center, under which students receive credits for alternative life experience. Ware and the student, however, learned that credit could not be given for work which was not completed satisfactorily. Since the student was not interested in taking the internship over, Division Chair Ware suggested that the student go through the student grievance procedure.

Upon learning that he wanted to pursue a student grievance, Patricia Chisholm, Dean of Students, sent the student to the Dean of Academic Affairs, Kathleen Assar. Dean Chisholm sent Assar a memo reviewing the student's allegations and requested that Division Chair Ware 're-asses [sic] the grading process for the student because the instructor of record is no longer available.' This letter was sent the same day as Robinson was on campus to attend a reception in her honor. Robinson testified that Division Chair Ware told her that the Dean was handling the matter and there was nothing else for her [Robinson] to do.

The two administrators [Assar and Ware] decided that they would ask three faculty members to examine this situation. Though one faculty member sent a memo [to Ware] noting the student's shortcomings, the faculty member agreed that the student should pass the course. The other two faculty members signed a prewritten note, on graduation day which stated . . . 'It appears from all evidence and supportive statements that the student was deserving of a [sic] least a grade of 'C'.' Division Chair Ware changed the student's grade to a 'C', and the student was graduated that day and received the President's Leadership Award.

ROBINSON NEVER NOTIFIED OF GRADE CHANGE

Throughout this hastily done change, Robinson, who had left her home and work telephone numbers with a number of people, was never contacted by anyone from

ATTEMPT TO UNDERMINE ACADEMIC FREEDOM FAILS

the college concerning this grade appeal. Division Chair Ware testified that he did not call her and get her input because he believed she was unavailable. Robinson learned from administrators and colleagues, who called her because they were upset with the College's actions, that the student's grade had been changed and the manner in which it was changed.

In addition, "At some point in time, the chairperson of the Human Services Department waived the standard internship requirements for graduation for the student. There was no evidence as to exactly when this waiver decision was made or how it came about. The department chairperson was the wife of the president of the College."

GRIEVANCE DENIED AT BOTH LEVELS FOR DIFFERENT REASONS

Robinson contacted the Union leadership for possible courses of action. She filed a grievance which was denied on grounds that she had been unavailable, and the division chair, therefore, had the right to proceed in her absence. The Step II level was denied on the grounds that the grievance was not grievable.

UNION'S ARGUMENT IN ARBITRATION

The case went to arbitration. The Union argued that (1) the grievance was arbitrable; (2) "by injuring her good reputation, professionalism, and academic freedom, the College violated article VII, Academic Freedom & Responsibility . . ."; (3) "the College in essence charged Robinson with the serious offense of unethical conduct in unfairly grading a student, without ever affording her the opportunity to present a defense."; (4) not notifying Robinson was inconsistent with the College's own procedures for reviewing student grades; (5) though Robinson took all reasonable steps to make herself available, the College chose to rely solely on the contentions of the student and declined to notify Robinson that a grade review was in process; (6) "management's right to administer the College may not be exercised unreasonably and to the detriment of employee rights"; and (7) the College was obligated to follow the grievance procedure established by the regents. "It could not set up an ad hoc faculty panel to determine the fairness of the grade Robinson gave the student, nor could it deny her the opportunity to be heard at all stages of the grievance procedure."

"The grievance of Brenda Robinson is arbitrable. The College violated the collective bargaining agreement by the manner in which it revised [the student's] grade in May, 1987. Any reference to the student's complaint and grade appeal should be expunged from the College's records. The College shall notify faculty members that Robinson's academic freedom was abridged by its actions."

Management argued that (1) the grievance was not arbitrable and there were no contract violations; (2) the College acted reasonably in determining that Robinson was unavailable; (3) the division chair is empowered to reassess the grade when a faculty member is unavailable; (4) because Robinson heard the oral complaint in her telephone conversation with the student, Robinson received the benefit of the procedure, so any error was harmless; (5) although Robinson did not have the opportunity to provide a written response, she had had the chance to fully present her views to the student; and (6) with the input from three faculty members who reviewed the folder, the division chair reasonably reassessed the grade and changed it to a 'C'.

ARBITRATOR'S DECISION

The decision from the arbitrator, Mark L. Irvings, stated Robinson's complaint constituted a grievance. Though the "Board has to right to adopt policies, rules, regulations, and practices, . . . claims that these on their face or in their implementation may be unreasonable or detrimental to an employee's rights are grievable and arbitrable. Though the "parties did not define in detail exactly what constitutes academic freedom, it does not mean the provision is unenforceable through the grievance and arbitration procedure.

DISPUTE ARBITRABLE

"The interrelationship between these overarching principles and the procedure followed when the College chose to question a faculty member's professional judgment and change an assigned grade clearly presents an issue of contract interpretation and application. It is through just such interpretation and application that terms like 'principles of academic freedom and responsibility as generally and traditionally accepted in institutions of higher education,' or 'procedures to assure academic freedom,' or 'academic freedom in its teaching aspect' are defined. The dispute presented by Robinson is therefore arbitrable."

STUDENT ASSESSMENT IS INHERENT RIGHT

"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.

"In establishing the student grievance procedure, and the subsection on grade appeals, the Board [Regents] acted consistent with articles VII and IV. The Board stated that grading is the careful and deliberate assessment of a student's performance by a professional and is necessarily judgmental. It allowed for a successful appeal only in the 'rare cases' where 'the process of grading may be subject to error or injustice.' Implicit is the principle that a grade given in good faith, based on reasonable and impartial standards, will not be overturned."

The arbitrator ruled that "the College failed to comply with the letter or the spirit of the student grievance procedure." In disposing of management's defense of Robinson's unavailability, the arbitrator stated that Robinson "did not sneak off and make herself unreachable. On the contrary, she informed many administrators and colleagues where she would be and exactly how she could be reached. Ware had no real difficulty getting ahold of Robinson in New York He knew she was willing to answer any questions he might have, he knew she would be back on campus on May 20, and he knew she had an intense professional interest in the student's grade." Because Robinson expressly questioned Ware about the grade and if there was anything she should do, "it can hardly be viewed as one of unavailability or abrogation of her professional responsibilities as the grading faculty member."

UNAVAILABILITY ARGUMENT IS SPECIOUS

"The inescapable conclusion is not that Robinson was unavailable . . . but rather that the College administration sought to keep her out of the process. The administrators were cognizant of Robinson's strongly held views on the student's grade and it seems the administration was just as strongly committed to finding a way for the student to graduate on time Where the College made sure Robinson was never told of the pending grade appeal prior to graduation, the claim of unavailability is specious."

Robinson "was never afforded the opportunity to supply a written answer, in which she could have delineated her rationale for refusing to change the grade. That she had an opportunity to tell the student and Ware the reasons does not make the breach a harmless error. The opportunity for a written answer allows a faculty member to create a permanent record which cannot be lightly ignored by those who might review a faculty member's actions"

An even more glaring breach occurred at Step Three — Robinson never being given the opportunity to be present and to be heard especially since "colleagues were asked whether Robinson was guilty of the rarely occurring professional misconduct of grading a student unjustly . . . though it was not apparent from the record if the three faculty members knew all of the details of this situation."

The College, changing a student's grade without following the procedure, "unreasonably applied a Board policy, rule, and practice, in violation of article IV . . . which significantly infringed Robinson's academic freedom as a teacher, in violation of article VII The damage to Robinson's professional reputation and the principles of academic freedom can be remedied" The College should expunge from its records references to this complaint or appeal, and the College "shall also send to its faculty members a notice that Brenda Robinson's contractual right to academic freedom was abridged when the College failed to follow the provisions of the student grievance before changing a student's grade."

BASIC EDUCATIONAL PRINCIPLE UPHELD

Brenda Robinson, now at the College of Staten Island, after learning of this decision, said "I had to pursue this case. I have enormous respect for my colleagues at Bunker Hill, and I would have felt like I had betrayed them if I had just walked away. I was already in another job, but I realized the importance of this issue to the institution of education, and because we know that this can happen to anyone. My friends who called me were outraged. I called Michael McSweeney, our chapter president, and he was able to listen objectively as I was very subjective and emotional about what had happened. Michael provided me with the support and encouragement I needed to proceed. Dennis Fitzgerald, [MCCC Grievance Coordinator] gave me the support of the MCCC, and Attorney Jack Carpenter was incredibly brilliant in the presentation of my arbitration. He was very perceptive and asked critical questions during the hearings. He had the ability to extrapolate the salient points of this case as he knew the impact this has on all academicians. At no time throughout this process did I feel I was being pushed or pressured to do something which I did not want to do. I was never what you would call an active union member, but the union was right there for me during this entire time, and its support never wavered." Jim Rice, MCCC President, stated, "This case is significant in that it reminds us of one of the important principles of our profession, academic freedom and that it cannot be tampered with by anyone."

**NEGOTIATING
TEAM CHOSEN
FOR 1989-1992
CONTRACT**

The negotiating teams for the next contract have been chosen. The following are the teams members from the MCCC and management.

MCCC Team

- Catherine A. Boudreau**, Massasoit Community College, Office Administration Department, MCCC Communications Coordinator, Director to the MCCC Board from Massasoit
- Karen Burns**, Roxbury Community College, Accounting Department, MCCC Research Coordinator
- Susan Dole**, Bunker Hill Community College, Counselor, chapter president
- Dennis Fitzgerald**, Massasoit Community College, Math Department, MCCC Grievance Coordinator
- Alan Foucault** No. Essex Community College, Director of Instructional Media, member of No. Essex Executive Committee
- Dr. Richard Nagle**, Massasoit Community College, Economics Department, Doctorate in Labor Studies, chapter president and grievance officer

Team Members, Ex Officio

- James F. Rice**, Quinsigamond Community College, Developmental Studies MCCC President
- R. Michael McSweeney**, Bunker Hill Community College, Political Science Department, MCCC Vice President

MTA Consultant

Attorney Jack Carpenter, Division of Higher Education, MTA

Management's Team

- Dr. Gerard F. Burke**, President, Massasoit Community College and chair of the Presidents' Council Negotiating Committee
- Patricia Chisholm**, Dean of Student Services, Bunker Hill Community College
- John Dunn**, Dean of Faculty, Springfield Technical Community College
- Kevin Kiernan**, Dean of Administration, Quinsigamond Community College
- Gary McPhee**, Director of Personnel, Middlesex Community College
- Dr. Carl Schilling**, Dean of the College, Middlesex Community College
- Charles Weitze**, Division Chair of Science and Technology, Mt. Wachusett Community College
- Donald Zekan**, Executive Vice President and Dean of Administration, Massasoit Community College
- Attorney Carolyn Young**, chief spokesperson for management

**LEADERSHIP
CONFERENCE**

The MTA will sponsor a leadership conference for all chapter leaders on **February 17, 1989**, at the Sheraton-Lincoln in Worcester. This conference will focus on the current budget situation from a national, as well as a state perspective. Thomas Shipka from Youngstown Ohio University, James Braude, Executive Director of TEAM, Sal Albano, Senate Chair of the Education Committee and Nick Paleologos, House Chair of the Education Committee will be speaking. MTA staff from the Communications, Governmental, and Professional Development Divisions will conduct a workshop on how to impact the higher education budget. Contact the MTA or your chapter president for additional information.

**BYLAW
CHANGES DUE**

If anyone is interested in submitting any bylaw changes to the MCCC Constitution and Bylaws, they must be sent to Bylaw Chair, Ernest Therrien, Springfield Technical Community College, Armory Street, Springfield, MA 01105, by **February 1, 1989**. The bylaws committee will put changes in the appropriate format for presentation to the Board of Directors and the MCCC Annual Meeting.

**NOTA
BENE**

Attorney Michael A. Ventrella, part-time day and DCE faculty member at Bunker Hill Community College has been appointed MCCC legislative Action Coordinator. Ventrella teaches courses in American Political Science and American History and is in private practice in Boston.

**COMMUNITY
COLLEGE
CALENDAR**

- Feb. 1** Bylaw changes to MCCC Constitution due
- Feb. 17** Higher Education Leadership Conference
Sheraton-Lincoln, Worcester
- Feb. 24-26** NEA Higher Education Conference Marriott Hotel,
Orlando, Florida
- Jan. 24** First Year professional staff work performance evaluation rebuttal
submitted
- Jan. 31** Summary evaluations released to faculty and professional staff
- Feb. 4** Sabbatical proposals submitted for Fall.
- Feb. 9** Faculty and professional staff summary evaluations rebuttal due
- Feb. 15** Notice of nonreappointment for unit members in first to third year

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MCCC Newsletter

Editor:
Catherine A. Boudreau

The MCCC Newsletter is a publication of the Massachusetts Community College Council. The Newsletter is intended to be an information source for the members of the MCCC and for other interested parties. The material in this publication may be reprinted with the acknowledgement of its source. For further information on issues discussed in this publication, contact Catherine A. Boudreau, Massasoit Community College, Brockton, MA 02402.