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**M**ASSACHUSETTS **C**OMMUNITY **C**OLLEGE **C**OUNCIL

# NEWSLETTER

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Volume IX

November, 1991



Number Four

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## MCCC Wins Furlough Arbitration

Last spring all of the higher education unions decided to file suit in court for impairment of contract because of the furloughs which were signed into law by Governor Weld as part of a supplemental budget on March 22, 1991 (A few unions, however, decided to agree to the furlough program, signed an agreement stating that the Commonwealth could furlough their employees for the next three years, and promised not to file an impairment-of-contract suit. In return the employees would receive their money back over a three-month period after the budget was passed.). Unlike most of the state employees, except judges who were excluded from furloughs in the law, faculty in higher education were designated as "critical and essential", which precluded these unit members from any option except one — money back upon retirement.

### Two major issues

On April 5, 1991, the MTA responded to the upcoming implementation of the furlough program by instituting a civil action in Superior Court alleging, among other things, that 1) the furlough impaired the MCCC's rights under the salary and retrenchment provisions of the con-

tract and, 2) therefore, violated the United States Constitution and the Massachusetts Constitution. The union argued for arbitration based on the fact that the furlough was a violation of the collective bargaining agreement. The Board [management], through the state's attorney general, interposed a number objections to arbitration. Judge Tuttle upheld the union's argument, and the cases were sent to arbitration. The attorney general further attempted to have the Court amend its order to provide that the arbitrator consider arbitrability issues. Following oral

arguments, the court denied the attorney general's motion.

### Arbitrator frames issues

Marc Greenbaum was appointed as arbitrator, and since the attorney general's office would not stipulate to issues presented to arbitration, Greenbaum framed the issues as follows:

- 1. To what extent, if any, is this matter arbitrable?
- 2. If the matter is arbitrable, does the implementation of the furlough violate the 1990-1993 collective bar-

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## MCCC Fact Finding Presentation

The MCCC concluded its fact finding presentation on October 10, 1991. With the help of MTA Assistant Director of Research David Danning, the MCCC presented its case for salary increases, restoration of health and welfare benefits, part-time salary increases, funding of outstanding promotions, and travel expenses.

**Salary.** David Danning presented 23 detailed exhibits showing the relationship between the community colleges and the state colleges and universities in Massachusetts as well as where the community colleges fell within a national and industrial state comparison. With an inflation adjustment for the years 1989-1993 and

an equity adjustment based approximately on the inflation rate for those years, the salary proposed to the fact finder was 40 percent over four years.

Presentations were also made for the restoration of what our health and welfare benefits were prior to their reduction; \$444,110 which would fund the outstanding 445 promotions; salary increases for day part-time faculty (35%-10%-20%) and professional staff; and increases in the mileage rate and meals allowance.

The Team is waiting for notice to return to fact finding for management's presentation. ■

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gaining agreement and/or the Cost Savings agreement?

• 3. If the implementation of the furlough violates the contract, does the arbitrator have the authority to determine the remedy for the violation?

• 4. If the arbitrator has authority to determine the remedy, what shall the remedy be?

On October 22, 1991, the MCCC received Arbitrator Greenbaum's 34-page decision.

### The Question of Arbitrability

The union, of course, argued that this law violated the collective bargaining agreement, and based its

## Early Retirement Bill Languishes

The early retirement bill still sits in the Public Service Committee. Though there is support for this bill from the governor and the legislative leadership, problems still exist within the committee, specifically chair Kevin Blanchette. One factor that arose at the public hearing was Administration and Finance Secretary Peter Nessen's testimony that higher education was not included in this bill. The language in the bill, however, clearly includes higher education except for the University of Mass. (They are on a different computer system.). All the committee members who spoke commented on the necessity of including higher education in an early retirement proposal. Jack Flanagan, MTA lobbyist who has been following this bill since its inception, testified at the public hearing and raised some concerns about the backfill rate. He stated that an early retirement incentive could be used to eliminate courses and programs if full-time employees could not be rehired to fill the vacancies. In order to get this bill out of committee, people will have to put pressure on their representatives and senators to contact Rep. Blanchette and have him move this bill out of committee. ■

argument, in large part, upon the definition of an arbitrator's authority as set forth in the contract. On the other hand, the Board based its argument, in large part, on the proposition that Section 90 [furlough law] superseded the collective bargaining agreement, including those provisions which provide for arbitration of disputes concerning the interpretation and application of the contract. After much written analysis, Greenbaum ruled that "the matter is arbitrable."

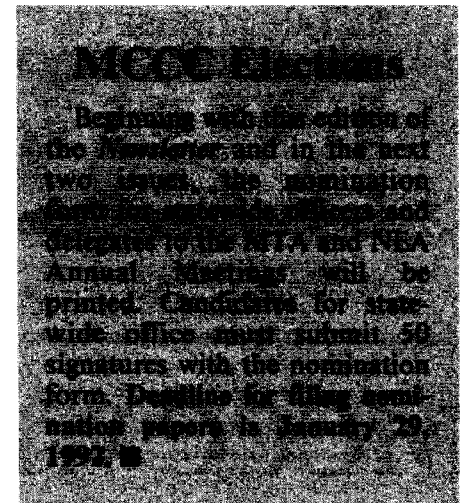
### The Merits of Contract Violation

Once the issue of arbitrability was established, the arbitrator then had to determine whether the implementation of Section 90 violated the 1990-1993 collective bargaining agreement.

The union put forth three contract violations: 1) That since the furlough required members to defer some portion of their salary, the union contended that this constituted a unilateral reduction of salaries in violation of the salary article. 2) That the contract provides a clear, precise, and comprehensive method for reducing staff through the retrenchment article in order to meet bona fide fiscal exigencies which protects the seniority rights of the members, and 3) That the contract comprehensively defines the vacation entitlement of members. It leaves no room for a system where additional vacation days may be earned in lieu of pay.

The Board argued that the furlough did not conflict with the provisions of the contract. Nowhere, according to the Board, does the salary article guarantee that compensation will be paid by a specific date; the furlough merely delays the employee's receipt of some portion of their salary.

The arbitrator ruled "... that the implementation of Section 90 conflicted with, and thus violated, relevant provisions of the parties' 1990-1993 Agreement." He wrote that Section 90 contravened the language, intent, and purpose of the salary article because employees were



## New DCE Consultant

Due to an internal reorganization within the MTA, Arthur Pippo has been assigned as MTA consultant to the MCCC DCE unit. Ellen Suarez who was with the DCE unit and was chief spokesperson for the bargaining team has moved to the MTA field office in Peabody. Any questions concerning DCE should be directed to either the MCCC statewide grievance officer Joe Rizzo (1-603-898-6309) or Art Pippo at (1-800-392-6175).

forced to defer expected salary. As strong an argument was the retrenchment article since its very purpose is "... is to anticipate the possibility that economic conditions will require an employer to take actions to reduce its salary overhead. Because such an article implicates fundamental questions of job security, it is among the most important provision in any collective bargaining agreement ... ." Greenbaum further stated that, "... it would be unusual for a labor organization to agree that an employer could continue its operation and reduce its overhead by means other than those reflected in the governing collective bargaining agreement." He also noted that the retrenchment article "... is quite detailed in specifying the manner in which retrenchments will be accom-

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## Grants Available from MTA

**Public Relations Grants.** The MTA has up to \$2,500 in matching funds for locals and chapters with creative approaches to publicize public education. Projects which have received reimbursement are: newspaper ads, bookmarks, media and legislators' nights, friend of education programs, radio spot campaigns, cable TV projects, bumperstickers, and many more. Any chapter wishing to participate must make an application to the **MTA Communication Committee by February 1, 1991.**

Any proposed activity must be approved by the chapter executive committee and signed by the MCCC president Jim Rice. If the activity is approved by the MTA Communications Committee, the chapter would expend the monies and the grant program would return fifty percent of

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plished. It is also the most important, if not the only substantive, article of the Agreement defining the manner in which the Board may respond to budgetary shortfalls . . . and the parties intended it to preempt other means of dealing with fiscal exigency."

"If there is one principle which can be described as the bedrock for collective bargaining it is the allocation of employment benefits and burdens by seniority. In the context presented by retrenchment, it recognizes that the most senior people in a bargaining unit deserve greater protection from the burdens of economic dislocation because of their investment of a substantial amount of human capital in their jobs. In effect, seniority assures that those with the greatest investment receive the greatest protection. Section 90 [furloughs] appears to conflict with this bedrock principle."

As to the Board's argument that the Savings Clause (Article XXIV) allows external laws passed to supersede a collective bargaining agree-

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the expenditures, up to a maximum grant of \$2500.

If any chapter would like a grant application, contact either your director or the MTA Division of Communications 1-800-392-6175. All public relations activities must be completed by June 30, 1992.

**Professional Development Grants.** This MTA grant program awards grants of up to \$500 to reimburse MTA locals or chapter for the costs incurred by a member or members in the design and implementation of a professional development program. The goals of the program are: to improve conditions for teaching and learning; to assist unit members in their continuing professional development; and to assist members to achieve an increased, effective role in the management of their professional and working lives. These grants are geared for projects which affect the membership in their professional environment. They are not awarded to support personal research, educational, or professional activities of individual members. For example, grants which encourage development of programs which address deterrents to effective teaching — student retention, early intervention, professional development workshops — meet the criteria for approval.

Anyone interested in applying must make an application which can be obtained from the chapter president, director, or from the Professional Development Division at MTA (1-800-392-6175). There are two deadlines for approval **December 13 and February 14, 1992.** ■

The MTA media campaign on 25 radio stations was extended to the middle of November. Radio stations on AM and FM have been playing 5,550, 60-second spots on the importance of supporting public education. NEA also has its spots on the four public radio stations across the state.

## Dept. Reorganization at Roxbury

The MCCC Bargaining Team went into impact bargaining after **Roxbury Community College** merged departments between the former Boston Business School and Roxbury Community College. The problem which needed to be addressed was what happens to departmental seniority when there is a merger of departments. There is no language in the contract which covers a merger of departments into one department or into a new department. The parties reached an agreement, **pertinent to this situation at Roxbury only.** The agreement stated, "A unit member's college-wide seniority shall prevail in the event of retrenchment in a department/work area/program that has been merged with an existing department/work area/program or merged into a completely new department/work area/program." ■

## Compensation for Lost Courses in DCE

**Bunker Hill.** A unit member was assigned a summer course during the day even though the college was informed that the unit member was available only in the evening. The grievance was resolved and the college compensated the unit member for the lost course.

At **Middlesex Community College** a unit member was not reappointed because of the manner in which the college was calculating seniority. A grievance was filed and resolved providing for compensation for the course the unit member should have been assigned and the eligibility issue was corrected. ■

• Any full-time unit member who is teaching a day DCE course this year for the first time should contact the chapter president or director to receive a copy of the DCE contract.

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ment, Greenbaum ruled that in his view, the language was most likely intended to address a situation where a law of general applicability precluded enforcement of a provision of the contract. For example, if a law was passed which mandated a minimum of four months maternity leave this would clearly override the MCCC contract language which provides for three months. "Section 90, on the other hand, stands on an entirely different footing." It was not a law of general applicability, but rather targeted the wages paid to state employees. "It would stretch the meaning of Article XXIV beyond all recognition to conclude that the Council acquiesced in legislative modification of employment conditions which the legislature had already declared were to be arrived at through the collective bargaining process."

#### Award

Though the Board argued that the arbitrator should not order a specific remedy, Greenbaum stated that ultimately the Board was not persuasive. The remedy, therefore, was that the employees be made whole for the injuries resulting from the violation of the Agreement and remand the matter to the parties to best implement the details of the Award.

In the past two weeks, the state colleges and the universities have

received their decisions from different arbitrators; both arbitrators ruled violation of contracts. It is important to remember this is but the first step. Once all awards are received, they will be sent to Judge Tuttle, and he will make his ruling to accept or reject the arbitrator's decision. There is a good possibility these cases will go to the Supreme Court.

Special thanks should be extended to MTA General Counsel Ann Clarke and Dennis Fitzgerald, MCCC Team Chair and statewide Grievance Coordinator. While management appeared with eight attorneys, Attorney Clarke presented the case with Dennis Fitzgerald as the sole witness. Both worked to prepare this case for a number of weeks. The arbitrator upheld each of the union's arguments. Congratulations on this first hurdle. ■

## Designing the Future: Northeast Conference

On Friday, January 24 beginning at 8:30 p.m. and going to Sunday, January 26, 1992, at 12:30, the NEA will hold its annual regional leadership conference. This year it will be held in Boston at the Lafayette Hotel, and the theme of the conference is **Public Education: Designing the Future**. The program will incorporate a number of issues of particular interest to the community colleges: The One-College Concept, Health Care Issues, Subcontracting and Privatization, Learning Labs, and New Technology and Uses.

If anyone is interested in attending contact the MTA for a registration form. **Registration Deadline is 10, 1991.** ■

## Know Your Contract

- Nov. 30** Faculty receive notice of tentative courses and schedule for Spring, 1992
- Dec. 6** Student evaluations (E-1) to faculty
- Dec. 16** Faculty submit Student Advisement (E-4) and College Advisement (E-5) forms
- Dec. 30** Professional Staff submit Student Advisement and College Service forms ■

*N.B. Dates vary depending on first day of classes. Also, most of these dates are "last date" standards. In many instances, the action can be accomplished before the date indicated.*

## MCCC Newsletter

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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 Boudreau, Massasoit Community College, Brockton, MA 02402.

MCCC/MTA Newsletter  
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