

ARTICLE X - RETRENCHMENT

INTRODUCTION

Should a financial exigency ever occur, every reasonable measure should be taken, as is hereinafter provided, to curtail the operations of any affected College consistent with the preservation of the academic integrity of its educational programs and goals and consistent with the preservation of the paramount teaching-learning relationship among members of its academic community.

Notwithstanding any other term of this Agreement, no unit member shall be retrenched except as provided in accordance with the provisions of Article X, X-A or X-B, as may be applicable.

APPLICATION

Save as is provided in Article X-A and X-B, the provisions of this Article shall exclusively govern the retrenchment of members of the bargaining unit at each College, any other provision of this Agreement to the contrary notwithstanding.

Except as is otherwise provided in Section I of this Article X, the provisions of this Article X shall be of no application to any person holding a part-time appointment to a position in the bargaining unit during the term of this Agreement at a College other than the Massachusetts College of Art.

DEFINITIONS

1. **Financial Exigency**: For the purposes of this Article, financial exigency shall be deemed to exist at a College whenever, in any fiscal year, the moneys allocated or otherwise made available from or by way of legislative appropriation for all of the operations of such College shall be insufficient for the continuation of any or all of such operations during such fiscal year; or whenever, in any fiscal year, either no annual appropriation shall have been enacted in respect of any College, or, if such annual appropriation shall have been enacted pursuant to Section 15 of Chapter 15A of the General Laws, no allocation shall have been made in respect of a College.

Whenever such annual appropriation shall have been enacted pursuant to the said Section 15 of Chapter 15A, and the Board of Higher Education shall have preliminarily determined to make an allocation to any College which shall be insufficient for the continuation of any or all such operations of the affected College during such fiscal year, the Chancellor, the President of the College, and the Association President shall promptly meet and confer. Such meeting shall be called by the Chancellor.

Nothing in this definition shall be deemed to permit the retrenchment of any member of the bargaining unit until the provisions of Section E of this Article shall have first been complied with, nor shall the existence of a

financial exigency as herein defined be deemed to require the Board of Trustees of any College to initiate procedures for the retrenchment of members of the bargaining unit. If the Board of Trustees shall have determined that such procedures should be initiated, it shall provide the Association with the information on the basis of which it has determined the financial exigency to exist.

2. Declining Student Enrollment: For the purposes of this Agreement, “declining student enrollment” shall mean a decrease in the total number of students enrolled in the total number of courses offered by a department or program area during a semester, which decrease shall be measured by comparing the total number of students so enrolled during the then-current semester with the average total number of students so enrolled during the three previous comparable semesters (i.e., fall or spring), and which decline shall, in the sole discretion of the Board, be deemed to be of sufficient magnitude to justify a reduction in the total number of faculty members within that department or program area; provided, however, that in the case of any department or program area that shall have been in existence for fewer than three (3) full academic years at the time when any measure of student enrollment is taken pursuant to this provision, such measure shall be taken with reference to the average total number of students enrolled in such department or program area during such number of previous comparable semesters as equals the number of full academic years, being fewer than three (3), during which such department or program area shall have been in existence; and provided further that the aforesaid determination of the Board shall not be arbitrary or capricious. For the purpose of determining the total number of students enrolled in all of the courses offered by a department or program area during any semester, the count shall be taken at the end of the period during which students are permitted to enroll in courses for such semester. Nothing in this definition shall be deemed to permit the retrenchment of any faculty member in any such department or program area until the provisions of Section E of this Article shall have first been complied with, nor shall the existence of a declining student enrollment as herein defined be deemed to require the Board to initiate procedures for the retrenchment of any such faculty member.
3. Retrenchment: For the purposes of this Article, “retrenchment” shall mean the laying off of any member of the bargaining unit by reason of financial exigency or declining student enrollment at a College, and shall not mean termination.
4. Seniority: Except as is provided in Article VIII-C, the seniority of each member of the bargaining unit shall, for the purpose of this Agreement, be measured by the length of his or her continuous service at a College or another State College; in respect of each such member of the bargaining unit, such service shall be deemed to have commenced on the date, time and order of which the Board of Trustees of any College or any of its predecessors

shall have voted to appoint such member of the bargaining unit to a position at the College. In all cases, seniority shall not include periods of leaves of absence without pay as a unit member; nor shall unpaid leaves of absence abrogate any prior-accrued seniority.

For the purposes of this Article X and of Articles X-A and X-B, the seniority of each member of the bargaining unit, as measured in accordance with the requirements of the preceding paragraph, shall mean:

in the case of faculty members, the seniority of each faculty member relative to all the other faculty members within the department or program area of which he or she is a member; and

in the case of librarians, the status of each librarian relative to all other librarians at the College at which he or she is employed.

D. CRITERIA FOR RETRENCHMENT

Retrenchment shall take place only pursuant to the following provisions:

1. Faculty Members

The seniority of each faculty member within any department or program area at a College shall determine the order in which he/she shall be retrenched from that department or program area, so that the most senior such member shall be last retrenched; provided, however, that such order of retrenchment shall govern only insofar as, pursuant to its initial application, those faculty members to be retained are, by training and/or experience, qualified to teach the remaining courses which are to be continued to be offered by such department or within such program area to fulfill its mission and purpose; provided further that such order of retrenchment shall govern only insofar as its application is not in violation of the laws of the Commonwealth of Massachusetts or the United States; and provided further that no tenured member of a department or program area shall be retrenched sooner than a non-tenured member of such department or program area solely by reason of the fact that such tenured member has less seniority than such non-tenured member.

2. Librarians

The seniority of each librarian at the College at which he/she is employed shall determine the order in which he/she shall be retrenched from that College, so that the most senior such librarian shall be last retrenched and the least senior such librarian shall be first retrenched; provided, however, that such order of retrenchment shall govern only insofar as, pursuant to its initial application, those librarians to be retained are, by training and/or experience, determined by the Board of Trustees to be essential to the operation of the library or libraries at such College; provided further that

such order of retrenchment shall govern only insofar as its application is not in violation of the laws of the Commonwealth of Massachusetts or the United States; and provided further that no tenured librarian shall be retrenched sooner than a non-tenured librarian solely by reason of the fact that such tenured librarian has less seniority than such non-tenured librarian.

3. Application

Whenever it shall be necessary, pursuant to the application of this Section D to determine:

- a. whether any faculty member who would otherwise be retrenched should be retained in any department or program area, such determination shall be made by the President and shall not be arbitrary or capricious; or

whether any librarian who would otherwise be retrenched should be retained in any library or libraries at any College, such determination shall be made by the President and shall not be arbitrary or capricious.

E. PROCEDURES FOR RETRENCHMENT

1. Financial Exigency

- b. If the President determines that retrenchment for financial exigency may be necessary, he/she shall notify the Chancellor, the President of the Association and the Chapter President, every appropriate decision-making body constituted pursuant to Article VII (which shall be the All College Committee if the provisions of Appendix A of Article VII are then in force at the College) and affected departments and/or program areas that a financial exigency exists, and shall provide them with a preliminary proposal, which shall address the reasons for the anticipated retrenchment, the amount of the anticipated retrenchment and the areas proposed for retrenchment.

Accurate information, statistics and/or financial data related to such preliminary proposal shall be made available by the President for inspection and/or copying upon request; provided, however that this Section shall not require the President to compile such information, statistics, and/or financial data in the form requested unless already compiled in that form.

The President shall provide a reasonable period of time and, whenever possible, a minimum of thirty (30) days from the issuance of the preliminary proposal, to receive advice and written recommendations from the President of the Association and/or the Chapter President.

The President of the College, the President of the Association and/or the Chapter President shall promptly meet and confer to consider the recommendations of each party and to seek to develop mutual recommendations relative to curtailing the operations of the College as it affects members of the bargaining unit with respect to the preliminary proposal and their recommendations.

If, after having considered such recommendations, the President determines that retrenchment remains necessary, he/she shall recommend a final retrenchment plan, which shall state the unit or units in which retrenchment shall occur, the extent of retrenchment in each such unit, and, if known, the projected duration of retrenchment. The plan shall identify, in accordance with the provisions of this Article, those unit members who are to be retrenched. A copy of the recommendations of the Association and Chapter shall accompany the recommendations of the President. In developing the final retrenchment plan, the President shall address the following considerations:

the mission of the affected unit(s) and how circumstances have altered that mission;

the dependence of other unit(s) of the College on the unit(s) affected, the effect on the offerings of the unit(s) affected and/or arrangements to replace offerings lost;

arrangements to allow students in the affected unit(s) to satisfy academic needs and requirements;

possible consequences to the stature of the College;

the possibilities of re-employment elsewhere in the College or other State College;
and

the advisability of program curtailment as opposed to program abolition.

A copy of the above material shall also be transmitted to the Chancellor.

The Board of Trustees shall promptly meet to consider the plan so recommended. In accordance with the Board of Trustees' procedures, upon the prior written request of the President of the Association and/or the Chapter President, the President of the Association and/or the Chapter President shall be granted an opportunity to address the Board. Thereafter, the Board may adopt a plan of retrenchment as it shall determine. Unit members may thereafter be retrenched pursuant to the plan so adopted in accordance with the provisions of this Article. A copy of such plan shall be given to the Chancellor, the President of the Association and the Chapter President.

2. Declining Student Enrollment

- c. If the President determines that retrenchment for reasons of declining student enrollment may be necessary, he/she shall so notify the Chancellor, the President of the Association and the Chapter President, every appropriate decision-making body

constituted pursuant to Article VII (which shall be the All College Committee if the provisions of Appendix A of Article VII are then in force at the College) and affected departments and/or program areas, and shall provide them with a preliminary proposal, which shall address the reasons for the anticipated retrenchment, the amount of the anticipated retrenchment and the areas proposed for retrenchment.

Accurate information, statistics and/or financial data related to such preliminary proposal shall be made available by the President for inspection and/or copying upon request; provided, however, that this Section shall not require the President to compile such information, statistics and/or financial data in the form requested unless already compiled in that form.

The President shall provide a reasonable period of time and, whenever possible, a minimum of sixty (60) days from the issuance of the preliminary proposal, to receive advice and written recommendations from the President of the Association and/or the Chapter President.

The President of the College, the President of the Association and/or the Chapter President shall promptly meet and confer with respect to the preliminary proposal and their recommendations.

If, after having considered such recommendations, the President determines that retrenchment remains necessary, he/she shall recommend a final retrenchment plan, which shall state the unit or units in which retrenchment shall occur and the extent of retrenchment in each such unit. The plan shall identify, in accordance with the provisions of this Article, those unit members who are to be retrenched. A copy of the recommendations of the Association and Chapter shall accompany the recommendations of the President. In developing the final retrenchment plan, the President shall address the following considerations:

the mission of the affected unit(s) and how circumstances have altered that mission;

the dependence of other unit(s) of the College on the unit(s) affected, the effect on the offerings of the unit(s) affected and/or arrangements to replace offerings lost;

arrangements to allow students in the affected unit(s) to satisfy academic needs and requirements;

possible consequences to the stature of the College;

the possibilities of re-employment elsewhere in the College or other State College;
and

the advisability of program curtailment as opposed to program abolition.

A copy of the above material shall also be transmitted to the Chancellor.

The Board of Trustees shall promptly meet to consider the plan so recommended. In accordance with the Board of Trustees' procedures, upon the prior written request of the President of the Association and/or the Chapter President, the President of the Association and/or the Chapter President shall be granted an opportunity to address the Board. Thereafter, the Board may adopt a plan of retrenchment as it shall determine. Unit members may thereafter be retrenched pursuant to the plan so adopted in accordance with the provisions of this Article. A copy of such plan shall be given to the Chancellor, the President of the Association and the Chapter President.

The determination of the Board of Trustees made hereunder shall not be arbitrary or capricious.

F. GENERAL PROVISIONS

No member of the bargaining unit shall be retrenched, pursuant to the provisions of this Article, by reason of financial exigency or declining student enrollment, until after the provisions of Section E of this Article, shall have first been complied with; provided, however, that whenever the President of the Association and/or the Chapter President shall have failed or refused to meet as provided in E(1)(d) and E(2)(d) above, then the Board shall determine to retrench as it may deem appropriate.

G. RIGHTS AND BENEFITS OF RETRENCHED BARGAINING UNIT MEMBERS

1. Notice

d. With regard to retrenchment pursuant to Section E above, bargaining unit members to be retrenched shall be informed as soon as possible of their selection. When circumstances permit, the Board shall provide a minimum of fifty-two (52) weeks' notice to tenured bargaining unit members with ten (10) or more years of service; thirty-seven (37) weeks' notice to tenured bargaining unit members with fewer than ten (10) years of service; and sixteen (16) weeks' notice to all other full-time bargaining unit members. Such notice shall be provided in writing.

With regard to faculty, the Board recognizes the desirability, whenever possible, of establishing retrenchment dates that coincide with the end of an academic semester so as to minimize the disruption of teaching.

Notwithstanding paragraph (a) above, notice shall not extend beyond the termination of a bargaining unit member's term of appointment or reappointment.

Upon request of the unit member who has been so retrenched, the President of the College shall provide him/her with a letter of recommendation which shall also state that

the unit member was retrenched due solely to financial exigency or declining student enrollment, and for no other reason.

Once notice of retrenchment for financial exigency has been given, the Board may abbreviate such notice period by making a lump sum payment equivalent to sixty percent (60%) of the bargaining unit member's weekly salary for each week such notice period is shortened.

2. Unemployment Compensation

The right of every member of the bargaining unit to receive such unemployment compensation benefits as he/she may be entitled to under Chapter 151A of the General Laws, as amended, is hereby recognized. Every appropriate Board of Trustees shall provide any member of the bargaining unit retrenched pursuant to the provisions of this Article with all such information and assistance as he/she may require for the purpose of making any claim pursuant to the said Chapter 151A.

3. Recall

e. Faculty Member

Whenever during the term of this Agreement it shall be determined by the President to be necessary to fill, in whole or in part, any faculty position in a department in which retrenchment shall, pursuant to the provisions of this Article, have earlier taken place, then the President shall recall the most senior faculty member from among those faculty members who shall have been so retrenched from such department; provided, however, that such order of recall shall govern only insofar as pursuant to its initial application each faculty member to be recalled is, by training and/or experience, qualified to teach the course or courses for the teaching of which such position is to be filled.

Librarian

Whenever at any College during the term of this Agreement it shall be determined by the President to be necessary to fill, in whole or in part, any librarian position at any library or libraries from which retrenchment shall, pursuant to the provisions of this Article, have earlier taken place, then the President may recall the most senior librarian who shall have been so retrenched from such library or libraries; provided, however, that such order of recall shall govern only insofar as pursuant to its initial application each librarian to be recalled is, by training and/or experience, qualified to discharge the responsibilities for which such position is to be filled.

General Provisions

Any provision of this Agreement to the contrary notwithstanding, any member of the bargaining unit recalled pursuant to the provisions of the foregoing paragraphs of this subsection 3 and who shall not have been recalled to serve as a full-time appointee shall be recalled subject to any and all such policies, practices and procedures of the Board of Trustees and the College as apply to persons who hold part-time appointments; and provided further that the term of service of such part-time appointee shall be governed by such policies, practices and procedures and shall not be governed by any of the provisions of this Agreement other than the provisions of this subsection 3; and provided further that, notwithstanding the foregoing, such part-time appointee shall retain the right to use the procedures of Article XI of this Agreement, to the extent they may apply, to determine whether any provision of this subsection 3, but of no other provisions of this Agreement, may have been violated in its application to him/her.

Any such member of the bargaining unit so recalled to a full-time position shall retain all those rights of tenure that he/she shall have held at the date of his/her retrenchment, and shall retain all accumulated sick leave and any eligibility for sabbatical leave that, pursuant to the terms of this Agreement, he/she was entitled to at the date of his/her retrenchment.

Any such member of the bargaining unit so recalled to a full-time position shall, for the purpose of determining his/her status of seniority, be deemed to have been employed at the College during any period in which he/she shall have been retrenched pursuant to the provisions of this Article.

4. Re-employment List

The name of any member of the bargaining unit retrenched pursuant to the provisions of this Article, other than a faculty member who shall have been reassigned in accordance with the provisions of the following subsection 5, shall be entered on a re-employment list and shall be maintained thereon for five (5) years or for a period equal to his/her length of service at the College where he/she was employed on the date of his/her retrenchment, whichever is less. Every person on such re-employment list shall, prior to posting, be notified of all positions that are included in the bargaining unit and that are to be filled at any State College and shall be interviewed for any such vacancy or position for which he/she shall have applied within the established time limit for the receipt of applications, which interview shall take place prior to the filling of such position.

In the event that any such person shall, during the period in which his/her name remains entered on the re-employment list, have been rehired by any

State College, his/her name shall be removed from such list, and such person shall retain all accumulated sick leave and all prior service for tenure and sabbatical leave that, pursuant to the terms of this Agreement, he/she shall have been entitled to at the date of his/her retrenchment. Such person shall also be entitled to repurchase past service credits for retirement in accordance with applicable statutes of the Commonwealth and regulations made thereunder.

5. Reassignment

Reasonable efforts shall be made to locate employment for retrenched unit members within other State Colleges.

6. Tuition Benefits

f. Retrenched unit members will maintain, for a period of up to two (2) years following the date of their retrenchment, those tuition benefits provided in this Agreement.

The children, including any adopted or stepchild or children, of any retrenched unit member will maintain those tuition benefits provided in this Agreement.

7. Supplemental Retraining

At the sole discretion of the President, and subject to the agreement of the retrenched tenured unit member and the President, a program of retraining may be undertaken for a period of up to two (2) years, pursuant to the provisions of Article X-A, Section G(2); provided, however, that the College shall not thereby be obliged to continue to employ such unit member following the completion of the approved program of retraining.

This provision is applicable only to unit members who are retrenched for reasons of declining student enrollment.

H. GRIEVANCES

Notwithstanding the provisions of Article XI of this Agreement, in the event that a grievant alleges a violation of an express provision of this Article X, the grievant may, at his/her option, initiate such grievance at Step 2 of Section C(9) of Article XI; provided, however, that, subject as aforesaid, every other provision of Article XI shall remain of full force and effect and shall apply to any such grievance so filed at Step 2.

I. PART-TIME PERSONNEL

No full-time member of the bargaining unit employed in any academic department or in any academic program area shall be retrenched pursuant to the provisions of this Article X if on the dates on which he/she would otherwise be retrenched there is employed in such department or program area any part-time faculty member who is teaching a course or courses that such member of the bargaining unit is qualified, by training and/or experience, to teach, it being the understanding of the parties that any such part-time faculty member shall be terminated prior to the retrenchment of any member of the bargaining unit. If, on the dates on which any part-time faculty member, who is a member of the bargaining unit, would otherwise be terminated pursuant to Article X(I) or Article X-A(J), there is employed in such department or program area any non-unit part-time faculty member who is teaching a course or courses that the above referenced full-time member of the bargaining unit is qualified, by training and/or experience, to teach, any said non-unit part-time faculty member shall be terminated prior to the termination of any part-time bargaining unit member.

The provisions of this Section I shall be of no application to members of the bargaining unit employed at the Massachusetts College of Art.

J. HOME DEPARTMENTS

The membership of any faculty member in any department, to be known as his/her home department, shall be determined as follows:

1. Except as is provided in the following subsection 2, a faculty member shall be a member of the department in which he/she teaches the largest number of his/her semester hours of credit of instruction.
2. In the case of any faculty member who teaches more than one half (1/2) of his/her semester hours of credit of instruction in a department to which he/she is on loan, so called, such faculty member shall be deemed to be a member of such department if he/she shall have been on such loan and shall have taught more than one half (1/2) of his/her semester hours of credit of instruction in such department for more than two (2) consecutive academic years, whether commencing with effect before or after the date of execution of this Agreement; such faculty member's home department shall otherwise be that department from which he/she is on loan.
3. In the case of any faculty member who teaches one half (1/2) of his/her semester hours of credit of instruction in one department and one half (1/2) of his/her semester hours of credit of instruction in another department, such faculty member shall be deemed to be a member of that department, being one of the aforesaid two (2) departments, which was last determined to be his/her home department by application of the foregoing subsection 1 or 2.

4. In the case of any faculty member who, by the terms of his/her initial appointment, teaches one half (1/2) of his/her semester hours of credit of instruction in one department and one half (1/2) of his/her hours of credit of instruction in another department, such faculty shall be deemed to be a member of one or the other of those two departments as the Vice President shall prescribe, as a term of such initial appointment, after consultation with the Chair of each such department.