

ARTICLE XI - GRIEVANCE PROCEDURE

A. INTRODUCTION

The Board of Higher Education, acting through the Council of Presidents, and the Association recognize that Chapter 150E, Section 8, of the General Laws provides a mechanism for arbitration of disputes between the parties to a collective bargaining agreement and further provides that the parties to an agreement may establish an independent grievance procedure culminating in final and binding arbitration. It is the intent of the parties to this Agreement to use their best efforts to encourage the informal and prompt settlement of grievances which may arise between the Association or a member or members of the bargaining unit and the Board of Higher Education. Therefore, the parties agree, for themselves and for all those whom they represent, that they shall use the procedures set forth in this Article, and no other procedures, for the resolution, strictly pursuant to the terms of this Agreement, of all disputes involving the interpretation of this Agreement and of any other matter that is or may become the subject of a grievance as hereinafter defined.

B. DEFINITIONS

1. Complaint - a complaint is a written statement, which shall be expressly denominated "Complaint", setting forth a grievance as hereinafter defined. A complaint shall aver all the known facts material to the alleged breach on which the grievance is based, including the date when such breach is alleged to have occurred and the specific contractual provisions alleged to have been breached, and shall set forth the remedy requested.
2. Grievant - grievant shall mean the Association or any member or members of the bargaining unit, as the case may be, who, pursuant to the terms of this Agreement, seeks resolution of a grievance.
3. Grievance - a grievance is an allegation by the Association or by a member or members of the bargaining unit that an express provision of this Agreement has been breached in its application to it, him/her, or them, respectively. The Association may seek resolution of a grievance only if initiation of the procedure for such resolution has been duly authorized by the Association and so certified by its President.
4. Day - for the purposes of this Article, day shall mean a working day.
5. Academic Judgment - for the purposes of this Article, every decision made pursuant to Article VIII, Article IX, Article XX, or any or all of them, as the case may be, to renew or fail to renew an academic appointment, to terminate any such appointment, to grant or refuse to grant tenure, or to grant or refuse to grant a promotion, and no other decision, shall be deemed to have been made pursuant to an exercise of academic judgment; and every grievance that, explicitly or by implication, questions the merits of any such

decision, but of no other decision, shall be deemed to be a grievance that questions an exercise of academic judgment.

6. Board of Higher Education - the Board of Higher Education is the Board of Higher Education acting through the Council of Presidents.

C. PROCEDURES FOR FILING A GRIEVANCE

The Association or any member or members of the bargaining unit having a grievance, as defined above, shall seek its resolution only in accordance with the grievance procedures set forth in this Article.

1. Extension of Certain Time Periods

Whenever there shall have been initiated procedures for the resolution of any grievance that arises out of or relates to a decision or determination the making of which requires an exercise of academic judgment, whether such grievance alleges breach of a substantive or procedural term of this Agreement, such initiation shall be deemed to extend the limits of time prescribed by this Agreement for the decision or determination that is the subject matter of such grievance. Such extension of time shall expire sixty (60) days from the date on which the procedures prescribed herein for the resolution of such grievance shall have been concluded.

2. Inspection of Record

At any reasonable time during any step of these procedures the grievant shall be permitted to inspect all or any part of the grievance record, and, where appropriate, shall be permitted to make copies of all or any parts of such record.

3. Introduction of Evidence

Evidence may be introduced into the grievance record only in compliance with the following provisions:

- a. Within the time limits hereinafter prescribed for the initiation of Step 2 of these procedures, the grievant shall introduce all evidence in his/her possession and on which he/she relies or intends to rely as supporting his/her claim for relief;
- b. Notwithstanding the foregoing, the grievant may introduce additional evidence for the sole purpose of rebutting any finding of fact or any determination as set forth in any decision rendered pursuant to the provisions of this Article; provided, however, that such additional evidence, if any, shall be introduced within the time period allowed for the initiation of the Step next following such decision;

- c. The President shall introduce at Step 2 all evidence in his/her possession and on which he/she relies in making any finding of fact and any determination as set forth in the decision rendered by him/her pursuant to the provisions of this Article; provided, however, that nothing herein contained shall be deemed to require the President to introduce any evidence otherwise introduced by the grievant pursuant to the foregoing provisions;
- d. Notwithstanding the foregoing, the grievant, the President or any of his/her agents, or the Chair of the Council of Presidents may introduce any evidence material and relevant to the grievance the existence of which evidence he/she or they did not and should not have known at the times otherwise provided herein for the introduction of evidence.

All evidence introduced pursuant to the foregoing provisions shall form a part of the grievance record.

4. Request for Evidence

Whenever the grievant wishes to introduce evidence pursuant to the provisions of this Article and such evidence is or may be in the possession of the Administration, the grievant may, within the time period allowed for the initiation of the Step at which such evidence is permitted to be introduced, file with the President a written request for such evidence. Whenever such request shall have been so filed, the President shall, within seven (7) days after the filing of such request, convey to the grievant any and all such evidence possessed by him/her so requested; provided, however, that notwithstanding the foregoing, the President may refuse to convey any such evidence not deemed by him/her material and relevant to the grievance set forth in the said complaint; and provided, further that whenever the President shall have refused to convey any such evidence, such refusal and the reasons therefor shall be communicated in writing to the grievant and shall thereafter form a part of the grievance record. Such request when so filed and such evidence when so conveyed shall form a part of the grievance record.

5. Notice to Association

Whenever any grievant shall have initiated the grievance procedures of this Article or shall have proceeded to Step 2, notice thereof shall be given to the Chapter President by the person charged at such Step with resolution of the grievance.

6. Determination to be made pursuant to Resolution of Grievance

At Step 2 of these procedures, the President shall, within the time limits prescribed, determine:

- e. whether the grievant has complied with the procedures for seeking resolution of a grievance as set forth in this Article;
- f. whether the complaint alleges a breach of an express term of the contract; and
- g. whether an express provision of this Agreement has been breached in its application to the grievant as claimed.

7. Expedited Grievances

Any grievance involving non-reappointment, tenure denial, or termination shall initially be heard at Step 2.

8. Optional Electronic Filing of Grievances

- h. Step One and Step Two Complaints may be filed by e-mail by the Chapter Grievance Representative, other MSCA officer, or an individual unit member provided that it is identified explicitly as a Step One or Step Two Complaint and has the appropriate case number as assigned by the chapter (consolidated grievances may be filed by e-mail by the Grievance Committee Chair on behalf of the Association President using the wording now used to identify them as consolidated grievances);
- i. The appropriate management representative shall acknowledge receipt by e-mail;
- j. On or before the day of the Step One or Step Two hearing, the grievant shall follow up with a signed paper copy of the complaint form, which shall include the correct grievance number and any relevant documents as required by the collective bargaining agreement. The management representative shall continue to notify the Chapter President of hearings scheduled with *pro se* grievants;
- k. The management grievance hearing officer at Step One or Step Two may respond via e-mail to an e-mailed grievance, sending it to the grievant and the Chapter Grievance Representative; and
- l. As soon as possible thereafter, the management hearing officer shall follow up with a paper copy of the decision.
- m. Either party, by giving written notice to the other, may discontinue the optional electronic filing of grievances that is permitted by this subsection 8.

9. Steps

STEP 1: THE VICE PRESIDENT (INFORMAL)

Save as is provided in Section L, a grievant shall initiate the grievance procedures of this Article by filing with the Vice President, during the term of this Agreement or an extension thereof, a written notice that a grievance exists. The notice need not be in the form of a complaint, but need only briefly describe the subject of the grievance. No such notice may be filed more than ten (10) days from the date of occurrence of the event upon which the grievance is based or from the date when the grievant had or should have had knowledge of the event upon which the grievance is based. The filing date required hereunder shall be deemed to have been complied with by a postmark dated within the specified time limit. Within five (5) days after the receipt of such notice, the Vice President shall meet with the grievant and attempt to resolve the grievance. If within five (5) days after such meeting, the grievant and the Vice President shall have failed to agree upon a resolution of the grievance, the grievant may elect to proceed to Step 2.

STEP 2: THE PRESIDENT (FORMAL)

If the grievant elects to proceed to this Step, then within seven (7) days after the expiration of the period provided under Step 1 for informal resolution of the grievance, he/she shall file with the President:

- n. a complaint; and
- o. all documents and evidence in his/her possession and upon which he/she relies or intends to rely as supporting his/her claim for relief.

All such documents and evidence so filed shall form a part of the grievance record.

The President shall transmit a copy of the complaint to the Chapter President.

The President shall meet with the grievant to discuss the grievance within fourteen (14) days after the filing of the complaint. The President shall consider any grievance the resolution of which shall have been sought, pursuant to the terms set forth herein, through the prior Step of the grievance procedure; provided, however, that the President shall have no jurisdiction to consider:

- p. any grievance that, explicitly or by implication, questions an exercise of academic judgment as herein before defined, but provided further that, notwithstanding the foregoing, the President shall have jurisdiction to consider:

any grievance that alleges a failure to comply with the procedures prescribed at Section E of Article IX of this Agreement but only as to such allegation;

any grievance that alleges that the exercise of the academic judgment complained of was arbitrary and capricious; and

any grievance pertaining to:

the denial of a promotion where such promotion was supported neither by the Department Chair or the Director, as the case may be, by the Peer Evaluation Committee, by the Committee on Promotions, nor by the Vice President;

the denial of a reappointment where such reappointment was supported neither by the Department Chair or the Director, Library, as the case may be, by the Peer Evaluation Committee, nor by the Vice President;

the denial of tenure where the granting of tenure was supported neither by the Department Chair or the Director, Library, as the case may be, by the Peer Evaluation Committee, by the Committee on Tenure, nor by the Vice President;

but provided further that, notwithstanding the foregoing, the President shall have jurisdiction to consider any grievance that alleges a failure to comply with the procedures prescribed at Article VIII of this Agreement but only as to such allegation.

Within thirty (30) days after the filing of the complaint, the President shall make such determination as is prescribed in Section C (6) of this Article. The President shall render a written decision and shall set forth therein his/her determinations and the reasons therefor and his/her findings of fact, and he/she shall provide a copy of his/her decision to the grievant and to the Chapter President. Such decision shall thereafter form a part of the grievance record.

If the President shall have determined that an express provision of this Agreement has been breached in its application to the grievant as claimed, he/she may, consistent with the terms of this Agreement, provide any appropriate remedy for such breach. Whenever the President shall have provided any remedy by him/her deemed appropriate, such remedy shall be set forth by him/her in writing in his/her decision. Such determination when so set forth in writing shall thereafter form a part of the grievance record. If the grievance shall not have been resolved to the satisfaction of the Association, then, subject to the provisions of this Article, the Association may elect to proceed to Step 3 or Step 4.

STEP 3: MEDIATION

If the Association elects to proceed to this Step, then within seven (7) days after the expiration of the period provided under Step 2 for resolution of

the grievance, it shall file notice of such election with the President, the Chair of the Association Grievance Committee, and the designated representative of the Council of Presidents.

Following the receipt of such notice by the representative of the Council of Presidents, but not sooner than thirty (30) days thereafter, the grievance will be addressed in mediation on the next available mediation date.

The Council and the Association shall reserve, at a minimum, the first Monday of each month for mediation of grievances at Step 3. Dates and locations shall be determined at the beginning of each fiscal year falling within the term of this Agreement. Mediation shall be conducted on a rotating basis by Mark Irvings, Diane Zaar Cochran, James Cooper and Roberta Golick. The expenses of the mediator shall be shared equally by the parties.

Three grievances per day shall be the standard for mediation.

Both parties shall insure that their representatives in mediation have the authority to enter into a settlement.

Documents introduced before and during mediation shall be included in the grievance record. Statements made during mediation shall be off the record in order to encourage free discussion without injuring either party's case if mediation is unsuccessful. The mediator shall not testify about the mediation in any arbitration conducted under this Article XI or in any other adversarial proceeding or judicial forum. Each party shall maintain the confidentiality of mediation and shall not rely on or introduce as evidence in any other proceeding:

- q. views expressed or suggestions made by the other party with respect to the possible settlement of the grievance;
- r. admissions made by the other party in the course of the mediation;
- s. proposals made or views expressed by the mediator; and
- t. the fact that the other party had or had not indicated willingness to accept a proposal for settlement or to continue these or any other mediation proceedings.

The mediator does not have the authority to impose a settlement on the parties but will attempt to help them reach a satisfactory resolution.

Mediation shall conclude in one of the following ways:

- u. by the execution of a settlement agreement by the parties; or

- v. by a written declaration of the mediator, a party, or the parties to the effect that the mediation is concluded.

After May 31, 2006, upon thirty (30) days' notice, either party may terminate this mediation procedure, after which Step 4 shall become Step 3.

STEP 4: ARBITRATION

Subject to and in accordance with the following provisions, arbitration of a grievance may be initiated either (i) within fourteen (14) days after receipt of the decision rendered at Step 2 or, if no decision has been rendered at Step 2 within the time specified, then within fourteen (14) days thereafter, or (ii), if the Association has elected to proceed to Step 3 following Step 2, then within fourteen (14) days after the conclusion of mediation (other than by the parties' execution of a settlement agreement) at Step 3:

1. The Association shall have the exclusive right to initiate arbitration of a grievance. Whenever the Association shall initiate arbitration of a grievance the resolution of which has theretofore been sought by a member or members of the bargaining unit, then such member or members shall be bound in all respects by the decision of the arbitrator to the same extent as the Board of Higher Education and the Association;
2. The Association may initiate arbitration of a grievance only if the resolution of the grievance has been sought through the initial two (2) prior Steps of the grievance procedure and only if submission of the grievance to arbitration has been duly authorized by the Association and so certified by its President; and
3. The Association shall initiate arbitration by giving written notice to the President and the Chair of the Council of Presidents within the said fourteen (14) days that it intends to submit a grievance to arbitration. A copy of such notice shall be provided to the Employee Relations Committee.

Except when expedited arbitration is to be conducted pursuant to Article VIII-C, §D, within ten (10) days of the President's receipt of such notice from the Association, the parties shall promptly select an arbitrator as follows. In the first instance of the initiation of arbitration by the Association, the parties shall select as arbitrator the individual whose name first appears on the list of arbitrators incorporated as Appendix I of this Agreement. In each subsequent instance, the parties shall select the individual whose name next follows the name last selected. If the individual so selected shall be unable or unwilling to serve as arbitrator, then the parties shall select the individual whose name next appears on

said list. No individual shall be selected to serve as arbitrator for a second time until all of the remaining individuals appearing on said list shall have been selected to serve in accordance with these procedures, and no arbitrator shall be selected to serve as arbitrator in respect of any grievance if, in respect of such grievance, he or she served as mediator under Step 3.

The parties shall give notice to the arbitrator of his or her selection as such, and they shall, as promptly thereafter as is practicable, schedule with the arbitrator a date or dates that are mutually acceptable for the conduct of the arbitration.

The parties shall have the right, upon mutually agreeing so to do, to waive their rights to a hearing and to submit to the arbitrator, in lieu of such hearing, written briefs setting forth the issues raised by the grievance that is the subject matter of such arbitration and their arguments in respect thereof; provided, however, that nothing herein contained shall be deemed to deprive the parties of any right they may have, pursuant to the rules of the American Arbitration Association, to submit briefs or any other written arguments pursuant to any hearing that may be required to be held pursuant to those rules.

The Association and the Board of Higher Education, acting through the Chair of the Council of Presidents, shall have the right to be represented by counsel at any hearing convened by the arbitrator pursuant to the provisions of this Article. All proceedings before the arbitrator shall be governed by the rules of the American Arbitration Association; provided, however, that the jurisdiction of the arbitrator to inquire into any issue presented by the complaint and his/her authority to render an award shall be governed solely by the provisions of this Article.

D. JURISDICTION OF THE ARBITRATOR

1. Powers of Remand

w. Whenever any grievance set forth in the complaint has not been entertained by the President in whole or in part on the ground that such grievance or part thereof was not within his/her jurisdiction as prescribed in Step 2, then the arbitrator shall have no authority or jurisdiction to arbitrate such grievance or part thereof but shall be conclusively bound by the determination of the President of the question of his/her jurisdiction; provided, however, that nothing contained herein shall be deemed to abridge the power of the arbitrator to determine whether such determination shall have been arbitrary or capricious. Whenever the arbitrator shall have determined that such determination was arbitrary or capricious, the arbitrator shall remand such grievance or part thereof to the President, and he/she shall, within fourteen (14) days of the date of

such remand, make such new determination of his/her jurisdiction to consider such grievance or part thereof as, subject to the terms of this Agreement, he/she shall deem proper. Whenever the President shall have newly determined that he/she has jurisdiction to entertain such grievance or part thereof, he/she shall do so pursuant to the provisions of Step 2 and subject to the time limits therein prescribed.

- x. Subject as is hereinafter provided, whenever any grievant shall have alleged, expressly or by implication of the factual allegations, that any determination or decision involving the exercise of academic judgment was, in its application to him/her, arbitrary or capricious, the arbitrator shall have the power to determine the truth or falsity of such allegation. Whenever the arbitrator shall have determined that such allegation is true, he/she shall order that such arbitrary or capricious determination or decision shall be reconsidered, and such determination or decision shall thereafter be newly made pursuant to the procedures prescribed in this Article and subject to the time limits therein prescribed. Thereafter, such decision so newly made shall be subject to the provisions of this Article, including this provision; provided, however, that any grievance arising from such decision so newly made shall be initiated by filing notice thereof with the President pursuant to the provisions of Step 2 of these procedures, and the provisions of Step 1 of these procedures shall not apply to such grievance; and provided further that, anything in the provisions of Step 2 to the contrary notwithstanding, such notice shall be filed with the President within fourteen (14) days of the date on which notice shall have been given of the decision that shall have been newly made pursuant to the provisions of this paragraph.

2. Limit of the Arbitrator's Jurisdiction

Subject to the provisions of this Agreement, the arbitrator shall have no authority or jurisdiction to arbitrate:

- y. such portion of any grievance as is removed from the jurisdiction of the President by the express terms of this Article;
- z. such portion of any grievance as relates to any determination or decision made pursuant to an exercise of academic judgment; and
- aa. any grievance which, arising during the period commencing on July 1, 2004, and ending on June 30, 2007, is of the kind described in numbered paragraph 2 of the Memorandum of Understanding made between the parties on June 24, 2005.

E. DECISION OF THE ARBITRATOR

Within thirty (30) days after the conclusion of a hearing, or within thirty (30) days after the date on which briefs shall have been submitted to the arbitrator in lieu of such hearing, the arbitrator shall determine:

1. whether the Association and, where a member or members of the bargaining unit sought resolution of the grievance through the first two (2) Steps of this Article, such member or members, have complied with the procedure for initiating and pursuing a grievance as set forth in this Article;
2. whether the complaint alleges a breach of an express term of the Agreement;
3. whether the arbitrator has jurisdiction to arbitrate; and
4. whether an express provision of this Agreement has been violated in its application to the grievant.

The arbitrator shall render his/her decision in writing, shall state the reasons therefor, and shall promptly provide copies of his/her decision to the parties to the arbitration proceeding.

The decision of the arbitrator shall be final and binding on all parties to the arbitration proceeding and shall be enforceable in any court of competent jurisdiction.

F. AWARD OF THE ARBITRATOR

If the arbitrator determines that no express provision of this Agreement has been breached in its application to the grievant as claimed, he/she shall dismiss the grievance. If the arbitrator determines that this Agreement has been so breached, he/she may, subject to the provisions of this Article, provide an appropriate remedy for the breach; provided, however, that in making any monetary award, the arbitrator shall provide compensation only for actual damages directly attributable to such breach, and shall in no event make any award of penal damages; and provided further that, save as is hereinafter provided, the arbitrator shall make no award that grants any appointment, reappointment, promotion, retention, termination, renewal of contract or tenure to any member of the bargaining unit.

Whenever in his/her complaint any grievant shall have alleged, expressly or by implication of the factual allegations, that any determination or decision made pursuant to an exercise of academic judgment was, in its application to him/her, both arbitrary or capricious and made in bad faith, the arbitrator shall have the power to determine the truth or falsity of both such allegations. Whenever the arbitrator shall have found as a matter of fact, on the basis of clear and credible evidence, that both such allegations are true, he/she shall have the power to make any such final and binding award as he/she may deem necessary to make the

grievant whole; provided, however, that whenever the arbitrator shall, in respect of such allegations, have found that such determination or decision was arbitrary or capricious but was not made in bad faith, he/she shall remand such determination or decision as is herein before provided.

Whenever the arbitrator shall have found that such decision was arbitrary or capricious but was not made in bad faith, he/she shall assess costs, which shall include reasonable representational costs or attorney's fees; at the discretion of the arbitrator, upon such a determination or decision the arbitrator may additionally impose liquidated damages not to exceed \$5000.00.

G. COSTS OF ARBITRATION

In all arbitration proceedings, the arbitrator's fees and expenses shall normally be paid fifty percent (50%) by the Association and fifty percent (50%) by the College or Colleges; provided, however, that whenever the arbitrator shall have found as a matter of fact on the basis of clear and credible evidence that either party has acted in bad faith during any of the proceedings contained in this Article XI, the arbitrator may determine that the fees and expenses of the arbitrator in such case shall be paid entirely by one or the other party. All payments to the arbitrator shall be made within thirty (30) days of the rendering of his/her statement of fees and expenses. In all other respects the parties shall bear their own costs of arbitration, except that the parties agree to provide a stenographic record of all arbitration proceedings and to each pay fifty percent (50%) of the costs thereof, unless they shall have mutually agreed not to provide for such a stenographic record.

H. ASSOCIATION REPRESENTATION

Any member or members of the bargaining unit may initiate and pursue a grievance through the first two (2) Steps of the grievance procedure without intervention of the exclusive representative of the employee organization representing him/her, provided that the exclusive representative shall be afforded the opportunity to be present at any conferences held and that any adjustment made shall not be inconsistent with the terms of this Agreement.

Any member or members of the bargaining unit may request that the Association represent him/her at any Step of the grievance procedure. The Association shall notify in writing the Vice President, the President of the College and the Chair of the Council of Presidents, as the case may be, of the name and address of such Association representative at the time he/she is so authorized to represent the grievant.

I. WAIVER, ADMISSION, TERMINATION, AND GROUNDS OF APPEAL

1. Waiver - Failure of a grievant to comply with any of the provisions of this Article shall be deemed to be a waiver of the right to seek resolution of the grievance under the terms of this Agreement. In determining whether there

has been any such failure to comply with any of the provisions of this Article, time shall be deemed to be of the essence, and any failure of the grievant to comply with any of the time limits prescribed herein shall be deemed to be such failure to comply with the provisions of this Article; provided, however, that the time limits prescribed herein may be extended in any specific instance by mutual written agreement of the parties.

2. Admission - The resolution of a grievance by the Vice President, the President of the College or the Council of Presidents, as the case may be, shall not be deemed to be an admission by any Board of Trustees or the Board of Higher Education that the grievance, has, for any other purpose or proceeding, standing as a grievance, or be an admission by any Board of Trustees or by the Board of Higher Education of any violation or breach of the terms of this Agreement, or be an admission by any Board of Trustees or by the Board of Higher Education that such grievance is cognizable or justiciable according to any applicable provisions of the laws of the Commonwealth.
3. Termination - Unless prohibited by applicable provisions of law, if any member or members of the bargaining unit shall initiate in any administrative forum other than the Labor Relations Commission or in any judicial or like proceeding that relates to any matter that is the subject of a grievance in respect of which such member or members is or are the grievant while any proceeding in respect of such grievance is pending under any provision of Section C of this Article, such Section C proceeding shall terminate as of the date of the initiation of such other administrative or judicial proceeding, and the grievance procedures aforesaid shall be inapplicable to such grievance.
4. Grounds of Appeal - The Board of Higher Education, acting through the Chair of the Council of Presidents, and the Association shall have the right to appeal any final decision of the arbitrator pursuant to the provisions of Chapter 150E, Section 8, and Chapter 150C, Sections 10, 11 and 12, of the General Laws.

J. COLLATERAL CONSEQUENCES OF A GRIEVANCE

The fact that a grievance is alleged by a member of the bargaining unit, regardless of the ultimate disposition thereof, shall not be recorded in the Official Personnel File of such member or in any file or record utilized in the taking of any personnel action in respect of such member; nor shall such fact be used in the making of any recommendation for the job placement of such member; nor shall such member or any other member or members who participate in any way in the grievance procedure be subjected to any action, whether disciplinary or other, for having processed such grievance; provided, however, that nothing herein contained shall derogate or be deemed to derogate from the right to take any action that might be authorized or required to be taken to give effect to the resolution of any grievance.

The parties agree that, except as may be required by the provisions of this Article or in connection with any appeal of a grievance or in connection with the implementation of any provision of this Agreement, the name of a grievant shall not be used to identify a grievance by an representative of the parties to this Agreement.

K. RELEASE TIME FOR MEMBERS OF THE BARGAINING UNIT

It is understood that grievances will ordinarily be processed during working days; the parties therefore agree that, whenever the work schedules of the grievant, of any Association representative and of any material witnesses who are members of the bargaining unit so require, such participants shall be given so much release time from their scheduled work assignments as the President shall determine is necessary for attendance at any hearing, meeting or other procedure that shall be required for the processing of any grievance. The parties understand that meetings held pursuant to the provisions of this Article will ordinarily be scheduled to avoid conflict with the regularly scheduled work of members of the bargaining unit.

L. CONSOLIDATED GRIEVANCES

Anything in the foregoing provisions to the contrary notwithstanding, the Association, acting through its President, may, within the ten (10) day period during which a grievance may otherwise be filed, file such grievance with the Chair of the Council of Presidents in the form of a complaint, specifying therein the reasons why the grievance should be treated as a consolidated grievance. The Chair shall, within ten (10) days, determine in his/her sole discretion whether to treat the grievance as a consolidated grievance. If the Chair accepts the complaint as a consolidated grievance, the procedures and time limits of Step 2 shall thereupon apply, provided only that the response rendered at such Step shall be rendered by the Chair in his/her capacity as such rather than by the President of a State College. If the Chair declines to accept the grievance as a consolidated grievance, the Association or any unit member or members may, within ten (10) days following the date of the Chair's decision, file the grievance at Step 1 at the College at which such grievance is alleged to have occurred.

M. GRIEVANCES FILED PRIOR TO THE DATE OF EXECUTION OF THIS AGREEMENT

Notwithstanding any other term of this Agreement, any grievance filed prior to the date of execution of this Agreement shall be subject to the provisions of the predecessor Agreement; provided, however, that at the request of either party, the Committee on Employee Relations may review any such grievance as it may determine, subject to the terms of Article II of this Agreement; and provided further that the selection of an arbitrator in connection with the arbitration of any grievance shall, unless already made pursuant to its predecessor, be made pursuant to this Agreement.

N. STANDING OF CERTAIN GRIEVANTS

A former member of the bargaining unit shall have standing as a grievant hereunder for the purpose of pursuing any grievance that pertains to a claim of right with respect to retrenchment, termination and/or sick-leave buy-back where such claim of right is based on his or her former employment as a member of the bargaining unit.

Whenever any former member of the bargaining unit pursues any grievance that pertains to a claim of right with respect to sick-leave buy-back or with respect to any other benefit that is claimed to have arisen under an agreement that is predecessor to this Agreement, the merits of the grievant's claim shall be governed by the agreement that was in force between the parties at the time the grievant was last employed in the bargaining unit. If any such grievance is submitted to arbitration, the arbitrator shall be selected in accordance with the provisions of this Agreement.

Nothing in this Section N shall operate to extend any limit of time that governs the filing or pursuing of any grievance under this Article XI or under the corresponding provision of any agreement that is predecessor to this Agreement.