

## **ARTICLE X-A - ACADEMIC PROGRAM DEVELOPMENT/NO LAY OFF**

### **A. INTRODUCTION**

It is the purpose of the State Colleges to provide educational programs and research in the liberal, fine and applied arts and sciences and other related disciplines, and to contribute to the resolution of the needs and problems of the local, regional and state-wide communities which they serve. It is the further and ultimate purpose of the several State Colleges to provide such educational services in order to prepare students for the social, economic, and cultural world in which they will live after the completion of their education.

In order to best effectuate these purposes, the professional academics who are members of this community -- the faculty and librarians -- have a personal and professional obligation to renew, improve and augment their individual capacities as those pertain to their methods of teaching, their command of a body of knowledge and their skills as mentors of students in a variety of modes, learning strategies and settings. To the same end, the Board of Trustees has a more comprehensive obligation to supervise and participate in the design, maintenance, renewal, improvement, expansion and limitation of such educational programs and curricula as it deems most effectively conceived, within the limits of its resources, to realize these fundamental purposes.

The Board of Trustees, in the furtherance of these purposes and in order thereby to improve the quality of its educational programs and curricula, may formulate plans for the renewal, development and staffing of the academic programs, structures, and offerings at a State College under its jurisdiction. In order to ensure the participation of members of the academic community at a State College in the formulation of any such plan or plans as it relates to the educational programs, curricula and staffing of such, the parties have made express provision for such participation by incorporating certain provisions to that effect in Article VII of this Agreement, it being the understanding of the parties that such participation shall occur in accordance with such provision.

Therefore, in order to ensure that the implementation of such plans, when and as they are more fully developed, will provide for the greatest possible utilization of the skills and knowledge of the faculty and librarians of each State College, the parties hereby agree as follows.

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

### **B. APPLICATION**

Save as is provided in Articles X 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 J of this Article X-A, the provisions of this Article X-A shall be of no application to any person holding a part-time appointment to a position in the bargaining unit.

C. DEFINITIONS

1. Academic Program Development

Academic Program Development shall be deemed to have occurred whenever either of the following necessitates increasing or decreasing the number of the unit members in one or more academic departments or program areas or a library, as the case may be:

a decision to establish, alter, or eliminate an academic program or a general education requirement when such decision has been made in accordance with any such procedures as have been established pursuant to Article VII (which shall mean the procedures depicted in Appendix A of Article VII if it is then in force at the College); or

a significant and demonstrable change in the enrollment patterns of students within an academic program resulting in the inability of the faculty of an academic department to teach twelve (12) semester hours of credit of instruction in courses offered by their department, or the equivalent through the fulfillment of alternative professional responsibilities assigned pursuant to Article XII, or work load reductions made in accordance with the provisions of this Agreement.

2. Retrenchment

For the purpose of this Article X-A, “retrenchment” shall mean the laying off of any member of the bargaining unit by reason of academic program development at a College and shall not mean termination.

3. Seniority

For the purposes of this Article, as applied to each member of the bargaining unit, “seniority” shall have the meaning ascribed to it by Section C(4) of Article X.

D. RETRENCHMENT

No member of the bargaining unit shall be retrenched by reason of academic program development at a State College except in accordance with the provisions of this Article X-A.

E. 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 E, to determine whether any faculty member who would otherwise be retrenched should be retained in any department or program area 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.

F. PROCEDURES FOR RETRENCHMENT: ACADEMIC PROGRAM DEVELOPMENT

1. If the President determines that retrenchment for reasons of academic program development 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.

2. 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 subsection shall not require the President to compile such information, statistics and/or financial data in the form requested unless already compiled in that form.
3. 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.
4. 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.
5. 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:
  - a. the mission of the affected unit(s) and how circumstances have altered that mission;
  - b. 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;
  - c. arrangements to allow students in the affected unit(s) to satisfy academic needs and requirements;
  - d. possible consequences to the stature of the College;
  - e. the possibilities of re-employment elsewhere in the College or other State Colleges; and

- f. the advisability of program curtailment as opposed to program abolition.

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

6. 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.
7. The determination of the Board of Trustees made hereunder shall not be arbitrary or capricious.

G. OFFER TO REASSIGN OR TO PROVIDE A PROGRAM OF PROFESSIONAL DEVELOPMENT

Notwithstanding any other term of this Agreement, no unit member shall be retrenched pursuant to the provisions of this Article until after the provisions of this Section G have been complied with and then only in compliance with the express provisions of this Article.

Whenever any member of the bargaining unit is to be retrenched by reason of academic program development, he/she shall be entitled to receive an offer from the Board of Trustees pursuant to the provisions of subsection 1 or 2.

1. Offer of Reassignment

Whenever the Board of Trustees shall have determined, at its sole discretion, that the skills, knowledge and experience of such member of the bargaining unit can be more effectively utilized at the College in a department, including any program area or library, other than that in which such member of the bargaining unit is then employed, it may, after consultation with such unit member, offer to reassign such unit member accordingly.

Any offer so made shall be made in writing, shall set forth the department, program area or library to which such reassignment is to have effect, shall provide such other pertinent information as the Board may deem necessary or desirable, and shall be sent to such unit member in accordance with the provisions of subsection 5 below.

Whenever the Board of Trustees shall, in respect of any member of the bargaining unit, have made any offer pursuant to the foregoing provisions of this subsection 1, and whenever such unit member shall have failed, within thirty (30) days after the receipt of such offer, to accept such offer in its entirety, the Board of Trustees may, at its sole discretion, subject only to the provisions of Section H below and to no other provisions of this Article or Article X or Article X-B, retrench such unit member by giving him/her notice thereof in writing, which notice shall, any other provision of this Agreement to the contrary notwithstanding, have effect not sooner than the commencement of the next academic semester.

No reassignment shall be offered or made pursuant to the provisions of this subsection 1 except to a position then vacant; provided, however, that at the sole discretion of the Board of Trustees, any such vacancy may be created by the retrenchment of a non-tenured member of the bargaining unit, by giving such non-tenured member of the bargaining unit notice thereof in writing, which notice shall, any other provision of this Agreement to the contrary notwithstanding, have effect not sooner than the commencement of the next academic semester. Any retrenchment effected for the purpose of creating a vacancy as aforesaid shall be subject only to the provisions of subsections 1, 2 and 3 of Section H below and to no other provision of this Article or Article X or Article X-B.

2. Offer of a Program of Professional Development

Whenever the Board of Trustees shall have determined, at its sole discretion, that the skills, knowledge and experience of such member of the bargaining unit might be made relevant to the changing needs of the College only if such member of the bargaining unit participates in a program of professional development, it shall offer:

- g. after consultation with such unit member, to provide such program to such unit member and to pay the tuition and fees at a public institution of higher learning within the Commonwealth or, if undertaken pursuant to the rules and regulations of the New England Regional Student Program, at a public institution of higher education in New England, if any, for a period of up to two (2) years required for the implementation of the same;

to continue to employ such unit member during any period of such program that falls within an academic or other work year, as the case may be, with such reduction of the workload of such unit member as the Board shall, after consultation with the Association, determine, but subject to all the other terms and conditions of this Agreement, including the provisions of this Article and of Article IX, and to all the terms and conditions of any successor thereto;

to continue to employ such member from and after the successful completion of such program, subject to all the terms and conditions of this Agreement, including Articles IX and X thereof, and to all the terms and conditions of any successor thereto.

Any offer so made shall be made in writing by the Board of Trustees, shall set forth the nature, purpose, terms, content, scope, time and duration, whether or not falling within any work year, and location of such program, together with the general manner of its implementation, including the manner in which any tuition thereby entailed shall be paid by the Board, and shall be sent to such unit member in accordance with the provisions of subsection 5 below.

Subject to the foregoing, the nature, purpose, terms, content, scope, time and duration, whether or not falling within any work year, and location of any and every such program of professional development shall be determined at the sole discretion of the Board of Trustees; provided, however, that whenever any such program requires the Board to pay any tuition and fees, it shall be a condition of the offer made that the member of the bargaining unit to whom it is made shall agree to remain an employee of the Board for a period equal to twice the period of such program unless the Board, then or thereafter, shall have waived this condition in whole or in part or shall have retrenched such member of the bargaining unit subsequent to the conclusion of such program.

Whenever the Board of Trustees shall, in respect of any member of the bargaining unit, have made any offer pursuant to the foregoing provisions of this subsection 2, and whenever such unit member shall have failed, within thirty (30) days after the receipt of such offer, to accept such offer in its entirety, the Board of Trustees may, at its sole discretion, subject only to the provisions of Section H below and to no other provision of this Article or Article X or Article X-B, retrench such unit member by giving him/her notice thereof in writing, which notice shall, any other provision of this Agreement to the contrary notwithstanding, have effect not sooner than the commencement of the next academic semester.

Whenever the Board of Trustees shall, in respect of any member of the bargaining unit, have made any offer pursuant to the foregoing provisions of this subsection 2, and whenever such unit member, within thirty (30) days after the receipt of such offer, shall have accepted such offer in its entirety, such unit member shall not be retrenched during the period in which such program of professional development is in effect unless such unit member shall have sooner failed, in some material way, to comply with the terms of such program.

3. Dual Offers

Nothing in the foregoing shall be deemed to prohibit a Board of Trustees from making offers to any eligible member of the bargaining unit, whether simultaneously or otherwise, pursuant to both of the foregoing subsections 1 and 2; and nothing in the foregoing shall be deemed to abridge the right of a Board of Trustees to reassign any member of the bargaining unit from one department, program area or other organizational unit at the College to another such unit at the College in circumstances other than those described in this Article X-A.

4. Criteria Governing the Order in Which Offers May be Made Pursuant to Subsections 1, 2 and 3

Whenever the Board of Trustees shall have determined that the implementation of any plan will require the transfer of, or the participation in a program of professional development by, any member or members of a department or program area or any librarian or librarians at a College, then no member of such department or program area and no librarian at such College shall receive an offer pursuant to subsection 1, subsection 2, or subsection 3 unless an offer, but not necessarily the same offer, shall have been sooner made to such faculty member or librarian, if any, as is required by the following provisions to have been the prior recipient of such an offer:

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 receive an offer made pursuant to the provisions of this Article, so that the least senior member shall first receive such an offer and the most senior such member shall last receive such an offer; provided, however, that such order shall govern only insofar as, pursuant to its initial application, those faculty members that will remain in such department or program area if an offer is accepted are, by training and/or experience, qualified to teach the remaining courses offered by such department or within such program area; and provided further that such order shall govern only insofar as its application is not in violation of the laws of the Commonwealth or the United States; and provided further that no tenured member of a department or program area shall receive any offer 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.

Librarians

The seniority of each librarian at the College at which he/she is employed shall determine the order in which he/she shall receive

an offer made pursuant to the provisions of this Article, so that the least senior such librarian shall first receive such an offer and the most senior such librarian shall last receive such an offer; provided, however, that such order shall govern only insofar as, pursuant to its initial application, those librarians that will remain at such College if any offer is accepted are, by training and/or experience, qualified to render the remaining services offered within the library or libraries at such College; and provided further that such order 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 receive any offer sooner than a non-tenured librarian solely by reason of the fact that such tenured librarian has less seniority than such non-tenured librarian.

5. Notice of Offer

Any offer made by a Board of Trustees to a member of the bargaining unit pursuant to this Section G shall be sent to such unit member by certified mail, return receipt requested. If such certified letter is returned undelivered, it shall then be sent to such unit member by regular first class mail and, if unreturned, shall be deemed to have been received by him/her on the date when delivery of the certified letter would have otherwise been effected.

6. Limitations

The provisions of this Section G shall be of no force or effect at any College during any period in respect of which the Board of Trustees shall have declared a fiscal exigency or during any period in which any one or more members of the bargaining unit who have been retrenched by reason of a fiscal exigency remain subject to recall therefrom pursuant to the provisions of subsection 3 of Section G of Article X.

It is the intent of this Section that the provisions of Article X shall exclusively be of application to a financial exigency, and shall not be applied arbitrarily or capriciously where the provisions of Article X-A are of proper application.

H. RIGHTS AND BENEFITS OF RETRENCHED BARGAINING UNIT MEMBERS

1. 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.

2. Recall

h. 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 2 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; 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 2; 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 2, 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.

3. Re-employment List

The name of any member of the bargaining unit retrenched pursuant to the provisions of this Article 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.

I. 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-A, 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.

J. 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-A 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, such 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 J shall be of no application to members of the bargaining unit employed at the Massachusetts College of Art.

K. 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.