

MEMORANDUM OF AGREEMENT

TENTATIVE AGREEMENT FOR A COLLECTIVE BARGAINING AGREEMENT FOR THE
PERIOD JULY 1, 2014 THROUGH JUNE 30, 2017
BETWEEN
THE BOARD OF HIGHER EDUCATION
AND THE
MASSACHUSETTS STATE COLLEGE ASSOCIATION/MTA/NEA

This Memorandum of Agreement (“Memorandum”) is entered into by the Board of Higher Education (the “Board”) and the Massachusetts Teachers Association acting through the Massachusetts State College Association (the “Association”) and reflects the tentative agreement arrived at by the Board and the Association on July 8, 2014.

WHEREAS the Board and the Association are parties to a collective bargaining agreement executed on July 1, 2012 (the “Agreement”), which by its terms is in full force and effect; and

WHEREAS the parties have conducted and concluded their negotiations for a successor to the Agreement; and

WHEREAS the parties wish hereby to record and give effect to the results of their negotiations,

NOW, THEREFORE, in consideration of the foregoing premises and of the mutual covenants hereinafter set down, the parties agree as follows:

1. All provisions of the Agreement not amended by this Memorandum shall remain in full force and effect from July 1, 2014 through June 30, 2017.
2. Amend Article XIII to provide that across-the-board increases shall be applied to salaries for full-time unit members and for salaried part-time faculty members as follows:

July 1, 2014:	1.75%
January 1, 2015:	1.75%
July 1, 2015:	1.75%
January 1, 2016:	1.75%
July 1, 2016:	1.75%
January 1, 2017:	1.75%

3. Amend Article XIII to provide that the part-time per credit rate shall be as follows (assumes courses at Framingham State University are four-credit courses):

July 1, 2014:	\$1,583
January 1, 2015:	\$1,611
July 1, 2015:	\$1,639

January 1, 2016:	\$1,668
July 1, 2016:	\$1,697
January 1, 2017:	\$1,727

4. Amend Article XIII to provide that the hourly rate for music instructors at Westfield State University shall be as follows:

July 1, 2014:	\$60.03
January 1, 2015:	\$61.08
July 1, 2015:	\$62.15
January 1, 2016:	\$63.24
July 1, 2016:	\$64.35
January 1, 2017:	\$65.47

5. Amend Article XIII to provide for the following amounts for terminal degree adjustments on the following effective dates:

September 1, 2014:	\$2,794
September 1, 2015:	\$2,893
September 1, 2016:	\$2,995

6. Amend Article XIII to provide for the following promotion increase amounts on the following effective dates:

Before all other increases, the following dollar amounts, or 5% of current salary, whichever is greater:

Effective September 1, 2014:

Professor/Senior Librarian:	\$4,375
Associate Professor/Librarian:	\$3,922
Assistant Professor/Associate Librarian:	\$3,536

Effective September 1, 2015:

Professor/Senior Librarian:	\$4,529
Associate Professor/Librarian:	\$4,060
Assistant Professor/Associate Librarian:	\$3,661

Effective September 1, 2016:

Professor/Senior Librarian:	\$4,689
Associate Professor/Librarian:	\$4,203
Assistant Professor/Associate Librarian:	\$3,790

7. Amend Article XIII to provide that the maximum salaries shall be as follows effective July 1, 2014.

Professor	\$131,675	Senior Librarian	\$131,675
Associate Professor	\$123,165	Librarian	\$123,165
Assistant Professor	\$114,425	Associate Librarian	\$114,425
Instructor	\$102,350	Assistant Librarian	\$102,350

8. Amend Article XIII-A to provide that effective July 2, 2014 the minimum salary formula shall be as follows:

Base:	\$40,969
Professor/Senior Librarian:	\$20,852
Associate Professor/Librarian:	\$13,715
Assistant Professor/Associate Librarian:	\$6,725
Terminal Degree:	\$2,846
Teaching Experience:	\$502/year
Professional Experience:	\$148/year

Each value in the formula shall increase as follows on the following dates:

January 2, 2015:	1.75%
July 2, 2015:	1.75%
January 2, 2016:	1.75%
July 2, 2016:	1.75%
January 2, 2017:	1.75%

9. Amend Article IV to provide that the Commonwealth's contributions to the Health and Welfare Trust shall be increased to the following amounts:

First pay period June 2015:	\$15.50 per FTE unit member/calendar week
First pay period June 2016:	\$16.00 per FTE unit member/calendar week
First pay period June 2017:	\$16.50 per FTE unit member/calendar week

10. Amend the formula in Article VIII-C to provide for formulary increases effective July 1st of 2014, 2015 and 2016 based on the following formula:

Base:	\$46,379
Professor/Senior Librarian:	\$25,929
Associate Professor/Librarian:	\$16,051
Assistant Professor/Associate Librarian:	\$3,423
Terminal Degree:	\$7,408
Teaching Experience (Prof./Sen. Lib):	\$988/year
Teaching Experience (Assoc. Prof./Lib):	\$741/year
Teaching Experience (Asst. Prof./Assoc. Lib):	\$494/year

11. Amend additional provisions of the Agreement in accordance with items #12-74 in the following table. Appendices referenced in the table are incorporated into this Memorandum.

Item	Article	Page(s)	Topic	Change
12.	I	2, 6, 7	Date of LRC Decision	Change date to December 16, 1986.
13.	VI, VII, VIII, XII		Housing of a Course	Incorporate ERC agreement that all credit courses are housed within an academic department.
14.	I. D	5	Definition	19. Day. Except as otherwise provided (e.g., “day” means “working day” in Article XI – Grievance Procedure), “ Day ” shall mean a calendar day exclusive of December 24 through January 2. Deadlines falling on a Saturday, Sunday or holiday are moved to the next business day.
15.	I. D	10	Definition	52. Student teaching supervision: Substitute “in accordance with state regulations” for “for these purposes, there shall be used as a guideline the making of four (4) such visits within a single quarter in respect of a student teaching on a full-time basis.”
16.	I. D	10-12	Definition	56. Terminal Degree: Modify the definition so that an M.L.S. or an equivalent Master’s degree, including Master of Library Science and Information Science (M.L.S.I.S), with a total of at least 60 graduate credits (including credits for the degree) is a terminal degree.
17.	I	13	Definition	61. Add “(other than references to department chair vacancies or vacancies on committees established in Article VII)” after “mean.”
18.	II. A.	15	Non-Discrimination	Add genetic information and ancestry in items 1 and 2.

19.	II. A.	16	Fair Practices	Add the following as Section 8 and renumber the existing section: “The institutions will provide training to assist unit members to recognize and avoid discriminatory conduct and to explain to them the employer’s expectations concerning the prohibition of discriminatory behavior. The parties acknowledge that Federal and state law and regulations will require the institutions to compel the attendance of all employees at certain types of training. The Association will encourage unit members to attend and avail themselves of training opportunities.”
20.	II	17	ERC	Change date for contract orientation meeting.
21.	III. B	24-25	Parking	Delete the second paragraph of subsection 7.
22.	IV. A	33	Sick Leave Bank	Limit use of sick leave bank to two years or the length of full-time employment in the bargaining unit, whichever is shorter.
23.	IV	38-39	Military Leave	4. a. Update references in second paragraph (e.g., acts passed in 2001, 2005).
24.	IV. A	43	11. Personal Leave	Unit members employed on Jan. 1 receive 22.5 or 15 hours on Jan. 1; members hired Jan. 1 – June 30 receive 22.5 or 15 hours; members hired July 1 – Dec. 31 receive 15 or 7.5 hours. Librarians with 37.5 hours of personnel leave shall receive the 37.5 hours of leave on Jan. 1.
25.	VI. A.	59		Add “but under no circumstances shall a chair be required to sign off on an ethics disclosure form regarding faculty using their own materials in classes” after the word “following” at the end of the first paragraph.
26.	VI. B.	60-61	Chair “Splitting”	Add language prohibiting the splitting of department chair duties in a department.
27.	VI. B.	61	Term of Office	When a chair is on a half-year sabbatical, unless otherwise specified, the term of the acting chair shall be July 1 st through the last day of the fall semester, or the first day of the spring semester through June 30 th .

28.	VI. G	66-67	Chairs – Stipends	Allow for five additional days between June 16 and August 16, inclusive, notice of these dates by April 15 th . Increase Chair stipend to \$2,700/semester.
29.	VI. I	68-69	Chair – Searches	See Appendix 1.
30.	VI. J.	70	Library Program Area Chair	Edit the second half of the first paragraph to reflect that the President will solicit nominations for LPAC. Change “academic year” in the 8 th line to “work year.”
31.	VII. D	80	Graduate Education Council	The All-University Committee will be convened by the University President by September 15 th , or within 15 days of being established , for the election of chairs and other administrative tasks (see pages 74 and 83). At Universities other than MassArt, MCLA and Mass Maritime, increase number of graduate faculty to 10.
32.	VII	82	Special Committees	c. Incorporate ERC interpretation of “not being greater than the term of this Agreement.” A special committee shall cease to exist upon the term in the agreement to establish it, or if the university president, chapter president and a majority vote of the All-University Committee all agree to abolish it.
33.	VIII		Delegation of Evaluation to Dean	See Appendix 2.
34.	VIII. A	89-90	Chair COI	Incorporate the MOA on a chair’s conflict of interest. Service is not to be ignored or discounted on the basis that the unit member was compensated for that work. The clarifications for Article VIII above should apply equally to librarians, and the paragraph after b. i. (D) should be modified to address librarians and inserted on pages 90-91. Replace “and” with “or.”
			b. i. (A)	
			b. i. (C)	

35.	VIII	91	PEC	Add language that the PEC of the department conducts classroom observations of courses in the department taught by librarians.
36.	VIII	92-93	Tenure Eligibility and Leaves	See Appendix 3.
37.	VIII. A.			4. Add the following between the existing 2 nd and 3 rd paragraphs: “Beginning with evaluations in academic year 2015-2016, whenever an Assistant Professor/Assistant Librarian/Associate Librarian is a candidate for tenure and has satisfied the time in rank requirement for promotion to the next higher rank, the unit member shall be considered for tenure with promotion. The unit member must satisfy the requirements of Article IX and must demonstrate meritorious performance.”
38.	VIII. C.	93	First Year Notice	Add language to the first paragraph on page 93 that candidates for reappointment during their first year be given notice of re-appointment.
39.	VIII	94	Portfolios	In second paragraph incorporate ERC agreement requiring paper copies of portfolios, allow candidates to provide the same material on digital media.
40.	VIII	96-98, 102	Classroom Observations	Clarify that post-observation visit takes place prior to final drafts of D-1(a) and/or D-1(b).
41.	VIII	103	Direct Observation	Develop a form for direct observation of librarian.
42.	VIII	106	Mandatory PEC	Add “or Section Q” after “Section P” in both the heading of Section E(2)(a)(i) and in the second line of the first paragraph of that section.
43.	VIII. E	107 and others		The CBA requires members of evaluation committees (e.g., PEC, Committee on Promotion, Committee on Tenure) to vote, meaning they are not permitted to abstain.
44.	VIII. E	113	Recommendations of Vice President	3. At the end of the last paragraph: “...the President shall designate a tenured Professor or Senior Librarian.... ”

45.	VIII. F.	115	Evaluation of Library Program Area Chairs	See Appendix 4.
46.	VIII. G.	115	Committee on Promotions	Section G(1): Eliminate the consultation, committee makes a single recommendation to the vice president, process moves forward. Add right of candidate to respond within seven days.
47.	VIII	123	New Section Q	Create new Section Q: <u>“Mandatory Peer Evaluation Committees for Certain Tenure Candidates”</u> “The provisions of Section Q shall apply only to faculty at the rank of Assistant Professor and to librarians at the rank of Assistant Librarian or Associate Librarian who have applied for tenure and who, at the time of application, have meet the time criteria for promotion to the next higher rank. “Whenever any such faculty member or librarian is a candidate for tenure, he/she shall be evaluated by a Peer Evaluation Committee, which committee shall be constituted pursuant to Section N of this Article VIII and shall conduct its evaluation pursuant to the provisions of Section E(2)(d) without its being required that such faculty member or librarian make any election in that regard.”

48.	VIII-C. E	132- 135	Formulary Increases	<p>Apply flat increases to bring all faculty and librarian salaries up to the formula on page 133 of the 2012-2014 CBA (the flat amount is to be computed with PTR increases removed from current salaries) on July 1, 2014 only, before any other increases effective that date, this amount shall be deducted from the 0.25% of the Commonwealth appropriated unit payroll in the first year.</p> <p>Then, replace the formula in this section with a new formula as follow:</p> <ul style="list-style-type: none"> • Base: \$46,379 • Prof./Sr. Lib.: \$25,929 • Assoc. Prof./Lib.: \$16,051 • Asst. Prof./Assoc. Lib.: \$3,423 • Terminal degree: \$7,408 • Teaching experience (Prof./Sen. Lib): \$988/year • Teaching experience (Assoc. Prof./Lib): \$741/year • Teaching experience (Asst. Prof./Assoc. Lib): \$494/year <p>Apply this formula as described in Article VIII-C, §E (on July 1st of 2014, 2015 and 2016), except that to the pool of funds available for these increases shall be added 0.25% of the Commonwealth appropriated unit payroll after the cost of Health and Welfare increases for the month of June, and the cost in the first paragraph of this cell are deducted.</p> <p>Then apply any across-the-board increases effective that date.</p>
49.	IX	140	Tenure	<p>9. Modify this subsection to conform to Appendix 3 of this Memorandum.</p> <p>10. Add “Program Area Chairs” and change “members of the faculty” to “unit members.”</p>
50.	IX	143 145	Tenure – Removal	<p>vi. Change “i.e.” to “e.g.”</p> <p>Delete paragraph 6.</p>

51.	X	156-157	Home Departments	J. Incorporate ERC interpretation regarding exclusion of APRs in computation of “teaching” workload.
52.	XI.	170-183	Grievance Procedure	See Appendix 5.
53.	XII	184	Workload	Make i., ii., iii. consistent with Article VIII. Add requirement that full-time faculty provide a syllabus to each student and to the Department Chair.
54.	XII	184-185	Part-time	One credit hour instruction is equal to 2.75 hours of work for ACA purposes. Edit Article XII, Section A(1)(b) as follows: “It shall also be the responsibility of each such part-time faculty member to: (1) be available to advise students in person (at a time mutually agreed upon by the student and the faculty member) or electronically for the equivalent of one-half (0.5) hour before and after each class;.... ”
55.	XII	185	Salaried Part-time Faculty	If a Salaried Part-Time Faculty member is given a full-time temporary appointment the full-time temporary appointment shall not be considered a break in service for purposes of Article XX, Section K.
56.	XII	185-186	Full-time	2. a. 72 credits/18 courses (Framingham) over AY 2014-2015, AY 2015-2016 and AY 2016-2017.
57.	XII	188	Scheduling	Add at beginning of last paragraph: “In an effort to equitably distribute the department’s workload....”
58.	XII	193	Workload	Make a., b., c. consistent with Article VIII.
59.	XII	197	Association Work	C.10. date in contract, or two weeks after the election, whichever is later.
60.	XII	200	Workload	H. Arrangements are made with the Vice President.
61.	XII-A		Maritime	See Appendix 6.
62.	XIII. C	217-218	Minimum Salary Review	5. Change years to 2014, 2015 and 2016.

63.	XIII. K	221-222	Times of Payments	Delete subsection 4 (paragraphs a, b, and c), keep last paragraph
64.	XIII. M	222	Salary Studies	Make both deadlines December 31, 2016.
65.	XIII-A	225	Minimum Salary Formula	<u>Insert a new B. 5. "Post-Doctoral Work: For each year of full-time post-doctoral work.</u> Renumber B.5. and B.6.
66.	XV	232-235	Sabbaticals	Incorporate Section G changes and correct for Salaried Part-time Faculty.
67.	XV	233	Teaching while on Sabbatical	Clarify that unit members on sabbatical are prohibited from teaching full-time or part-time in the day programs of any of the nine Massachusetts State Universities.
68.	XX. A.	241	Introduction	New paragraph: "With regard to promotion, full-time teaching or library experience and full-time employment in rank in this Article include time on paid leave as well as time on unpaid leave, but only if during such unpaid leave the unit member performs full-time teaching or library service at the relevant rank as described in the applicable section of this Article. Unpaid leave of less than the equivalent of one semester (for faculty) or the equivalent of less than one half of a work year (for librarians) shall not be deducted from full-time experience or full-time employment in this Article.
69.	XX. B	243	Appointment and Promotion	"fulfilled the criteria (including time requirements), including..." Add to librarians section as well.

70.	XX. D	247-250	Librarians	<p>No librarian shall be hired at the rank of Library Associate on or after July 1, 2014. Promote any librarian at the rank of Library Associate on July 1, 2014 (we believe there is only one in the system) to the rank of Library Assistant with effect on September 1, 2014 with commensurate salary increase(s). Modify other provisions of the CBA as necessary.</p> <p>Time requirements:</p> <ul style="list-style-type: none"> • Asst. Lib: delete reference to years as librarian. • Assoc. Lib.: four years as librarian (two academic/research), two as Asst. Lib. • Librarian: six years as librarian (three academic/research), three as Assoc. Lib. • Senior Lib.: eight years as librarian (five academic/research), four as Librarian.
71.	XX. K	253	Salaried Part-time Faculty	Add "A Part-time Clinical Nursing Instructor achieving this status shall be notified, in writing, by the Board of Trustees or its designee." after "continued appointment." in subsections (2).
72.	XX-A. A.	255	Promotion	New paragraph: "With regard to promotion, full-time teaching experience or professional service in the maritime field and full-time employment in rank in this Article include time on paid leave as well as time on unpaid leave, but only if during such unpaid leave the faculty member performs full-time teaching or professional service in the maritime field at the relevant rank as described in the applicable section of this Article. Unpaid leave of less than the equivalent of one semester shall not be deducted from full-time experience.
73.	Appx.	D-1	Classroom Obs.	Consider modifying Appendices D-1(a) and D-1(b).
74.	Appx.	New	Anonymous Complaints	Incorporate the anonymous complaint documents as the parties have with the DGCE CBA.

This Memorandum is subject to ratification by the Day unit membership.

WHEREFORE the parties hereto hereunder set their signs and seals as follows:

BOARD OF HIGHER EDUCATION

MASSACHUSETTS TEACHERS
ASSOCIATION/MSCA

By: _____
Michael Murray
Director of Employee and Labor Relations

By: _____
Christopher J. O'Donnell
President, Massachusetts
State College Association

Date signed: _____

APPENDIX 1

ARTICLE VI

I. RECRUITMENT AND INTERVIEWING OF CANDIDATES IN DEPARTMENTS AND LIBRARIES

1. General Departments

a. Role of the Department

Whenever a vacancy is to be filled within a department, **tenured, tenure-track and salaried part-time members of the department, and other unit members as described in paragraphs (b) and (c) of this subsection 1**, shall assist in the recruitment and interviewing of candidates, provided that the filling of such vacancy shall have been duly authorized by the President. Such assistance shall be rendered upon the request of the Vice President or the Department Chair and shall be rendered pursuant to such procedures as may be established from time to time by the department; such written procedures shall not be inconsistent with the provisions of this Agreement. Recommendations made by the members of the department, exclusive of the Department Chair, shall be transmitted to the Department Chair, who shall make such additional recommendations to the Vice President as he/she deems appropriate. Copies of the recommendation of the Chair shall be provided to the members of the department. Nothing in these provisions shall be deemed to abrogate or qualify the right of the Department Chair to participate in the recruitment and interviewing of candidates.

b. Non-departmental Faculty Teaching in the Department

Where departmental procedures provide for the establishment of a departmental search committee, the department may include on the search committee tenured, tenure-track and salaried part-time faculty from different home departments who teach in the department filling the vacancy.

c. Non-departmental Faculty from Cognate Departments

Where departmental procedures provide for the establishment of a departmental search committee, and where the number of members of the department eligible to serve on the search committee is insufficient to populate the search committee based on the number of members required as per the department's written procedures, the department may include tenured, tenure-track, and salaried part-time faculty from cognate departments on the search committee.

d. Non-departmental Faculty from Departments Sharing the Position

Where departmental procedures provide for the establishment of a departmental search committee, and where the vacancy notice identifies another department in which the successful candidate will teach, the department conducting the search may include tenured, tenure-track and salaried part-time faculty from the other department identified in the vacancy notice.

2. Libraries

a. Role of the Library

Whenever a vacancy is to be filled within a library, tenured and tenure-track librarians, and other unit members as described in paragraph (b) of this subsection 2, shall assist in the recruitment and interviewing of candidates, provided that the filling of such vacancy shall have been duly authorized by the President. Such assistance shall be rendered upon the request of the Vice President the Library Director or the Library Program Area Chair, as appropriate, and shall be rendered pursuant to such procedures as may be established from time to time by the library; such written procedures shall not be inconsistent with the provisions of this Agreement. Recommendations made by the members of library, exclusive of the Library Program Area Chair, if any, shall be transmitted to the Library Director or the Library Program Area Chair, as appropriate, who shall make such additional recommendations to the Vice President as he/she deems appropriate. Copies of the recommendation of the Library Director or Library Program Area Chair, as appropriate, shall be provided to the librarians. Nothing in these provisions shall be deemed to abrogate or qualify the right of the Library Director or Library Program Area Chair, as appropriate, to participate in the recruitment and interviewing of candidates.

b. Faculty from Cognate Departments

Where library procedures provide for the establishment of a library search committee, and where the number of librarians eligible to serve on the search committee is insufficient to populate the search committee based on the number of members required as per the library's written procedures, the library may include tenured, tenure-track, and salaried part-time faculty from cognate departments on the search committee.

2 3. Special Procedures

Whenever a vacancy is to be filled by a faculty member whose responsibilities will include teaching in a department or departments outside his/her home department (i.e., the department filling the vacancy), those members of the faculty who assist in the recruitment and interviewing of candidates in accordance with subsection 1 shall, at the request of the Vice President, consult with members of the other department or departments in which the faculty member who fills the vacancy will have teaching

responsibilities, **unless in accordance with subsection 1(d) above, at least one (1) member of that such a department is on the search committee.**

As used in this subsection 2, the phrase “home department” shall have the meaning ascribed to it in Article X, Section J, of this Agreement. **Home departments for new faculty who will be teaching in more than one department will be determined by the Vice President before the search begins.**

3 4. Conflicts of Interest

No member of the bargaining unit shall serve on a search committee or otherwise participate in any way in the hiring of a member of the bargaining unit if to do so would constitute a conflict of interest or the appearance of a conflict of interest. No unit member, for example, shall serve on a search committee if his/her spouse or domestic partner is a candidate for the position.

4 5. Departmental and Library Procedures

The departmental **or library** procedures that are used in the recruitment and interviewing of candidates shall be published in written form and made available to the members of the department **or library**. All such procedures shall conform with the Affirmative Action/Equal Opportunity guidelines of the University and with other applicable policies and shall not be inconsistent with the provisions of this Agreement.

5 6. Recruitment of Part-time Faculty

The recruitment of part-time faculty shall be conducted by or under the supervision of the Department Chair.

6 7. Exclusions

The provisions of this Section I shall be of no application to any person who holds a professional position, and has academic rank and tenure, within the system of State Universities on the date immediately prior to the date of his/her appointment, assignment or transfer to a position in a department unless such person shall have voluntarily applied for such position in accordance with the provisions of Section C(7) of Article XX of this Agreement.

APPENDIX 2

For purposes of evaluations, the word “dean” shall refer to the head of a School, College, or Division, within which academic departments or libraries are housed. Such deans may be assigned by the Vice President to conduct evaluations in their respective Schools, Colleges or Divisions.

For academic departments or libraries not within a School, College, or Division, the Vice President may appoint an academic administrator to fulfill the responsibilities of a dean in the evaluation of those faculty and librarians in a designated area. “Dean” in the evaluation process described in Articles VIII, VIII-A, and VIII-C shall also refer to such academic administrators; a non-academic administrator shall not become an academic administrator by virtue of being assigned to evaluate faculty and librarians.

For purposes of the preceding paragraph, “academic administrator” is defined as an administrator whose administrative appointment is academic in nature, but in no case shall persons holding the following or related titles be appointed to evaluate faculty or librarians:

- Dean of Graduate Education or Graduate Studies¹
- Dean of Continuing or Professional Education
- Dean of Graduate and Continuing Education
- Dean of Students
- Dean of Enrollment Management
- Dean of Admissions
- Dean of Multicultural Affairs
- Dean of Faculty Development

If the Vice President chooses to assign evaluations to an appropriate dean, then he/she shall assign all of the following responsibilities:

- the evaluation after all departmental/library evaluations are completed for reappointments,
- the evaluation after the Committee on Promotions has completed evaluations for promotion (except in the case of candidates for tenure who are also eligible for concurrent promotion),
- the evaluation after the Committee on Tenure has completed evaluations for tenure, and
- the post-tenure review evaluations and reconsiderations.

Candidates for personnel actions during the 2014-2015 academic year shall be notified by September 4, 2014 of who will be conducting their evaluations. After September 4, 2014,

¹ No administrator in the division of graduate and continuing education shall evaluate day unit members under the day CBA.

candidates for personnel actions shall be notified of this assignment by April 8th of the academic year preceding the evaluation.

Each dean assigned to evaluate unit members is responsible for conducting all evaluations of candidates in his/her School, College, Division, or other designated area; that is, each unit member in a given School, College, Division, or other designated area must be evaluated by the same evaluator in a given academic year.

Solely for the purpose of conducting evaluations, deans shall have access to candidates' personnel files and evaluation materials, including evaluations and responses from the preceding stages of the evaluation process. The dean shall provide a copy of his/her evaluation to the candidate. The candidate shall have seven (7) days in which to respond to the dean's evaluation. Thereafter, the dean shall transmit the evaluation and response, if any, to the Vice President.

Deans delegated the responsibility to conduct evaluations by the Vice President in accordance with these provisions shall not further delegate such responsibility. In the event a dean is incapacitated or otherwise unable to conduct evaluations prior to beginning any evaluations, the Vice President shall assume responsibility for those evaluations. In the event a dean is incapacitated or otherwise unable to conduct evaluations once he/she has begun the evaluations, the Vice President may appoint an alternate dean (as defined herein) to complete the incapacitated dean's evaluations.

After the dean's evaluation is completed, it shall be transmitted to the candidate who shall have seven (7) days in which to respond. The dean shall transmit the evaluation, recommendation, reasons for his/her recommendation, candidate's response, if any, and all evaluation materials completed in the preceding stages of the evaluation to the Vice President.

The Vice President may concur with the dean's evaluation, recommendation, and the reasons for the dean's recommendation, in which case the evaluation, recommendation, reasons for the dean's recommendation, and candidate's response, if any, are transmitted to the President. If the Vice President does not concur with the dean's evaluation, recommendation, and/or reasons, then the Vice President shall conduct his/her own evaluation and transmit his/her evaluation, recommendation, and reasons to the candidate in accordance with Article VIII.

Appeals pursuant to Article VIII-C shall be to the University President.

Delete the language on page 112 regarding the Vice President's consultation with deans.

APPENDIX 3

Effect of leave on time toward eligibility for tenure:

- A leave equivalent to at least one (1) semester (for faculty) or at least half of a work year (for librarians)¹ during any work year shall delay the tenure evaluation by one (1) year.
- The work year in which such a leave takes place shall not count as a year towards eligibility for tenure.
- Such years do not count as a year for purposes of Article IX, Section A (5) as a result of leave granted during the pre-tenure period.

Effect of leave on reappointment evaluation:

- A leave that delays the tenure eligibility by a year shall not be counted as a year towards eligibility, but that year will be included in subsequent review periods but shall not count toward years of full-time teaching or time in rank.
- A leave for the fall semester² shall delay a reappointment evaluation to the following spring semester.
- The evaluation to be conducted in the spring semester is the evaluation that would have been initiated during the fall semester during which the leave was taken.
- If a leave is taken for only part of the fall semester, the candidate shall elect whether to proceed with the evaluation during the fall or initiate the evaluation in the spring semester.
- The parties will create a revised Personnel Calendar for members who require a reappointment evaluation to be initiated in the spring semester or delayed during the fall semester.
- The evaluation to be conducted the work year following the work year in which the leave was take shall be the same evaluation as was conducted the work year in which the leave was taken (e.g., if a member takes a leave for the fall semester during his/her second year of tenure-track employment then a 2nd year evaluation is conducted in the spring semester following a leave and the following academic year another 2nd year evaluation shall be conducted).

² For librarians, the relevant period is the six months from September 1st through February 28th or 29th and March 1st through August 31st.

- A leave during the spring semester only¹ shall not interrupt the evaluation that was initiated in the fall semester just preceding the leave, however tenure eligibility shall be delayed by one year, and the evaluation to be initiated the following fall will be the abbreviated evaluation that is normally conducted during a third or fifth year.
- A leave for a full work year, or of sufficient duration during both semesters of a work year, shall delay the evaluation to the following fall semester.

Effect of leave during the tenure evaluation year

- Leave during the fall semester only¹ delays the tenure evaluation to the following spring semester.
- If leave during the fall semester¹ prevents the candidate from submitting tenure materials by September 15th, but the candidate will not be on leave during the period when observations and evaluations are scheduled to be conducted, the candidate shall elect to proceed during the fall semester or to initiate the evaluation in the spring semester.
- The parties will create a revised Personnel Calendar for members who require a tenure evaluation to be initiated in the spring semester or delayed during the fall semester.
- Leave during the spring semester¹ only shall suspend the evaluation and the evaluation for tenure shall continue in the semester in which the member returns from the leave.
- Leave for a full work year or which occurs during the period when observations and evaluations are scheduled to be conducted, shall delay the evaluation to the following fall semester.

APPENDIX 4

ARTICLE VIII

F. EVALUATION OF DEPARTMENT AND LIBRARY PROGRAM AREA CHAIRS

1. Departmental Evaluation

a. Evaluation of Department Chairs in Their Capacity as Faculty

Members In his/her capacity as a member of the faculty, each Department Chair shall be evaluated in accordance with the provisions of the foregoing Section E; provided, however, that for a reappointment or promotion evaluation, the sole preliminary evaluation required to be conducted pursuant to subsection 2(a) of Section E shall be conducted pursuant to subparagraph (i) thereof.

b. Evaluations of Department Chairs in Their Capacity as Department Chairs

The performance of each Department Chair in his/her capacity as such shall be evaluated by the Departmental Peer Evaluation Committee during the second (2nd) and third (3rd) years of his/her first (1st) term and during the third (3rd) year of any subsequent consecutive term(s).

The committee shall evaluate the Department Chair's performance of the duties and responsibilities set forth in Section A of Article VI of this Agreement and shall do so using Appendix D-4. In conducting such evaluation, the Committee shall solicit evaluations from other members of the department regarding the Department Chair's performance of his/her duties as Department Chair.

c. Evaluation of Library Program Area Chairs in Their Capacity as Librarians

In his/her capacity as a librarian, each Library Program Area Chair shall be evaluated in accordance with the provisions of the foregoing Section E; provided, however, that for a reappointment or promotion evaluation, the sole preliminary evaluation required to be conducted pursuant to subsection 2(c) of Section E shall be conducted pursuant to subparagraph (i) thereof.

d. Evaluation of Library Program Area Chairs in Their Capacity as Such

The performance of each Library Program Area Chair in his/her capacity as such shall be evaluated by the Library Peer Evaluation Committee not less frequently than during every third year of his/her service as such

commencing, unless the Vice President shall otherwise direct, during the second such year.

The committee shall evaluate the Library Program Area Chair's performance of the duties and responsibilities set forth in Section J(2) of Article VI of this Agreement and shall do so using Appendix D-[to be created]. In conducting such evaluation, the committee shall solicit evaluations from other librarians regarding the Library Program Area Chair's performance of his/her duties as Library Program Area Chair.

2. Evaluations Transmitted to the Vice President

Every evaluation conducted pursuant to the foregoing subsection 1 shall be transmitted to the Vice President.

APPENDIX 5

ARTICLE XI - GRIEVANCE PROCEDURE

A. INTRODUCTION

The Board of Higher Education, acting through the Council of Presidents, and the Association recognize that Chapter 150E, §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. **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. A complaint grievance 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.
43. Day - for the purposes of this Article, day shall mean a ~~working~~ **calendar** day exclusive of December 24th through January 2nd. **Deadlines falling on a Saturday, Sunday or holiday are moved to the next business day.**

54. 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.
65. 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 procedure 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.~~

The parties may agree, providing such agreement is recorded in writing, to extend any time period of the grievance procedure contained in this Article.

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; and
- 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 **or relevance** 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)~~ **eleven (11)** 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~~ **grievance**; 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 the Association

Whenever any grievant shall have initiated the grievance procedure 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:

- a. whether the grievant has complied with the procedures for seeking resolution of a grievance as set forth in this Article;
- b. whether the ~~complaint~~ **grievance** alleges a breach of an express term of the Agreement; and
- c. 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, the denial of promotion to an Instructor in his/her fourth (4th) year of employment or the denial of tenure ~~shall~~ **may, at the discretion of the grievant**, initially be filed and heard at Step 2 if the breach of the Agreement the grievance alleges is attributed to the Vice President, the President or the Board of Trustees. Any grievance involving termination ~~shall~~ **may, at the discretion of the grievant**, initially be filed and heard at Step 2.

8. Optional Electronic Filing of Grievances and Other Communication

- a. Step 1 and Step 2 ~~grievances Complaints~~ **grievances** 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 1 or Step 2 ~~grievance Complaint~~ **grievance** 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);
- b. The appropriate management representative shall acknowledge receipt by e-mail;
- c. On or before the day of the Step 1 or Step 2 hearing, the grievant shall follow up with a signed paper copy of the ~~grievance complaint~~ **grievance** 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;
- d. The management grievance hearing officer at Step 1 or Step 2 may respond via e-mail to an e-mailed grievance, sending it to the grievant and the Chapter grievance representative; and
- e. As soon as possible thereafter, the management hearing officer shall follow up with a paper copy of the decision.

- f. ~~Either party, by giving written notice to the other, may discontinue the optional electronic filing of grievances that is permitted by this subsection 8.~~ **All other communications between the parties under this Article XI may be exchanged electronically, and such electronic communications shall be considered to be “in writing” or “written” provided that paper copies can be made available.**

9. Steps

STEP 1: THE VICE PRESIDENT (INFORMAL)

Save as is provided in Section L, a grievant shall initiate the grievance procedure 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)~~ **fifteen (15)** 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)~~ **seven (7)** 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)~~ **seven (7)** 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)~~ **eleven (11)** days after the expiration of the period provided under Step 1 for informal resolution of the grievance, he/she shall file with the President:

- a. ~~a complaint~~ **copy of the grievance**; and
- b. 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~~ **grievance** to the Chapter President.

The President shall meet with the grievant to discuss the grievance within ~~fourteen (14)~~ **twenty-one (21)** days after the filing of the ~~complaint~~ **grievance at Step 2**. 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:

- a. 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:
 - i. 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;
 - ii. any grievance that alleges that the exercise of the academic judgment complained of was arbitrary and capricious; and
- b. any grievance pertaining to:
 - i. the denial of a promotion where such promotion was supported neither by the Department Chair or the Library Director **or Library Program Area Chair**, as the case may be, by the Peer Evaluation Committee, by the Committee on Promotions, nor by the Vice President;
 - ii. the denial of a reappointment where such reappointment was supported neither by the Department Chair or the Library Director **or Library Program Area Chair**, as the case may be, by the Peer Evaluation Committee, nor by the Vice President;
 - iii. the denial of tenure where the granting of tenure was supported neither by the Department Chair or the Library Director **or Library Program Area Chair**, as the case may be, by the Peer Evaluation Committee (if one was requested by the candidate **or required pursuant to Article VIII, §P**), 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 twenty (20) days after the President and the grievant meet, 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 he/she 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.

If the Association elects to proceed beyond Step 2, then within ~~fourteen (14)~~ **twenty-one (21)** days after the expiration of the period provided under this 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. This notice shall satisfy the requirements of Step 3 and the requirements of clauses (i) and (ii) in the first paragraph of Step 4; such notice may be filed electronically. As soon as practicable thereafter, the Association President shall follow up with a signed paper copy.

STEP 3: MEDIATION

If the Association elects to proceed to this Step, then following the receipt of such notice by the representative of the Council of Presidents, but no sooner than ~~thirty (30)~~ **forty-five (45)** days thereafter, the grievance, **unless it concerns a question of tenure**, will be addressed in mediation **as soon as practicable** ~~on the next available mediation date~~. **If the grievance concerns a question of tenure, the Association may request mediation. If the Employer agrees to mediation or fails to respond to the Association's request within fifteen (15) days, the matter shall proceed to mediation as soon as practicable. If the Employer declines mediation, the matter shall proceed to arbitration.**

The Council and the Association shall reserve, at a minimum, the first Wednesday of each month for the mediation of grievances at Step 3; to the extent possible, the parties will, by mutual agreement, add mediation dates as needed. Dates 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 Loretta Attardo, Richard Boulanger, Diane Zaar Cochran and Roberta Golick and **other mediators as the parties may agree to add**, ~~on a trial basis for a period of not less than six (6) months from and after July 1, 2012, by one (1) or more mediators appointed by and through the Massachusetts Board of Conciliation and Arbitration.~~

Two (2) grievances per day shall be the standard for mediation unless the grievances are related, in which case additional related grievances may be addressed by agreement of the parties. Both parties shall ensure 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:

- a. views expressed or suggestions made by the other party with respect to the possible settlement of the grievance;
- b. admissions made by the other party in the course of the mediation;
- c. proposals made or views expressed by the mediator; and
- d. 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:

- a. by the execution of a settlement agreement by the parties; or
- b. by a written declaration of the mediator, a party, or the parties to the effect that the mediation is concluded.

After May 31, ~~2017~~ 2006, upon ~~thirty (30)~~ **forty-five (45)** days' notice, either party may terminate this mediation procedure, after which Step 4 shall become Step 3.

STEP 4: ARBITRATION³

Subject to and in accordance with the following provisions, **the Association may initiate arbitration within ~~ninety (90)~~ one hundred thirty-five (135) days of:** ~~arbitration on 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:~~

- **notice by the Association that mediation is waived;**

³ The parties acknowledge a Grievance Settlement dated April 20, 2012 that is enforceable pursuant to the terms of this Agreement, subject to the **grievance procedure of the 2012-2014 Agreement as modified by procedural modifications** in the Grievance Settlement, e.g., an arbitrator will be selected using the American Arbitration Association and its labor rules and procedures.

- **in the case of a grievance relating to tenure denial, the Employer’s statement declining mediation; or**
 - **the conclusion of mediation (other than by the parties’ execution of a settlement agreement).**
- a. 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;
 - b. 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 (or through Step 2 thereof if the grievance is properly initiated at that Step) and only if submission of the grievance to arbitration has been duly authorized by the Association and so certified by its President; and
 - ~~c. 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) that it intends to submit a grievance to arbitration. A copy of such notice shall be provided to the Employee Relations Committee.~~
 - c. In order to proceed to arbitration, within the time specified in the first paragraph in Step 4, the Association shall file a demand for arbitration with the American Arbitration Association, a copy of which shall be sent to the President, the Chair of the Council of Presidents, the Employee Relations Committee and the labor representative of the Council of Presidents in labor arbitration.**
 - d. The deadline for filing a demand for arbitration for related grievances shall be ~~ninety (90)~~ one hundred thirty-five (135) days after the last of the related grievances has been addressed in accordance with the first paragraph in Step 4. The term “related grievances” shall refer to grievances such as those concerning the stages in a personnel action for the same unit member, grievances by different unit members pertaining to the same transaction or occurrence, or other grievances determined by the parties to be related. Such related grievances shall be included in a single demand for arbitration.**

~~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/she served as mediator under Step 3. The parties shall give notice to the arbitrator of his/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 **grievance 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

- a. Whenever any grievance set forth in the **grievance 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)~~ **twenty-one (21)** 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.

- b. 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)~~ **twenty-one (21)** 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:

- a. such portion of any grievance as is removed from the jurisdiction of the President by the express terms of this Article; or
- b. such portion of any grievance as relates to any determination or decision made pursuant to an exercise of academic judgment.

E. DECISION OF THE ARBITRATOR

Within ~~thirty (30)~~ **forty-five (45)** days after the conclusion of a hearing, or within ~~thirty (30)~~ **forty-five (45)** 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 the grievance procedure (or through Step 2 thereof if the grievance was properly initiated at that Step), such member or members, have complied with the procedure for initiating and pursuing a grievance as set forth in this Article;
2. whether the ~~grievance complaint~~ **grievance 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~~ **grievance** 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 Five Thousand Dollars (\$5000.00).

G. COSTS OF MEDIATION AND ARBITRATION

In all mediation and arbitration proceedings, the mediator's or arbitrator's fees and expenses shall normally be paid fifty percent (50%) by the Association and fifty percent (50%) by the University or Universities; provided, however, that whenever an 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 mediator or arbitrator shall be made within ~~thirty~~

~~(30)~~ **forty-five (45)** days of the rendering of his/her statement of fees and expenses. In all other respects the parties shall bear their own costs of mediation and 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 University 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 University 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, 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 **Department** ~~Division~~ of Labor Relations 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 procedure 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, §8, and Chapter 150C, §§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 any 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 GRIEVANCES⁴

Anything in the foregoing provisions to the contrary notwithstanding, the Association, acting through its President, may, within the ~~ten (10)~~ **fifteen (15)** 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 **grievance complaint**, specifying therein the reasons why the grievance should be treated as a consolidated grievance. The Chair shall, within ~~ten (10)~~

⁴The parties acknowledge a Grievance Settlement dated April 20, 2012 that is enforceable pursuant to the terms of this Agreement, subject to the **grievance procedure of the 2012-2014 Agreement as modified by procedural modifications** in the Grievance Settlement, e.g., an arbitrator will be selected using the American Arbitration Association and its labor rules and procedures.

fifteen (15) days, determine in his/her sole discretion whether to treat the grievance as a consolidated grievance. If the Chair accepts the **grievance complaint** as a consolidated grievance, the procedures and time limits of Step 2 shall thereupon apply, provided only that the ~~fourteen (14)~~ **twenty-one (21)** day period for a hearing to be conducted at Step 2 shall commence upon the expiration of the period provided for the Chair to determine if the grievance is to be treated as a consolidated grievance rather than the date the **grievance complaint** was filed, and provided further 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 University. If the Chair declines to accept the grievance as a consolidated grievance, the Association or any unit member or members may, within ~~ten (10)~~ **fifteen (15)** days following the date of the Chair's decision, file the grievance at Step 1 at the University 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 Employee Relations Committee 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, salary or stipend, and/or sick-leave buy-back subject to the time limits for filing and pursuing a grievance under Section C of this Article but without any other limitation on the time for initiating a grievance. A former member of the bargaining unit shall have standing as a grievant hereunder for the purpose of pursuing other grievances concerning his/her former employment under and subject to the limits of time contained in Section C of this Article; in no event shall any such grievance be filed more than ninety (90) days after termination of employment in 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.

APPENDIX 6

Additions in **bold**, deletions ~~struck~~.

Article I (Pages 7-8):

Definition 38. Professional Maritime Faculty. “Professional Maritime Faculty” shall mean a full-time faculty member at the Massachusetts Maritime Academy who is appointed, **who accepts a transfer in accordance with Article XX, Section C(9), or who agrees to a change in designation** to perform services during the work year, as provided in this Agreement, ~~of a member of the Professional Maritime Faculty~~ and who holds a United States Coast Guard Merchant Marine License **and valid STCW documentation for the license held**.

Definition 56. Terminal Degree. Modify the definition so that an M.S.E. plus a professional engineering license is a terminal degree in Engineering Department at Mass Maritime. [Contract language will be worked out.]

Article XII-A:

Section A(1) (Page 201):

Delete language: “to participate in shipyard overhaul/repair periods as provided in this Agreement;” and “and transporting a vessel to or from shipyard.” (Delete participation in senior cadet license seminar, it is an academic course and is already unit work.)

Article XII-A, Section A(5)(a) (Pages 203-205):

i. Blue and Gold

(A) Definition

“Blue and Gold” or “Blue-Gold” shall refer to the obligation to participate in no more than one (1) Sea Term in each alternating year over a period of six (6) years.

“Blue” years shall be odd-numbered calendar years starting with calendar year 2001. “Gold” years shall be even-numbered calendar years starting with calendar year 2002.

Blue and Gold shall include the requirement to participate, in the Professional Maritime Faculty member’s obligatory year, in the Basic Safety Training portion (approximately five (5) days) of the freshmen orientation period (held the last two (2) weeks of August).

Professional Maritime Faculty shall have the option to renew Blue-Gold status after completion of their Blue-Gold obligation. Renewal shall be for a six (6)-year period. If a Professional Maritime Faculty member chooses not to renew Blue-Gold status, his/her salary shall be reduced by thirteen percent (13%) upon the conclusion of the Blue-Gold commitment.

Professional Maritime Faculty who elect to renew their Blue-Gold status shall do so by giving to the President of the Academy written notice of their election on or before the June 30 preceding the expiration of their then-current Blue-Gold status.

- (B) **All tenured and tenure-track faculty appointed as, who transfer into a, or who agree to have their designation changed to** Professional Maritime Faculty ~~appointed to tenure-track positions~~, with effect on or after July 1, 2000 (including any person so appointed pursuant to Article XX, Section M), will be required to participate in the Sea Term on a Blue-Gold basis for their first twenty-four (24) years of employment **after such appointment, transfer or change in designation**. The minimum starting salary for each such Professional Maritime Faculty ~~shall~~ **will** be fifteen percent (15%) above the minimum salary as computed in Article XIII-A. **The effective date of a transfer into, or change in designation to, Professional Maritime Faculty shall be the September 1st following the approval of such transfer or change in designation, and the faculty member shall have his/her salary increased by fifteen percent (15%) effective such September 1st.**
- (C) During any calendar year in which seven (7) or more members of the Professional Maritime Faculty on Blue-Gold status participate in the Sea Term (i) from the Engineering Department and/or (ii) from the Marine Transportation Department, the Academy can require no more than one (1) full-time temporary member of the Professional Maritime Faculty (i) from the Engineering Department in the one case and/or (ii) from the Marine Transportation Department in the other case, to participate in the annual Sea Term during such year. During any calendar year in which fewer than seven (7) members of the Professional Maritime Faculty on Blue-Gold status participate in the annual Sea Term (i) from the Engineering Department and/or (ii) from the Marine Transportation Department, the Academy can require no more than two (2) full-time temporary members of the Professional Maritime Faculty (i) from the Engineering Department in the one case and/or (ii) from the Marine Transportation Department in the other case, to participate in the annual Sea Term during such calendar year.

The Academy shall, no later than October 31 of each year, give to full-time temporary Professional Maritime Faculty notice of whether they will be obliged to participate in the annual Sea Term the following calendar year.

Full-time temporary Professional Maritime Faculty having a Sea Term obligation under this subsection shall be compensated for their Sea Term service in accordance with the following subparagraph (ii).

- (D) Any person other than a member of the Professional Maritime Faculty who is employed at the Academy as a tenured or tenure-track member of the bargaining unit and who secures a United States Coast Guard Merchant Marine License of the kind described in Article XX-A, Section B, may, then or thereafter, make to the President of the Academy a request in writing that he/she **have his/her designation changed to that of a be appointed a member of the Professional Maritime Faculty.** If the President grants the request, he/she shall do so in writing and, when doing so or as soon thereafter as is practicable, shall fix the effective date of the **change in designation-appointment.** Any **change in designation-appointment** when granted shall be subject to the provisions of this subparagraph (i) that pertain to appointments, **transfers or changes in designation** of Professional Maritime Faculty that are granted on or after July 1, 2000, but shall not affect any then-accrued seniority (including seniority that pre-dates July 1, 2000) or eligibility for tenure or any like entitlement.