

COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF LABOR RELATIONS

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In the Matter of \*

BOARD OF HIGHER EDUCATION \*

and \*

MASSACHUSETTS STATE \*

COLLEGE ASSOCIATION/MTA/NEA \*

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Case No. SUP-08-5396

Date Issued: January 16, 2014

Hearing Officer:

Kendrah Davis, Esq.

Appearances:

James B. Cox, Esq. - Representing the Board of Higher Education

Laurie R. Houle, Esq. - Representing the Massachusetts State College Association/MTA/NEA

HEARING OFFICER'S DECISION AND ORDER

1 SUMMARY

2 The issue in this case is whether the Board of Higher Education (Board or  
3 Employer) violated Section 10(a)(5) and, derivatively, Section 10(a)(1) of  
4 Massachusetts General Laws, Chapter 150E (the Law) when it failed to bargain in good  
5 faith by repudiating both Article XX, §C(10) of the collective bargaining agreement  
6 (Agreement) and the February 23, 2006 grievance decision involving the Massachusetts  
7 State College Association/MTA/NEA (Association) and the Board. I conclude that the  
8 Board failed to bargain in good faith with the Association by repudiating both Article XX,  
9 §C(10) of the Agreement and the February 23, 2006 grievance decision by employing

1 more part-time faculty members during the 2007-2008 academic year than the  
2 Agreement permitted in violation of Section 10(5) and, derivatively, Section 10(a)(1) of  
3 the Law.

#### 4 STATEMENT OF THE CASE

5 On May 30, 2008, the Association filed a Charge of Prohibited Practice (Charge)  
6 with the Department of Labor Relations (DLR), alleging that the Board had violated  
7 Sections 10(a)(5) and, derivatively, Section 10(a)(1) of the Law by failing to bargain in  
8 good faith when it repudiated Article XX, § C(10) of the Agreement and the February 23,  
9 2006 grievance decision. A DLR investigator investigated the Charge and issued a  
10 Complaint of Prohibited Practice and Partial Dismissal (Complaint) on May 6, 2009.  
11 The Board filed its Answer to the Complaint on February 18, 2010. On March 3, 2010,  
12 the Association filed a "Motion in Limine to Exclude Testimonial Evidence of Alleged  
13 Financial Shortfall at State College," which I denied.

14 I conducted eight days of hearing on March 3, April 21 and 26, June 14, July 20  
15 and November 22, 2010, and January 19 and May 16, 2011. At the hearing, both  
16 parties had an opportunity to be heard, to examine witnesses and to introduce  
17 evidence. On August 5 and 8, 2011, the Association and the Board filed post-hearing  
18 briefs, respectively. Based on the record, which includes witness testimony, admissions  
19 of fact and documentary exhibits, and in consideration of the parties' arguments, I make  
20 the following findings of fact and render the following decision.

#### 21 ADMISSIONS OF FACT

22 The Board admitted to the following facts:<sup>1</sup>

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<sup>1</sup> In its Answer, the Board made full and partial admissions of fact. This section of my decision reflects only the Board's full admissions of fact.

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- 1. The Board is a public employer within the meaning of Section 1 of the Law.
- 2. The [Association] is an employee organization within the meaning of Section 1 of the Law.
- 3. The [Association] is the exclusive collective bargaining representative for certain faculty employed by the Employer.
- 4. The [Association] and the Board are parties to a collective bargaining agreement for the period July 1, 2004 to June 30, 2007 (Agreement). Pursuant to a Memorandum of Agreement dated August 27, 2007, the Agreement was effective at the time the dispute arose.

5. Article XX, § C(10) of the Agreement states:

Part-Time Appointments: Limitations

This subsection shall be of application only to departments with six (6) or more full-time members.

Except at the Massachusetts College of Art [(Mass. Art)], not more than fifteen percent (15%) of an academic department's total number of three (3) credit courses and sections shall be taught by part-time employees during an academic year.

At [Mass. Art], not more than twenty percent (20%) of the total number of three (3) credit courses taught in department with six (6) or more full-time faculty shall be taught by part-time employees during an academic year.

Not included in the foregoing are courses or sections taught by part-time employees hired to replace unit members on sabbatical leave of absence, on unpaid leave of absence, on reduced teaching loads for the purposes of alternative professional responsibilities or Association release time, or any other contractual release time, or any unforeseen emergency.

STIPULATIONS OF FACT

38 The parties stipulated to the following facts:

- 39 1. On February 23, 2006, the Board issued a grievance decision, requiring, in part,  
40 that each college commencing no later than the fall semester of the academic  
41 year 2006-2007, reduce its improper reliance on part-time faculty.  
42
- 43 2. Certain departments at Bridgewater, Framingham, Salem, Westfield and Mass.  
44 Art employed part-time instructors during the 2007-2008 academic year, and in

1 prior academic years, exceeded the assignment limitations of part-time  
2 instructors set forth in Article XX, § C(10).

3  
4 FINDINGS OF FACT  
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6 The language in Article XX, § C(10) of the parties' Agreement first appeared in  
7 their 1986-1989 contract and has remained in effect through the 2004-2007 Agreement.

8 The Board is the statutory employer of faculty and other employees employed at  
9 the Commonwealth of Massachusetts' nine colleges:<sup>2</sup> Bridgewater State College  
10 (Bridgewater); Fitchburg State College (Fitchburg); Framingham State College  
11 (Framingham); Massachusetts College of Art and Design (Mass. Art); Massachusetts  
12 College of Liberal Arts (Mass. Lib.); Massachusetts Maritime Academy (Mass.  
13 Maritime); Salem State College (Salem); Westfield State College (Westfield); and  
14 Worcester State College (Worcester).

15 Each college is governed by a Board of Trustees pursuant to G.L. c. 15A, §§ 9  
16 and 22 (Chapter 15A). Chapter 15A, § 9 authorizes the Council of Presidents of the  
17 Massachusetts State Universities (Council) to establish salaries and tuition rates for the  
18 colleges. Section 22 of Chapter 15A states, in part:

19 Each board of trustees of a community college or state university shall be  
20 responsible for establishing those policies necessary for the administrative  
21 management of personnel, staff services and the general business of the  
22 institution under its authority. Without limitation upon the generality of the  
23 foregoing, each such board shall... (c) appoint, transfer, dismiss, promote  
24 and award tenure to all personnel of said institution....

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26 **Full-time, Benefitted Part-time and Part-time Faculty Members**

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<sup>2</sup> After the hearing, Commonwealth Governor Deval Patrick signed legislation that granted university status to all Massachusetts state colleges on July 28, 2010. As a result, the Commonwealth's nine state colleges are now known as state universities; however, for purposes of this decision, I refer to them as colleges.

1           The colleges can employ their respective faculty members on part-time (or  
2 adjunct), full-time temporary, full-time tenure-track (tenure-track) or full-time tenured  
3 (tenured) bases. Mass. Art can also employ faculty members on a “benefitted” part-time  
4 basis.

5           All full-time faculty members teach 12 credits (of three or four-credit courses) per  
6 semester and receive an annual salary with benefits. Tenured faculty members  
7 participate in ongoing governance at their particular college, including structuring  
8 academic programs, designing curriculum, and serving on one of the many  
9 departmental committees. Tenure-track faculty members are eligible for tenured  
10 evaluation at the conclusion of a set number of years. A college’s decision to grant  
11 tenure to a faculty member is a major financial decision for that college because the  
12 prospective candidate is entitled to employment at the college for the remainder of their  
13 professional academic career. Full-time temporary faculty members teach from one to  
14 four consecutive semesters, advise students who are assigned to them, and have the  
15 same workload as tenured or tenure-track faculty members.

16           Mass. Art refers to certain faculty members as “benefitted” part-time, which is  
17 similar to full-time status because: (1) benefitted part-time employees possess the same  
18 rights and benefits as full-time faculty members and hold similar academic ranks; (2)  
19 they have the same workload as full-time faculty members and are evaluated under the  
20 same rules; (3) they share the same salary scale and are entitled to professional  
21 development monies (on a pro rata basis); and, (4) they are eligible for sabbatical  
22 leaves of absence.

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1           Part-time faculty members are not eligible to become members of the bargaining  
2 unit until they complete three consecutive semesters. Although the colleges pay part-  
3 time faculty members per course taught, the Employer is prohibited from hiring them for  
4 more than four consecutive semesters and cannot hire a number greater than the 15%  
5 and 20% caps pursuant to the parties' Agreement.

6           The colleges hire part-time faculty when the number of needed courses exceeds  
7 the current ability of full-time faculty (and benefitted part-time faculty at Mass. Art) to  
8 deliver those courses. The colleges also hire part-time faculty members who have a  
9 specialization in a particular area. Each college determines the number of part-time  
10 faculty based on the number of students enrolled in particular programs and related  
11 courses for a given academic year (AY). Depending on the number of students enrolled  
12 in a particular program during a given semester and/or AY, some departments may not  
13 have enough full time faculty members to teach the core courses and will hire to part-  
14 time faculty to teach those courses.

15           Each college allocates a portion of its yearly budget toward full-time salaried  
16 positions based on the size of particular departmental programs and projected growth  
17 for those programs. In some instances it costs the colleges less money to hire a part-  
18 time faculty member than a full-time faculty member because each college pays their  
19 part-time adjuncts per course rather than per semester or on a yearly salary. The  
20 colleges use education and "rank" (i.e., professor, associate professor, assistant  
21 professor and instructor) as factors to determine minimum and maximum salaries for its  
22 faculty members.

23   **Department Chairs and Committee Assignments**

1 Department chairs are full-time faculty who are responsible for supervising and  
2 evaluating other full-time and part-time faculty members in their respective departments.  
3 At Mass. Art, department chairs meet biweekly with the college's Senior Vice President  
4 for Academic Affairs Dr. Johanna Branson (Dr. Branson) to review staffing plans, the  
5 hiring of adjuncts and tenure-track faculty, and to discuss requests for temporary  
6 appointments.

7 The Department Chairs serve on at least 17 different departmental committees at  
8 the nine colleges. Five committees exist at the departmental level, 11 at the college  
9 level, along with two "other" committees.<sup>3</sup> The five departmental committees have 396  
10 full-time faculty members; the 11 college committees have over 963 full-time faculty  
11 members; and the two "other" committees have at least 92 full-time faculty members.  
12 An increased number of part-time faculty members generally results in an increased  
13 workload for department chairs coupled with a smaller pool of full-time faculty members  
14 to staff committee assignments.

### 15 **Core Curriculums and Student Enrollment**

16 The colleges require all students to enroll in a general requirement of core  
17 curriculum courses as a prerequisite to earning their degree. Each college develops its  
18 core curriculum with significant input from faculty members, and usually requires a large

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<sup>3</sup> The departmental committees are: (1) Undergraduate Curriculum Committee; (2) Graduate Committee; (3) Ad Hoc Committee; (4) Search Committee; and (5) Peer Evaluation Committee. The college committees are: (1) All-College Committee; (2) Curriculum Committee; (3) Academic Policies Committee; (4) Student Affairs Committee; (5) Special Committee; (6) Ad Hoc Committee; (7) College-Wide Advisory Committee such as Dean/Vice President Search Committee; (8) Other School/College Committees; (9) Committee on Promotions; (10) Committee on Tenure; and (11) Committee on Termination of a Tenured Faculty Member. The two "other" committees are the System-Wide Task Force and the Inter-Segmental Committee.

1 number of part-time faculty members to teach lower level core courses and certain  
2 program/degree-specific courses. The colleges balance the need to offer lower level  
3 core courses against the availability of full-time instructors to teach those courses.

4 Enrollment numbers for first-year students at Westfield, Bridgewater,  
5 Framingham and Salem during AY 2007-2008 were higher than expected and the  
6 colleges did not have enough full-time faculty members to teach all the core courses,  
7 including: English, Economics, Mathematics, Music, Theater, History, Computer  
8 Science, Communications, Psychology, Sociology, Science and Philosophy.  
9 Consequently, the colleges hired additional part-time instructors to teach those core  
10 courses, which exceeded the 15% cap. Also, during AY 2007-2008, Mass. Art hired  
11 additional part-time instructors to teach core courses in the Environmental Design  
12 (including Fashion Design, Architectural and Industrial Design) and Communications  
13 programs (including Graphic Design, Illustration and Animation), which exceeded the  
14 20% cap.

#### 15 **The 15% and 20% Caps**

16 The purpose of the 15% cap in Article XX, §C(10) of the Agreement is to protect  
17 the work load for full-time faculty members, including department chairs, by limiting the  
18 number of part-time instructors who teach in qualifying departments. When there is a  
19 shortage of faculty due to exigent circumstances (such as retirement, medical leave of  
20 absence, sabbatical, death or increase in student enrollment), the colleges may hire  
21 faculty members on a full-time temporary (semester-by-semester) or part-time  
22 temporary (course-by-course) basis under Article XX, C(10) of the Agreement. The  
23 colleges may also respond by arranging tenured and tenure-track faculty to assume



1 more courses than required by the Agreement or by shifting full-time faculty members  
2 from compliant to non-compliant departments.

3         Neither the Board nor the Association know whether the colleges have satisfied  
4 the 15% or 20% compliance rule for a given AY until the spring semester of that year.  
5 However, prior to the start of an AY, the parties know the core courses offered, the  
6 number of full time tenured faculty, full time tenure-track faculty and full-time temporary  
7 faculty and the number of students enrolled for the fall semester. To avoid a potential  
8 violation of the 15% and 20% rules, the colleges can: (1) hire more full-time faculty  
9 members; (2) instruct full-time faculty to teach more courses, including lower-level core  
10 courses; (3) cancel courses; (4) reduce course offerings; (5) combine low-enrollment  
11 courses; (6) increase student enrollment caps for courses; (7) use historic data to plan  
12 courses more carefully; and (8) control matriculation.

13         Requiring full-time faculty to teach lower-level courses could adversely impact  
14 bargaining unit members by diminishing professional development and faculty morale.  
15 Canceling courses could impact a student's financial aid and lengthen the amount of  
16 time that a student has to complete his/her degree because they would have to wait  
17 until the college offers the required course. Combining courses could also negatively  
18 impact a faculty member's ability to evaluate students' work such as in English  
19 Composition — which requires heavy-writing assignments — because that decision  
20 would increase that faculty member's workload.

21         There is also a detrimental impact to increasing the number of part-time faculty  
22 members. As the number of part-time faculty increases so does the work load for full-  
23 time faculty and department chairs because they have to oversee more employees in

1 terms of hiring, supervision, evaluation, academic advising, committee assignments and  
2 peer evaluations. As the number of part-time faculty increases, the number of full-time  
3 faculty available for committee assignments and other areas of continuing scholarship  
4 (e.g., research, publishing and presentation at conferences) decreases because full-  
5 time faculty must spend more time supervising part-time members. There is also a  
6 corresponding decrease in a full-time faculty member's ability to meet and work one-on-  
7 one with students outside of the classroom. More part-time faculty members can also  
8 adversely affect the number of available parking and office spaces. Increased part-time  
9 faculty also decreases a part-time adjunct's ability to write letters of recommendation for  
10 students due to their short employment period (four consecutive semesters or less) and  
11 decreases their ability to meet with students because many part-time faculty members  
12 do not have their own office space.

### 13 **Colleges in Violation of the 15% and 20% Caps**

14 From AY 2001-2002 through AY 2007-2008, eight colleges reported having  
15 academic departments in violation of the 15% or 20% cap for part-time faculty  
16 members.<sup>4</sup> The total number of departments that violated the 15% and 20% caps rose  
17 from 14 in AY 2001-2002 to 31 in AY 2007-2008. The total number of course sections  
18 that violated those caps rose from 416 in AY 2004-2005 to 664 in AY-2007-2008.  
19 Specifically, in AY 2005-2006, five colleges had 20 departments and 346 course  
20 sections taught by part-time faculty members which exceeded the 15% cap.<sup>5</sup> In AY  
21 2006-2007, seven colleges reported having 27 departments and 551 course sections in

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<sup>4</sup> Fitchburg reported zero departments/courses in excess of the 15% cap.

<sup>5</sup> Mass. Art reported zero violations for AY 2005-2006.

1 violation of the 15% and 20% caps. In AY 2007-2008, eight colleges had 31  
2 departments and 663 course sections in excess of the caps.

3 **1. Bridgewater**

4 During the fall semester of AY 2001-2002, 21 departments at Bridgewater  
5 violated the 15% rule, with 113 total courses that exceeded the cap. During the spring  
6 semester of AY 2001-2002, 17 departments violated the 15% rule with 76 courses  
7 exceeding the cap. During the fall semester of AY 2002-2003, 18 departments violated  
8 the 15% rule, for a total of 157 courses in excess of the cap.<sup>6</sup> During the fall semester  
9 of AY 2002-2003, 16 departments violated the 15% rule with a total of 182 courses in  
10 excess of the cap. During the spring semester of AY 2003-2004, 20 departments  
11 violated the 15% rule with 161 courses exceeding the 15% cap.

12 In AY 2004-2005, Bridgewater had seven departments that violated the 15% rule  
13 for a total of 140 courses in excess of the cap. For AY 2005-2006, Bridgewater had  
14 nine departments in violation of the 15% rule with a total of 129 courses in excess of the  
15 cap. For AY 2006-2007, 11 departments violated the 15% rule with 230 total courses  
16 above the 15% cap. In AY 2007-2008, 12 departments violated the 15% rule with 343  
17 courses in excess of the cap.

18 **2. Framingham**

19 In the fall of AY 2001-2002, Framingham had 14 departments with 35 courses  
20 that exceeded the 15% cap. In the spring of AY 2001-2002, 13 departments violated  
21 the 15% rule, with a total of 22 courses in excess of the cap. In AY-2002-2003,

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<sup>6</sup> The parties did not present evidence showing data for the spring 2003 semester.

1 Framingham had 13 departments with 102 courses in excess of the 15% cap. For AY  
2 2003-2004, the college had 13 departments with 48 total courses in excess of the 15%  
3 cap. For AY 2004-2005, the college had 5 departments in violation of the 15% rule, with  
4 a total of 29 courses in excess of the cap. For AY 2005-2006, it had three departments  
5 that violated the 15% rule with three courses exceeding the cap. In AY 2006-2007,  
6 Framingham had zero departments in excess of the 15% cap, but in AY 2007-2008, it  
7 had two departments that violated the 15% rule with 16 courses in violation of the cap.

### 8 **3. Mass. Art**

9 In AY 2001-2002, Mass. Art had eight departments with 116 total courses above  
10 the 20% cap. For AY 2002-2003, eight departments with 48 courses exceeded the 20%  
11 cap, and during AY 2003-2004, eight departments with 133 courses exceeded the 20%  
12 cap. In AY 2004-2005, the college had three departments that violated the 20% rule  
13 with six courses in above the cap. Although Mass. Art had zero departments that  
14 violated the 20% rule, in AY 2005-2006, it had two departments with 19 courses in  
15 excess of the 20% cap in AY 2006-2007, and reported two departments with 16 course  
16 violations in AY 2007-2008.

### 17 **4. Mass. Lib.**

18 During AY 2001-2002, Mass. Lib. had four departments in violation of the 15%  
19 rule with a total of 18 courses that exceeded the cap. During the spring semester of AY  
20 2002-2003, the college had six departments that violated the 15% rule with 15 total  
21 courses in excess of the cap.<sup>7</sup> During AY 2003-2004, Mass. Lib. had seven

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<sup>7</sup> The parties did not provide evidence for the spring semester of AY 2002-2003.

1 departments in violation of the 15% rule with a total of 28 courses exceeding the cap.  
2 In AY 2004-2005, it had two departments that violated the 15% rule with a total of 11  
3 courses over the cap. In AY 2005-2006, the college had zero departments in violation  
4 of the 15% rule but, in AY 2006-2007, it had one department and one course in excess  
5 of the cap and, in AY 2007-2008, it had one department and three courses in violation  
6 of the cap.

#### 7 **5. Mass. Maritime**

8 During AY 2001-2002, AY 2002-2003, AY 2003-2004, AY 2004-2005 and AY  
9 2005-2006, Mass. Maritime had zero departments in violation of the 15% rule.  
10 However, in AY 2006-2007 and AY 2007-2008, it had two total departments that  
11 exceeded the cap.

#### 12 **6. Salem**

13 During the fall semester of AY 2001-2002, Salem had three departments in  
14 violation of the 15% cap.<sup>8</sup> In AY 2002-2003, the college had 11 departments that  
15 violated the 15% rule and, for AY 2003-2004 it had five departments that violated the  
16 cap. In AY 2004-2005, seven departments violated the 15% rule, for a total of 158  
17 courses in excess of the cap.

18 Between 2002 and 2004, Salem offered an early retirement incentive that a  
19 significant number of faculty members accepted. Based on the faculty response, the  
20 College was only able to fill 20% of those positions with full-time instructors, resulting in  
21 a increased use of number of part-time adjuncts during AY 2005-2006 through AY

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<sup>8</sup> The parties did not provide evidence for the spring semester of AY 2001-2002.

1 2007-2008. Specifically: in AY 2005-2006, Salem had five departments in violation of  
2 the 15% rule with 148 courses in excess of the cap; in AY 2006-2007, the college had  
3 seven departments with 210 courses in excess of the 15% cap; and, in AY 2007-2008, it  
4 had 10 departments with 203 courses that violated the 15% rule.

#### 5 **7. Westfield**

6 During AY 2001-2002 Westfield had 10 departments in violation of the 15% rule.<sup>9</sup>  
7 In AY 2004-2005, the college had four departments that violated the 15% rule with total  
8 66 courses in excess of the cap. In AY 2005-2006, it had two departments that violated  
9 the 15% rule with 61 courses exceeding the cap. In AY 2006-2007, the college had two  
10 departments in violation of the 15% rule with 75 courses in excess of the cap. In AY  
11 2007-2008, it had three departments in violation of the 15% rule with 58 courses above  
12 the cap. Although Westfield hired seven full-time temporary faculty members to teach  
13 four sections of English Composition in AY 2007-2008, its English Department still  
14 violated the 15% rule by exceeding the cap on part-time adjuncts.

#### 15 **8. Worcester**

16 During AY 2001-2002, Worcester had zero departments that violated the 15%  
17 rule, and in AY 2002-2003, it had three departments that exceeded the 15% cap. In AY  
18 2003-2004, the college had six departments that violated the 15% rule and, in AY 2004-  
19 2005, it had only one department with six courses in violation of the 15% cap. In AY  
20 2005-2006, Worcester had two departments with five courses in excess of the 15% cap.  
21 For AY 2006-2007, it had three departments in violation of the 15% rule with 14 courses

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<sup>9</sup> The parties did not submit evidence for AY 2002-2003 and AY 2003-2004.

1 exceeding the cap. In AY 2007-2008, the college had one department with 25 courses  
2 in excess of the 15% cap.

### 3 **The 2002 Grievance**

4 By memorandum dated March 7, 2002, Association Grievance Committee Chair  
5 Frank S. Minasian (Minasian) and Association President Dr. Markunas filed a  
6 consolidated grievance with Council of State College Presidents Chair Frederick  
7 Woodward (Dr. Woodward), alleging that the Board violated "Article XX C9"<sup>10</sup> of the  
8 Agreement, and "all other applicable articles....by exceeding the 15% provision relating  
9 to maximum amount of part-time faculty in each academic department."

10 By memorandum on September 15, 2005, Salem Vice President of Academic  
11 Affairs Dr. Diane R. Lapkin (Dr. Lapkin) notified Association Grievance Officer Margaret  
12 Vaughan (Vaughan) about the status of the grievance as it pertained to Salem, which  
13 the Employer had held in recess since May 9, 2003. In that letter Dr. Lapkin found that  
14 seven departments at the college had violated Article XX, §C(10), stating, in pertinent  
15 part:

16 At Step I, this grievance is upheld. There is no doubt that [Salem] is in  
17 violation of Article XX.C.9. However, the data shown in Table I presents  
18 evidence of a good faith effort to mitigate the effect of faculty retirements.

19  
20 I assure the Association that [Salem] will continue its commitment to  
21 continue focusing new position requests on those departments that are  
22 out of compliance with Article XX.C.9.

### 23 24 **The 2006 Grievance Ruling**

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<sup>10</sup> Article XX, § C(9) of the parties' 2001-2003 Agreement is referenced as Article XX, § C(10) in the parties' 2004-2007 successor Agreement. For purposes of this decision, all references to Article XX, C(10) of the current Agreement include Article XX, C(9) of the prior Agreement.

1 By letter dated February 23, 2006, Dr. Woodward's successor, Dr. Janelle C.  
2 Ashley (Dr. Ashley) notified Dr. Markunas that the Board had upheld the Association's  
3 2002 grievance and found that the Employer had violated the parties' Agreement  
4 pertaining to excessive use of part-time faculty in violation of the 15% and 20% rules.  
5 Dr. Ashley's letter stated, in part:

6 I find no reason to question the sufficiency of the factual basis for the  
7 Association's claim. I conclude from it that seven of the Colleges—  
8 Fitchburg and the Maritime Academy are...exceptions—have at different  
9 points (though not at every point in every case) violated the Agreement by  
10 employing, in various departments at various times, more part-time faculty  
11 to teach three-credit courses than the Agreement permits.

12  
13 ...considering all of the data collectively, the Colleges have most  
14 significantly exceeded the contractual limits on the employment of part-  
15 time faculty during the academic year 2004-2005. That year culminates,  
16 indeed, what the data depict as an upward (i.e., negative) trend. I have no  
17 doubt...that trend is...a product of the funding shortfalls the Colleges have  
18 experienced in recent years. While that may not excuse the contractual  
19 violation I have identified, it goes far to explain it, and it puts real and  
20 serious impediments in the way of the prompt effectuation of a remedy.

21  
22 Having regard to the point just made and to my factual findings generally, I  
23 decline to adopt as a remedy here the immediate and categorical directive  
24 to "cease and desist" that the Association has sought. But I acknowledge  
25 that the Colleges must in fact, without being expected to expend moneys  
26 they lack or to disrupt academic programs of importance to their students,  
27 "cease and desist" from violating Article XX, §C(10), of the Agreement. I  
28 therefore require the following:

- 29  
30 1. That each College, commencing no later than the fall  
31 semester of the academic year 2006-2007, reduce its  
32 improper reliance on part-time faculty in as great a  
33 measure as it judges practicable;
- 34  
35 2. That each College continue thereafter to reduce its  
36 improper reliance on part-time faculty and bring itself into  
37 compliance with the contractual mandate (but subject to  
38 the requirements of any collective bargaining agreement  
39 then in force) no later than at the conclusion of the  
40 academic year 2008-2009; and  
41



1           3. That each College, either by its Vice President for  
2 Academic Affairs or otherwise as the President may  
3 determine, publish to the chair of each academic  
4 department notice of the obligation depicted in the  
5 preceding items 1 and 2; each College shall do so prior  
6 to the scheduling of courses and teaching assignments  
7 for the academic year 2006-2007 and, again, prior to the  
8 scheduling of courses and teaching assignments for the  
9 academic years 2007-2008 and 2008-2009. In this  
10 context I encourage, perhaps unnecessarily, that the Vice  
11 Presidents and appropriate Deans meet with Department  
12 Chairs to discuss the means for bringing the Colleges  
13 into compliance with the contractual requirements in the  
14 manner I require.

15  
16           In fulfilling the obligations that this decision imposes on it, every College is  
17 at liberty to increase its compliment of full-time faculty (including  
18 temporary full-time faculty), to alter or reduce its course offerings  
19 (including the number of course sections) or to employ some combination  
20 of the two. Nothing in this decision shall be thought to limit any College's  
21 authority in any of those respects.

22  
23           By memorandum on April 6, 2006, Dr. Lapkin informed all Department Chairs at  
24 Salem about the college's "Use of Part-Time Faculty" and Dr. Ashley's ruling on the  
25 2002 grievance. Specifically, Dr. Lapkin reminded the Chairs of Salem's obligation to  
26 comply with Article XX, §C(10) of the Agreement beginning in AY 2006-2007 and to  
27 reduce improper reliance on part-time faculty members "no later than at the conclusion  
28 of the 2008-2009 academic year."

### 29 **2007 Successor Contract Negotiations**

30           The parties commenced successor contract negotiations in 2007. During that  
31 summer, the Employer proposed to delete Article XX, §C(10). The Association rejected  
32 that proposal and the Employer eventually withdrew it. Also in the summer of 2007, the  
33 Association discovered that some colleges had failed to reduce their reliance on part-  
34 time faculty for academic year (AY) 2006-2007 and had, in fact, increased the number

1 of part-time faculty members who were hired in excess of the 15% and 20% rules and in  
2 contravention of Dr. Ashley's February 23, 2006 letter.

3 Although the parties finalized their successor agreement on August 27, 2007, by  
4 letter on the same date, Board counsel Mark Peters (Peters) notified Association  
5 Representative Donna Sirutis (Sirutis) about the Employer's concern regarding Article  
6 XX, §C(10), stating in pertinent part:

7 Throughout the course of the negotiations now just concluded, the Board  
8 of Higher Education took the position that...[Article XX, §C(10)...is]  
9 unlawful because [it] intrudes upon and impairs an authority that the law of  
10 this Commonwealth vest[s] exclusively in the persons charged with  
11 managing the State Colleges...in other words, [it is a matter] of  
12 managerial prerogative. All of the proposals I made on behalf of the  
13 Board of Higher Education therefore included a specific proposal to delete  
14 [that provision] from the agreement. The Association consistently rejected  
15 that proposal.

16  
17 Because those whom I represent have wished to consummate an  
18 agreement rather than to reach impasse concerning [that matter]...we  
19 have elected to allow [Article XX, §C(10)] to remain in the new agreement.  
20 But because [that contractual provision is] unlawful...[it is,] in our view,  
21 unenforceable as a matter of law and both...a legal and contractual nullity.

22  
23 By letter dated September 27, 2007, Sirutis responded to Peter's August 27,  
24 2007 letter, stating that Article XX, §C(10) is "legal and enforceable" and expected the  
25 Board to enforce that provision.

26 Sometime between August 27, 2007 and September 11, 2007, Dr. Markunas, on  
27 behalf of the Association, complained to Fitchburg President Robert Antonucci (Dr.  
28 Antonucci) about Peters' August 27, 2007 letter. By response letter dated September  
29 11, 2007, Dr. Antonucci informed Dr. Markunas that he presented the Association's  
30 concerns to the Council. By that letter, Dr. Antonucci also assured Dr. Markunas that:

31 Speaking for all of the Colleges, we wish you to know that we intend, in  
32 fact, to adhere to the provisions of the new collective bargaining

1 agreement now at issue. With respect to the use of part-time faculty,  
2 therefore, the Colleges will continue to implement the grievance decision  
3 that Janelle Ashley rendered on February 23, 2006.  
4

5 By letter on January 30, 2008, Dr. Markunas requested certain information from  
6 Dr. Antonucci to ensure compliance with Article XX, §C(10) of the Agreement.  
7 Specifically, Dr. Markunas requested that the Employer provide the following  
8 information:

9 1. the total number of three-credit sections (four-credit sections at  
10 Framingham State College) being taught by part-time employees during  
11 each of the Fall 2007 and Spring 2008 semesters,  
12

13 2. the number of those three-credit sections (four credit sections at  
14 Framingham State College), above, being taught by part-time employees  
15 during each of the Fall 2007 and Spring 2008 semesters that fall under the  
16 exemption provisions (the last paragraph of Article XX.C.9) from the  
17 overall limit of 15%, and  
18

19 3. the grand total number of three-credit sections (four-credit sections at  
20 Framingham State College) being taught by all employees during each of  
21 the Fall 2007 and Spring 2008 semesters.  
22

### 23 **Board's Confirmation of AY 2007-2008 Violations**

24 In or about April of 2008, the Board provided the Association with the requested  
25 information, showing that certain departments at Bridgewater, Framingham, Salem,  
26 Westfield and Mass. Art had violated the 15% and 20% rules for AY 2007-2008 by  
27 increasing reliance on part-time faculty members in excess of the Article XX, §C(10)  
28 caps.

29 By memorandum on June 27, 2008, Dr. Lapkin notified Salem President Patricia  
30 Maguire Meservey (Dr. Meservey) about Salem's eight departments that were in  
31 violation of the 15% rule for AY 2007-2008, stating, in part:

32 In all but one of the severe cases (English), current full-time faculty  
33 staffing increases scheduled for Fall 2008 and requested for Fall 2009 will

1 bring the college into compliance by 2008-09 (Communications, Sport &  
2 Movement Science) or 2009-2010 (Computer Science, History,  
3 Mathematics).  
4

5 In the case of English, approximately 15 full-time faculty would need to be  
6 added in order to bring the department into compliance. Three positions  
7 will be added in 2008-2009 and three more have been requested for 2009-  
8 2010. This will result in reducing the part-time faculty utilization from  
9 almost 50% to only approximately 36%.  
10

11 There is no doubt that class size and frequency of course offering must be  
12 managed to further reduce the number of sections offered by the  
13 department.  
14

#### OPINION

#### **Repudiation**

15 The statutory obligation to bargain in good faith includes the duty to comply with  
16 the terms of a collectively bargained agreement and to implement settlement  
17 agreements. Commonwealth of Massachusetts, 26 MLC 165, 168 (2000). A public  
18 employer's deliberate refusal to implement or to abide by the unambiguous terms of an  
19 agreement constitutes a repudiation of that agreement in violation of the  
20 Law. Commonwealth of Massachusetts, 36 MLC 65, 68 (2009). To establish that a  
21 respondent acted deliberately, a charging party must show that the respondent engaged  
22 in a pattern of conduct designed to ignore the parties' collectively bargained agreement.  
23 Commonwealth of Massachusetts, 26 MLC 87, 89 (2000). If the language of the  
24 agreement is ambiguous, the Commonwealth Employment Relations Board (CERB)  
25 looks to the bargaining history that culminated in the provision at issue to determine  
26 whether there was an agreement between the parties. City of Waltham, 25 MLC 59, 60  
27 (1998).  
28

29 Here, it is undisputed that the parties entered into a collective bargaining  
30 agreement and an MOA on August 27, 2007, which included the language of Article XX,

1 § C(10). It is also undisputed that the Board issued a grievance decision on February  
2 23, 2006 requiring, in part, that each College reduce its improper reliance on part-time  
3 faculty commencing no later than the fall semester of the AY 2006-2007. Further, the  
4 parties agree that certain departments at Bridgewater, Framingham, Salem, Westfield  
5 and Mass. Art employed a number of part-time instructors in AY 2006-2007 and AY  
6 2007-2008, that exceeded the 15% and 20% rules set forth in Article XX, § C(10) of the  
7 Agreement.

8         The Association contends that the Employer repudiated the Agreement because  
9 the parties had a meeting of the minds when they assented to the plain language of  
10 Article XX, §C(10), which specifically instructs any department with six or more full-time  
11 faculty members to limit the number of three-credit courses taught by part-time faculty  
12 members to not more than 15% (or 20% at Mass. Art) of the total three-credit courses  
13 taught in that department, with specific exemptions for certain leaves of absences,  
14 contractual release time or any other unforeseen emergency. Similarly, the Association  
15 asserts that the Board repudiated the February 23, 2006 grievance ruling when it failed  
16 to implement its terms by continuing to hire a number of part-time faculty members in  
17 AY 2007-2008 that exceeded the 15% and 20% caps.

18         The Employer argues that it did not repudiate the Agreement or the grievance  
19 ruling because: (1) the parties have differing interpretations of Article XX, § C(10); (2) in  
20 AY 2007-2008, the colleges were forced to balance high enrollment numbers with the  
21 costs of hiring an excess number of part-time faculty members to teach additional  
22 courses, or leaving those courses unstaffed due to the unavailability of full-time faculty  
23 members; and, (3) Article XX, § C(10) is unenforceable as a matter of law because it is

1 a "legal nullity" that impermissibly infringes on the Board's nondelegable managerial  
2 prerogative to "appoint, transfer, dismiss, promote and award tenure to all personnel"  
3 under Chapter 15A.

4 **1. Clear and Unambiguous Language and Meeting of the Minds**

5 The Employer first argues that it did not repudiate the Agreement or the  
6 grievance ruling because the parties held differing interpretations of Article XX, § C(10).  
7 Specifically, the Board argues that the article is unenforceable while the Association  
8 argues for its enforceability.

9 To establish repudiation of the 2006 grievance ruling and Article XX, §C(10) of  
10 the contract, the Association must show that the parties reached an agreement on the  
11 language of Article XX, §C(10) and that the Board deliberately refused to abide by or  
12 implement the unambiguous terms of that Article and the grievance settlement.  
13 Commonwealth of Massachusetts, 36 MLC at 68; see also (2009) Boston School  
14 Committee, 22 MLC 1365, 1375 (1996); Commonwealth of Massachusetts, 18 MLC  
15 1161, 1163 (1991); Boston Water and Sewer Commission, 15 MLC 1319, 1323 (1989).  
16 Where the evidence is insufficient to show an agreement underlying the matter in  
17 dispute, or if the parties hold differing good faith interpretations of the terms of the  
18 agreement, the CERB will not find repudiation because the parties did not achieve a  
19 meeting of the minds. City of Boston/Boston Public Library, 26 MLC 215, 216 (2000);  
20 Town of Ipswich, 11 MLC 1403, 1410 (1985), aff'd sub nom. Town of Ipswich v. Labor  
21 Relations Commission, 21 Mass. App. Ct. 1113 (1986). To achieve a meeting of the  
22 minds, the parties must manifest an assent to the terms of an agreement. City  
23 of Boston, 26 MLC at 217.

1           The language of Article XX, §C(10) is clear and unambiguous because it states  
2 that in departments with six or more full-time faculty members, the colleges are  
3 permitted to hire part-time faculty members to teach three-credit courses in those  
4 departments only if those hires do not exceed 15% (or 20% at Mass. Art) of the total  
5 number of three-credit courses offered during an academic year. The bargaining history  
6 shows that since the 1986-1989 contract, the parties have collectively bargained over  
7 and successfully incorporated the terms of that Article into all successor agreements,  
8 including the 2004-2007 Agreement.

9           While the language of the 2006 grievance decision is overwhelmingly clear and  
10 unambiguous because it stated that the colleges must “cease and desist” from violating  
11 Article XX, §C(10) of the Agreement; there is one sentence from that decision that is  
12 ambiguous: when Dr. Ashley stated that beginning in the fall of AY 2006-2007, each  
13 college must reduce its improper reliance on part-time faculty members “in as great a  
14 measure as it judges practicable.” However, based on the totality of the evidence,  
15 including the parties’ successor contract bargaining history over the terms of Article XX,  
16 §C(10) and the subsequent correspondence from Dr. Antonucci, Dr. Lapkin and Peters,  
17 the intent of the 2006 grievance decision was to affirm the Employer’s commitment to  
18 abide by the plain language of the Agreement.

19           Based on this evidence, I find that the parties did not hold differing interpretations  
20 but reached an agreement when they established a meeting of the minds by assenting  
21 to the clear and unambiguous terms of Article XX, § C(10) and the 2006 grievance  
22 ruling. See Commonwealth of Massachusetts, 36 MLC at 68; City of Boston, 26 MLC at  
23 216.

**2. Deliberate Refusal to Abide by the Agreement and the Grievance Decision**

The Employer argues that forcing the colleges to balance high enrollment numbers in AY 2006-2007 and AY 2007-2008, with the high costs of hiring additional faculty members and the consequences of leaving courses unstaffed does not show deliberate intent to refuse to abide by Article XX, §C(10) of the Agreement or the grievance ruling but, instead, showed unsuccessful intent to comply with those agreements. However, the Board failed to provide evidence showing why it was “impracticable” for the colleges to comply with the grievance decision, even though seven colleges reported violations in 27 departments and 551 course sections for AY 2006-2007 and another eight colleges reported 31 departments and 663 course section violations for AY 2007-2008. Further, the CERB holds that internal difficulties related to a public employer’s implementation of collective bargained agreements do not vitiate its obligation to aggressively implement the letter and the spirit of the agreement. Massachusetts Board of Regents of Higher Education, 10 MLC 1196, 1205 (1983).

Consequently, I find that the colleges’ continued violations of the 15% and 20% caps in AY 2006-2007 and AY 2007-2008, shows that the Employer deliberately engaged in a pattern of conduct that ignored Article XX, §C(10) of the parties’ Agreement and the grievance ruling. Commonwealth of Massachusetts, 26 MLC at 89; see also Commonwealth of Massachusetts, 26 MLC at 89; Higher Education Coordinating Council/Roxbury Community College vs. Massachusetts Teachers Association/Massachusetts Community College Council, (HECC) 423 Mass. 23, 27-32 (1995).

**Core Managerial Prerogative**



1           As an affirmative defense, the Employer argues that Article XX, § C(10) is  
2 unenforceable as a matter of law because it is a “legal nullity” that impermissibly  
3 infringes on the Board’s nondelegable managerial prerogative to “appoint, transfer,  
4 dismiss, promote and award tenure to all personnel” under Chapter 15A. It also  
5 contends that the doctrine of non-delegability gives the Employer an exclusive  
6 managerial prerogative to: make specific appointment determinations, abolish positions  
7 and determine on an annual basis the size of its teaching staff. Relying primarily on  
8 Massachusetts Board of Higher Education/Holyoke Community College vs.  
9 Massachusetts Teachers Association/Massachusetts Community College Council,  
10 (Board of Higher Education), 79 Mass. App. Ct. 27, 32-34 (2011) and HECC, 423 Mass.  
11 at 28-31 (1996), the Employer contends that statutory non-delegability principles as  
12 applied to the colleges are well-settled law, and Article XX, § C(10) violates Section 22  
13 of Chapter 15A because it limits the colleges’ ability to staff courses with faculty  
14 members and provide other fundamental services necessary for a complete post-  
15 secondary education.

16           Comparing c. 71, §§ 37 and 38 with c. 15A, § 22, the HECC court stated that  
17 because “faculty and teaching appointments...are the defining elements of an  
18 educational institution’s quality and programs” and that as a matter of policy and  
19 legislative directive, “the College(s), through its board of trustees and school  
20 administrators, should retain sole authority for determining the content of its educational  
21 curriculum and the optimum system for the delivery of the academic programs and  
22 related services it deems necessary.” 423 Mass. at 30. Based on the court’s  
23 reasoning, the Employer maintains that Article XX, § C(10) is unenforceable because it

1 expressly violates the terms of c. 15A, §22. It also asserts that strict compliance with  
2 the 15% and 20% caps would render the colleges unable to: staff their courses; attract  
3 specialized faculty; respond to enrollment fluctuations; focus on student and faculty  
4 development; prevent extended time and costs for students to complete their degree  
5 programs.

6 Section 6 of the Law requires public employers and employee organizations to  
7 negotiate in good faith about mandatory subjects of bargaining, including wages, hours,  
8 standards or productivity and performance, and any other terms and conditions of  
9 employment. To determine whether a matter is a mandatory subject of bargaining, the  
10 CERB balances the interests of employees in bargaining over a particular subject  
11 against the interest of the public employer in maintaining its managerial prerogatives,  
12 and considers factors like: the degree to which the topic has a direct impact on terms  
13 and conditions of employment; whether the issue concerns a core governmental  
14 decision; or whether it is far removed from terms and conditions of employment.  
15 Commonwealth of Massachusetts, 25 MLC 201, 205 (1999) (citing Town of Danvers, 3  
16 MLC 1559 (1977)). The CERB applies the balancing test on a case-by-case basis. City  
17 of Boston, 31 MLC 25, 31 (2004) (citing Town of Danvers, 3 MLC at 1577).

18 The Law exempts from collective bargaining certain types of managerial  
19 decisions that must, as a matter of policy, be reserved to the public employer's  
20 discretion. See Local 346, Int'l Bhd. of Police Officers v. Labor Relations Comm'n, 391  
21 Mass. 429, 437 (1984) (in instances where a negotiation requirement would unduly  
22 impinge on a public employer's freedom to perform its public functions, Section 6 of the  
23 Law does not mandate bargaining over a decision directly affecting the employment

1 relationship). A public employer may exercise its core managerial prerogative  
2 concerning the nature of its level of services without first bargaining with its employees'  
3 exclusive collective bargaining representative over that decision. City of Boston, 31  
4 MLC at 31 (citing City of Worcester, 438 Mass. at 182); see generally Boston v. Boston  
5 Police Patrolmen's Ass'n, 403 Mass. 680, 684 (1989).

6 Here, Section 22 of Chapter 15A gives the Board exclusive managerial authority  
7 to appoint, transfer, dismiss, promote and award tenure to all personnel. However, the  
8 statute is silent about the Board's authority to hire full-time or part-time faculty members  
9 to teach certain three-credit courses in the colleges' departments. Further, even if  
10 Chapter 15A expressly prohibits the colleges from delegating specific appointment and  
11 transfer decisions, the courts hold that the Board can still bind itself to the process that  
12 is to be used in making such decisions, including determining the number of part-time  
13 faculty members needed to teach three-credit courses in qualifying departments with six  
14 or more full-time faculty members. See HECC, 423 Mass. at 28 (principle of non-  
15 delegability does not apply when a public employer binds itself to follow certain  
16 procedures with respect to decisions committed to its exclusive authority and fails to  
17 follow those procedures); see also Board of Higher Education, 79 Mass. App. Ct. at 33-  
18 34; Board of Higher Education vs. Massachusetts Teachers Association/NEA, 62 Mass.  
19 App. Ct. 42, 49 (2004).

20 The principle of non-delegability does not apply in this case because Chapter  
21 15A does not prohibit the Board from delegating to the colleges the right to bind itself to  
22 the procedures listed in Article XX, § C(10) of the parties' Agreement or the 2006  
23 grievance decision. Further, the Agreement does not curtail the Board's ability to

1 provide quality of educational services at the colleges nor does it limit its ability to: (1)  
2 hire more full-time faculty members; (2) instruct full-time faculty to teach more courses;  
3 (3) cancel courses; (4) reduce course offerings; (5) combine low-enrollment courses; (6)  
4 increase student enrollment caps for courses; (7) use historic data to plan courses more  
5 carefully; and (8) control matriculation. Instead, the record shows that the Board failed  
6 to explore those options in favor of hiring more part-time faculty members in excess of  
7 the 15% and 20% rules. Consequently, I find that the Employer did not have the  
8 exclusive managerial prerogative to hire an excess number of part-time faculty  
9 members in AY 2006-2007 or AY 2007-2008 and its deliberate refusal to abide by  
10 Article XX, § C(10) of the Agreement and the terms of the grievance ruling amount to an  
11 unlawful repudiation of those agreements in violation of the Law. Commonwealth of  
12 Massachusetts, 36 MLC at 68; Commonwealth of Massachusetts, 26 MLC at 89; see  
13 generally, City of Holyoke, 28 MLC 393 (2002); Board of Trustees of Higher Education,  
14 28 MLC 235 (2002).

#### 15 CONCLUSION

16 Based on the record and for the reasons explained above, I conclude that the  
17 Employer violated Section 10(a)(5) and, derivatively, Section 10(a)(1) of the Law when it  
18 failed to bargain in good faith with the Association by repudiating both Article XX, §  
19 C(10) of the Agreement and the February 23, 2006 grievance decision.

#### 20 REMEDY

21 When a public employer repudiates a settlement agreement, the traditional  
22 remedy is to order the employer to cease and desist from its unlawful conduct; to  
23 adhere to the agreement; to make whole any employee who sustained an economic

1 loss as a result of the employer's unlawful action; and to post a notice to employees.  
2 Commonwealth of Massachusetts, 36 MLC 68-69 (2009) (citing City of Lawrence, 27  
3 MLC 57, 59 (2000)); see also Suffolk County Sheriff's Department, 30 MLC 1, 8 (2006);  
4 Town of Falmouth, 20 MLC 1555, 1561 (1994). However, the CERB permits the use of  
5 extraordinary remedies when a public employer engages in an established pattern of  
6 long-term pervasive refusal to bargain in good faith. See Higher Education  
7 Coordinating Council (HECC), 25 MLC 37, 42 (1998). In cases where a party has a  
8 history of violating the Law, the National Labor Relations Board (NLRB) has employed  
9 numerous extraordinary remedies like requiring employers to include a copy of the  
10 notice in company publications, mailing the notice to employees, publishing the notice in  
11 the local papers, having the notice to read to employees by the top company official at  
12 an assembly for that purpose, and requiring the top company official to personally sign  
13 the notice. HECC, 25 MLC at 42 (citing United Dairy Farmers Coop. Ass'n, 242 NLRB  
14 No. 179, 101 LRRM 1278, 1279-83 (1979)).

15 Here, the Association requested a make whole remedy and asked the DLR to  
16 maintain jurisdiction to address any disputes the parties may encounter in determining a  
17 make whole remedy. The purpose of the CERB's remedies is to restore the parties to  
18 the position in which they would have been but for the unfair labor  
19 practice. Commonwealth of Massachusetts, 29 MLC 162, 164 (2003)). Because the  
20 Association failed to identify any specific economic harm suffered by members of the  
21 bargaining unit due to the Employer's repudiation, I deny the Association's request for a  
22 make whole remedy. See Commonwealth of Massachusetts, 26 MLC 169, 172 (2000).  
23 Nonetheless, the Board's pattern of conduct is pervasive because it affects colleges

1 across the Commonwealth and has recurred over a long period of time. Such conduct  
2 hinders the parties' bargaining relationship and threatens to undermine the collective  
3 bargaining process contemplated by the Law. HECC, 25 MLC at 42.

4 Accordingly, I order the Board to cease and desist from repudiating the terms of  
5 Article XX, § C(10) of the parties' Agreement and the 2006 grievance decision. In  
6 addition to that traditional remedy, I also order the president or human resources  
7 director at each college at issue in this case to co-sign the attached Notice to  
8 Employees, along with a representative of the Board. Those signatories must inform  
9 the DLR in writing within 10 days of receiving this order that they have read the decision  
10 and notice, signed the notice, and acknowledge the college's obligation under the Law  
11 to bargain in good faith.

12 ORDER


13 WHEREFORE, based upon the foregoing, IT IS HEREBY ORDERED that the Board of  
14 Higher Education shall:

- 15 1. Cease and desist from:
- 16 a) Failing to bargain in good faith by repudiating Article XX, §C(10) of  
17 the parties' Collective Bargaining Agreement.  
18 b) Failing to bargain in good faith by repudiating the February 23,  
19 2006 grievance settlement reached with the Association.  
20 c) In any like manner, interfering with, restraining and coercing its  
21 employees in any right guaranteed under the Law.  
22
- 23 2. Take the following action that will effectuate the purposes of the Law:
- 24 a) Immediately adhere to the terms of Article XX, §C(10) of the  
25 parties' Collective Bargaining Agreement and the February 23,  
26 2006 grievance settlement reached with the Association.  
27 b) A representative of the Board and either the president or the human  
28 resources director for each of the colleges shall read the decision  
29  
30  
31  
32  
33  
34

- 1           and notice, sign the notice, acknowledge the college's obligation  
2           under the Law to bargain in good faith, and post immediately in  
3           conspicuous places where members of the Association usually  
4           congregate and where notices to employees are usually posted,  
5           including but not limited to the Board's internal e-mail system, and  
6           maintain for a period of 30 consecutive days thereafter, signed  
7           copies of the attached Notice to Employees; and,  
8  
9           c) Notify the DLR in writing of the steps taken to comply with this  
10          decision within ten (10) days of receipt of this decision.

SO ORDERED.

COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF LABOR RELATIONS

  
\_\_\_\_\_  
KENDRAH DAVIS, ESQ.  
HEARING OFFICER

APPEAL RIGHTS

The parties are advised of their right, pursuant to M.G.L. c. 150E, Section 11, 456 CMR 13.02(1)(j), and 456 CMR 13.15, to request a review of this decision by the Commonwealth Employment Relations Board by filing a Notice of Appeal with the Executive Secretary of the Department of Labor Relations not later than ten days after receiving notice of this decision. If a Notice of Appeal is not filed within the ten days, this decision shall become final and binding on the parties.



THE COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF LABOR RELATIONS

**NOTICE TO EMPLOYEES**

**POSTED BY ORDER OF A HEARING OFFICER OF  
THE MASSACHUSETTS DEPARTMENT OF LABOR RELATIONS  
AN AGENCY OF THE COMMONWEALTH OF MASSACHUSETTS**

A hearing officer of the Massachusetts Department of Labor Relations (DLR) has held that the Board of Higher Education (Board) has violated Section 10(a)(5) and, derivatively Section 10(a)(1) of Massachusetts General Laws, Chapter 150E by failing to bargain by repudiating Article XX, § C(10) of the collective bargaining agreement (Agreement) and the February 23, 2006 grievance settlement with the Massachusetts State College Association/MTA/NEA (Association). The Board posts this Notice to Employees in compliance with the hearing officer's order.

Section 2 of the Law gives all employees: (1) the right to engage in concerted protected activity, including the right to form, join and assist unions, to improve wages, hours, working conditions, and other terms of employment, without fear of interference, restraint, coercion or discrimination; and, (2) the right to refrain from either engaging in concerted protected activity, or forming or joining or assisting unions.

The Board assures its employees that WE WILL NOT:

- Repudiate Article XX, § C(10) of the Agreement;
- Repudiate the February 23, 2006 grievance decision; and,
- In any like manner, interfere with, restrain and coerce its employees in any right guaranteed under the Law.

WE WILL immediately adhere to the terms of Article XX, §C(10) of the Collective Bargaining Agreement and the February 23, 2006 grievance decision reached with the Association.

WE sign this notice as an acknowledgment of this college's obligation under the Law to bargain in good faith with the Association.

WE WILL inform the DLR within 10 days of issuance of the order that representatives for the Board and the college who have signed below have read the decision and notice, signed the notice, and acknowledged the college's obligation under the law to bargain in good faith with the Association.

\_\_\_\_\_  
Board of Higher Education

\_\_\_\_\_  
Date

\_\_\_\_\_  
For the College

\_\_\_\_\_  
Date

**THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED OR REMOVED**

This notice must remain posted for 30 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Department of Labor Relations, Charles F. Hurley Building, 1<sup>st</sup> Floor, 19 Staniford Street, Boston, MA 02114 (Telephone: (617) 626-7132).