

Timeline on the “15% Cap” Ruling

December 16, 1986: Part-time faculty at the nine Massachusetts State Colleges are added to the MSCA/MTA Day unit in the “Decision and Direction of Election” issued by the Labor Relations Commission (now the Department of Labor Relations, DLR) – Case No. SCR-2172.

April 23, 1987: The MSCA/MTA and the Massachusetts Board of Regents of Higher Education (now the Board of Higher Education) execute the 1986-1989 contract which includes a new provision – Article XX, Section C(9) (which becomes Section C(10) in later contracts) – that limits, in departments with six or more full-time faculty, the number of three-credit courses that can be taught by part-time faculty to 15%. The provision includes numerous exclusions. The provision is to take effect for the 1987-1988 academic year. The provision becomes known as the “15% rule.”

December 2000: Pat Markunas (Salem) takes office as MSCA President. At the time the MSCA has been in protracted contract negotiations since 1998 in which management wants to abolish tenure and replace it with three-year term contracts for all full-time faculty (even if the faculty member already holds tenure), and to remove any restrictions on their hiring of non-benefitted, lower paid part-time faculty who have no job security. The MSCA fights back these proposals for three years sacrificing salary increases to do so.

November 20, 2001: The MSCA requests information regarding the 15% rule for the Fall 2001 semester.

February 2002: The MSCA requests the same information for the Spring 2002 semester.

March 7, 2002: The MSCA files a consolidated grievance after learning that during academic year 2001-2002:

Five departments are in violation at Bridgewater,
Two departments are in violation at Framingham,
Two departments are in violation at Mass Art (where the cap is 20%),
Three departments are in violation at Salem, and
Two departments are in violation at Westfield.

The total number of departments in violation of the 15% rule at five colleges is 14.

April 30, 2002: The MSCA sends notice that it has elected to pursue the matter to arbitration.

Extended period: The parties agree to put the grievance into abeyance in order to give the colleges time to comply with the 15% rule.

January 16, 2006: The MSCA files for mediation/arbitration after learning that the problem has not abated but has been exacerbated to the point that during academic year 2004-2005:

Seven departments are in violation at Bridgewater,
Five departments are in violation at Framingham,
Three departments are in violation at Mass Art (where the cap is 20%),
Two departments are in violation at MCLA,
Seven departments are in violation at Salem,

Four departments are in violation at Westfield, and
One department is in violation at Worcester.

The total number of departments in violation of the 15% rule at seven colleges is 29.

February 23, 2006: Dr. Janelle Ashley, then Chair of the State College Council of Presidents renders a decision in favor of the MSCA. Excerpts include:

“I make my decision in [the capacity as Chair of the Council of Presidents] and do so, therefore, on behalf of the entire Council.”

“I conclude from [the data] that seven of the Colleges – Fitchburg and the Maritime Academy are, again, the exceptions – have at different points (though not at every point in every case) violated the Agreement by employing, in various departments at various times, more part-time faculty to teach three-credit courses than the Agreement permits.”

“In fashioning a remedy for the violations I find, I take note of the fact that, considering all of the data collectively, the Colleges have most significantly exceeded the contractual limits on the employment of part-time faculty during the academic year 2004-2005. That year culminates, indeed, what the data depict as an upward (i.e., negative) trend. I have no doubt that the circumstance, that trend, is, in some significant measure, a product of the funding shortfalls the Colleges have experienced in recent years. While that may not excuse the contractual violation I have identified, it goes far to explain it, and it puts real and serious impediments in the way of the prompt effectuation of a remedy.”

The Remedy ordered on behalf of the Council:

1. That each College, commencing no later than the fall semester of the academic year 2006-2007, reduce its improper reliance on part-time faculty in as great a measure as it judges practicable;
2. That each College continue thereafter to reduce its improper reliance on part-time faculty and bring itself into compliance with the contractual mandate (but subject to the requirements of any collective bargaining agreement then in force) no later than at the conclusion of the academic year 2008-2009; and
3. That each College, either by its Vice President for Academic Affairs or otherwise as the President may determine, publish to the chair of each academic department notice of the obligation depicted in the preceding items 1 and 2; each College shall do so prior to the scheduling of courses and teaching assignments for the academic year 2006-2007 and, again, prior to the scheduling of courses and teaching assignments for the academic years 2007-2008 and 2008-2009. In this context I encourage, perhaps unnecessarily, that the Vice Presidents and appropriate Deans meet with Department Chairs to

discuss the means for bringing the Colleges into compliance with the contractual requirements in the manner I require.

The ruling concludes:

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

August 27, 2007: The MSCA reaches an agreement on a one-year contract extension.

August 28, 2007: The MSCA receives a letter from the chief negotiator for the BHE and Council of Presidents in which he states that the 15% rule is:

“...unlawful because [it] intrudes upon and impairs an authority that the laws of this Commonwealth vest exclusively in the persons charged with managing the State Colleges [and is a matter] of managerial prerogative.”

September 11, 2007: Robert Antonucci, then Chair of the State College Council of Presidents, sends a letter to the MSCA in which he states:

“I have brought your concern to my colleagues on the Council. Speaking for all of the Colleges, we wish you to know that we intend, in fact, to adhere to the provisions of the new collective bargaining agreement now at issue. With respect to the use of part-time faculty, therefore, the Colleges will continue to implement the grievance decision that Janelle Ashley rendered on February 23, 2006.”

May 30, 2008: The MSCA files a charge with the DLR alleging that the BHE has failed to bargain in good faith by repudiating the 15% provision in the contract and by renegeing on the grievance resolution issued on February 23, 2006. At the time the MSCA files the charge, at the end of academic year 2007-2008:

Twelve departments are in violation at Bridgewater,
Two departments are in violation at Framingham,
Two departments are in violation at Mass Art (where the cap is 20%),
One department is in violation at MCLA,
Ten departments are in violation at Salem,
Three departments are in violation at Westfield, and
One department is in violation at Worcester.

The total number of departments in violation of the 15% rule at seven colleges is 31.

June 1, 2008: C. J. O'Donnell (Mass Maritime) takes office as MSCA President.

May 6, 2009: The DLR issues a “Complaint of Prohibited Practice” meaning that there is a reasonable belief that a violation of the collective bargaining law has occurred and an investigation will be conducted.

2010 – 2011: Eight days of testimony are taken by the DLR hearing officer.

January 16, 2014: The DLR hearing officer finds for the MSCA and orders that the BHE cease and desist from bargaining in bad faith and that the BHE immediately comply with the 15% rule.

February 2014: The BHE appeals the hearing officer’s ruling to the Commonwealth Employment Relations Board.

February 6, 2015: The Commonwealth Employment Relations Board affirms the hearing officer’s ruling and reiterates the cease and desist and the compliance orders.

March 5, 2015: The BHE files with the Massachusetts Appeals Court a request to stay the order.

Today:

Bridgewater: Dana Mohler-Faria is retiring, Fred Clark named successor.

Fitchburg: Robert Antonucci is retiring, Richard Lapidus named successor.

MassArt: Kurt Steinberg is interim president,

MCLA: Cindy Brown is interim president, Greg Summers named as next president.

MMA: Richard Gurnon is retiring, a search is underway.

Westfield: Elizabeth Preston is interim president, a search is underway.

BHE: Commissioner Richard Freeland is retiring, a search is underway.

As of academic year 2013-2014¹:

Sixteen departments are in violation at Bridgewater,

One department is in violation at Fitchburg,

Eight departments are in violation at Framingham,

Five departments are in violation at Mass Art (where the cap is 20%),

Three departments are in violation at MCLA,

Two departments are in violation at Mass Maritime,

Nine departments are in violation at Salem,

Eight departments are in violation at Westfield, and

Five department is in violation at Worcester.

The total number of departments in violation of the 15% rule at the nine universities is 57.

So it appears the Commissioner and six of the nine presidents wish to continue to kick the can down the road long enough so it will not be their problem to deal with.

¹ Data for Mass Maritime and Westfield are from 2012-2013; the data for 2013-2014 have not been received.

After reviewed the exemptions reported by the universities, the MSCA has revised the current information.

As of academic year 2013-2014²:

Sixteen departments are in violation at Bridgewater,
One department is in violation at Fitchburg,
Ten departments are in violation at Framingham,
Six departments are in violation at Mass Art (where the cap is 20%),
Three departments are in violation at MCLA,
Two departments are in violation at Mass Maritime,
Eleven departments are in violation at Salem,
Eight departments are in violation at Westfield, and
Six department is in violation at Worcester.

The total number of departments in violation of the 15% rule at the nine universities is 63.

² Data for Mass Maritime and Westfield are from 2012-2013; the data for 2013-2014 have not been received.