



COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS
CHARGE OF PROHIBITED PRACTICE
M.G.L. c.150E

DO NOT WRITE IN THIS SPACE

Case No.

Date Filed

INSTRUCTIONS: Answer all applicable questions. Failing to provide information may result in the dismissal of the charge.

Note: Pursuant to 456 CMR 15.04, the DLR will not issue a complaint unless the charging party has complied with the applicable provisions of M.G.L. c.150E, §§13 and 14.

1. Employer Board of Higher Education	2. Representative to contact James B. Cox, Esq.	4. Telephone Number 617.330.7000
3. Address (street and No., city/town, state, and ZIP code) Rubin and Rudman LLP 53 State Street, Boston, MA 02109		5. Fax Number 617.330.7550
6. Employee Organization (if any): Massachusetts State College Association/MTA/NH	7. Representative to contact Matthew D. Jones	9. Telephone Number 617.878.8283
8. Address (street and No., city/town, state, and ZIP code) 2 Heritage Dr. Suite 800 Quincy, MA 02171		10. Fax Number 617.570.4976

11. This charge is filed against (check one)

Employer Employee Organization

12. The above named employer or employee organization has engaged or is engaging in a prohibited practice within the meaning of Massachusetts General Law, Chapter 150E, Section(s) (enter all appropriate sections/subsections)

10(a)(1) and 10(a)(5).

Failing to specify an appropriate section/subsection may result in the dismissal of the charge.

13. Summary of basis of Charge (be specific as to names, dates, addresses, etc.)

Please see Attachment A.

By these and other acts, the party complained of has interfered with, restrained, and/or coerced rights guaranteed by the Law.

14. (a) Is there a collective bargaining agreement that may apply to the conduct that is alleged to have violated the Law? Yes No

(b) If you checked "Yes" in question 14(a), please list all of the clauses alleged to apply and attach a copy of each.

(c) Is there a grievance concerning this matter pending? Yes No

15. Without limiting your rights to later amend your remedial request, please explain what remedy you seek. Include the amount of any financial remedy to which you claim entitlement.

Cease and desist and bargaining orders and posting.

16. Have you attempted to settle this case? Yes No
If not, why not?

Case concerns legal dispute not amenable to settlement.

Note: The DLR may decline to issue a complaint unless reasonable settlement efforts have been made by the charging party. 456 CMR 15.04(1).

INFORMATION ON CHARGING PARTY

17. Name Massachusetts State College Association/MTA/NEA	18. Representative to contact Matthew D. Jones	20. Telephone Number 617.878.8283
19. Address (street and No., city/town, state, and ZIP code) 2 Heritage Dr. Suite 800 Quincy, MA 02171		21. Fax Number 617.570.4976
22. The Charging Party is an: <input type="checkbox"/> Individual <input checked="" type="checkbox"/> Employee Organization <input type="checkbox"/> Employer		

DECLARATION

I have read the above charge of prohibited practice and swear under the pains and penalties of perjury that the information contained in it is true and complete to the best of my knowledge and belief.

Name (print) Matthew D. Jones	Signature <i>Matthew D. Jones</i>	Title (if any) Counsel
Address (street and no., city/town, state, and ZIP code) 2 Heritage Dr. Suite 800 Quincy, MA 02171		Telephone Number 617.878.8283

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of this Charge of Prohibited Practice on the following representative of the opposing party.

Name James B. Cox, Esq.	Address (street and no., city/town, state, and ZIP code) 53 State Street, Boston, MA 02109	Telephone Number 617.330.7000
Method of Service <input type="checkbox"/> In hand <input type="checkbox"/> First Class Mail <input checked="" type="checkbox"/> Other (specify): e-mail		
Signature of Person making Certification <i>Matthew D. Jones</i>		Telephone Number 617.878.8283

Attachment A

1. The Charging Party, Massachusetts State College Association/MTA/NEA (“MSCA”), acts on behalf of the Massachusetts Teachers Association/NEA as the exclusive representative of a bargaining unit of certain full-time and part-time faculty and other professional employees employed by the State Universities.
2. The Respondent, Board of Higher Education (“BHE”), is the employer for purposes of collective bargaining of employees in the said bargaining unit, as provided by G.L. c. 150E, § 1.
3. The MSCA and BHE are parties to a collective bargaining agreement with a term of July 1, 2017 to June 30, 2020 (“2017 – 2020 Agreement”).
4. The parties met to negotiate a successor to the 2017 – 2020 Agreement starting on or about March 9, 2020, when they agreed to certain ground rules for the negotiations. (Attachment B.)
5. In the negotiations for a successor to the 2017 – 2020 Agreement, the BHE delegated its bargaining authority to the Universities’ Council of Presidents (“COP”). That delegation requires that “all economic or financial proposals must be reviewed by the Department of Higher Education for analysis and approval.” (*See*, Attachment D.)
6. The parties met to negotiate on April 14, 2020 and the MSCA made a proposal for a two year agreement. (Attachment C.)
7. Following the April 14, session, the COP representatives at the table submitted the MSCA’s proposal for a two year agreement to the Department of Higher Education (“DHE”) and the proposal was rejected by a memorandum signed by Thomas J. Simard, Deputy Commissioner for Administration and Finance. (Attachment D.)
8. The parties met to negotiate on April 27, 2020 and the MSCA made a proposal for a one year agreement. (Attachment E.)
9. The parties scheduled a further bargaining session for May 14, 2020.
10. On or about May 7, 2020, Counsel for the COP wrote the MSCA Bargaining Committee Chair to cancel the May 14 bargaining session, stating, among other things, as follows:

As you know, on April 23, 2020, I received a letter from the DHE in which the DHE informed me it could not approve the MSCA’s April 14, 2020 proposal. In that communication, the DHE directed the bargaining team to emphasize to the MSCA the need to place bargaining in abeyance until the financial impacts and uncertainties resulting from the COVID-19 public health emergency could be fully ascertained. In addition, the DHE made clear that, in light of the fiscal impact of the

pandemic on the Commonwealth, the effect on public higher education remains uncertain.

The most recent proposal by the MSCA, which we received on April 27, contains terms that have a financial impact or some cost associated with them, and we and the DHE must assess those costs in order to evaluate the proposal. . . .

. . .

As you know from the DHE's April 23, 2020 letter, the COP is required to seek review and approval by the DHE of all economic or financial proposals. Accordingly, as soon as the COP's financial analysis is complete, the COP will send the MSCA's most recent proposal to the DHE for its own analysis and approval. We will not have the DHE's response prior to the May 14 meeting, and for that reason we must cancel the meeting.

. . .

With respect to scheduling future meetings, the COP recognizes that the Ground Rules require that the parties schedule three meetings in advance. Without knowing when to expect a response from the DHE or when the Commonwealth will have more fiscal certainty, or at least a budget, we are requesting that the next meeting not be scheduled until a response is received by the DHE or, in the alternative, that we schedule the next meeting sometime in early June, with the understanding that we will have to cancel it if we have not yet received a response from the DHE. I will be sure to inform you as soon as a response is received from the DHE.

(Attachment F.)

11. On or about May 12, 2020, The MSCA Bargaining Chair replied to the May 7, 2020 letter from Counsel for the COP requesting future bargaining dates and clarification on the scope of DHE approval of financial items in connection with the negotiations. (Attachment G.)

12. On or about May 20, 2020, Counsel for the COP replied by e-mail with respect to DHE approval of financial items in connection with the negotiations as follows:

The Board delegated to the COP the authority to bargain a successor agreement, on the condition that all economic and financial proposals be reviewed by the Department of Higher Education for its analysis and approval. This condition of the delegation was reiterated in the letter dated April 23, 2020, from the DHE, addressed to me, which I have shared with you.

(Attachment H.)

13. By the conduct summarized above, the BHE has failed or neglected to bargain in good faith with the MSCA for a successor to the 2017 – 2020 Agreement by not granting its bargaining representatives, the COP, sufficient authority to negotiate items with a financial impact, and by broadly construing the scope of items with a financial impact, so that virtually all proposals for consideration by the COP negotiating team require, prior to reaching a tentative agreement, review and approval by third parties not at the negotiating sessions, all in violation of G.L. c. 150E, § 10(a)(5) and, derivatively, § 10(a)(1).

GROUND RULES FOR NEGOTIATIONS
BETWEEN
THE BOARD OF HIGHER EDUCATION
AND
THE MASSACHUSETTS TEACHERS ASSOCIATION/
MASSACHUSETTS STATE COLLEGE ASSOCIATION

1. The parties agree that they have authority to negotiate and to make tentative agreements which shall be subject to final ratification by their constituencies. All bargaining shall be conducted at the bargaining table.
2. The parties may not submit new proposals after the fifth (5th) meeting following agreement upon these Ground Rules except by mutual waiver; except, each party shall be deemed to have reserved the right, in good faith, to submit new proposals for the purpose of facilitating the resolution of other outstanding matters or to address issues that may arise during bargaining.
3. All tentative agreements shall be reduced to writing and ^{in all 4. 12/20} the principal representative of each party shall initial all tentative agreements; provided, however, that every such tentative agreement shall be subject to and contingent upon the parties' entering into a final and complete collective bargaining agreement, and each party shall be deemed to have reserved the right, in good faith, to reopen negotiations in respect of any such tentative agreement for the purpose of facilitating the resolution of other outstanding matters.
4. The parties shall hold meetings for the purpose of negotiations at mutually agreeable dates, times and places. Other than for an emergency, each party will endeavor to give at least three days' notice of cancelation. The parties shall establish an agenda for the next meeting after each negotiating session. The parties shall schedule three meetings in advance, which shall include start and end times for these meetings. The end times of these meetings may be extended by mutual consent of the parties.
5. Each side shall have the right to caucus at any time for a reasonable period of time and shall inform the other party of the anticipated length of caucus.
6. There shall be no recording or transcripts made of bargaining sessions, and there shall be no official minutes or records. Both parties are free, however, to keep their own notes of bargaining sessions.

7. The parties reserve the right to communicate concerning the negotiations consistently with the requirements and limitations of law. All correspondence between the parties concerning matters that are or may be the subject of negotiations shall be made exclusively through the principal representatives of each party and the chief negotiator of each bargaining team, if any.
8. The Board shall make available to the Association, upon its written or oral request and as soon as may be practicable thereafter, such statistics and information in the possession of the Board as are related to the collective negotiations. It is understood that this shall not require the Board to compile such information and statistics in the form requested unless already compiled in that form or to supply any information that is confidential as a matter of law
9. It is understood that there may be a need for bargaining unit members serving as team representatives to attend bargaining sessions on occasion for major periods of time. On those occasions, release time shall be provided to these bargaining team representatives.
10. Any of the aforementioned provisions may be waived or additions made by written mutual consent of the parties.

MASSACHUSETTS TEACHERS
ASSOCIATION/MASSACHUSETTS
STATE COLLEGE ASSOCIATION

By: Maria Heflorn 3/9/20
Spokesperson Date:

BOARD OF HIGHER EDUCATION

By: Mary M. Shea SHE
Spokesperson Date: 3/9/20
representative

MSCA Proposal for a Two-Year Collective Bargaining Agreement

The MSCA would like to make an effort to reach quick settlement on a successor agreement in light of the current pandemic, which would allow the parties to focus on the increased work necessary to continue to provide high-quality instruction to our students.

This is the framework for a two-year collective bargaining agreement. The MSCA views this as an extension of the 2017-2020 CBA, with cost-of-living increases for our members, coupled with language changes necessitated by the current global pandemic, or beneficial to both parties.

A two-year CBA would allow both sides to focus on the emergency at hand taking into account current projections and the likelihood of an extended period of not being able to conduct in-person classes while affording our members reasonable cost-of-living increases during that period.

Framework:

- This would be a two-year CBA from July 1, 2020 through June 30, 2022.
- Increase all full-time unit members' salaries, including salaried part-time faculty, by 2% effective July 1, 2020, and then again by 2% effective July 1, 2021.
- Increase the per-credit part-time and music instructor rates by 2% effective July 1, 2020 and then again by 2% effective July 1, 2021.
- Suspend formulary increases for the FY 2021 and FY 2022 and use those moneys to increase the per-credit part-time and music instructor rates after each 2% increases, using the methodology used in the 2017-2020 CBA. Reinstitute formulary increases at the end of the two-year CBA.
- For part-time faculty in the bargaining unit on the date of a tentative agreement, allow them to retain their unit status for compensation purposes for the duration of the two-year CBA (as some may not be able to teach online or remotely for a number of reasons).
- Incorporate the ERC agreements and understandings reached on March 20, 2020 in a side letter. Those agreements and understanding would be in place at each university and for each semester during which a university is not conducting in-person classes.
- For faculty teaching at least six credits in an online/remote format in a semester, allow that one-half of that faculty member's office hours may be conducted online/remotely. (This is intended to be a change that would remain in place after a university returns to in-person teaching.)
- Allow instructors who were required to convert in-person courses to online/remote instruction as service for evaluations purposes.

MSCA Proposal for a Two-Year Collective Bargaining Agreement

- Create a joint committee to research other student evaluation instruments for a recommendation to the parties. (The intent is that this work would begin reasonably quickly so the parties would have recommendation in a reasonable amount of times.)
- Allow for the digital submission of evaluation materials.
- Create a joint salary study committee so the parties would be informed for successor negotiations two years from now.
- Create a standing committee on Budget and Finance. (This committee would contain unit members, administrators and students. As with all committees, it would make recommendations only. It would afford more transparency for the public.)
- Do not allow librarians to be declared "essential personnel."
- Classify the MSCA librarians as a department.
- Add a retirement incentive (Attachment A).
- Begin negotiations on a successor agreement no later than January 31, 2022.

Changes dates throughout the CBA as necessitated by the changes above.

The MSCA reserves its right to withdraw this package proposal and return to our position immediately prior to the proffering of this package should the parties be unable to reach agreement on a framework, or should negotiations on this framework stale.

MSCA Proposal for a Two-Year Collective Bargaining Agreement

Attachment A

A. Eligibility

Any unit member who has served at least ten (10) years in the State University system, who is eligible to retire under the retirement system of the Commonwealth of Massachusetts or the Optional Retirement Program, and who is at least fifty-five (55) years of age as of the anticipated date of retirement shall be eligible to receive a retirement incentive subject to notification provisions below.

B. Notification

A unit member must apply by notifying the President of the University in writing of the unit member's intent to retire not less than one (1) year in advance of the unit member's retirement date; provided, however, that this notice requirement may be waived for those who intend to retire within one (1) year after the execution of this agreement who are otherwise eligible and have applied in writing; provided further that this requirement shall be waived for unit members who have been notified that they will be retrenched or unit members who will retire because of medical reasons who are otherwise eligible and have applied in writing.

C. Compensation

An eligible unit member who retires in accordance with the foregoing conditions shall receive a retirement incentive equal to the applicable percentage of that unit member's salary as of the date of retirement in accordance with the following schedule:

Retirement Incentive as a Percentage of Salary

Age on Date of Retirement	Retirement Date Last Fiscal Day of				
	May-August	September	October	November	Dec.-April
55-60	30.0%	25.0%	20.0%	15.0%	10.0%
61	25.0%	20.8%	16.7%	12.5%	8.3%
62	20.0%	16.7%	13.3%	10.0%	6.7%
63	15.0%	12.5%	10.0%	7.5%	5.0%
64+	10.0%	8.3%	6.7%	5.0%	3.3%

Payment shall be made after the date of retirement and may be spread over a period not to exceed twenty-four (24) months at the election of the unit member.



Massachusetts Department of Higher Education

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One Ashburton Place, Room 1401
Boston, MA 02108

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OFFICE of STUDENT FINANCIAL ASSISTANCE
75 Pleasant Street
Malden, MA 02148

TEL (617) 391-6070
WEB www.mass.edu/osfa

Carlos E. Santiago
Commissioner

Chris Gabrieli
Board Chairman

April 23, 2020

Elizabeth M. Sullivan, Esq.
Rubin & Rudman
53 State Street
Boston, MA 02109

RE: Review and Analysis of MSCA Bargaining Package Proposal April 14, 2020

Dear Attorney Sullivan:

Thank you for your email of April 14, 2020 in which you, on behalf of the State University Council of Presidents (COP) forwarded the MSCA's two-year offer which was presented to the COP's bargaining team on April 14, 2020. Your submittal was made in accordance with the Board's delegation of collective bargaining authority to the COP under which all economic or financial proposals must be reviewed by the Department of Higher Education for analysis and approval.

As presented, the MSCA package proposal contains provisions calling for a two percent (2%) across the board salary increase for Year 1 of the successor collective bargaining agreement (7/1/20-6/30/21) and a further two percent (2%) across the board salary increase for Year 2 of the successor agreement (7/1/21-6/30/22). The proposal further provides that formulary increases for FY2021 and FY 2022 be suspended and that those monies be used specifically to increase the per-credit part-time and music instructor compensation rates. Lastly, the package proposal contains a proposed early retirement incentive under which eligible employees would receive a lump sum payment ranging from 3.3% to 30% of their then salary upon retirement.

After careful review and consideration of the MSCA proposal, and for the reasons cited below, please be advised that the Department of Higher Education cannot approve the submitted proposal, and further directs the COP bargaining team to emphasize with the MSCA the need to place collective bargaining in abeyance until such time that the

financial impacts and other uncertainties resulting from the current COVID-19 public health emergency can be more fully ascertained.

The Commonwealth is currently in the midst of an unprecedented global pandemic which has had deep and far reaching ramifications. Thousands have succumbed to the COVID-19 virus and the Commonwealth is presently in the surge of the COVID-19 infections and deaths. The continuing public health emergency makes it impossible for people and institutions to carry on in a "business as usual" manner. Stay at home and social distancing advisories remain in effect, and the economy and fiscal outlook of the Commonwealth has been severely impacted by the crisis.

The long-term impact on public higher education presented by the current crisis remains uncertain. The economic impacts on students and families is likely to be long lasting, with corresponding impacts on enrollment, retention, and student housing vacancies. These factors, as well as the uncertainty of public funding, will have adverse impacts on university financial conditions.

At the Legislature's budget hearing last week, regional economists, legislators and Administration officials all agreed that the state's economy has been damaged, that its financial prognosis is still largely unknowable, and that public health considerations, not economic forces, will determine how the next several months will unfold. Estimates were given that future tax collections could result in \$4 billion to \$6 billion below initial projections for FY 2021. Economists predict it would be at least until July before anyone knows the extent of the damage to the economy and what a recovery would look like. At least one expert noted that it might be until 2022 before employment (and thus tax revenue) recovers to pre-virus levels. All of this makes it difficult to craft a balanced state budget. Thus, budgetary uncertainty will remain for at least the short term if not the long term. Consequently, the uncertainty of the state fiscal situation has an associated effect on the ability of the universities to establish reliable budget forecasts for the coming year.

Furthermore, state universities are and will be facing several other financial liabilities and uncertainties. There is still a large degree of uncertainty on the amount of supplemental funding to be received by the Commonwealth and universities under federal programs including the CARES Act. The universities are also facing large bond payments on dormitories and other infrastructure and there is no clear path on how these payments will be addressed during the current crisis. The universities have also incurred expenses directly related to meeting the COVID-19 crisis and transitioning to on-line and remote learning. Moreover, they have incurred \$47 million in room and board and parking refunds to students for the Spring semester.

Recently, the Commissioner publicly stated his concern about our systems of higher education as a result of the present pandemic. Furthermore, the DHE has been advised by the OER against bargaining on a successor agreement given the uncertainty of the state's fiscal condition. Therefore, the DHE is unable to provide you with any financial parameters for collective bargaining now or in the foreseeable future and certainly not until these economic uncertainties are resolved. Without greater clarity on public funding

and university budgets and revenue, any discussion on salary increases for the next two years would be unrealistic, and therefore unproductive. For these reasons, it would be irresponsible for the DHE and the state universities to engage in any collective bargaining. Therefore, the Department must decline the MSCA's proposed two-year salary increases and other financial proposals, and we see it as critical, given the ongoing financial uncertainties, that collective bargaining on a successor agreement be placed in abeyance during the present public health emergency and fiscal crisis.

Sincerely,

A handwritten signature in black ink, appearing to read 'T. Simard', with a stylized flourish at the end.

Thomas J. Simard
Deputy Commissioner for A&F

CS/m

cc: Carlos E. Santiago, Commissioner
Richard Lapidus, Chair, State Universities Council of Presidents
Michael J. Murray, Esq., Director of Employee and Labor Relations

MSCA Proposal for a One-Year Collective Bargaining Agreement

The MSCA would like to make an effort to reach quick settlement on a successor agreement in light of the current pandemic, which would allow the parties to focus on the increased work necessary to continue to provide high-quality instruction to our students without sacrificing the need to address a significantly changed work situation for our members.

This is the framework for a one-year collective bargaining agreement. The MSCA views this as an extension of the 2017-2020 CBA, with language changes necessitated by the current global pandemic, or that are beneficial to both parties.

A one-year CBA would allow both sides to focus on the emergency at hand taking into account current projections and the likelihood of an extended period of not being able to conduct in-person classes.

Framework:

- This would be a one-year CBA from July 1, 2020 through June 30, 2021.
- Suspend formulary increases for the FY 2021 and use those moneys to increase the per-credit part-time and music instructor rates using the methodology used in the 2017-2020 CBA. Reinstigate formulary increases at the end of the one-year CBA. (Note: This is not an incremental cost item. These are already increases that need to be funded on July 1, 2020. The MSCA is suggesting we shift them from full-time faculty and librarians to part-time faculty.)
- Cap enrollment at 20 students for course sections that were to be conducted in-person but are required to be moved to online/remote instruction.
- Provide part-time faculty with at least 30 days' notice of the cancellation of a course to minimize the time dedicated to converting a course to online/remote instruction for a course that is ultimately canceled.
- Allow part-time faculty in the bargaining unit on the date of a tentative to retain their unit status for the duration of this agreement, or if continuing longer, for the duration of the crisis (as some may not be able to teach online or remotely for a number of reasons).
- Rewrite Article IX, Section A(5) by adding a second paragraph: "At the discretion of a faculty member who holds a tenure-track appointment of the kind described in subsection 2(a), the faculty member may delay the evaluation for tenure to be conducted to the seventh (7th) consecutive academic year. In such cases, the evaluation during the sixth (6th) consecutive academic year shall be a reappointment evaluation conducted using the procedure set forth for a fourth (4th) year evaluation. The President, not later than September 1 of his/her eighth (8th) academic year of service, shall notify the faculty member of the decision of the Board of Trustees to grant or to deny such faculty member tenure. Every such faculty member other than an Instructor who serves the University as a full-time

MSCA Proposal for a One-Year Collective Bargaining Agreement

faculty member for more than seven (7) consecutive years (exclusive of an eighth (8th) terminal year) shall thereby gain tenure. Such consecutive years shall be computed in accordance with the provisions of Article VIII, Section L(2) and L(3)."

- Incorporate the ERC agreements and understandings reached on March 20, 2020 in a side letter. Those agreements and understanding would be in place at each university and for each semester during which a university is not conducting in-person classes.
- For faculty teaching at least six credits in an online/remote format in a semester, allow that one-half of that faculty member's office hours may be conducted online/remotely. (This is intended to be a change that would remain in place after a university returns to in-person teaching.)
- Expand the use of the sick leave bank provision to include the use for the care of parents, children and spouse.
- Allow instructors who were required to convert in-person courses to online/remote instruction as service for evaluations purposes.
- Create a joint committee to research other student evaluation instruments for a recommendation to the parties. (The intent is that this work would begin soon after ratification so the parties would have a recommendation in a reasonable amount of time.)
- Allow for the digital submission of evaluation materials.
- Create a standing committee on Budget and Finance. (This committee would contain unit members, administrators and students. As with all committees, it would make recommendations only. It would afford more transparency for the public, and broaden creative thinking during the financial crisis that has resulted from the pandemic.)
- Do not allow librarians to be declared "essential personnel" during emergency periods when in-person classes are not being held.
- Classify the MSCA librarians as a department.
- Add a retirement incentive (Attachment A). (Note: This is not an incremental cost item, and is intended on having the effect of decreasing the full-time unit payroll.)
- Modify Article XIII, Section L by adding at the end of the paragraph the boldfaced language: "...to re-open this Agreement for further negotiations on those economic matters."

MSCA Proposal for a One-Year Collective Bargaining Agreement

- Begin negotiations on a successor agreement no later than January 31, 2021.

Change dates throughout the CBA as necessitated by the changes above.

The MSCA reserves its right to withdraw this package proposal and return to our position immediately prior to the proffering of this package should the parties be unable to reach agreement on a framework, or should negotiations on this framework stall.

MSCA Proposal for a One-Year Collective Bargaining Agreement

Attachment A

A. Eligibility

Any unit member who has served at least ten (10) years in the State University system, who is eligible to retire under the retirement system of the Commonwealth of Massachusetts or the Optional Retirement Program, and who is at least fifty-five (55) years of age as of the anticipated date of retirement shall be eligible to receive a retirement incentive subject to notification provisions below.

B. Notification

A unit member must apply by notifying the President of the University in writing of the unit member's intent to retire not less than one (1) year in advance of the unit member's retirement date; provided, however, that this notice requirement may be waived for those who intend to retire within one (1) year after the execution of this agreement who are otherwise eligible and have applied in writing; provided further that this requirement shall be waived for unit members who have been notified that they will be retrenched or unit members who will retire because of medical reasons who are otherwise eligible and have applied in writing.

C. Compensation

An eligible unit member who retires in accordance with the foregoing conditions shall receive a retirement incentive equal to the applicable percentage of that unit member's salary as of the date of retirement in accordance with the following schedule:

Retirement Incentive as a Percentage of Salary

Age on Date of Retirement	Retirement Date Last Fiscal Day of				
	May-August	September	October	November	Dec.-April
55-60	30.0%	25.0%	20.0%	15.0%	10.0%
61	25.0%	20.8%	16.7%	12.5%	8.3%
62	20.0%	16.7%	13.3%	10.0%	6.7%
63	15.0%	12.5%	10.0%	7.5%	5.0%
64+	10.0%	8.3%	6.7%	5.0%	3.3%

Payment shall be made after the date of retirement and may be spread over a period not to exceed twenty-four (24) months at the election of the unit member.

MSCA Proposal for a One-Year Collective Bargaining Agreement

COVID-19 Issues

1. Unit members being required to work on campus?
Response: It is the understanding of the CoP representatives that no faculty member is required to go to campus to teach at this time. As to librarians, none at BSU are on campus now. At FiSU, two volunteered to be regarded as “essential” and are working. The CoP representatives will inquire if librarians are being required to be on campus while other employees have been told to stay at home.
2. Will faculty (librarians) we required to return to campus this semester?
Response: The CoP representatives reported it is accurate that at some campuses (BSU, FrSU, FiSU and WoSU) faculty will be working remotely for the balance of the semester. The representatives are unsure the arrangements concerning librarians.
3. Librarians working remotely.
Response: See the response to #1
4. Access to faculty/librarian offices.
Response: The Provosts explained the process in effect at their campuses. Permission or notice is required for a unit member to be on campus at this time at some universities and faculty at those universities have been informed.
5. Evaluations currently in progress.
Response: The Committee agreed the unit member and evaluators may transmit the materials electronically. Members will be provided the evaluations electronically via their campus e-mail addresses. The members may respond electronically. The recipient of the member’s e-mail will acknowledge receipt so the member may be assured the response was received and will be added to the dossier.
6. Personnel deadlines/response deadlines.
Response: The Committee saw no need to alter existing deadlines for personnel actions.
7. **Tenure eligibility (extension of “clock”).**
Response: The Committee saw no need to alter existing deadlines for tenure eligibility.
8. Spring 2020 day part-time faculty and DGCE faculty evaluations.
Response: The Committee agreed that there will be no evaluations of part-time faculty teaching in the day program. In DGCE, instructors who taught courses that were scheduled to be taught in an online modality shall be evaluated. In DGCE, instructors of face-to-face courses that were then moved to remote instruction will not be evaluated.

MSCA Proposal for a One-Year Collective Bargaining Agreement

9. Student evaluations for day Spring 2020 semester.
Response: The Committee agreed student evaluations will not be conducted for day Spring 2020 courses, and as a result faculty will be held harmless¹ for the lack of student evaluations for the Spring 2020 semester. For DGCE courses, student evaluations will be conducted only for courses that were scheduled to be instructed in an online modality, and as a result faculty who were not required to have student evaluations conducted for the Spring 2020 instructional period will be held harmless.
10. Classroom observations for Spring 2020 semester.
Response: Classroom observations will not be conducted in the day program.
11. Advising obligations.
Response: The Committee agreed that faculty should continue to perform advising responsibilities electronically during this crisis period. If the faculty advisor is unable to perform these duties, a professional advisor will assist the student. The CoP representatives confirmed there is no intention to reassign students to a professional advisor.
12. Service obligations.
Response: When considering the evaluation of service obligations, the CoP representatives expressed the view that everybody is doing the best they can. There is no intention to penalize unit members if the committees on which they serve could not meet. There will be a reasonable shift in expectations this semester due to these novel circumstances.
13. Continuing scholarship (conferences canceled, etc.)
Response: If a unit member being evaluated was scheduled to present or attend, but the conference was cancelled, the unit member should inform the evaluators of this, and provide evidence or samples of the work, such as an abstract.
14. APRs that cannot be completed.
Response: The CoP representatives explained that if an APR cannot be completed due to the disruption, the unit member should explain this when being evaluated for the APR.
15. Refund for canceled university-related travel (conferences, etc.)
Response: The universities will address issues of refunds as they determine. The CoP representatives declined to set a policy.
16. Post-Tenure Review deadline of April 1, 2020.
Response: The Committee saw no reason to alter the PTR calendar.

¹ In this context, "held harmless" is defined as present and future evaluators not drawing negative inferences based upon the absence of student evaluations or classroom observations for the Spring 2020 semester.

MSCA Proposal for a One-Year Collective Bargaining Agreement

17. Student complaints [how will they be handled?]
Response: The CoP representatives explained the chair or EO officer (depending upon the nature of the complaint) and unit member will communicate in accordance with university policy, which at this time means they will communicate electronically.
18. Student access to online remote learning.
Response: In response to concerns that students do not receive or have difficulty with remote learning, the CoP representatives replied evaluators will consider the circumstances. They also offered that the chief academic officers are concerned and attentive to the fact that students may have technology and internet service issues to address.
19. Communication with students.
Response: Professor O'Donnell noted that communication is occurring by e-mail, primarily. Dr. Cardelle commented that some schools are allowing access to software by which faculty send emails that are texted to the students' phones. The replies of the students are received in the unit member's e-mail.
20. Obligations related to students with disability.
Response: The CoP representatives replied faculty should continue to work with the campus disability resource officer questions concerning accommodations for disabled students.
21. Tutoring.
Response: Prof. O'Donnell asked if the schools were providing tutors to students while studying remotely. The Provosts explained that tutoring was being made available at their campuses. In addition, most schools are remotely operating their writing centers.
22. Pass/fail options.
Response: The CoP representatives explained the universities that are considering such options will address them through local governance.
23. Online and remote delivery of lectures.
Response: Prof. O'Donnell asked if any campus is not permitting both/all options of instruction, and is training being made available to faculty? There is training for Blackboard and Google Hangouts, Provost Cardelle replied. FiSU also is making help desk support available to unit members. The Committee acknowledged the value of sharing the training provided by or prepared at one school with the other schools. Provosts Cardelle and Ismaili both offered to share the links to training that each has utilized.
24. Will software subscriptions necessary to teach online/remotely be supplied/paid for by the university?
Response: Provosts Cardelle and Ismaili explained the reactions at their universities, but this is a fiscal issue beyond the range of their authority. It is dependent upon the schools, they replied.

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25. Privacy issues for online/remote teaching.
Response: The Association representatives expressed concern of faculty of being "watched." It would be helpful if the provosts could put out something similar to what the Provost at NYU circulated. Prof. O'Donnell stated there is contract language that is applicable, and the union would enforce the language, if required.
26. Academic integrity (tests, final exams, etc.)
Response: Faculty are concerned about students' academic integrity and how to address these concerns. The Provosts explained that FiSU bought some licenses for two departments for specific software. BSU's testing center is trying to address these issues, as well.
27. Office hours.
Response: The Committee agreed office hours may be conducted online during this period of remote teaching.
28. Modes of instruction not adaptable to online/remote teaching.
Response: The Committee acknowledged that faculty are trying alternatives. In some courses, students will be graded upon work performed (ensemble music, for instance) up to the shift to remote teaching. The parties acknowledged this situation is dynamic.
29. Availability of laptops for faculty?
Response: The CoP representatives replied that to the extent this has been a problem for faculty, especially for part-time and DGCE faculty, some schools have been loaning laptops. The faculty member should check at their school.
30. Can faculty take [their] desktop home?
Response: No.
31. Sick leave/administrative leave for FT faculty and librarians.
Response: The Committee agreed this question is presently moot.
32. Sick leave for part-time & DGCE faculty.
Response: The CoP representatives stated these employees are entitled to statutory leave under state law, and may receive benefits under the newly enacted Federal law. The Association replied it does not want to see people off the payroll. The CoP representatives replied the availability of leave all depends upon the particular circumstances.

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33. Sick leave bank.

Response: The Committee acknowledged the parties agreed unit members who belong to the bank do not have to be off the payroll for five days. The usual contract terms will apply in the event the bank is close to depletion. Prof. O'Donnell noted there is only one opportunity for a unit member to join the bank in the fall. He asked if the BHE would consider permitting non-bank members to join the bank earlier. Mr. Cox and Prof. O'Donnell shared the opinion that the parties could waive the contract provision to allow early joining of the bank. Mr. Cox replied he would consult with his principals and reply to Prof. O'Donnell.

34. Virtual governance committee meetings.

Response: The Committee agrees virtual committee meetings are positive and necessary, and are suitable for governance meetings. The universities and committees need to assure the members of the university community can observe. Furthermore, the Committee sees value in the governance committees being prepared to start working promptly upon the start of the next academic year. They agreed that the universities and local unions should collaborate to be prepared and ready to start working as close to go September first as possible. Department meetings also shall continue virtually.

35. Faculty/librarian searches.

Response: The Committee observed most searches are nearly complete, those underway will be conducted virtually. Every department has the discretion to decide if a search now in progress will proceed or not.

36. Department chair elections.

Response: The Committee does not endorse extending the time for elections. The Department should conduct the election electronically by a process it determines.

37. AUC elections at Fitchburg and Worcester.

Response: The Association will address this issue.

38. Grievances.

Response: The hearings will be handled electronically unless the hearing participants mutually agree to meet in person. The parties encourage reasonableness in extending deadlines for hearing and responses when requested.

39. Librarians not able to reduce vacation leave by June 30, 2020.

On March 26, 2020 the BHE agreed to extend the deadline to September 1, 2020.

40. Graduation.

Response: The Provosts reported that most schools have postponed their ceremonies, and have not yet rescheduled them. This item will remain on the agenda.



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BY E-MAIL AND FIRST CLASS MAIL

Maria Hegbloom
MSCA Bargaining Committee Chair and Chapter President
Bridgewater State University
91 Burrill Ave.
Bridgewater, MA 02325

Dear Professor Hegbloom,

I am writing regarding the negotiation session scheduled for May 14, which the COP unfortunately must cancel for the reasons that follow.

As you know, on April 23, 2020, I received a letter from the DHE in which the DHE informed me it could not approve the MSCA's April 14, 2020 proposal. In that communication, the DHE directed the bargaining team to emphasize to the MSCA the need to place bargaining in abeyance until the financial impacts and uncertainties resulting from the COVID-19 public health emergency could be fully ascertained. In addition, the DHE made clear that, in light of the fiscal impact of the pandemic on the Commonwealth, the effect on public higher education remains uncertain.

The most recent proposal by the MSCA, which we received on April 27, contains terms that have a financial impact or some cost associated with them, and we and the DHE must assess those costs in order to evaluate the proposal. These terms and costs include: a cap on the number of students for course sections that move to remote instruction, which will impose substantial and near-term costs by requiring that more instructors be hired; a 30-day notice requirement for the cancellation of remote instruction for part-time faculty that, based upon our history, will require payments if cancellation is not consistent with the proposed deadline; the classification of libraries as a department, which may require chair stipends; and a retirement incentive that will have a significant cost in the years following agreement upon the incentive. Further, while not included in the April 27 proposal, you clarified at the April 14, 2020 negotiation session that any MSCA proposal would assume that the universities would be responsible for both the employee and employer contributions relative to the Paid Family Medical Leave Act, consistent with its position at negotiations relative to PFMLA. At present, that contribution is shared by the parties.

Notwithstanding the current fiscal difficulties and uncertainties facing the state, the COP takes the MSCA's most recent proposal seriously and has endeavored to analyze the costs associated with it, in accordance with the authority delegated to it by the DHE. As you know from the DHE's April 23, 2020 letter, the COP is required to seek review and approval by the DHE of all economic or financial proposals. Accordingly, as soon as the COP's financial analysis is complete, the COP will send the MSCA's most recent proposal to the DHE for its own analysis and approval. We will not have the DHE's response prior to the May 14 meeting, and for that reason we must cancel the meeting.

With respect to scheduling future meetings, the COP recognizes that the Ground Rules require that the parties schedule three meetings in advance. Without knowing when to expect a response from the DHE

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Page 2

or when the Commonwealth will have more fiscal certainty, or at least a budget, we are requesting that the next meeting not be scheduled until a response is received by the DHE or, in the alternative, that we schedule the next meeting sometime in early June, with the understanding that we will have to cancel it if we have not yet received a response from the DHE. I will be sure to inform you as soon as a response is received from the DHE. The COP is also requesting that we revisit the Ground Rules at or prior to our next negotiation session to address the requirement that limits the parties from submitting proposals after the fifth meeting. Without knowing when any financial parameters will be provided, or the extent of the state's financial situation, we are unable to comply with this provision and must discuss it further.

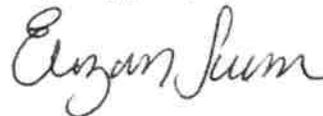
In the meantime, we must again object to the union's use of its entire membership to serve as "silent representatives." At our last session, on April 27, I made clear the COP's position: the parties agreed to participation of bargaining unit members as silent representatives, but the employer did not agree with the understanding that participation as silent representatives would be open to the entire bargaining unit at each bargaining session. Indeed, nothing the MSCA communicated when we were discussing ground rules suggested it intended to invite all unit members to participate as silent representatives.

The COP recognizes that the union has the right to decide the composition of its negotiating team. However, the union's invitation to its entire membership to serve as "silent representatives" has effectively opened bargaining to all of its members, with the number limited only by the software platform the MSCA is using. The union's open invitation to all unit members to attend bargaining sessions as silent representatives is a circumvention of closed negotiation sessions and a unilateral implementation of the proposal for open bargaining that the union withdrew. We therefore request that the union designate a reasonable number of unit members to serve on its bargaining team.

Finally, to the extent there are immediate and pressing issues that need to be discussed related to the pandemic and the continuity of operations, or should any such issues arise, we believe these matters can be discussed and resolved at ERC just as the parties did in March, when ERC addressed and resolved numerous matters. To the extent the universities must make decisions as they prepare for the fall semester that impact upon mandatory topics, we will inform ERC or invite the Association to discuss the impact of these decisions promptly.

In closing, I want to again express the gratitude of the COP to the MSCA for its collaboration in these difficult times, and its appreciation of the MSCA's continued understanding. We look forward to meeting with you again, after we receive a response from the DHE regarding the union's April 27 proposal.

Very truly yours,



Elizabeth M. Sullivan

Attachment F,
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Page 2

Dear Ms. Sullivan,

I am disappointed that the Council of Presidents has decided to cancel our next bargaining session. We are, of course, aware of the fiscal uncertainties you note in your letter. This was, as we have already stated, why we proposed a one-year contract with no incremental cost items.

The law states that only "incremental cost items" require a supplemental appropriation. Your letter seems to indicate that university presidents must seek DHE approval to spend any university funds, roughly 75% of which are not state appropriations. Clarification on this point would be helpful to us in better understanding the situation.

The CoP's cancellation of this meeting means that we currently have no bargaining sessions scheduled. As you correctly note, the mutually agreed to ground rules require scheduling at least three meetings in advance. So, we once again request that your team consider the dates that we have already provided so that you can comply with the ground rules. You suggest in your letter a desire to revise ground rules, but this would need to be done at the bargaining table, for which a meeting must be scheduled. For your recollection we offered the following dates to meet between the hours of noon and 4:00pm: May 11th, 13th, 15th, 18th, 20th, 22nd, 26th and 29th.

Regarding the composition of our bargaining team, we note again that the composition of our team was communicated clearly in advance of negotiations beginning and that the team is consistent with that composition. You may not be aware, but the MSCA represents well over 2,000 day-unit union members. Only a very small percentage of our membership has ever been included on our bargaining team at any of our meetings.

Finally, you suggest that should "immediate and pressing" issues arise that the ERC would be the appropriate place to address these. However, as clearly stated in Article II.C.2, the Employee Relations Committee has no authority to "alter, amend, extend, or revise" any part of the Collective Bargaining Agreement. Our proposal addresses both the current and future crises the universities and our faculty and librarians may face. The items in our one-year proposal are properly the subject for negotiations, not implementation or interpretation.

We expect to hear soon from you about the bargaining dates we have proposed as well as a clarification of the role of the DHE in assessing the finances of the universities.

Sincerely,

Maria

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

From: Elizabeth M. Sullivan <ESullivan@rubinrudman.com>
Sent: Wednesday, May 20, 2020 11:17 AM
To: hegbloommaria@hotmail.com
Cc: CJ O'Donnell <c.j.odonnell@comcast.net>; James, Roberta <RJJames@massteacher.org>; Vincent Pedone <vpedone@massart.edu>
Subject: RE: May 14 negotiation session

Dear Maria,

Thank you for your letter. In your letter you state that the law provides that only incremental cost items require a supplemental appropriation, and you ask for clarification of the role of the DHE in assessing the finances of the universities. As you know, the BHE is the employer of record. The Board delegated to the COP the authority to bargain a successor agreement, on the condition that all economic and financial proposals be reviewed by the Department of Higher Education for its analysis and approval. This condition of the delegation was reiterated in the letter dated April 23, 2020, from the DHE, addressed to me, which I have shared with you.

Further, I must reiterate that the COP does not agree with the union's open-ended invitation to all of its more than 2,000 day unit members to participate in negotiations as silent representatives. I trust that the union will select only a reasonable number of silent representatives in future bargaining sessions.

As for future dates, the COP can offer June 17, June 23, June 29 (10:00 a.m. – 3:00 p.m.), July 14, July 20 (after 10:00 a.m.), and July 30. The dates that are selected will need to be sufficiently spread out, and I would propose at least three weeks between each. Accordingly, I will be asking my team for suggestions for a third date in August.

We look forward to discussing modifications to the ground rules at our next session.

Best,
Elizabeth

From: Maria Hegbloom <hegbloommaria@hotmail.com>
Sent: Tuesday, May 12, 2020 7:58 PM
To: Elizabeth M. Sullivan <ESullivan@rubinrudman.com>
Cc: CJ O'Donnell <c.j.odonnell@comcast.net>; James Roberta <rjames@massteacher.org>; Vincent Pedone <vpedone@massart.edu>
Subject: [EXTERNAL] Re: May 14 negotiation session

Elizabeth,
Please see our attached reply.
Maria

From: Elizabeth M. Sullivan <ESullivan@rubinrudman.com>
Sent: Thursday, May 7, 2020 2:02 PM
To: Maria Hegbloom <hegbloommaria@hotmail.com>
Cc: CJ O'Donnell <c.j.odonnell@comcast.net>; James Roberta <rjames@massteacher.org>; Vincent Pedone <vpedone@massart.edu>
Subject: May 14 negotiation session

Dear Maria,

Unfortunately, the COP must cancel the negotiation session scheduled for May 14 for the reasons set forth in the attached letter.

Thank you for your understanding in this regard.

Best,
Elizabeth

Elizabeth Sullivan
Rubin and Rudman LLP
(617) 330-7009
esullivan@rubinrudman.com



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