ARTICLE X - RETRENCHMENT

# Introduction

Should a financial exigency ever occur, every reasonable measure should be taken, as is hereinafter provided, to curtail the operations of any affected University consistent with the preservation of the academic integrity of the institution.

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

# Application

Save as is provided in Article X-A and X-B, the provisions of this Article shall exclusively govern the retrenchment of members of the bargaining unit at each University, any other provision of this Agreement to the contrary notwithstanding.

Except as is otherwise provided in Section I of this Article X, the provisions of this Article X shall be of no application to any person holding a part-time appointment to a position in the bargaining unit.

# Definitions

## Financial Exigency: For the purposes of this Article, financial exigency shall be declared by the formal communication to the Commissioner of Higher Education by the university that the Board of Trustees, or the president acting on its behalf, has determined, in its exclusive Business Judgment that financial reasons threaten to undermine the university’s academic mission.

Nothing in this definition shall be deemed to permit the retrenchment of any member of the bargaining unit until the provisions of Section E of this Article shall have first been complied with, nor shall the existence of a financial exigency as herein defined be deemed to require the Board of Trustees of any University or the president on its behalf to initiate procedures for the retrenchment of members of the bargaining unit.

## Declining Student Enrollment: For the purposes of this Agreement, “declining student enrollment” shall mean a decrease in the total number of undergraduate students enrolled in the total number of courses offered by a department or program area over the previous three academic years, both fall and spring semesters combined, and which decline, in the exclusive Business Judgement of the Board or the president on its behalf, is of sufficient magnitude to justify a reduction in the total number of faculty members within that department or program area. However, in the case of any department or program area that shall have been in existence for fewer than three (3) academic years when any measure of undergraduate student enrollment is taken pursuant to this provision, such determination shall be made in relation to undergraduate student enrollment in the immediate prior academic year(s), both fall and spring semesters combine, in the exercise of Business Judgment. For the purpose of determining the total number of undergraduate students enrolled in all of the courses offered by a department or program area during any semester, the count shall be taken on the final day of classes for the semester. Nothing in this definition shall be deemed to permit the retrenchment of any faculty member in any such department or program area until the provisions of Section E of this Article shall have first been complied with, nor shall the existence of a declining student enrollment as herein defined be deemed to require the Board to initiate procedures for the retrenchment of any such faculty member.

## Retrenchment: For the purposes of this Article, “retrenchment” shall mean the laying off of any member of the bargaining unit by reason of financial exigency or declining student enrollment at a University, and shall not mean termination.

## Seniority: The seniority of each member of the bargaining unit shall, for the purpose of this Agreement, be measured by the length of their continuous, full-time service at a University or another State University; in respect of each such member of the bargaining unit, such service shall be deemed to have commenced on the effective start date of the unit member’s employment.. In all cases except those involving statutorily protected leave, including parental and medical leaves, seniority shall not include periods of unpaid leaves of absence on a full-time basis as a unit member, including leaves taken to assume non-unit professional roles; nor shall such unpaid leaves of absence abrogate any prior-accrued seniority. Service while on a part-time leave of absence shall be counted on a pro-rata basis.

For the purposes of this Article X and of Articles X-A and X-B, the seniority of each member of the bargaining unit, as measured in accordance with the requirements of the preceding paragraph and without regard to a unit member’s tenure status, shall mean:

### in the case of faculty members, the seniority of each faculty member relative to all the other faculty members within the department or program area of which he/she is a member; and

### in the case of librarians, the status of each librarian relative to all other librarians at the University at which he/she is employed.

# Criteria for Retrenchment

Retrenchment shall take place only pursuant to the following provisions:

## Faculty Members

The seniority of each faculty member within any department or program area at a University shall determine the order in which he/she shall be retrenched from that department or program area, so that the most senior such member shall be last retrenched and the least senior such member shall be first retrenched; provided, however, that such order of retrenchment shall govern only insofar as, pursuant to its initial application, those faculty members to be retained are, by training and/or experience, as determined by the President through the exercise of academic judgment as informed by the chief academic officer and respective dean(s), qualified to teach the remaining courses which are to be continued to be offered by such department or within such program area to fulfill its mission and purpose; provided further that such order of retrenchment shall govern only insofar as its application is not in violation of the laws of the Commonwealth of Massachusetts or the United States; and provided further that no tenured member of a department or program area shall be retrenched sooner than a non-tenured member of such department or program area solely by reason of the fact that such tenured member has less seniority than such non-tenured member and provided further that the order of retrenchment may be disregarded if the continued employment of a member is essential to;

* + 1. The programmatic mission and purpose of the department, program area, or the University;
    2. The programmatic integrity or operation of the department or program area; or

c. The ability of the University to maintain its commitment to diversity in the curriculum and scholarship.

## Librarians

The seniority of each librarian at the University at which he/she is employed shall determine the order in which he/she shall be retrenched from that University, so that the most senior such librarian shall be last retrenched and the least senior such librarian shall be first retrenched; provided, however, that such order of retrenchment shall govern only insofar as, pursuant to its initial application, those librarians to be retained are, by training and/or experience, determined by the Board of Trustees to be essential to the operation of the library or libraries at such University; provided further that such order of retrenchment shall govern only insofar as its application is not in violation of the laws of the Commonwealth of Massachusetts or the United States; and provided further that no tenured librarian shall be retrenched sooner than a non-tenured librarian solely by reason of the fact that such tenured librarian has less seniority than such non-tenured librarian and provided further that the order of retrenchment may be disregarded if the continued employment of a member is essential to;

* + 1. The programmatic mission and purpose of the department, program area, or the University;
    2. The programmatic integrity or operation of the department or program area; or
    3. The ability of the University to maintain its commitment to diversity in the curriculum and scholarship.

## Application

Whenever it shall be necessary, pursuant to the application of this Section D, to determine:

### whether any faculty member who would otherwise be retrenched should be retained in any department or program area, such determination shall be made by the President and shall not be arbitrary or capricious; or

### whether any librarian who would otherwise be retrenched should be retained in any library or libraries at any University, such determination shall be made by the President and shall not be arbitrary or capricious.

# Procedures for Retrenchment

## Financial Exigency

### If the President determines, in their sole discretion, that retrenchment for financial exigency may be necessary, they shall notify the Commissioner, the President of the Association and the Chapter President that a financial exigency exists, and shall provide them with a preliminary proposal, which shall address the reasons for the anticipated retrenchment, the number of bargaining unit members anticipated to be retrenched and the areas proposed for retrenchment.

### Accurate information, statistics and/or financial data, including but not limited to information about the distribution of faculty workload, student-faculty ratio, etc., related to such preliminary proposal shall be made available by the President for inspection and/or copying upon request; provided, however that this Section shall not require the President to compile such information, statistics, and/or financial data in the form requested unless already compiled in that form.

### The President shall provide a reasonable period of time and, whenever possible, a minimum of twenty (20) days, but not more than thirty (30) days, from the issuance of the preliminary proposal, to receive advice and written recommendations, including a statement regarding the necessity of retrenchment, from both the President of the Association and the Chapter President.

### The President of the University, the President of the Association and the Chapter President shall meet no later than forty-five (45) days from the receipt of the preliminary proposal and confer to consider the recommendations of each party.

### If, after having considered such recommendations, the President determines that retrenchment remains necessary, they shall recommend a final retrenchment plan, which shall state the department(s) and/or program area(s) in which retrenchment shall occur, and the extent of retrenchment in each such department and/or program area. The plan shall identify, in accordance with the provisions of this Article, those members of the bargaining unit who are to be retrenched. A copy of the recommendations of the Association and Chapter shall accompany the recommendations of the President. In developing the final retrenchment plan, the President shall have considered the following:

#### the mission of the affected department(s) and/or program area(s) and how circumstances have altered that mission, with specific reference to the university’s mission and strategic plan in effect at the time a retrenchment plan is developed;

#### the dependence of other department(s) and/or program area(s) of the University on the department(s) and/or program area(s) affected, the effect on the offerings of the department(s) and/or program area(s) affected and/or arrangements to replace offerings lost;

#### arrangements to allow students in the affected department(s) and/or program area(s) to satisfy academic needs and requirements, such plan or plans shall conform to the accreditation standards relevant to the affected department(s) or program(s);

#### possible consequences to the stature of the University;

#### the possibilities of re-employment elsewhere in the University; and

#### the advisability of program curtailment as opposed to program abolition.

A copy of the above materials shall be transmitted to the Commissioner.

### The Board of Trustees shall meet no later than fifteen (15) days after receipt of the president’s final retrenchment plan, to which shall be appended the advice and written recommendations of the Association and Chapter, to consider the plan so recommended. In accordance with the Board of Trustees’ procedures, upon the prior written request of the President of the Association and/or the Chapter President, the President of the Association and/or the Chapter President shall be granted an opportunity to address the Board. Thereafter, the Board may adopt a plan of retrenchment as it shall determine. Members of the bargaining unit may thereafter be retrenched pursuant to the plan so adopted in accordance with the provisions of this Article. A copy of such plan shall be given to the Commissioner, the President of the Association and the Chapter President.

g. Nothing in this Section E(1) procedures for retrenchment shall be construed to in any way require the application of Article VII.

## Declining Student Enrollment

### If the President determines that retrenchment for reasons of declining student enrollment may be necessary, they shall so notify the Commissioner, the President of the Association and the Chapter President and shall provide them with a preliminary proposal, which shall address the reasons for the anticipated retrenchment, the number of bargaining unit members anticipated to be retrenched and the areas proposed for retrenchment.

### Accurate information, statistics and/or financial data, including class enrollment data, retention and graduation data, related to such preliminary proposal shall be made available by the President for inspection and/or copying upon request; provided, however, that this Section shall not require the President to compile such information, statistics and/or financial data in the form requested unless already compiled in that form.

### The President shall provide a reasonable period of time and, whenever possible, a minimum of twenty (20) days, but not more than thirty (30) days, from the issuance of the preliminary proposal, to receive advice and written recommendations from both the President of the Association and the Chapter President.

### The President of the University, the President of the Association and the Chapter President shall, no later than forty-five (45) days from the receipt of the preliminary proposal shall meet and confer with respect to the preliminary proposal and their recommendations.

### If, after having considered such recommendations, the President determines that retrenchment remains necessary, they shall recommend a final retrenchment plan, which shall state the department(s) and/or program area(s) in which retrenchment shall occur and the extent of retrenchment in each such department(s) and/or program area(s)unit. The plan shall identify, in accordance with the provisions of this Article, those members of the bargaining unit who are to be retrenched. A copy of the recommendations of the Association and Chapter shall accompany the recommendations of the President. In developing the final retrenchment plan, the President shall have given consideration to the following:

#### the mission of the affected department(s) and/or program area(s)and how circumstances have altered that mission, with specific reference to the university’s mission and strategic plan in effect at the time a retrenchment plan is developed;

#### the dependence of other department(s) and/or program area(s)of the University on the department(s) and/or program area(s)affected, the effect on the offerings of the department(s) and/or program area(s) affected and/or arrangements to replace offerings lost;

#### arrangements to allow students in the affected department(s) and/or program area(s) to satisfy academic needs and requirements, such plan or plans shall conform to the accreditation standards relevant to the affected department(s) or program(s);

#### possible consequences to the stature of the University;

#### the possibilities of re-employment elsewhere in the University ; and

#### the advisability of program curtailment as opposed to program abolition.

A copy of the above materials shall be transmitted to the Commissioner.

### The Board of Trustees shall meet no later than fifteen (15) days after receipt of the President’s final retrenchment plan, to which shall be appended the advice and written recommendations of the Association and Chapter, to consider the plan so recommended. In accordance with the Board of Trustees’ procedures, upon the prior written request of the President of the Association and/or the Chapter President, the President of the Association and/or the Chapter President shall be granted an opportunity to address the Board. Thereafter, the Board may adopt a plan of retrenchment as it shall determine. Members of the bargaining unit may thereafter be retrenched pursuant to the plan so adopted in accordance with the provisions of this Article. A copy of such plan shall be given to the Commissioner, the President of the Association and the Chapter President.

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

g. Nothing in this Section E(2) procedures for retrenchment shall be construed to in any way require the application of Article VII.

# General Provisions

No member of the bargaining unit shall be retrenched, pursuant to the provisions of this Article, by reason of financial exigency or declining student enrollment, until after the provisions of Section E of this Article, shall have first been complied with; provided, however, that whenever the President of the Association and/or the Chapter President shall have failed or refused to meet with the President of the University as provided in Section E(1)(d) and Section E(2)(d) above, then the President shall prepare a final retrenchment plan and shall not be required to accompany with said plan the advice and written recommendations of the Association and Chapter.

# Rights and Benefits of Retrenched Bargaining Unit Members

## Notice

### With regard to retrenchment pursuant to Section E above, bargaining unit members to be retrenched shall be informed as soon as possible of their selection. When circumstances permit, the Board of Trustees, through the president, shall provide a minimum of twenty (20) weeks’ notice in a calendar year to tenured bargaining unit members with ten (10) or more years of service; fourteen (14) weeks’ notice in a calendar year to tenured bargaining unit members with fewer than ten (10) years of service; and eight (8) weeks’ notice in a calendar year to all other full-time and salaried part-time bargaining unit members. Such notice shall be provided in writing. In all instances, at the discretion of the Board, or the President on its behalf, and as a substitute for notice, a lump sum payment that is the monetary equivalent of 60 percent of the bargaining unit member’s weekly salary for each week of notice may be paid out.

### With regard to faculty, the Board recognizes the desirability, whenever possible, of establishing retrenchment dates that coincide with the end of an academic semester so as to minimize the disruption of teaching.

### Notwithstanding paragraph (a) above, notice shall not extend beyond the termination of a bargaining unit member’s term of appointment or reappointment.

### Upon request of any unit member who has been so retrenched, the President of the University shall provide them with a standard letter of recommendation which shall also state that the unit member was retrenched due solely to financial exigency or declining student enrollment, and for no other reason.

### Once notice of retrenchment has been given, the Board, or the President acting on its behalf, may abbreviate such notice period by making a lump sum payment equivalent to sixty percent (60%) of the bargaining unit member’s weekly salary for each week such notice period is shortened.

## Unemployment Compensation

The right of every member of the bargaining unit to receive such unemployment compensation benefits as he/she may be entitled to under Chapter 151A of the General Laws, as amended, is hereby recognized. Every appropriate Board of Trustees shall provide any member of the bargaining unit retrenched pursuant to the provisions of this Article with all such information and assistance as he/she may require for the purpose of making any claim pursuant to Chapter 151A.

## Recall

### Faculty Member

Whenever during the term of this Agreement it shall be determined by the President to be necessary to fill, any full-time faculty position in a department or program area in which retrenchment shall, pursuant to the provisions of this Article, have earlier taken place, the President shall recall the most senior faculty member from among those faculty members who shall have been so retrenched from such department or program area; provided, however, that such order of recall shall govern only insofar as pursuant to its initial application each faculty member to be recalled is, by training and/or experience, as determined in the sole discretion of the Board, or the President acting on behalf of the Board, qualified to teach the course or courses for the teaching of which such position is to be filled.

* + 1. Librarian

Whenever at any University during the term of this Agreement it shall be determined by the President to be necessary to fill any full-time librarian position at any library or libraries from which retrenchment shall, pursuant to the provisions of this Article, have earlier taken place, the President shall recall the most senior librarian who shall have been so retrenched from such library or libraries; provided, however, that such order of recall shall govern only insofar as pursuant to its initial application each librarian to be recalled is, by training and/or experience, as determined in the sole discretion of the Board, or the President acting on behalf of the Board, qualified to discharge the responsibilities for which such position is to be filled.

* + 1. General Provisions

Any such member of the bargaining unit so recalled to a full-time position shall retain all those rights of tenure that he/she shall have held at the date of his/her retrenchment, and shall retain all accumulated sick leave and any eligibility for sabbatical leave that, pursuant to the terms of this Agreement, he/she was entitled to at the date of his/her retrenchment.

Any such member of the bargaining unit so recalled to a full-time position shall, for the purpose of determining their status of seniority, be deemed to have been employed at the University during any period in which they shall have been retrenched pursuant to the provisions of this Article, except with regard to consideration for promotion, tenure, post-tenure review, and eligibility for sabbatical.

## Re-employment List

The name of any member of the bargaining unit retrenched pursuant to the provisions of this Article, other than a unit member who shall have been reassigned in accordance with the provisions of the following subsection 5, shall be entered on a re-employment list and shall be maintained thereon for five (5) years or for a period equal to his/her length of service at the University where they were employed on the date of their retrenchment, whichever is less. Every person whose name appears on such re-employment list shall, prior to posting, be notified of all full-time positions that are included in the bargaining unit and that to be filled at the University and shall be interviewed for any such vacancy or position for which they shall have applied within the established time limit for the receipt of applications, which interview shall take place prior to the filling of such position.

In the event that any such person shall, during the period in which their name remains entered on the re-employment list, have been rehired by any State University, their name shall be removed from such list, and such person shall retain all accumulated sick leave and all prior service for tenure and sabbatical leave that, pursuant to the terms of this Agreement, they shall have been entitled to at the date of their retrenchment. Such person shall also be entitled to repurchase past service credits for retirement in accordance with applicable statues of the Commonwealth and regulations made thereunder.

## Reassignment

The curriculum vitae currently on file with the University for each retrenched unit member shall be shared with each State University for consideration in future hiring. It shall be incumbent upon the retrenched unit member to supply the University with any updated curriculum vitae as they see fit.

## Tuition and Fee Benefits

### Retrenched unit members shall maintain, for a period of up to two (2) years following the date of their retrenchment, those tuition and fee benefits provided in this Agreement.

### The spouse and children, including any adopted or stepchild or children, of any retrenched unit member shall maintain, for a period of up to two (2) years following the date of their retrenchment, those tuition and fee benefits provided in this Agreement.

## Supplemental Retraining

At the sole discretion of the President, and subject to the agreement of the retrenched tenured unit member and the President, a program of retraining may be undertaken for a period of up to two (2) years, pursuant to the provisions of Article X-A, Section G(2); provided, however, that the University shall not thereby be obliged to continue to employ such unit member following the completion of the approved program of retraining.

This provision is applicable only to unit members who are retrenched for reasons of declining student enrollment.

# Grievances

Notwithstanding the provisions of Article XI of this Agreement, in the event that a grievant alleges a violation of an express provision of this Article X, the grievant may, at his/her option, initiate such grievance at Step 2 of Section C(9) of Article XI; provided, however, that, subject as aforesaid, every other provision of Article XI shall remain of full force and effect and shall apply to any such grievance so filed at Step 2.

# Order of Retrenchment

For any course or courses that a part-time faculty member is assigned to teach, a retrenched, full-time member of the bargaining unit or salaried part-time member of the bargaining unit who has taught the same or substantively similar course during their period of employment at the university shall be offered, by order of seniority, the option to teach such course or courses in their respective department or program area. The Department Chair, in accordance with this provision and their responsibilities, shall recommend such retrenched unit member for assignment to teach such course or courses in their respective department. A retrenched unit member assigned to teach a course or courses in a part-time capacity shall be subject to any and all such policies, practices and procedures of the Board of Trustees and the University as apply to persons who hold part-time appointments; and provided further that the term of service of such part-time appointee shall be governed by such policies, practices and procedures and shall not be governed by any of the provisions of this Agreement other than the provisions of this subsection; and provided further that, notwithstanding the foregoing, such part-time appointee shall retain the right to use the procedures of Article XI of this Agreement, to the extent they may apply, to determine whether any provision of this subsection 3, but of no other provisions of this Agreement, may have been violated in its application to them.

ARTICLE X-A - ACADEMIC PROGRAM DEVELOPMENT

# Introduction

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

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

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

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

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

# Application

Except as is provided in Articles X and X-B, the provisions of this Article shall exclusively govern the retrenchment of members of the bargaining unit at each University, any other provision of this Agreement to the contrary notwithstanding.

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

# Definitions

## Academic Program Development

Academic Program Development shall be deemed to have occurred whenever a university establishes, alters or eliminates an academic program or general education requirement when such a decision is made in accordance with Article VII.

2. Retrenchment

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

## 3. Seniority

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

# Retrenchment

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

# Criteria for Retrenchment

Retrenchment shall take place only pursuant to the following provisions:

## Faculty Members

The seniority of each faculty member within any department or program area at a University shall determine the order in which they shall be retrenched from that department or program area, so that the most senior such member shall be last retrenched and the least senior such member shall be first retrenched; provided, however, that such order of retrenchment shall govern only insofar as, pursuant to its initial application, those faculty members to be retained are, by training and/or experience, as determined by the President through the exercise of academic judgment as informed by the chief academic officer and respective dean(s), qualified to teach the remaining courses which are to be continued to be offered by such department or within such program area to fulfill its mission and purpose; provided further that such order of retrenchment shall govern only insofar as its application is not in violation of the laws of the Commonwealth of Massachusetts or the United States; provided further that no tenured member of a department or program area shall be retrenched sooner than a non-tenured member of such department or program area solely by reason of the fact that such tenured member has less seniority than such non-tenured member; and provided further that the order of retrenchment may be disregarded if the continued employment of a member is essential to;

* + 1. The programmatic mission and purpose of the department, program area, or the University;
    2. The programmatic integrity or operation of the department or program area; or
    3. The ability of the University to maintain its commitment to diversity in the curriculum and scholarship.

## Librarians

The seniority of each librarian at the University at which he/she is employed shall determine the order in which he/she shall be retrenched from that University, so that the most senior such librarian shall be last retrenched and the least senior such librarian shall be first retrenched; provided, however, that such order of retrenchment shall govern only insofar as, pursuant to its initial application, those librarians to be retained are, by training and/or experience, determined by the Board of Trustees to be essential to the operation of the library or libraries at such University; provided further that such order of retrenchment shall govern only insofar as its application is not in violation of the laws of the Commonwealth of Massachusetts or the United States; provided further that no tenured librarian shall be retrenched sooner than a non-tenured librarian solely by reason of the fact that such tenured librarian has less seniority than such non-tenured librarian; and provided further that the order of retrenchment may be disregarded if the continued employment of a member is essential to;

a. The programmatic mission and purpose of the department, program area, or the University;

b. The programmatic integrity or operation of the department or program area; or

c. The ability of the University to maintain its commitment to diversity in the curriculum and scholarship.

## Application

Whenever it shall be necessary, pursuant to the application of this Section E, to determine whether any faculty member who would otherwise be retrenched should be retained in any department or program area or whether any librarian who would otherwise be retrenched should be retained in any library or libraries at any University, such determination shall be made by the President and shall not be arbitrary or capricious.

# Procedures for Retrenchment: Academic Program Development

## If the President determines that retrenchment for reasons of academic program development may be necessary, they shall so notify the Commissioner, the President of the Association and the Chapter President and shall provide them with a preliminary proposal, which shall address the reasons for the anticipated retrenchment, the number of bargaining unit members who are anticipated to be retrenched and the units proposed for retrenchment.

## Accurate information, statistics and/or financial data related to such preliminary proposal shall be made available by the President for inspection and/or copying upon request; provided, however, that this subsection shall not require the President to compile such information, statistics and/or financial data in the form requested unless already compiled in that form.

## The President shall provide a reasonable period of time and, whenever possible, a minimum of thirty (30) days but no more than forty-five (45) days from the issuance of the preliminary proposal, to receive advice and written recommendations from both the President of the Association and the Chapter President.

## The President of the University, the President of the Association and the Chapter President shall meet no later than sixty (60) days from the issuance of the preliminary proposal, and confer with respect to the preliminary proposal and their recommendations.

## If, after having considered such recommendations, the President determines that retrenchment remains necessary, they shall recommend a final retrenchment plan which shall state the unit(s) in which retrenchment shall occur, and the extent of retrenchment in each such unit. The plan shall identify, in accordance with the provisions of this Article, those bargaining unit members who are to be retrenched. A copy of the recommendations, if any, of the President of the Association and the Chapter President shall accompany the recommendations of the President. In developing the final retrenchment plan, the President shall consider the following:

### the mission of the affected department(s) and program area(s) and how circumstances have altered that mission;

### the dependence of other department(s) and program area(s) of the University on the department(s) and program area(s) affected, the effect on the offerings of the department(s) and program area(s) affected and/or arrangements to replace offerings lost;

### arrangements to allow students in the affected department(s) or program area(s) to satisfy their academic needs and requirements, provided such plan or plans conform to the accreditation standards relevant to the affected department(s) or program(s);

### possible consequences to the stature of the University;

### the possibilities of re-employment elsewhere in the University; and

### the advisability of program curtailment as opposed to program abolition.

A copy of the above material shall be transmitted to the Commissioner.

## The Board of Trustees shall meet no later than fifteen (15) days after receipt of the President’s final retrenchment plan, to which shall be appended the advice and written recommendations of the Association and Chapter, to consider the plan so recommended. In accordance with the Board of Trustees’ procedures, upon the prior written request of the Association President and/or the Chapter President, the Association President and/or the Chapter President shall be granted an opportunity to address the Board. Thereafter, the Board may adopt a plan of retrenchment as it shall determine. Bargaining unit members may thereafter be retrenched pursuant to the plan so adopted in accordance with the provisions of this Article. A copy of such plan shall be given to the Commissioner, the Association President and the Chapter President.

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

# Offer to Reassign or to Provide a Program of Professional Development

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

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

## Offer of Reassignment

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

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

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

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

## Offer of a Program of Professional Development

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

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

* + 1. to continue to employ such unit member during any period of such program that falls within an academic or other work year, as the case may be, with such reduction of the workload of such unit member as the Board shall determine, but subject to all the other terms and conditions of this Agreement, including the provisions of this Article and of Article IX, and to all the terms and conditions of any successor thereto;
    2. to continue to employ such unit member from and after the successful completion of such program, subject to all the terms and conditions of this Agreement, including Articles IX and X thereof, and to all the terms and conditions of any successor thereto.

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

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

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

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

## Dual Offers

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

## Criteria Governing the Order in Which Offers May Be Made

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

### Faculty Members

The seniority of each faculty member within any department or program area at a University shall determine the order in which he/she shall receive an offer made pursuant to the provisions of this Article, so that the least senior member shall first receive such an offer and the most senior such member shall last receive such an offer; provided, however, that such order shall govern only insofar as, pursuant to its initial application, those faculty members that will remain in such department or program area if an offer is accepted are, by training and/or experience , as determined by the President through the exercise of academic judgment as informed by the chief academic officer and respective dean(s), qualified to teach the remaining courses offered by such department or within such program area; and provided further that such order shall govern only insofar as its application is not in violation of the laws of the Commonwealth or the United States; and provided further that no tenured member of a department or program area shall receive any offer sooner than a non-tenured member of such department or program area solely by reason of the fact that such tenured member has less seniority than such non-tenured member and provided further that the order for receiving an offer may be disregarded if the member is essential to:

a. The programmatic mission and purpose of the department, program area or the University;

b. The programmatic integrity or operation of the department or program area; or

c. The ability of the University to maintain its commitment to diversity in the curriculum and scholarship. .

* + 1. Librarians

The seniority of each librarian at the University at which he/she is employed shall determine the order in which he/she shall receive an offer made pursuant to the provisions of this Article, so that the least senior such librarian shall first receive such an offer and the most senior such librarian shall last receive such an offer; provided, however, that such order shall govern only insofar as, pursuant to its initial application, those librarians that will remain at such University if any offer is accepted are, by training and/or experience, qualified to render the remaining services offered within the library or libraries at such University; and provided further that such order shall govern only insofar as its application is not in violation of the laws of the Commonwealth or the United States; and provided further that no tenured librarian shall receive any offer sooner than a non-tenured librarian solely by reason of the fact that such tenured librarian has less seniority than such non-tenured librarian.

## Notice of Offer

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

## Limitations

The provisions of this Section G shall be of no force or effect at any University during any period in respect of which the Board of Trustees shall have declared a fiscal exigency or during any period in which any one (1) or more members of the bargaining unit who have been retrenched by reason of a fiscal exigency remain subject to recall therefrom pursuant to the provisions of Section G(3) of Article X.

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

# Rights and Benefits of Retrenched Bargaining Unit Members

## Unemployment Compensation

The right of every member of the bargaining unit to receive such unemployment compensation benefits as he/she may be entitled to under Chapter 151A of the General Laws, as amended, is hereby recognized. Every appropriate Board of Trustees shall provide any member of the bargaining unit retrenched pursuant to the provisions of this Article with all such information and assistance as he/she may require for the purpose of making any claim pursuant to Chapter 151A.

## Recall

### Faculty Member

Whenever during the term of this Agreement it shall be determined by the President to be necessary to fill, in whole or in part, any full-time faculty position in a department in which retrenchment shall, pursuant to the provisions of this Article, have earlier taken place, the President shall recall the most senior faculty member from among those faculty members who shall have been so retrenched from such department; provided, however, that such order of recall shall govern only insofar as pursuant to its initial application each faculty member to be recalled is, by training and/or experience, as determined in the sole discretion of the Board or the President in its behalf, qualified to teach the course or courses for the teaching of which such position is to be filled.

* + 1. Librarian

Whenever during the term of this Agreement any University President shall have determined it necessary to fill, in whole or in part, any librarian position at any library or libraries from which retrenchment shall, pursuant to the provisions of this Article, have earlier taken place, then the President shall recall the most senior librarian who shall have been so retrenched from such library or libraries; provided, however, that such order of recall shall govern only insofar as pursuant to its initial application each librarian to be recalled is, by training and/or experience, as determined in the sole discretion of the Board or the President acting on its behalf, qualified to discharge the responsibilities for which such position is to be filled.

* + 1. General Provisions

Any such member of the bargaining unit so recalled to a full-time position shall retain all those rights of tenure that he/she shall have held at the date of his/her retrenchment, and shall retain all accumulated sick leave and any eligibility for sabbatical leave that, pursuant to the terms of this Agreement, he/she was entitled to at the date of his/her retrenchment.

Any such member of the bargaining unit so recalled to a full-time position shall, for the purpose of determining his/her status of seniority, be deemed to have been employed at the University during any period in which he/she shall have been retrenched pursuant to the provisions of this Article.

## Re-employment List

The name of any member of the bargaining unit retrenched pursuant to the provisions of this Article shall be entered on a re-employment list and shall be maintained thereon for five (5) years or for a period equal to his/her length of service at the University where he/she was employed on the date of his/her retrenchment, whichever is less. Every person whose name appears on such re-employment list shall, prior to posting, be notified of all bargaining unit positions to be filled at any State University, and shall be interviewed for any such position for which he/she shall have applied within the established time limit for the receipt of applications, which interview shall take place prior to the filling of such position.

In the event that any such person shall, during the period in which his/her name remains entered on the re-employment list, have been rehired by any State University, his/her name shall be removed from such list, and such person shall retain all accumulated sick leave and all prior service for tenure and sabbatical leave that, pursuant to the terms of this Agreement, he/she shall have been entitled to at the date of his/her retrenchment. Such person shall also be entitled to repurchase past service credits for retirement in accordance with applicable statutes of the Commonwealth and regulations made thereunder.

# Grievances

Notwithstanding the provisions of Article XI of this Agreement, in the event that a grievant alleges a violation of an express provision of this Article X-A, the grievant may, at his/her option, initiate such grievance at Step 2 of Section C(9) of Article XI; provided, however, that, subject as aforesaid, every other provision of Article XI shall remain of full force and effect and shall apply to any such grievance so filed at Step 2.

# Order of Retrenchment

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For any course or courses that a part-time faculty member is assigned to teach, a retrenched, full-time member of the bargaining unit or salaried part-time member of the bargaining unit who has taught the same or substantially similar course during their period of employment at the University shall be offered, by order of seniority, the option to teach such course or courses in their respective department or program area.

ARTICLE X-B - ACADEMIC REORGANIZATION

# Programmatic Reorganization

Prior to implementing in whole or in part any plan of a kind described in Article X-A, Section A, but only to the extent that such plan or part of such plan will, if implemented, change any academic program, curriculum or structure at any one (1) or more of the several State Universities, the Board of Higher Education shall transmit such plan or part thereof, to the extent that the same will, if implemented, change any academic program, curriculum or structure at any University, through the President of such University to every appropriate decision-making body constituted pursuant to Article VII. A copy of the same shall be transmitted to the Chapter President and to the Association President. Upon its receipt of such plan, the All-University Committee shall refer the same to any such standing committee(s) within whose jurisdiction such plan or part thereof falls, but only to the extent, in the case of each such standing committee, that such plan or part thereof so falls.

At the time of transmittal, the Board of Higher Education, acting through the President, shall give to any appropriate decision-making body described in the preceding paragraph written notice of the date by which any final recommendation(s) are required to be submitted to the President in respect of such plan or part thereof,

* 1. provided such date shall be no later than 90 days from the transmittal of the plan to the decision-making body; and
  2. provided, however, that different dates may be so established with respect to different portions of such plan(s); and
  3. provided further that if after its receipt of any recommendation(s) from any standing or like committee any of the decision-making bodies shall have determined that an extension of time is reasonably required for its consideration of any such recommendation, it shall so notify the President in writing and it shall thereupon be granted, during an academic year, an additional thirty (30) days for such purpose from and after the date first set for the making of any final recommendation.

The date(s) established pursuant to the foregoing provision for the making of any recommendation in respect of any such plan or part thereof shall govern the making of such recommendation made by any of the above-described decision-making bodies pursuant to the provisions of Article VII, anything in such provisions to the contrary notwithstanding.

In the absence of any final recommendation(s) by the decision-making body to which the President’s plan has been transmitted pursuant to this section, the President shall inform the Board of Trustees of the same. The Trustees shall then be empowered to authorize the President to implement said plan.

Thereafter, any unit member retrenched as a result of such programmatic reorganization will be accorded the retrenchment rights provided for in Article X-A, Sections G and H, and the provisions of Sections C, D, E, I, J and K of Article X-A shall be of application regarding the retrenchment of any unit member under the terms of this Section A.

# Merger or Abolition of a University

In the event that a State University is abolished or merged pursuant to any legislative enactment, then, upon the written demand of the Association, the Board of Higher Education, acting through the Council of Presidents, shall convene impact negotiations within five (5) days of the receipt of such written demand.

# Application

The provisions of this Article X-B shall be of no application to part-time unit members other than salaried part-time faculty members.