

DRAFT

ARTICLE VI

GRIEVANCE PROCEDURE

A grievance is a complaint by a member or members of the Unit (or by the MSP) brought during the term of this Agreement that an express provision of this Agreement, has been violated, misinterpreted, or improperly applied in its application to the grievant, the grievants, and/or the MSP.

A. Limitations on Grievances

1. Academic Judgments

For the purposes of this Article, every decision required pursuant to Article IX relative to Evaluation, Articles VII and VIII relative to Reappointment (where grievable only after September 15 in the fourth year of service and nonrenewal of Contract)¹, Promotion and Tenure, to Article XIII relative to Retrenchment, as the case may require to renew or fail to renew an academic appointment, to terminate any such appointment except as provided in Article XIV for Dismissal, to grant or refuse to grant tenure, or to grant or refuse to grant a promotion, and no other decision, shall be deemed to have been pursuant to an exercise of academic judgment; and every grievance that, explicitly or by implication, questions the merits of any such decision, but of no other decision, shall be deemed to be a grievance that questions an exercise of academic judgment. Academic judgment may not be grieved except under the criteria provided herein in the section on Arbitration and Academic Judgment.

2. Other limitations

It is further understood that certain other limitations on grievance rights are specified in various articles herein.

B. Intent

The Board and the MSP agree that they will use their best efforts to encourage the prompt settlement of grievances which may arise between a member or members of the Unit or the MSP and the Board by the use of the processes set forth below.

C. Information

Upon request, the parties shall make available to each other such statistics and information which are in their possession and which are pertinent to the disposition of the grievance.

D. Grievance Procedure

1. Informal Procedure

A Unit member is encouraged to meet and confer with the department chairperson/library division head when a problem relating to employment arises. The flexibility of informal discussion often results in solutions to employment problems more easily and quickly than do formal procedures.

¹ cf. Termination, Dismissal, and resignation Article in this Agreement.

DRAFT

The grievant is to meet and confer with the department chairperson/library division head within ten (10) work days of notice by the grievant to the chairperson/library division head of a complaint that a grievance exists. The purpose of such a meeting is to attempt to find an informal resolution of the complaint. In some cases it may be helpful if the grievant and the chairperson/library division head discuss the problem with the College Dean or Library Director. If the academic chairperson/library division head and the grievant have not resolved the complaint within ten (10) work days of the receipt of the grievance then the grievant may proceed to the formal procedures hereinafter described. The grievant need not elect to start the procedure at the informal level.

2. Formal Procedures

a. Level One: Dean of the College or the Director of Libraries

When a grievance arises, the grievant must set forth in writing to the College Dean or Director of Libraries as succinctly as possible the complaint, including the relevant facts, the contractual provision(s) violated, how the provisions were allegedly violated, and the specific remedy requested, and shall state same on the grievance form as promulgated herein in Appendix A-12 (or any jointly promulgated successor) or a reasonable facsimile thereof and shall supply appropriate support documents. No complaint shall be filed more than twenty-one (21) work days after the event upon which the grievance is based or from the date when the grievant(s) had or should have had knowledge of the event. The Dean of the College or the Director of Libraries shall investigate the complaint and shall within twenty-one (21) work days from the filing of the grievance render a written decision, providing reasons justifying such decision to the grievant, with informational copy to the MSP President (or other MSP designated grievance officer).

b. Level Two: The Chancellor of the University

If the grievant is not satisfied with the disposition of the grievance at Level One, he or she may move to file such grievance with the Chancellor within twenty-one (21) work days after the date of written response of the College Dean or the Director of Libraries is received or is due. [For informational purposes, copies of the form filing the Level Two grievance should be sent by the grievant to the MSP president or other MSP designated grievance officer and the MSP Official Designee.] The Chancellor or his designee shall investigate the matter and within forty (40) work days from the filing of the grievance at Level Two, he shall render a written decision providing reasons to justify such decision to the grievant, with copies to the officers indicated above.

c. Level Three: Mediation

If the MSP/MTA is not satisfied with the disposition of the grievance at Level Two, the MSP/MTA may appeal the Level Two decision in writing to the Chancellor or his/her designee for mediation with a copy to the President of the University or the President's designee. The appeal shall be filed within twenty one (21) work days of receipt of the decision of the Chancellor, or his/her designee, or the end of the time specified in Level Two for said decision, whichever is sooner.

DRAFT

Failure to so file with the Chancellor or his/her designee within the time specified shall be deemed to be acceptance of the decision rendered at Level Two or a decision by the MSP/MTA to proceed directly to arbitration.

Mediation will only occur in those cases where both parties mutually agree to engage in mediation.

Within thirty (30) work days of receipt of the appeal, the parties shall meet for the purpose of mediation. The parties agree that the following arbitrators shall serve as mediators on a rotating basis:

- a. Roberta Golick
- b. Gary Altman
- c. Diane Cochran
- d. Mark Irvings

If no settlement is reached in the mediation conference, the grievance may be appealed to arbitration pursuant to E.1.c. below.

Mediation is an informal, off-the-record process in which the parties are free to disclose to the mediator the essence of the dispute without injuring their case if mediation is unsuccessful and the case goes to arbitration. Confidential information disclosed to a mediator in the course of mediation shall not be divulged by the mediator. All records, reports, or other documents received by the mediator while serving in that capacity shall be confidential. The mediator shall not be compelled to divulge such records or to testify in regard to the mediation in any adversary proceeding or judicial forum. The parties shall maintain the confidentiality of the mediation and shall not rely or introduce as evidence in any arbitral, judicial, or other proceeding:

1. Views expressed or suggestions made by another party with respect to a possible settlement of the dispute;
2. Admissions made by another party in the course of the mediation proceedings;
3. Proposals made or views expressed by the mediator; or
4. The fact that another party had or had not indicated willingness to accept a proposal for settlement made by the mediator.

The mediator does not have the authority to impose a settlement on the parties, but will attempt to help them reach a satisfactory resolution of their dispute.

Mediation shall conclude in one of the following ways:

1. By the execution of a settlement agreement by the parties, or
2. By a written declaration of the mediator, a party, or parties to the effect the mediation proceedings are concluded.

E. Binding Arbitration

1. General Provisions

A grievance dispute which was not resolved at Level Two or Level Three under the above grievance procedures may be submitted, with the consent of the MSP/MTA, in response to the initiative of either an aggrieved unit member (s) or the MSP/MTA, to an arbitrator for decision if such grievance involves the application or interpretation of this Agreement.

DRAFT

a. MSP Rights

The MSP/MTA acting through its Official Designee or his/her specific designee shall have the sole right to authorize filing for arbitration under this Agreement.

b. Exclusivity of MSP/MTA representation

No Unit member may be represented on any level of the grievance procedure by an agent and/or representative of any employees' organization other than the MSP/MTA.

c. Filing Notice

The arbitration proceeding may be initiated by filing an authorized demand for arbitration with the American Arbitration Association. The notice shall be filed within ninety (90) work days during the faculty academic year after receipt of the decision of the previous level under the grievance procedure, or where no decision has been issued, after the date when the decision was due. (Notice of intent to file sent to the Chancellor preserves the right to file for another ninety (90) work days or until the University demands filing or withdrawal, whichever comes last.) The demand for arbitration filing or withdrawal shall include a brief statement setting forth precisely the issue to be decided by the arbitrator and the special provision of the agreement involved. (In this Article, "work days" shall in all instances refer to days within the academic year.)

d. Selection of Arbitrator

The American Arbitration Association shall be requested to appoint a panel of arbitrators, from which the parties shall select an arbitrator to hear the particular grievance. If the parties cannot agree as to which member of the panel shall be selected, the American Arbitration Association shall designate the arbitrator.

e. Arbitration Rules and Procedures

The regular voluntary labor arbitration rules of the American Arbitration Association shall be utilized, provided that expedited procedures may be requested by joint decision and agreement of the MSP Official Designee and the Provost for Academic Affairs.

DRAFT

2. Determinations of the Arbitrator

Within thirty (30) days after the conclusions of a hearing, or within thirty (30) days after the date on which briefs shall have been submitted to the arbitrator in lieu of such hearings, the arbitrator shall determine:

- a. whether the MSP/MTA and, where a unit member or unit members sought resolutions of the grievance through the formal grievance steps of this Article, such unit member or members have complied with the procedure for initiating and pursuing a grievance as set forth in this Article;
- b. whether the complaint alleges a breach of a provision of the contract;
- c. whether the arbitrator has jurisdiction to arbitrate; and
- d. whether a provision(s) of this Agreement has been violated in its application to the grievant. The arbitrator shall render his/her decision in writing, shall state the reasons therefore, and shall promptly provide copies of his/her decision to the parties to the arbitration proceeding.

3. Decision of the Arbitrator

The decision of the arbitrator shall be final and binding on all parties to the arbitration proceeding and shall be enforceable in any court of competent jurisdiction.

4. Award of the Arbitrator in General

If the arbitrator determines that no express provision of this Agreement has been breached in its application to the grievant by each unit member as claimed, he/she shall dismiss the grievance. If the arbitrator determines that this Agreement has been so breached, he/she may, subject to the provisions of this Article, provide an appropriate remedy for the breach; provided, however, that in making any monetary award, the arbitrator shall only provide compensation for actual damages directly attributable to such breach, and shall in no event make any award by way of penal damages; and provided further that, save as this Agreement hereinafter provides, the arbitrator shall make no award that grants any appointment, reappointment, promotion, retention, termination, renewal of contract, or tenure to any member of the Unit except as is provided for in the Agreement.

Anything herein contained to the contrary notwithstanding, in making his/her decision the arbitrator shall apply the express provisions of this Agreement and shall not alter, amend, extend, or revise any term or condition hereof.

5. Arbitration and Academic Judgment

- a. Subject to the provisions of this Agreement, the arbitrator shall have no authority or jurisdiction to arbitrate any such portion of any grievance as it relates to any determination or decision made pursuant to an exercise of academic judgment except in the case of a unit member who, in their sixth year (up or out year), has received positive recommendations from all prior levels of review for tenure or tenure with promotion, but is not recommended by the Chancellor. In this case, the arbitrator shall have the authority to determine whether or not the University's actions were arbitrary or capricious. Whenever

DRAFT

the arbitrator shall have determined that such allegation is true, he/she may reinstate the unit member for one full academic year with back pay and the right to be reviewed for tenure or tenure with promotion during that academic year. It is understood that an arbitrator in so reinstating a unit member shall not be empowered to bestow tenure or promotion in rank and that this provision, based on arbitrary and capricious standards, shall be available to a unit member only once.

b. Powers of Remand

Subject as is hereinafter provided, whenever any grievant shall have alleged, expressly or by implication of the factual allegations, that any determination or decision of the University involving the exercise of academic judgment was, in its application to said grievant, arbitrary or capricious, the arbitrator shall have the power to determine the truth or falsity of such allegation. Whenever the arbitrator shall have determined that such allegation is true, he/she shall order that such arbitrary or capricious determination or decision shall be reconsidered by the board and such determination or decision shall thereafter be newly made pursuant to the procedures prescribed in this Article and subject to the time limits prescribed. Thereafter, such decision so newly made shall be subject to the provision of this Article, including this provision; provided, however, that any grievance arising from such decision so newly made shall be initiated by filing notice thereof with the Chancellor of the University and then proceeding pursuant to the provisions of the Binding Arbitration section of these procedures, and the provisions of Levels I and II of these procedures shall not apply to such grievance; and provided further that, anything in the provisions of the Binding Arbitration section to the contrary notwithstanding, such notice shall be filed with the Chancellor of the University and the American Arbitration Association within fourteen (14) working days of the date on which notice shall have been given pursuant to the provisions of this paragraph.

Whenever in his/her complaint any grievant shall have alleged, expressly or by implication of the factual allegations, that any determination or decision of the University made pursuant to an exercise of academic judgment was, in its application to him/her, both arbitrary or capricious and made in bad faith, the arbitrator shall have the power to determine the truth or falsity of both such allegations. Whenever the arbitrator shall have found as a matter of fact, on the basis of clear and credible evidence, that both such allegations are true, he/she shall have the power to make any such final and binding award as he/she may deem necessary to make the grievant whole; provided, however, that whenever the arbitrator shall, in respect of such allegations, have found that such determination or decision of the Board was arbitrary or capricious but was not made in bad faith, he/she shall remand such determination or decision as is herein before provided, except in the case cited in section 5, a., of this article.

6. Costs of Arbitration

In all arbitration proceedings, the arbitrator's fees and expenses shall be paid fifty percent (50%) by or on behalf of the MSP/MTA and fifty percent (50%) by the Board. All payments to the arbitrator shall be made within thirty (30) days of the rendering of his/her statement of fees and expenses. In all other respects the parties shall bear their own costs for arbitration.

DRAFT

F. Representation

Any Unit member may initiate and pursue a grievance through the informal and formal steps of the grievance procedure (except arbitration) without intervention of the exclusive representative of the employee organization representing him/her provided that the exclusive representative shall be afforded the opportunity to be present at any conferences held and that any adjustment made shall not be inconsistent with the terms of this Agreement.

Any member of the Unit may request through the MSP President (or other designated grievance officer) that the MSP/MTA represent him/her at any step of the grievance procedure. If such request is granted, the MSP/MTA shall notify in writing the Dean, or the Chancellor of the University, as the case may be, of the name and address of such representative at the time he/she is so authorized to represent the grievant.

The provision of representation, assistance or advice to a grievant does not necessarily constitute union endorsement of any or all of the grievant's claim. Notwithstanding the above, no grievant or representative of a grievant may advance a claim through the grievance-arbitration process that is contrary to contractual provisions and positions taken and/or negotiated by and on behalf of the MSP/MTA, or that is contrary to the MSP's related established administrative policies.

G. Grievance Based on Discrimination

A grievance relating to discrimination based on race, color, age, religion, gender, sexual orientation, handicap, or national origin shall be processed at the option of the grievant in accordance with the procedures established by the Chancellor which are under the direction of the Equal Employment Opportunity Officer. But the grievant may not elect to grieve under both procedures simultaneously. Any grievance alleging discrimination shall be reported, upon receipt of same, by the University to the Equal Employment Opportunity Officer at the earliest level. Remedies from the Equal Employment Opportunity process may not conflict with, exceed, or alter the terms of this Agreement.

H. Waiver, Admission, Termination, and Grounds of Appeal

1. Waiver--Failure of a grievant to comply with any of the provisions of this Article shall be deemed to be a waiver of the right to seek resolution of the grievance under the terms of this Agreement. In determining whether there has been any such failure to comply with any of the provisions of this Article all deadlines shall be adhered to, provided that, grievances involving truly significant interests shall not be deemed waived because of trivial deadline violations; and provided further, that the time limits prescribed herein may be extended in any specific instance by mutual written agreement of the parties.
2. Admission--The resolution of a grievance by the Dean or the Chancellor of the University, or any of their designees, as the case may be, shall not be deemed to be an admission by the University that the grievance has, for any other purpose or proceeding, standing as a grievance, or be an admission of any violation or breach, of the terms of this Agreement or be an admission that such grievance is cognizable or justifiable according to any applicable provisions of the laws of the Commonwealth.
3. Termination--If any member or members of the bargaining Unit shall initiate in any administrative forum other than the Department of Labor Relations (DLR) and

DRAFT

providing that MSP/MTA approves the decision to file, the Massachusetts Commission Against Discrimination (MCAD) or in any proceeding that relates to any matter that is the subject of a grievance in respect of which such member or members is or are the grievant while any proceeding in respect of such grievance is pending under any provision of this Article, the proceeding shall terminate as of the date of the initiation of such other administrative or judicial proceeding, and the grievance procedures aforesaid shall be inapplicable to such grievance.

4. Grounds of Appeal--The Board and the MSP/MTA shall have the right to appeal any final decision of the arbitrator pursuant to the provisions of Chapter 150E, Section 8, and Chapter 150C, Sections 10, 11, and 12 of the General Laws.

I. Release Time for Members of the Bargaining Unit

It is understood that grievances will ordinarily be processed during working days; the parties therefore agree that, whenever the work schedules of the grievant, of any MSP/MTA representative, and of any material witnesses who are members of the bargaining Unit so require, such participants shall be given so much release time from their scheduled work assignments as the Chancellor shall determine is necessary for attendance at any hearing, meeting, or other procedure that shall be required for the processing of any grievance.

J. Waiver of Irrelevant Levels

Where it is clear on its face that the remedy for a grievance brought by the MSP involves an exercise of authority beyond the scope of chairpersons or deans, the grievance may be brought directly to Level Two.