

E. Dismissal and Retrenchment

If a unit member's employment is discontinued as a result of dismissal or retrenchment, and the arbitrator determines based on clear and convincing evidence that the decision of the President of the College or the President's designee was arbitrary, capricious or unreasonable, the arbitrator shall remand the matter for reassessment by the President of the College or the President's designee of the original decision but shall not have the result or effect of granting any binding award, provided however, that a part-time unit member shall have no right to grieve or arbitrate retrenchment decisions. After remand, the President of the College or the President's designee shall have thirty (30) days to render a new decision. If the grievant believes the decision of the President of the College or the President's designee on remand is arbitrary, capricious or unreasonable, the grievant may file an appeal to the original arbitrator (if the original arbitrator is unable to hear the case, the parties shall choose a new arbitrator according to the terms of this Agreement) in accordance with the provisions of this Article. On appeal, if the arbitrator determines based on clear and convincing evidence, that the decision of the President of the College or the President's designee is arbitrary, capricious or unreasonable, the arbitrator shall have the power to make the grievant whole; provided, however, that any monetary award shall be reduced by way of mitigation by an amount equal to the total income received by the grievant during the period for which monetary damages are so awarded. If the arbitrator determines that the Step One or Two decision was not issued within the applicable time limits contained in this Article, the arbitrator may in the arbitrator's first decision provide a binding award in accordance with the foregoing procedures.

F. The granting or failure to grant tenure shall be arbitrable but any award is not binding.

G. Notwithstanding any rule of the American Arbitration Association to the contrary, in making a decision, the arbitrator shall apply the express provisions of this Agreement and shall not alter, amend, extend or revise any term or condition hereof.

H. All fees and expenses of the arbitrator shall be divided equally between the parties. Each party shall bear the cost of preparing and presenting its own case.

**ARTICLE X - APPENDIX A**

**Release of Confidential Materials for Grievance Administration**

accordance with the responsibility of the Employer to provide to the Massachusetts Community College Council-Massachusetts Teachers Association (MCCC/MTA) such information as may be necessary to the discharge of duties as the exclusive bargaining agent under Chapter 150E and to maintain the confidentiality of personal a in accordance with state and federal law, the Employer and the Association agree:

Whenever the MCCC/MTA Grievance Coordinator or the Grievance Coordinator's designee needs personnel file information from a College in order to intelligently evaluate and prepare a grievance involving evaluations, promotions or performance-based awards, the MCCC/MTA Grievance Coordinator or the Grievance Coordinator's designee shall make a written request for such information to the President of the College from where the grievance originated.

Within ten (10) calendar days of receipt of such information request, the President or the President's designee shall give written notice to all bargaining unit members involved that materials contained in their personnel files and/or evaluative materials are being released to the Union for purposes of grievance administration.

The President of the College or the President's designee shall mail the requested information within sixty (60) calendar days of receipt of the request for information to the MCCC Grievance Coordinator.