

SETTLEMENT AGREEMENT

This SETTLEMENT AGREEMENT ("Agreement") is made by and between Mercy College ("Employer") and Local 2110 of the United Auto Workers (collectively "the Union").

WHEREAS, the Union and the Employer are parties to a collective bargaining agreement covering the Employer's non-professional workers ("CBA") which contains a grievance and arbitration procedure providing for final and binding arbitration of disputes arising thereunder; and

WHEREAS, the Union filed grievances on behalf of the bargaining unit collectively, challenging the Employer's reorganization and resultant impacts by filing for two arbitrations (one before Arbitrator Martin F. Scheinman entitled "Reclassification/Relocation of Employees" and the other before Arbitrator Bonnie Siber Weinstock entitled "Admission Unit") and filing an unfair labor practice charge (Case No. 2-CA-39379); and

WHEREAS, the Employer, the Union have reached a full and final settlement disposing of these grievance and arbitration cases and the unfair labor practice charge;

NOW, THEREFORE, in consideration of these promises and in exchange for other good and valuable consideration the sufficiency and receipt of which is hereby acknowledged, the parties agree as follows:

1. The Union hereby withdraws with prejudice the pending arbitration cases, as well as the respective underlying grievances and unfair labor practice charge (Case No. 2-CA-39379).
2. The Union will advise the respective Arbitrators that it has withdrawn the above-referenced arbitration cases with prejudice and shall similarly inform the National Labor Relations Board of its withdrawal with prejudice of the above referenced charge.

3. In exchange for the promises and commitments set forth in Paragraphs 1 and 2, the Employer shall adhere to the commitments set forth below:

- a. The job titles indicated on the organization charts for the Departments identified in attached Exhibits 1-6 are the job titles at Mercy which are the subject of the Union's claims via the two arbitration cases and unfair labor practice charge listed above. The Departments, and their successors, that are shown in Exhibits 1-6 and are covered by this Agreement are: Student Services (all campuses), Student Services Support Center, Center for Student Success and Engagement, Admissions Recruitment, and Central Operations. The attached charts identify each job title in the applicable Department and its inclusion (shaded) or exclusion from the bargaining unit. With the exception of the Assistant Director ("AD") and Senior Assistant Director ("SAD") positions (for which specific criteria must be met which is addressed in 3(b) below), the parties agree these designations are resolved via this Agreement and not subject to future grievance.
- b. The job titles of AD and SAD shall be deemed supervisory and excluded from the collective bargaining unit if they meet the criteria set forth herein. The Employer shall maintain a ratio of at least two (2) unique bargaining unit positions to report to each AD and each SAD. These ratios must be established by August 1, 2011. However as of September 1, 2010, the College may not establish any new AD or SAD positions without meeting the required ratio for those new positions. It is expected that employees in the titles of AD and SAD

will actually perform supervisory duties, and that their placement in those titles is not merely pretext.

- c. For the Student Services Support Center (or its successor department title), the ratio of ADs and SADs to unique bargaining unit employees must be 1 to 6 and this shall be implemented effective January 1, 2011.
- d. The parties acknowledge that the natural ebb and flow of staff arrivals and departures may create occasions when no such reporting ratio might exist. Beginning on January 1, 2011 and August 1, 2011 as applicable above, the Employer must establish within 30 days of the ratio not being met that it is engaged in good faith efforts (e.g. posting the position(s) and interviewing appropriate candidates) to fill the open positions necessary to meet the ratio. In the event that any reporting ratio described above does not exist for a continuous period of 90 days, the position lacking the required reporting ratio must be eliminated or transitioned into the bargaining unit with the appropriate bargaining unit title, classification, grade and compensation. These ratios apply to any successor titles to the AD and SAD positions.
- e. The Employer shall provide to the Union by February 1, 2011 organizational charts for all the covered Departments under this settlement indicating the available positions so as to meet the agreed upon ratios and the job titles of any positions being transitioned back into the bargaining unit. The employer shall then post and place on the intranet all available positions by March 1, 2011. The postings shall include the title, grade level, location, job description,

required qualifications and general hours of work. The postings shall be provided to the Union prior to their posting.

- f. All bargaining unit employees who are in the affected Departments and were employed before February 1, 2010 shall be granted a 45 day window beginning on March 1, 2011 and ending on April 14, 2011 to review all bargaining unit positions which were affected by the July 2009 reorganization and all newly-available positions pursuant to the February 1, 2011 organization charts. The affected bargaining unit employee may then submit a request to transfer to any of up to 3 positions for which they qualify regardless of location. The requests must indicate the employee's preference among the requested positions, in ranked priority order. The request must be in writing, accompanied by an application form provided by the College, and submitted to the Director of Human Resources by the end of business on April 14, 2011. The Employer shall then have 30 business days to assess the collective requests and assign bargaining unit employees to the bargaining unit positions. If an employee is given one of their priority selections, they are precluded from grieving any aspect of their selection. Seniority will be used to determine placement where two or more qualified bargaining unit members request the same position and location. If a bargaining unit person is denied any selection because a more senior person has been selected for the position, then they are precluded from grieving any aspect of being denied those positions. Following placement in a new position, the bargaining unit member shall complete the standard paperwork and process to change positions. Such bargaining unit members will

not be subject to a new probationary period but will be evaluated after 90 calendar days in the new position. This evaluation shall be non-disciplinary in nature.

- g. It is understood that no employee shall be required to apply for a transfer as described in subsection (f) above. It is further understood that no employee may be "bumped" from his or her current position by someone who is less senior. In the event that any employee is "bumped" by a more senior employee, the affected employee shall retain all seniority rights under the CBA.
- h. It is agreed that all the persons sitting in positions which are excluded from the bargaining unit under the ratios described above as of the signing of this Agreement (or any persons who assume excluded positions via the initial posting and selection process under this Agreement) shall not be subject to challenge regarding their supervisory status so long as the ratios are met. The Union may challenge the exclusion of subsequent position holders from the bargaining unit if the Union believes that the position is not supervisory. The mere transition of a new person into a position shall not be a sufficient basis for the challenge.
- i. The Employer shall not exclude subsequent position holders from the bargaining unit for the purpose of eroding the bargaining unit.

4. In order to ensure that affected employees understand the bidding process described above and have assistance if needed, the Employer agrees that after it provides revised organizational charts on February 1, 2011 (as set forth in paragraph 3(e) above), it will release affected employees, without loss of pay, to participate in a meeting with the Union to explain the

