

## Massachusetts Supreme Judicial Court Considers Whether University Is Prohibited from Reducing Compensation or Lab Space of Tenured Faculty Under Tenure Contracts

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In *Wortis v. Trustees of Tufts College*, the Massachusetts Supreme Judicial Court (“Court”) held that a university’s agreement to provide academic freedom and economic security to tenured faculty in the tenure contract *did not* prevent the university from reducing or eliminating the faculty’s laboratory space based on a failure to secure external funding, but presented a material factual question as to whether the university could reduce their compensation.

In that case, tenured faculty at Tufts University School of Medicine (“the University”) challenged a compensation policy, implemented after they were granted tenure, under which their salaries would be cut and their employment status would be reduced from full-time to part-time in the event they failed to secure external research funding sufficient to cover fifty percent of their salaries. The faculty also challenged a lab space policy requiring them to ensure that their external research funding maintained a cost recovery rate equal to a Federal grant from the National Institute of Health. The policy stated that if the faculty failed to maintain this level of funding, the University could reduce or eliminate their lab space.

The Court first analyzed which documents comprised the tenure contract. The Court concluded that the professors’ respective tenure appointment letters (which differed from letter to letter), the faculty handbook, and the basic science policy and “academic freedom, tenure, and retirement” policy (“AFTR policy”), formed the tenure contract.

The second issue addressed by the Court was whether the contract documents addressed compensation, employment status, and lab space. The Court noted that nothing in the tenure letters or the faculty handbook specifically addressed these issues. The Court, however, closely examined the AFTR policy and determined that “economic security” as provided by the policy was central to the definition of tenure. Nonetheless, what constituted “economic security” was still unclear because it was not defined beyond “the requirement that it be sufficient to attract ‘men and women of ability.’” The Court also noted that past practice did not resolve this ambiguity, because there was no evidence that there had been any salary reductions for tenured faculty prior to 2009, and the tenured faculty had not challenged previous, less drastic salary reduction policies implemented by the University after 2009 prior to the policy at-issue. The Court also contrasted the tenured faculties’ letters with those in another case, in which those letters specifically stated that the tenure track position had a “zero-base salary.” In contrast, the tenured faculties’ letters did not contain any such language clarifying their entitlement to compensation (or lack thereof).

Ultimately, the Court held that there was a genuine issue of material fact whether the significant reductions in salary and full-time status violated the tenure contract and remanded the case to the trial court.

It’s also worth noting that the tenured faculty had also brought a claim for violation of the Massachusetts Wage Act arising out of the allegedly improper salary reductions. The Court declined to address the Wage Act claim, however, because the claim turned on whether “economic security” included protection from reduction in compensation as claimed by the tenured faculty.

Finally, the Court addressed whether the “economic security” or “academic freedom” provisions of the AFTR policy prohibited the University from reducing, reassigning or closing tenured faculty lab space. The Court held that they did not and stated that “[p]roviding such lab space to those who have grants to support the use of the space, rather than those who require [the University] to incur such costs, appears to be well within the authority of [the University] to control its affairs.” The Court, however, also specifically noted that the University had made other lab space available to the tenured professors and continued to commit to providing resources to conduct research in grant applications submitted by the tenured faculty.

Private universities who require tenured faculty to support their compensation with external funding should analyze whether any provisions in the tenure contract documents could be in violation of Massachusetts law in light of this decision. In particular, private universities should be aware, as demonstrated in *Wortis*, that a violation of the tenure contract with respect to compensation may not just result in a breach of contract, but also in a violation of the Wage Act, which provides prevailing parties with multiple damages and attorneys’ fees.

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