

ARTICLE 7: ARBITRATION PROCEDURE

- A. Grievances which have not been settled under the Grievance Procedure provided in this Agreement may be appealed to Arbitration. Only the Association shall have the right to submit a grievance to arbitration, and only after the timely exhaustion of the Grievance Procedure. A timely appeal to arbitration must be received by the Office of Staff Relations within 20 calendar days from receipt of the Department Manager's response, or from when the response was due. The appeal of a grievance to arbitration must be signed by the President of the Association or his/her designee. Grievances which are not processed within the above time limits, and/or which do not contain the appropriate Association signature, will be considered ineligible for appeal to arbitration. If an unresolved grievance is not appealed to arbitration, the Department Manager's written Step 3 answer shall become final.
- B. If a grievance is neither settled nor withdrawn following the completion of the Step 3 grievance procedure, the grievance must be presented at a mediation conference before it may be scheduled for arbitration if either Laboratory or Association so requests. The grievance mediation process shall be informal. Rules of evidence shall not apply, and no record shall be made of the process. Both sides shall be provided ample opportunity to present the evidence and arguments to support their case. The mediator shall have thirty (30) calendar days, commencing with the appeal of the grievance to arbitration in which to effect a resolution between the parties. The mediator shall have no authority to compel resolution of the grievance. During that period, the mediator shall have recourse to persons and information appropriate to speedy resolution. The mediator may meet with the parties jointly or in separate caucuses. If resolution occurs, both parties shall sign an agreement identifying the remedy. This signed agreement shall be the only written product of the mediation -process. Unless the parties agree otherwise, the outcome shall not be precedential. Any personal notations or other records kept by the mediator shall be protected from review or examination in connection with any other processes internal or external to the Employer.
1. If the mediation process cannot be completed within the initial thirty (30) days, the mediator shall have the authority to extend the time. Such extensions shall be in writing to both parties.
 2. A panel of at least three (3) internal mediators shall be mutually selected, by the parties, to serve on a continuous basis. The panel shall be assigned cases in rotating order designated by the parties.
 3. If the grievance is not resolved and is subsequently moved to arbitration, such proceeding shall be de novo. Nothing said or done by the parties or the mediator during grievance mediation with respect to positions concerning resolution or offers of settlements may be used or referred to during arbitration.
- C. Unless there is mutual agreement by both parties to modify the scope of the hearing, the issue to be heard by the arbitrator shall solely and in its entirety be restricted to the matter, which was the subject of Step 2 or Step 3 of the Grievance Procedure, whichever is applicable. The decision of the arbitrator will be restricted to whether there is a violation of the Agreement as set forth in the Step 2 or Step 3 written answer of the Employer, whichever is applicable. If such a violation is found, the arbitrator shall specify the remedy in accordance with the terms of this Agreement. The decision of the Arbitrator shall be final and binding.

1. The arbitrator shall not have the authority or jurisdiction to add to, amend, modify, nullify or ignore in any way the provisions of this Agreement and shall not make any award which would, in effect, grant the Association or the employee any matter which was not obtained in the negotiations process.
 2. Should it be determined that a dismissal action was not based on reasonable cause, the employee shall be restored to his/her former status. The Employer shall have the right to credit against any back pay awarded, any earnings, compensation or remunerations, received or eligible to receive by the employee from any source during the period involved, including but not limited to unemployment insurance, workers compensation, disability or other benefit payments.
 3. An employee seeking back pay under this provision may be required to produce evidence of all interim earnings or other compensation. Such evidence shall include, but is not limited to, tax returns or other financial records.
 4. An employee who has been dismissed shall exercise reasonable diligence to mitigate damages.
 5. Other grievances sustained in whole or part shall be restricted to restoring to the employee or Association the pay, benefits or rights lost as a result of a violation of the Agreement in accordance with the above limitations.
- D. A separate arbitrator shall be appointed for each grievance appealed to arbitration. On grievances where the arbitrability of the subject matter is an issue, a separate arbitrator shall be appointed to determine the question of arbitrability.
- E. An appeal to arbitration shall not constitute a bar to efforts by the Employer and the Association to achieve resolution of the grievance appealed to arbitration during the time the appeal is pending and until such time that an arbitrator has rendered his or her decision. With regard to a grievance appealed to arbitration, the Association shall have full authority to settle, withdraw or otherwise dispose of any grievance brought on behalf of the Association or on behalf of the employee. An agreement to settle, withdraw, or otherwise dispose of the grievance appealed to arbitration reached by and between the Employer and Association shall be binding upon the employee represented by the Association.
- F. An offer of settlement at any step of the Grievance Procedure shall not be relied upon or referred to by the Employer or Association in the arbitration of any grievance under this Agreement.
- G. With regard to a grievance appealed to arbitration for which, in whole or part, the remedy sought involves back wages or other monetary reimbursement, the Employer shall not, in providing such remedy as a result of an arbitrator's award or a settlement, be required to make any payment of wages or any other monetary reimbursement for:
1. Any period of time between the date a hearing was originally scheduled to be held and, due to a request from the Association or the Association's designated representative to postpone or change the scheduled hearing, and the date of the rescheduled hearing.

- H. In order for grievances which are appealed to arbitration to be considered timely and arbitrable under this Article, the scheduling of the hearing date for such arbitration must be accomplished no later than one hundred eighty (180) calendar days from the date the grievance was originally appealed to arbitration. The parties shall endeavor to agree upon a hearing date. Should the parties be unable to agree to a hearing date, the final authority to schedule a hearing rests with the Arbitrator. The parties may, however, mutually agree in writing, in advance to extend the one hundred eighty (180) day time limitation. Grievances not appealed within the designated time limits above, shall be considered resolved and ineligible for further consideration.
- I. The arbitrator shall have authority to issue subpoenas requiring the attendance of witnesses.
- J. At least 14 days prior to the arbitration hearing, each party shall provide relevant information to the other party including, but not limited to, the names, titles, and business telephone numbers of all witnesses the party intends to call in its case in chief to testify at the hearing and copies of all "writings" as defined in Evidence Code section 250 the party intends to introduce into evidence in its case in chief. Neither party shall be required to produce confidential or privileged matter that the party does not intend to introduce into evidence.
- K. Arbitration hearings conducted pursuant to this Article shall be closed unless the parties mutually agree otherwise in advance and in writing.
- L. Either or both parties may, at their discretion, file briefs with the arbitrator. The order and time limits of briefing shall, on a case by case basis, be mutually agreed upon by the parties or as specified by the arbitrator. Briefing time limits may be extended if mutually agreed upon by the other party.
- M. The arbitrator shall consider the evidence presented and render a written decision within thirty (30) calendar days after receipt of briefs or closing arguments. By mutual agreement of the parties, the time limit may be extended.
- N. The selection of the arbitrator shall be made from a list furnished to both parties by the American Arbitration Association. The parties shall then select an arbitrator from this panel by mutual agreement or by alternately striking until one (1) name is left.
- O. The arbitrator shall consider all facts and evidence brought before him or her by the representatives of the parties at the hearing. The arbitrator shall be the sole judge of the relevancy and materiality of the evidence and testimony offered. The arbitrator may receive and consider evidence but shall give appropriate weight to any objections made.
- P. In all cases appealed to arbitration, excluding disciplinary appeals, the Association shall have the burden of proceeding and the burden of proof.
- Q. The cost of the arbitration shall be borne by the party whose position is not upheld. In the case of a compromise decision, the arbitrator shall decide the distribution of his/her fees.
- R. Each Party desiring a record of the proceeding shall pay for the record and make a copy available to the arbitrator. Any expenses connected with calling witnesses or representatives shall be borne by the party calling them, except for Laboratory employees who shall be on paid release time for grievances or disciplinary appeals

and shall be released by the employer without necessity of subpoena. Employees to be called as witnesses may be placed on-call status while at work to reduce Laboratory cost. This provision shall only apply to those employees who are on-shift during the time of the hearing. Employees who are on off-shift shall appear at their own expense.