

ARTICLE 6 GRIEVANCE PROCEDURE

A. DEFINITION

1. A grievance is defined as, and limited to, a written complaint by an individual employee, a group of employees or the Association involving an alleged violation of a specific provision of this Agreement during the term of this Agreement.
2. Only one subject matter shall be covered in any one grievance. A grievance shall contain a clear and concise statement of the grievance by indicating the issue involved, the specific relief sought, the date the incident or violation took place and the specific section or sections of the Agreement involved. The grievance shall be presented to the designated campus/Laboratory grievance official on a form mutually agreeable to the parties. The grievance form shall be furnished to the employee by the Association and the form must be signed and dated by the grievant(s) and/or the grievant's representative. Any grievance which seeks a relief or remedy which in whole or in part is not contemplated by the terms and provisions of this Agreement and/or which is not within the authority or jurisdiction of an arbitrator to award pursuant to the terms and provisions of this agreement, including but not limited to the provisions of the Arbitration Article, shall be ineligible for processing through the grievance/arbitration procedures of this Agreement.
3. Group grievances are defined as, and limited to, those grievances which cover more than one employee, and which involve the same circumstances and facts for the grievance involved. Grievances which are group grievances must be so designated on the grievance form at Step 1, and all employees covered by the grievance must be indicated on the grievance form.
4. Alleged violations of a specific provision of this Agreement may be grieved by the Association and shall be so identified as an Association grievance on the grievance form. Such Association grievances shall be signed by the President of FUPOA or his/her designee and shall contain all information as specified above for any other grievance.
5. Except as otherwise provided in this Agreement, an individual employee, a group of employees and FUPOA shall have the right to use the Grievance Procedure. FUPOA shall have the right to present grievances under this procedure on behalf of an individual employee, on behalf of a group of employees or on behalf of itself as an Association grievance, as defined above. It shall be the Association's responsibility to inform an employee that it is bringing a grievance on behalf of said employee (including an employee named in a group grievance). In the event an employee named on a group or individual grievance which has been submitted to the University wishes to withdraw from the grievance, he/she shall so notify the University and FUPOA in writing and upon such written request the named employee shall be withdrawn as a party to the grievance. Failure to notify FUPOA shall not preclude the withdrawal. The University will promptly provide FUPOA with a copy of the employee's written request to withdraw. Employees who voluntarily terminate their employment, including Retirement with the University shall have their pending grievances immediately withdrawn and will not benefit by any subsequent settlement or disposition of any individual or group grievance.
6. The University shall not have the right to use the Grievance Procedure.

B. CONSOLIDATION OF GRIEVANCES

Grievances of two or more employees, as well as multiple grievances by or related to the same employee or which relate to the same incident, issue or course of conduct, may be consolidated for purposes of the Grievance Procedure by mutual agreement of the University and the Association.

C. TIME LIMITS

1. All grievances (individual, group, Association) must be presented promptly, in writing and in compliance with A.2. above, but no later than 30 calendar days from the date the grievant first became aware of, or should have become aware of with the exercise of reasonable diligence, the alleged violation of the Agreement. Said 30 days time limit begins when either the employee or the Association could first have become aware of, with the exercise of reasonable diligence, the alleged violation of the Agreement. The failure of an employee to file a grievance within the 30 day period does not provide an opportunity for the Association to later file a grievance by invoking a new 30 day time limit. Grievances not presented within this 30 calendar day period shall be considered untimely and ineligible for processing through the Grievance Procedure.
2. Grievances not appealed within the designated time limits in any step of the Grievance Procedure will be considered resolved on the basis of the last preceding University answer. Grievances not answered by the University within the designated time limits of any step of the Grievance Procedure may be appealed to the next step of the Grievance Procedure by giving written notice of the appeal within 15 calendar days of the expiration of the designated time limits to the campus official responsible for the next step of the Grievance Procedure. The parties may, however, mutually agree in writing to extend the time limits in any step of the Grievance Procedure. Such written extension by mutual agreement must be accomplished in advance of the expiration of the time limit being waived. Deadlines which fall on a day which is not a campus business day will automatically be extended to the next business day. The mailing of the grievance appeal form shall constitute a timely appeal if it is postmarked within the appeal period. Likewise, the mailing of the answer shall constitute a timely response if it is postmarked within the answer period.

D. INFORMAL REVIEW AND RESOLUTION

1. In the event there is an alleged violation of a specific provision of this Agreement, employees may informally discuss such allegation with their immediate supervisor in order to resolve an issue which may become a grievance. As in Steps 1, 2 and 3 of the Grievance Procedure, employees may request and, if such a request is made, have present an Association representative during Informal Review and Resolution discussions with their supervisor. FUPOA representatives may also discuss with designated campus officials matters which may become an Association grievance in an attempt to resolve the matter. Resolutions of items which are potential grievances through such informal discussions are final but shall not be precedent setting. If such discussions do not resolve the matter or if such discussions do not take place, a grievance, as defined in Section A. of this Article, may be presented to the University.
2. Attempts to informally resolve a potential grievance, whether satisfactory or unsatisfactory to the grievant, or the lack of such informal attempts, shall not in any way constitute a waiver to or interruption of any or all time limits governing the Grievance

Procedure. Involvement or non-involvement of the parties in efforts to informally resolve potential grievances shall not constitute in any way an extension of time limits.

E. REPRESENTATION RIGHTS

1. An employee or group of employees shall have the right to be represented at all steps of the Grievance Procedure by one person of the employee's or group of employees' choice. The one person chosen to provide representation may be the grievant himself or herself, one member of the group in a group grievance, a Association representative or any other person of the grievant's choosing. In any event, representation is to be provided by one person. However, pursuant to HEERA (3580.5), a University employee who has been designated as managerial, supervisory or confidential by the University shall not represent any employee or group of employees at any step of the Grievance Procedure or in any activity or role provided for in the Grievance Procedure.
2. An employee or group of employees may choose a representative other than a FUPOA representative for purposes of grievance representation and adjustment. In the event the University is involved in the resolution of a grievance from an employee or group of employees who are represented by themselves or by a representative other than a ~~an~~ FUPOA representative:
 - a. The University shall provide FUPOA with a copy of the grievance and the proposed resolution thereto indicating the employee or employees have chosen a representative other than FUPOA. Proof of Service shall accompany such notification.
 - b. FUPOA shall have fifteen calendar days from the date of issuance of such copy within which to comment in writing on the proposed resolution.
 - c. The employer shall not implement the proposed resolution of the grievance until timely receipt and review of FUPOA's written comments, if any.
 - d. The resolution of grievances presented absent FUPOA representation shall not be inconsistent with the terms of this Agreement.

F. PAY STATUS

1. If the University convenes a meeting involving the parties to a grievance for the purposes of resolving the grievance and/or completing the steps of the Grievance Procedure enumerated below, bargaining unit employees eligible to attend such a meeting pursuant to this Article shall be in a without-loss-of-straight-time-pay status during the meeting provided:
 - a. such meeting occurs during the regularly scheduled hours of work of the employee;
 - b. advance request is made in writing to and approval is received from the employee's immediate supervisor and the University representative conducting the meeting. Approval to attend shall be made on an operational needs basis and shall not be unreasonably denied; and
 - c. the employee is at his/her work station as assigned and scheduled immediately prior to and immediately after the period of time during which the employee participates in such a grievance meeting, provided such meeting commences

after the beginning of the employee's normally-scheduled hours of work or ends prior to the end of the employee's normally-scheduled hours of work.

2. A grievant and/or Association representative may request the availability of bargaining unit employee witnesses for such grievance meetings. The availability of bargaining unit employee witnesses shall be determined by their immediate supervisor(s) on the basis of operational needs, and such requests shall not be denied unreasonably. Such witnesses shall be in a without-loss-of-straight-time-pay status if the information they provide is relevant and material to the grievance which is the subject of the meeting and the criteria enumerated in F.1.a.-c. above are met. Grievants and the Association agree that every effort shall be made to avoid the presentation of repetitive witnesses and that the absence of any or all witnesses shall not require the meeting to be recessed or postponed.
3. Grievants and/or representatives and/or witnesses shall not be on pay status for time spent participating in meetings convened by the University for the purposes of grievance resolution and/or complying with the steps of the Grievance Procedure for such meeting time which is not within the employee's regularly-scheduled work time. The University is not responsible for any travel or lodging expenses or any other expenses incurred by the employee and/or the Association or its representatives and/or witnesses which are related to participation in meetings convened by the University for the purpose of grievance resolution.

G. EXCLUSION OF NON-CAREER EMPLOYEES AND PROBATIONARY EMPLOYEES

The retention or release of non-career employees and probationary employees shall not be subject to Article 6 - Grievance Procedure or Article 7 - Arbitration Procedure of this Agreement. The retention or release of non-career employees and probationary employees is at the sole discretion of the University.

H. GRIEVANCE STEPS

1. Step 1
 - a. Within the time limits indicated elsewhere in this Article the employee or his/her representative, if any, shall provide the written grievance on the approved form to the designated campus grievance official. The time limits relative to the University's response to the grievance at Step 1 of the Grievance Procedure shall begin on the date the Step 1 grievance official receives the grievance. Receipt of the grievance from the employee or his/her representative shall be acknowledged in writing by the designated Step 1 campus/Laboratory grievance official. Any grievance which is not received within the time limits established by this Article and/or which does not comply with the procedures and requirements of this Article shall be considered waived and withdrawn by the employee and/or the Association.
 - b. The immediate supervisor, or the University's designee, shall review the grievance and, at his/her discretion, meet with the grievant and/or the grievant's representative, if any, to discuss the grievance. Within 15 calendar days after receipt of the grievance a response will be issued, in writing, to the employee and the employee's representative. If the University's written response is not issued within these time limits or if the grievance is not resolved at Step 1 of the Grievance Procedure, the grievance may be appealed to Step 2.

- c. Resolution of the grievance at Step 1, although final, shall not be precedent setting.
- d. As set forth in Section I. below, the parties may mutually agree in writing to waive Step 1 and proceed directly to Step 2.

2. Step 2

If the grievance is not satisfactorily resolved at Step 1, the employee or the Association may proceed to Step 2 by filing an appeal as follows:

- a. The appeal shall be submitted in writing by the employee or the employee's representative, if any, to the designated campus official. The campus official to whom Step 2 appeals must be presented shall be a designee of the Chancellor of the campus.
- b. The written appeal must be received by the designated campus official within 15 calendar days of the date on which the written response to Step 1 was given or due.
- c. Within 15 calendar days of receipt of the Step 2 appeal, the designated campus official shall schedule and convene a meeting with the employee and the employee's representative, if any, to attempt to resolve the grievance. During this Step 2 meeting, both parties shall have an opportunity to discuss information and contentions relevant to the grievance.
- d. Within 15 calendar days following the Step 2 meeting, the designated campus/Laboratory official shall issue a written decision indicating the University's answer to the grievance. A copy of the decision shall be provided to the grievant and his or her representative, if any, and Proof of Service shall accompany the written decision.
- e. If requested by the grievant, an Association representative (non-University employee) may participate for purposes of representation in the Step 2 meeting.
- f. If a grievance, which solely alleges that a dismissal was not for just cause, is not satisfactorily resolved at Step 2, the Association may appeal the grievance directly to the Arbitration Procedure of this Agreement subject to the terms and provisions of the Arbitration Article.
- g. If not appealed to Step 3, the Step 2 answer shall be final.

3. Step 3

- a. All grievances which are not satisfactorily resolved at Step 2 may be appealed to Step 3 by FUPOA or the employee. In order for a grievance to be considered at Step 3, written notice of appeal of the Step 2 University answer shall be served (pursuant to M. of this Article) upon the Director -- Labor Relations of the University by the President of FUPOA or designee. Such notice must be received by the Director -- Labor Relations of the University within 15 calendar days of the date the Step 2 answer was given or due. Such notice shall identify the grievance being appealed and be signed and dated by the President of FUPOA or designee.

- b. An employee or group of employees using a representative other than FUPOA pursuant to Sections E.1. and E.2. of this Article may, in order for a grievance to be considered further, appeal a Step 2 University answer to the Director -- Labor Relations of the University. Such appeal must be served upon (pursuant to M. of this Article) and received by the Director -- Labor Relations within 15 calendar days of the date the Step 2 answer was given or due. Such appeal shall be in writing, identify the grievance being appealed and be signed and dated by the employee(s) and representative.

- c. The subject of the grievance as stated in Step 2 shall constitute the sole and entire subject matter of the appeal to Step 3.

- d. The University's written answer to a grievance appealed to Step 3 shall be issued by the Director -- Labor Relations of the University or designee within 45 calendar days of the receipt of the appeal to Step 3. Proof of Service shall accompany the written decision. In the case of a grievance where FUPOA is the representative, the written answer shall be served upon the President of FUPOA or designee. Upon receiving a grievance at any step of the grievance procedure, the University shall affix the date stamp of the office of receipt. The time limits shall be measured at all steps for the grievance procedure by the date stamp. Such date stamping shall be done for both U.S. mail receipt and personal delivery of the grievance.
- e. The Director -- Labor Relations of the University or designee shall have authority to settle grievances appealed to Step 3. In the case of a grievance with FUPOA representation, the President of FUPOA or designee shall have authority to settle or withdraw the grievance or appeal the grievance to arbitration.
- f. Settlements of grievances processed beyond Step 2 of the Grievance Procedure must be signed by the Director -- Labor Relations of the University and the President of FUPOA or designee(s).
- g. If the University's Step 3 decision is not properly appealed to arbitration or heard in an arbitration hearing as provided in Article 7 - Arbitration Procedure, the grievance shall be considered settled on the basis of the Step 3 decision and shall not be eligible for further appeal.
- h. The Arbitration Procedure shall be available only for grievances that allege a claimed violation, misapplication, or misinterpretation of a specific provision of this agreement.

I. EXTENSION OF TIME LIMITS

Each of the steps in the Grievance Procedure, as well as the time limits prescribed at each step of the Grievance Procedure, may be waived by mutual agreement of the parties. Such waiver must be in writing and must be signed by the representatives of the respective parties who are responsible for the Grievance Procedure at the step succeeding the step being waived. Where appropriate, the parties at any step of the Grievance Procedure may, upon mutual agreement, remand the grievance to a previous step for resolution.

J. OFFERS OF SETTLEMENT

Settlement offers made during attempts at informal resolution or during the steps of the Grievance Procedure shall not be introduced as evidence in subsequent steps of the Grievance or Arbitration Procedures.

K. RETROACTIVITY

Settlement of grievances may or may not be retroactive as the equities of a particular case may demand. In any case where it is determined that the settlement shall be applied retroactively, except for the correction of mathematical, calculation, recording or accounting errors relating to the payment of wages, the maximum period of retroactivity allowed shall not commence on a date earlier than 30 calendar days prior to the initiation of the written grievance in Step 1. No settlement shall provide for the payment of interest, damages, mental consideration, punitive damage or any other form or payment not related to the employee(s) direct rate of pay and associated benefits.

L. EXCLUSIVE PROCEDURE

The Grievance Procedure set out in this Article shall be exclusive and shall replace any other grievance procedure for adjustment of any disputes arising from the application and interpretation of this Agreement. Unless otherwise indicated within this Agreement, any previous grievance procedure or other procedure in existence or adopted by the University shall not apply to employees covered by this Agreement for any purposes whatsoever.

M. PROOF OF SERVICE

Wherever Proof of Service is required in this Agreement, it shall be accomplished as follows:

1. When delivery is by U.S. mail, the person mailing shall complete and sign the prescribed and appropriate Proof of Service form which shall indicate that they have personally deposited with or presented to the U.S. Postal Service the document(s) being mailed.
2. When delivery is through a personal presentation of a document(s), Proof of Service is accomplished and recorded by:
 - a. the person presenting the document(s) completing and signing the prescribed and appropriate Proof of Service form which shall indicate they have delivered the document(s) by hand and to whom the document(s) were delivered; or
 - b. the person delivering the document(s) and the person accepting delivery of the document(s) shall mutually acknowledge the delivery/receipt by signing and dating the document(s) and a copy of the document(s) and each of them retaining one of the signed and dated document(s).

- N.** The Grievance Procedure, including its various steps, shall not require any discovery process and/or compelling of the production of documents.