

ARTICLE 6 GRIEVANCE AND ARBITRATION

A. GRIEVANCE PROCEDURE

1. A grievance is a claim by an individual Postdoctoral Scholar, a group of Postdoctoral Scholars or the UAW, that the University has violated a specific provision of this Agreement during the term of this Agreement.
2. A Postdoctoral Scholar may be represented at all stages of the grievance and arbitration procedures. Representation is to be provided by one (1) person, only. However, a University employee designated as managerial, supervisory or confidential by the University shall not represent any Postdoctoral Scholar or group of Postdoctoral Scholars at any step of the Grievance Procedure or in any activity or role provided for in the Grievance Procedure.
3. Resolutions shall be consistent with this Agreement, and shall not be precedential unless agreed to in writing by the parties to this Agreement.
 - a. The University shall provide the UAW with a copy of the grievance and the proposed resolution.
 - b. The University shall not implement the proposed resolution of the grievance until timely receipt and review of the UAW's written comments, if any.
4. Only the UAW has standing to file a grievance on the following:
 - a. A campus' failure to provide Postdoctoral Scholar lists in accordance with Article 28, Union Access and Rights, and Article 29 Union Security.
 - b. "Locking out" employees in accordance with Article 14, No Strikes.
 - c. Failure to provide the necessary information to the mailing house as set forth in Article 29, Union Security.

5. FILING GRIEVANCES

- a. Grievances must be filed by hand, facsimile or by U.S. Mail at the campus labor relations office at the location where the alleged violation occurred.
- b. In the event the union alleges a contract violation as a result of an Office of the President action, the grievance shall be filed directly at the Office of the President within 30 days of the day the union knew or should have known of the action giving rise to the grievance. The University shall issue a step 3 response within 45 calendar days from the day the grievance was filed at the Office of the President.
- c. **Time Limits** - The date of filing shall be the date the grievance is received at the campus labor relations office. Filings received after the close of business shall be deemed filed the next business day. If a grievance is filed by facsimile, an original must be filed within five (5) calendar days. The timelines and meetings for the processing of grievances shall be in accordance with the steps addressed below:
- d. Informal (optional) Grievance Resolution - Before commencing formal grievance processes, the grievant may discuss the grievance with his or her immediate supervisor in a timely manner. Informal resolutions, although final shall not be precedential nor inconsistent with this Agreement.
 - 1) If the grievance is not resolved through informal discussion, the grievant may seek review as set forth below.

- 2) Attempts at informal resolution do not extend the thirty (30) calendar day time limit to file at Step 1.
- e. Step 1 – Formal department or Unit Grievance Review - A written grievance must be filed as set forth below
- 1) A written grievance must be filed with the campus labor relations office on the grievance form agreed to by the parties (Appendix E) within thirty (30) calendar days from the date on which either the grievant or her/his representative knew or could have been expected to know of the event or action which gave rise to the grievance.
 - 2) The written grievance must contain the following information or the University may consider the grievance ineligible for processing:
 - a) a specific description of the dispute including the name(s) of the affected Postdoctoral Scholars or description of the group of the affected Postdoctoral Scholars,
 - b) the facts giving rise to the dispute,
 - c) a listing of the article and section violated,
 - d) a statement as to how the article and section were violated,
 - e) the date(s) of the violation, and
 - f) the requested remedy.
 - 3) At the time the Step 1 grievance is filed, either party may request a meeting prior to the issuance of the Step 1 response. If a meeting is requested, it shall be held within fifteen (15) calendar days of the date on which the Step 1 grievance was filed.
 - 4) The University shall issue a written response to the grievance within fifteen (15) calendar days of the date on which the Step 1 grievance was filed or the date of the Step 1 meeting, whichever is later.
- f. **Step 2** - Campus Grievance Review - If the grievance has not been resolved at Step 1, the grievant and/or her/his representative may file an appeal in writing to the campus labor relations office. Such appeal must be received by the local labor relations office no later than fifteen (15) calendar days after the University's Step 1 response is issued.
- 1) If either party requests a meeting to discuss the merits of the grievance, one shall be conducted within fifteen (15) calendar days of the request for the Step 2 meeting.
 - 2) The parties shall be able to bring individuals to the meeting who have relevant information to present regarding the grievance.
 - 3) If no Step 2 meeting is requested, the University shall issue the written decision to the grievant and/or the grievant's representative within fifteen (15) calendar days following the date of the receipt of the Step 2 appeal. If a meeting is requested, the University shall issue the written decision to the grievant and/or the grievant's representative within fifteen (15) calendar days following the meeting.
- g. **Step 3 – UC Office of the President Review**
- 1) If the grievance has not been resolved at Step 2, the grievant and/or

her/his representative may file an appeal in writing to the Office of the President. Such appeal must be received by the Office of the President no later than fifteen (15) calendar days after the University's Step 2 response is issued.

- 2) The subject of the grievance as stated in Step 2 shall constitute the sole and entire subject matter of the appeal to Step 3.
- 3) The UCOP official or her/his designee shall issue the University's Step 3 decision within thirty (30) calendar days of the receipt of the appeal. Proof of Service shall accompany the written decision. The Step 3 decision shall be served upon the grievant and/or the grievant's representative.
- 4) The UCOP official or her/his designee shall have the authority to settle grievances appealed to Step 3.

6. Failure to comply with the time limits

- a. If the grievant or her/his representative does not comply with a timeline set forth in this Article, the grievance shall be ineligible for further processing.
 - b. If the University does not comply with a timeline set forth in this Article, the grievant or her/his representative has the right to appeal the grievance to the next step of the Grievance procedure in accordance with the timelines provided in this Article.
7. Offers of settlement are inadmissible at any step of the grievance or arbitration procedures.
8. Consolidation Of Grievances - Grievances may be consolidated by written agreement of the University, the grievant and/or the grievant's representative.
9. Grievance File - Materials generated as a result of the filing of a grievance including the grievance form shall be maintained by the University in a file separate from the Postdoctoral Scholar's personnel file.

B. APPEAL TO ARBITRATION

1. General Provisions -

- a. Only the UAW may file an appeal to arbitration and only after the timely exhaustion of the grievance procedure. The written appeal must be signed by an authorized representative of the UAW and must include:
 - 1) the name and address of the UAW representative who is responsible for the appeal to arbitration and to whom all correspondence relating to the arbitration is to be sent;
 - 2) a copy of the completed grievance form; and
 - 3) a statement setting forth the unresolved issue(s), the articles of the agreement alleged to have been violated, and the remedy requested.
- b. Appeals to Arbitration that are not processed within the time limit in §B.3.a., below are ineligible for arbitration.
- c. If a grievance is not appealed to arbitration, the University's Step 3 response shall be final. If the appeal to arbitration is withdrawn or an arbitration hearing otherwise does not take place, the University's Step 3 response will be final.

2. **Time Limits**

- a. The written appeal to arbitration must be received by the Office of the President within forty-five (45) calendar days of the date on which the University issued its Step 3 response, or within forty-five (45) calendar days of the final date on which the University's response was due if no response was issued.
- b. Within fifteen (15) calendar days of the postmark or date of personal delivery the University shall mail to the union an acknowledgment of the receipt of the appeal and the identity of the University official to whom all relevant correspondence should be directed.

3. **Selection of the Arbitrator**

- a. The UAW representative shall contact the designated University official within thirty (30) calendar days of the appeal to arbitration in order to select an arbitrator from the panel set forth in Appendix F. The arbitrator shall be selected within forty-five (45) calendar days from the date of the appeal. Failure to contact the designated University official within the established time frame will be considered as a withdrawal of the appeal to arbitration.
- b. If the parties cannot agree to an arbitrator from the panel, the parties shall alternately strike one name each from the list of panel members. Unless the parties agree otherwise, the party selecting first shall be determined by the flip of a coin. The remaining name shall be designated as the arbitrator.
- c. Within sixty (60) calendar days from selection, the parties shall attempt to agree to a hearing date, but if they are unable to agree, the authority for scheduling a hearing date shall reside with the arbitrator.

4. **Bifurcation**

- a. The arbitration process shall be bifurcated where the University asserts that there are procedural (e.g., timeliness, standing) and/or arbitrability issues that preclude the UAW from proceeding to a hearing on the merits of the claim.
- b. When practicable, the University shall inform the UAW in writing of its intent to assert the issue of arbitrability prior to the selection of the arbitrator or at least forty-five (45) days prior to the scheduled arbitration. The issue(s) of arbitrability shall be resolved in a hearing prior to and separate from the hearing (if any) on the merits of the claim, except as provided in §B.5.c., below. If possible, after an arbitrator is selected, the dates for the arbitrability hearing and the hearing on the merits shall be scheduled at the same time. Unless the parties agree otherwise, the arbitrator shall issue a bench decision on the issue of arbitrability.
- c. In the event the University fails to notify the UAW that it is asserting the issue of arbitrability in accordance with the provisions of §B.4.b., above, a single hearing on the issue of arbitrability and the merits will be held. If the arbitrator finds the grievance to be not arbitrable, the substantive facts of the case need not be heard and the grievance shall be denied. If the arbitrator finds in favor of arbitrability, the hearing shall proceed to the substantive issues raised.

5. **Procedural/Evidentiary Issues At Hearing**

- a. Prior to the arbitration hearing, the UAW and the University shall attempt to stipulate as to the issue(s) to be arbitrated and to as many facts as possible. At least seven (7) calendar days prior to the arbitration the parties shall exchange lists of known witnesses.
 - b. During the hearing the parties shall have the opportunity to examine and cross-examine witnesses under oath and to submit relevant evidence. Issues and allegations shall not be introduced at the hearing unless they were introduced prior to or during Step 3 of the grievance procedure.
 - c. Upon request by either party but not upon his/her own motion, the arbitrator shall have the authority to subpoena relevant documents and/or witnesses.
 - d. The arbitration hearing shall be closed to anyone other than the participants in the hearing unless the parties agree otherwise in writing.
 - e. In all cases appealed to arbitration except for actions taken pursuant to Article 5, Discipline and Dismissal, the UAW shall have the burden of proceeding.
6. **Scope Of Arbitrator's Authority** The arbitrator shall consider the evidence presented and render a written decision within thirty (30) calendar days of the close of the record of the hearing. The arbitrator's decision will set forth the findings of fact, reasoning, and conclusions on issues submitted by the parties. The arbitrator's authority shall be limited to determining whether the University has violated arbitrable provisions of this contract and to ordering corresponding remedies. The arbitrator shall not have jurisdiction or authority to add to, amend, modify, nullify, or ignore in any way the provisions of this contract nor shall the arbitrator have the authority to review any academic judgment. To the extent that the University's action is based upon academic judgment, the arbitrator shall have no authority or jurisdiction to substitute his/her judgment for that of the University and its agents.
- a. If the grievance is sustained in whole or in part, the remedy shall not exceed restoring to the grievant the pay, benefits or contractual rights lost less any compensation from any source including but not limited to Workers' Compensation, Unemployment Compensation or other employment. The decision and award of the arbitrator shall be final and binding upon the parties to the contract and the Postdoctoral Scholars. The University will not be liable for back wages or other monetary reimbursement for:
 - 1) any period of time during which an extension of the time limits has been granted at the request of the UAW;
 - 2) any period of time greater than thirty (30) calendar days prior to the date the grievance was filed pursuant to this article.
 - b. The arbitrator's fees and the costs of transcripts requested by the arbitrator or both parties shall be equally born by the parties. Costs for transcripts requested by only one party, shall be born by the requesting party.
 - c. The party that cancels or postpones an arbitration will be liable for any cancellation/postponement fees charged by the arbitrator or court reporter.
7. **Extension Of Time Limits** - Time limits set forth in this article may be extended only by agreement of the parties in writing.

8. **Pay Status**

- a. The University and the UAW shall establish a reasonable schedule for the arbitration proceeding. The UAW shall provide the names of witnesses in advance in order to facilitate the University's provision of release time in accordance with §B.8.b., below.
- b. The Postdoctoral Scholar grievant(s), shall be in a without-loss-of-pay-status for the entire arbitration hearing. Postdoctoral Scholar witnesses will be in a without-loss-of-pay-status for travel to and from the arbitration hearing, for time actually giving testimony or waiting to give testimony, at the hearing. Total release time for the grievant, employee representative and witness(es) for travel to/from the hearing and for participation in the hearing shall not exceed either their normally scheduled hours of work for the day(s) of the hearing or their actual participation in the hearing. Participants shall travel to/from the hearing via the most expeditious method of transportation available.
- c. No more than one (1) Postdoctoral Scholar representative shall be in without-loss-of-pay-status for an arbitration hearing.
- d. The University shall not be responsible for any lodging, travel expenses or other expenses incurred by a grievant, witnesses, employee or UAW representatives with regard to the union's presentation in the arbitration hearing.

9. **Arbitrator Panel**

The parties agree that there will be a standing panel of thirteen (13) arbitrators to hear arbitration cases scheduled for hearing pursuant to the provision of this article.

C. NONDISCRIMINATION ACKNOWLEDGMENT AND WAIVER

1. If the UAW appeals a grievance to arbitration that contains allegations of a violation of Nondiscrimination but does not allege violation of another Article that is arbitrable, the Union's notice must include an Acknowledgment and Waiver Form signed by the affected Postdoctoral Scholar. The Acknowledgment and Waiver Form will reflect
 - a. that the Postdoctoral Scholar has elected to pursue arbitration as the exclusive forum for the claim and
 - b. that the Postdoctoral Scholar understands the procedural and substantive differences between arbitration and the other remedial forum or forums in which the dispute might have been resolved, including the differences in the scope of remedies available in arbitration as compared to other forums.
2. The timeline to appeal to arbitration set forth in this Article will be extended by thirty (30) calendar days for such grievance to enable the Postdoctoral Scholar to make an informed choice.