

## **ARTICLE 3 ARBITRATION**

### **A. GENERAL CONDITIONS**

1. An appeal to arbitration may be made only by the union and only after the timely exhaustion of Article 10, Grievance Procedure. The appeal to arbitration must be signed by the President of UPTE-CWA Local 9119 or his/her designee, and filed with the Office of Labor Relations, Office of the President.
  - a. When hand delivered, proof of service must accompany the appeal to arbitration. The date of receipt will be used to determine the date of the appeal for hand-delivered appeals.
  - b. When mailed, the appeal must arrive in an envelope with a U.S. Postal Service Postmark. The U.S. Postal Service Postmark will be used to determine the date of the appeal for mailed appeals.
2. For the purposes of this Article, time limits are calculated in calendar days, and deadlines which fall on a day which is not a University/campus business day will automatically be extended to the next business day. All time limits may be extended by written agreement of the parties in advance of the expiration of the time limit. The union's failure to meet any time limit, or extension to a time limit, will render the Appeal to Arbitration ineligible for further processing and the University's Step 3 answer will be considered final.
3. If the appeal to arbitration is withdrawn or an arbitration hearing otherwise does not take place, the University's Step 3 answer will be considered final.
4. The decision of the arbitrator on any issue properly before her/him shall be final and binding.
5. An appeal to arbitration shall not prohibit efforts by the University and UPTE to resolve the grievance during the time the appeal is pending and until such time that an arbitrator has rendered her/his decision.
6. UPTE shall have full authority to settle, withdraw or otherwise dispose of any grievance brought on behalf of the union and/or on the behalf of employees. An agreement by the parties to settle, withdraw, or otherwise dispose of a grievance appealed to arbitration shall be binding upon the grievant(s).
7. Where two (2) or more grievances are appealed to arbitration, all grievances by or related to the same employee(s), or grievances which relate to the same incident, issue or course of action, may be consolidated by agreement of the parties.

### **8. TIME LIMITS**

#### **a. Initial Filing**

An appeal to arbitration must be filed within thirty (30) calendar days of the issuance of the University's Step 3 decision to the union. Appeals which do not contain the appropriate union signature will be considered ineligible for appeal to arbitration.

#### **b. University Acknowledgment of Receipt**

Within fifteen (15) calendar days of the postmark or, in the case of hand delivery the date of receipt, of the union's appeal to arbitration, the University shall mail to the union an acknowledgment of the receipt of the appeal and the identity of the location to which all relevant correspondence should be directed.

#### **c. Scheduling of the Hearing Date**

Within ninety (90) calendar days from the date the grievance was originally appealed to arbitration, the parties shall select an arbitrator and schedule an arbitration date. Should the parties be unable to agree to a hearing date, the authority to schedule the hearing rests with the

arbitrator. The parties may extend the ninety (90) day limit for scheduling the arbitration by mutual written agreement in advance of the expiration of the time limit. In such cases the arbitrator shall be provided with a copy of the written agreement.

d. **UPTE Request that a Grievance Be Placed in Abeyance**

Should UPTE make a request that the grievance be placed in abeyance for any reason, the period of abeyance shall not exceed ninety (90) days, except in cases of sexual harassment where it shall be 180 days. The provisions of Section H.1 shall apply to grievances placed in abeyance by UPTE. Failure by UPTE to reactivate the grievance within the ninety (90) or one-hundred-eighty (180) day time limit following agreement by the parties that it be held in abeyance will render the grievance ineligible for arbitration and the last preceding University written answer shall become final.

9. An appeal of an expedited grievance to arbitration may be made only by UPTE in accordance with this section. Requests for arbitration under the expedited grievance, Section F.2.e., of Article 10 - Grievance Procedure must include a copy of the completed grievance form.

**B. DEFINITIONS**

For the purposes of this Article, the terms:

1. **"Grievant"** means any employee covered by this contract who has a grievance or complaint (as defined by this Article);
2. **"Witness"**, for the purposes of release time, means any employee covered by this contract who is serving as a witness in a grievance proceeding;
3. **"Employee Representative"** means any employee covered by this contract who is a designated union representative of UPTE, in accordance with the provisions of Article 1, Access; and
4. **"UPTE Representative"** means any person who is a non-university employee acting in the interest of or on behalf of UPTE.
5. **"The Parties"** means the University and
  - a. the grievant; and/or
  - b. the "UPTE representative" or the "employee representative" serving as the grievant's representative.

**C. EMPLOYEE REPRESENTATION**

Union representation at the arbitration hearing may consist of up to two (2) representatives, with only one (1) of the two (2) representatives being eligible for without-loss-of-straight-time-pay status. Only one (1) of these individuals may be designated as the employee advocate for the course of the hearing.

**D. SELECTION OF ARBITRATOR**

Within forty-five (45) calendar days of the date of the appeal to arbitration, the arbitrator shall be selected using the following permanent panel procedures:

1. On a case by case basis, the parties may agree to the selection of any qualified and available person to serve as an arbitrator. Absent such agreement, the parties may agree to the selection of an arbitrator from their respective panel.
2. In the event the parties cannot agree to an arbitrator, the parties shall select the names of seven (7) arbitrators from the appropriate panel, as provided in Section L.6., below, by blind lot. The parties shall then alternately strike one (1) name each from the seven names. The first strike will be determined by a flip of a coin, and the last name remaining shall be the arbitrator.

3. If both parties disagree with the arbitrator who has been selected, the process shall be repeated once in its entirety.
4. A separate arbitrator shall be selected for each grievance appealed to arbitration, unless the parties agree otherwise in writing.
5. The parties may agree in writing to extend the forty-five (45) day limit for selecting the arbitrator. Failure to select the arbitrator within forty-five (45) calendar days, or to achieve a written extension of the time period, will render the appeal to arbitration ineligible for further processing and the University's Step 3 answer will be considered final.
6. If UPTE initiates the selection process in writing to the University with a preferred arbitrator from the arbitration panel and there is no written University response by the deadline for selection of the arbitrator (45 days from UPTE's appeal to arbitration), then the UPTE choice shall be final unless UPTE initiates the selection process within 15 business days of the deadline for selection of the arbitrator. In such case, the University shall have 15 business days to respond to UPTE's choice of an arbitrator and the period for scheduling the arbitration hearing shall be extended by 10 business days.
7. All arbitrability disputes, substantive or procedural, shall be subject to arbitration under this Article 3 including disputes arising from University claims that UPTE has lost the right to pursue arbitration of a pending grievance because of untimely processing or that the grievance is ineligible for further processing.
8. The process set forth herein to pursue an arbitrability hearing when the University claims that UPTE has failed to select an arbitrator in a timely manner shall be the exclusive process for such purpose, superceding and/or replacing any other claimed process.
9. When the University refuses to proceed to arbitration on a grievance on the grounds that UPTE has failed to participate in the selection of arbitrators in a timely manner as required by Article 3, Section D.5., of the contract, only UPTE will make a demand for arbitration of that issue in writing to the Office of the President within thirty (30) days of the postmark of the campus notification to the union that the case is ineligible for further processing.

#### **E. SCOPE OF ARBITRATION**

1. Unless there is an agreement by both parties to modify the scope of the hearing, the issue(s) to be heard by the arbitrator shall solely and in its entirety be restricted to the issue(s) stated by Step 3. Issues or allegations which were known or should have been known to either party but not introduced by the Step 3 process shall not be introduced by either party at the arbitration hearing, except as provided in Section E.2., below.
2. When practicable, the University shall inform UPTE in writing of its intent to assert the issue of arbitrability prior to the selection of the arbitrator in its Acknowledgement of receipt, according to A.8.b above. The issue(s) of arbitrability shall be resolved in a hearing prior to and separate from the hearing (if any) about the substantive facts and/or allegations in dispute, except as provided in Section E.3., below. In such case, the parties shall use the selection process described in Section D above to select two arbitrators. The first arbitrator will be selected to hear the issues of arbitrability, and the second arbitrator will be selected to decide the merits of the case if the issues are determined to be arbitrable. Unless either party requests a full and complete arbitration proceeding on the arbitrability issue, the first arbitrator shall issue either a bench decision, or upon either party's request, a written decision within seven (7) calendar days of the completion of the arbitrability hearing. In the event that the first arbitrator, as a result of the hearing referenced above determines a matter to be arbitrable, the first arbitrator shall have no authority to decide the issues pursuant to the merits of the case. A hearing on the merits of the case will be scheduled with the second arbitrator, unless the parties agree otherwise.
3. If, following the University's acknowledgement of UPTE's appeal to arbitration in A.8.b, the University raises for the first time issue(s) of arbitrability a single

hearing on the issue of arbitrability and the substantive facts will be held, unless the parties agree otherwise. 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.

4. Section E.1. and Section E.2. above shall not prevent the parties from agreeing in writing to combine the arbitrability hearing with the hearing on the merits of the case.
5. If the union requests a postponement of the scheduled arbitration hearing following the University's raising issue(s) of arbitrability, the hearings on arbitrability and facts, if any, shall be separate, and the provisions of Section E.3. above, shall apply.

#### **F. ARBITRATION PROCEEDING**

1. The parties will attempt to agree on a location for the arbitration hearing.
2. The arbitration hearing shall be closed to anyone other than the participants in the arbitration hearing, unless the parties otherwise agree in writing.
3. The arbitration hearing shall provide an opportunity for UPTe and the University to examine and cross-examine witnesses under oath or affirmation, and to submit relevant evidence.
4. Settlement offers made any time during the Grievance and/or Arbitration Procedure shall not be introduced as evidence in the arbitration hearing.
5. 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 as agreed upon by the parties or as specified by the arbitrator. Briefing time limits shall be extended by the Arbitrator upon the agreement of both parties.
6. 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.
7. In all cases appealed to arbitration pursuant to the terms of this Article and this Agreement, UPTe has the burden of initiating the steps in the procedure. With the exception of those cases in which the issue is that of actions taken by the University pursuant to Article 7 - Corrective Action / Discipline and Dismissal, UPTe shall have the burden of proof. The burden of proof in cases in which the issue is that of actions taken by the University pursuant to Article 7 - Corrective Action / Discipline and Dismissal, shall be the University's.
8. Prior to the hearing, the parties may endeavor to exchange the names of known witnesses and relevant materials to be introduced at the hearing.

#### **G. AUTHORITY OF THE ARBITRATOR**

1. The arbitrator's authority shall be limited to determining whether the University has violated the provision(s) of this Agreement. The arbitrator shall not have jurisdiction or authority 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 UPTe or the employee(s) any terms which were not obtained in the negotiation process.
2. The arbitrator shall have the authority to subpoena documents and to require the attendance of witnesses upon the reasonable request of either party but not upon his/her own motion.
3. The expense of service and appearance fees, if any, shall be borne entirely by the party requesting the subpoena of witnesses and each party shall, in advance of the hearing date, inform the other party of the identity of witnesses it subpoenaed.
4. The arbitrator shall have the obligation of assuring that all necessary facts and considerations are brought before her or him by the representatives of the parties at the hearing. In all respects s/he shall assure that the hearing is a fair one. 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. All documents to be considered by the arbitrator shall be filed at the hearing, or within the post-hearing time lines agreed to by the parties during the hearing.

#### **H. ARBITRATION REMEDIES**

1. No remedy by an arbitrator with respect to any grievance which shall be submitted to her/him shall in any case be made retroactive to a date earlier than thirty (30) calendar days prior to the filing of the Step 1 grievance, except for the correction of mathematical, calculation, recording or accounting errors relating to the payment of wages. For grievances involving the correction of mathematical, calculation, recording or accounting errors relating to the payment of wages, an award of an arbitrator shall not in any case be made retroactive to a date earlier than three (3) years prior to the initiation of the written grievance in Step 1 of the Grievance Procedure. Additionally, no remedy shall be provided for any period of time during the grievance and/or arbitration procedure for which an extension of time limits has been granted at the request of UPTE; any period of time between the date a hearing was originally scheduled to be held, and due to a request from UPTE to postpone or change the scheduled hearing, the rescheduled date of the hearing; or any time an employee was on strike.
2. In any decision of a grievance appealed to arbitration involving retroactive payments, the appropriate University and UPTE representatives shall expeditiously determine the identity of the payees and the specific amount owed each payee. Such amount of payment shall be final and no employee or group of employees may subsequently grieve the amounts owed.
3. Remedies involving monetary payment and/or credit shall be limited in their calculation to the utilization of the employee's actual and appropriate wage or benefit amount at the time of the violation and shall not include the awarding of interest or any other payment/credit unrelated to a University benefit amount or the employee's hourly wage.
4. Upon the motion of either party, or at his or her own discretion, an arbitrator may retain jurisdiction in cases involving an award of retroactive monetary payment and/or credit.
5. If the grievance is sustained in whole or in part, the remedy shall not exceed restoring to the employee the pay, benefits or rights lost less any compensation from any source, including but not limited to Workers' Compensation, Unemployment Compensation or other employment.

#### **I. COST OF ARBITRATION**

1. The cost of the arbitrator and expenses of the hearing will be shared equally by the University and UPTE. If either party requests that a stenographic record of the hearing be made and/or transcripts of the stenographic record or a taped record be provided, the parties shall equally share the entire cost of such service and the cost of the provision of a transcript to each party and the arbitrator.
2. In the event either party requests the cancellation or postponement of a scheduled arbitration proceeding which causes an arbitrator to impose a cancellation or postponement fee, the party requesting such cancellation or postponement shall bear the full cost of the cancellation/postponement fee. In the event the parties agree to settle or postpone the arbitration during the period of time in which the arbitrator will charge a cancellation/postponement fee, the parties will equally bear the cost of the fee, unless the parties agree otherwise.

#### **J. PAY STATUS**

1. The grievant, as defined in Article 10, Grievance Procedure, Section A.4.a., (one [1] grievant in a group grievance) shall be in a without-loss-of-straight-time-pay status at the arbitration hearing.
2. The University and UPTE shall establish a reasonable schedule for witness(es)' testimony at the arbitration proceeding. Employee witnesses who appear at the

arbitration hearing at the request of UPTE shall be in a without-loss-of-straight-time-pay status for the time spent actually giving testimony or waiting to testify in accordance with the established schedule. Every effort shall be made by UPTE to avoid the presentation of repetitive witnesses.

3. 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 reasonable method of transportation available.
4. Not more than one employee representative will be released in without-loss-of-straight-time-pay status for attendance at any one (1) arbitration hearing.
5. The University shall not be responsible for any lodging, travel expenses or other expenses incurred by grievants, witnesses, employee or UPTE representatives with regard to the union's presentation in the arbitration hearing.

**K. EXPEDITED ARBITRATION**

The parties may agree to use an expedited form of arbitration, to be agreed to by the parties and the arbitrator.

**L. ARBITRATION PANEL**

1. The parties will make an attempt to agree on the panel of thirty (30) arbitrators, with fifteen (15) on a Northern Panel, and fifteen (15) on a Southern Panel. Nothing shall preclude the parties from including an arbitrator on both the northern and southern lists. If agreement cannot be reached on the names of the arbitrators on each list, the remaining number of arbitrators needed to complete a panel will be selected alternately by the parties. The party selecting first shall be determined by a flip of a coin.
2. After one (1) year from the date the panel members were initially selected, and annually thereafter, each party shall have the right to eliminate up to one (1) arbitrator from the panel. A party exercising this right shall notify the other party in writing of the name of the arbitrator to be stricken from the panel.
3. In replacing arbitrators who were eliminated from the panel, the procedure in Section L.1. shall be used again but any arbitrator eliminated in Section L.2. above, may not be placed back on the panel until at least one (1) year from the date on which such arbitrator was stricken.
4. In the event one (1) vacancy in the panel of arbitrators occurs, other than the elimination of an Arbitrator by the parties pursuant to Section L.3., above, such vacancy may be filled by the parties within thirty (30) calendar days, using the procedures in Section L.1. and 2. above, if the parties agree that a replacement is necessary. In the event more than one vacancy in the panel of arbitrators occurs, such vacancy shall be filled by the parties within thirty (30) calendar days by using the procedures in Section L.1. and 2. above, unless both parties agree that no replacement is necessary prior to the annual panel review.
5. The northern list of arbitrators shall be used for arbitrations arising at the Davis, the Office of the President, Lawrence Berkeley Laboratory, Berkeley, San Francisco, Santa Cruz and Merced locations unless the parties agree to use an arbitrator from the southern panel. The southern list of arbitrators shall be used for arbitrations arising at the Santa Barbara, Los Angeles, Irvine, Riverside, and San Diego locations, unless the parties agree to use an arbitrator from the northern panel.
6. The Lists of Arbitrators are:

a. Northern List of Arbitrators:	b. Southern List of Arbitrators:
Charles Askin 31 Loma Vista Walnut Creek, CA 94597 Ph (925) 934-1929 Fax (925) 472-0408	Howard Block Wellington Plaza Suite G 505 East First Street Tustin, CA 92780 (714) 544-3323 - Telephone & Fax

a. Northern List of Arbitrators:	b. Southern List of Arbitrators:
Bonnie Bogue 3020 El Cerrito Plaza, #411 El Cerrito, CA 94530 Ph (510) 527-7205 Fax (510) 527-7205	Joseph Gentile P.O. Box 7418 Thousand Oaks, CA 91359-7418 Ph (805) 499-4282 Fax (805) 499-0018
Luella Nelson 4096 Piedmont Avenue #159 Piedmont, CA 94611 Ph (510) 658-4959 Fax (510) 658-9423	R. Douglas Collins P.O. Box 4399 West Hills, CA 91308-4399 (818) 716-8969 - Telephone and Fax
Paul Staudohar 1140 Brown Avenue Lafayette, CA 94549 Ph (510) 885-3080 Fax (510) 885-4796	Louis Zigman 473 South Holt Avenue Los Angeles, CA 90048 Ph (310) 556-3748 Fax (310) 550-8439
John Kagel P.O. Box 50787 Palo Alto, CA 94303 Ph (650) 325-0389 Fax (650) 325-4394	Kenneth A. Perea P.O. Box 2788 Del Mar, CA 92014-5788 Ph (619) 481-5191 Fax (619) 481-0149
Gerald Mc Kay P.O. Box 406 Burlingame, CA 94011-0406 Ph (650) 588-6655 Fax (650) 340-1511	Fred Horowitz P.O. Box 3613 Santa Monica, CA 90408-3613 Ph (310) 829-6064 Fax (310) 449-1049
Frank Silver 385 Grand Avenue, Suite 201 Oakland, CA 94610 Ph (510) 839-8525 Fax (510) 444-3604	Bonnie Bogue 3020 El Cerrito Plaza, #411 El Cerrito, CA 94530 Ph (510) 527-7205 Fax (510) 527-7205
Kathleen Kelly 400 Capital Mall, 27 <sup>th</sup> Floor Sacramento, CA 95814 Ph (916) 321-4500	Ed Edelman 516 Warner Avenue Los Angeles, CA 90024 Ph (310) 474-3794 Fax (310) 475-8782
Alexander Cohn P.O. Box 4006 Napa, CA 94558 Ph (707) 226-7096 Fax (707) 252-4067	George Marshall 854 Pico Boulevard Santa Monica, CA 90405 Ph (310) 463-7002 Fax (310) 234-8247
Phil Tamoush P.O. Box 1128 Torrance, CA 90505 Ph 1(800) 747-9245 Fax 1(800)903-4266 (310) 540-4978 – home	David Hart 1350 Front Street, Room 4060 San Diego, CA 92101 (619) 525-4231
Neil Herring 503 Sandretto Dr. Sebastopol, CA 95472 Ph (707) 823-9418	Luella Nelson 4096 Piedmont Avenue, #159 Piedmont, CA 94611 Ph (510) 658-4959 Fax (510) 658-9423
Barry Winograd Lake Merritt Plaza 1999 Harrison Street, Suite 1400 Oakland, CA 94612 Ph (510) 465-5000 Fax (510) 273-8746	Barry Winograd Lake Merritt Plaza 1999 Harrison Street, Suite 1400 Oakland, CA 94612-3517 Ph (510) 465-5000 Fax (510) 273-8746
Robin Matt 909 Marina Village Parkway, Suite 149 Alameda, CA 94501 Ph (510) 865-4662	Robin Matt 909 Marina Village Parkway, Suite 149 Alameda, CA 94501 Ph (510) 865-4662
Fred Horowitz P.O. Box 3613 Santa Monica, CA 90408-3613 Ph (310) 829-6064 Fax (310) 449-1049	Bonnie Castrey P.O. Box 5007 Huntington Beach, CA 92615 Ph (714) 963-7114 Fax (714) 963-2395
Norman Brand 150 Lombard Street #3 San Francisco, CA 94111 Ph (415) 982-7172 Fax (415) 982-8021	Norman Brand 150 Lombard Street #3 San Francisco, CA 94111 Ph (415) 982-7172 Fax (415) 982-8021



