

**ARTICLE 12
GRIEVANCE AND ARBITRATION**

- A.** A grievance is a claim by an individual ASE, a group of ASEs, or the UAW, that the University has violated a specific provision of this agreement during the term of this agreement. A grievant may be represented at all stages of the grievance and arbitration procedures.

- B.** Only the UAW has standing to file a grievance on the following:
 - 1. A campus' failure to establish a campus-wide web site that lists the ASE positions anticipated by the date agreed to in Article 22, Posting.

 - 2. A campus' failure to provide ASE lists in accordance with Article 27, Union Access and Rights, and Article 28, Union Security.

 - 3. "Locking out" employees in accordance with Article 19, No Strikes.

 - 4. Failure to provide the necessary information to the mailing house as set forth in Article 28, Union Security.

C. FILING GRIEVANCES

Grievances must be filed by hand, facsimile or by U.S. Mail at the campus labor relations office. 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:

1. Step 1 (Optional)

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.

- a. If the grievance is not resolved through informal discussion, the grievant may seek review as set forth below.

- b. Attempts at informal resolution do not extend the thirty (30) calendar day time limit to file at Step 2.

2. Step 2

A grievant may file a written grievance as set forth below.

- a. A written grievance must be filed with the campus labor relations office the grievance form agreed to by the parties (Appendix A) within thirty (30) calendar days from the date on which either the ASE or the UAW knew or could have been expected to know of the event or action which gave rise to the grievance or within thirty (30) calendar days after the date of separation from University employment of the ASE in the unit, whichever occurs first.
- b. The written grievance must contain the following information: a specific description of the dispute, the facts giving rise to the dispute, a listing of the article and section violated, a statement as to how the article and section were violated, the date(s) of the violation, and requested remedy, or the grievance may be considered ineligible for processing.
- c. At the time the Step 2 grievance is filed, either party may request a meeting prior to the issuance of the Step 2 response. If a meeting is requested, it shall be held within fifteen (15) calendar days of the date on which the Step 2 grievance was filed. Such meeting may be waived by mutual agreement.
- d. The University shall issue a written response to the grievance within fifteen (15) calendar days of the date on which the Step 2 grievance was filed or the date of the Step 2 meeting, whichever is later.

3. Step 3

If the grievance has not been resolved at Step 2, the grievant and/or the UAW may file an appeal in writing to the campus labor relations office. Such appeal must be filed within fifteen (15) calendar days after the issuance of the University's Step 2 response.

- a. 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 3 review.
- b. The parties shall be able to bring individuals to the meeting who have relevant information to present regarding the grievance.
- c. If no Step 3 meeting is requested, the University shall issue the written decision to the grievant and/or the grievant's representative within 15 calendar days following the date of the receipt of the request for a Step 3 review. If a meeting is requested, the University shall issue the written decision to the grievant and/or the grievant's representative within 15 calendar days following the meeting.

- D. Failure to comply with the time limits set forth herein shall render the grievance ineligible for further processing.
- E. Offers of settlement are inadmissible at any step of the grievance or arbitration procedures.
- F. The parties may mutually agree at any time prior to arbitration, to engage in grievance mediation and request a state mediator in order to resolve cases prior to a hearing. However, if the parties agree to engage in grievance mediation, nothing in this paragraph shall supplant the grievance process timelines from continuing, unless mutually agreed by the parties. If a settlement is reached in grievance mediation, the settlement shall be in writing and signed by the parties.

G. APPEAL TO ARBITRATION

An appeal to arbitration may be made only by the UAW and only after the timely exhaustion of the grievance procedure. The written appeal to arbitration must be received by the Office of the President within forty-five (45) calendar days of the date of issuance of the final University decision to the UAW. 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.

If a grievance is not appealed to arbitration, the University's Step 3 response shall be final.

- H. The UAW representative shall contact the Office of the President within thirty (30) calendar days of the appeal to arbitration in order to select an arbitrator from the panel set forth in Appendix B. The arbitrator shall be selected within forty-five (45) calendar days from the date of the appeal. Failure to contact the Office of the President within the established time frame will be considered as a withdrawal of the appeal to arbitration.
 1. If the parties cannot mutually 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.

2. 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.

I. BIFURCATION

1. 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.
2. 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 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 Section 3 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.
3. Subject to the above, a single hearing on the issue of arbitrability and the merits 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.

J. PROCEDURAL/EVIDENTIARY ISSUES AT HEARING

1. At least seven (7) calendar days prior to the arbitration the parties shall exchange lists of known witnesses.
2. 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.
3. 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.
4. The arbitration hearing shall be closed to anyone other than the participants in the hearing unless the parties agree otherwise in writing.

5. In all cases appealed to arbitration except for actions taken pursuant to Article 8, Discipline and Dismissal, the UAW shall have the burden of proceeding.

K. 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.

1. 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. In arbitration cases involving the Health and Safety Article, the arbitrator may order the University to cease violations of the Health and Safety Article. The arbitrator shall not have authority to order specific remedies for health and safety violations involving expenditures for structural modifications nor shall the arbitrator have the authority to order such a remedy for the purchase or rental of equipment in excess of \$500 unless there are available specifically budgeted funds for the particular efforts which may be necessary to comply with the order. The decision and award of the arbitrator shall be final and binding upon the parties to the contract and the ASEs. The University will not be liable for back wages or other monetary reimbursement for:
 - a. any period of time during which an extension of the time limits has been granted at the request of the UAW;
 - b. any period of time greater than thirty (30) calendar days prior to the date the grievance was filed pursuant to this article.
2. 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 borne by the requesting party.
3. The party that cancels or postpones an arbitration will be liable for any cancellation/postponement fees charged by the arbitrator or court

reporter.

L. EXTENSION OF TIME LIMITS

Time limits set forth in this article may be extended only by agreement of the parties in writing.

M. RELEASE TIME FOR GRIEVANCE/ARBITRATION FOR THE ASE GRIEVANT AND ASE REPRESENTATIVE

1. Grievances

The parties will endeavor to schedule grievance meetings that do not conflict with bargaining unit assignments of the grievant or the grievant's representative which cannot be rescheduled. If a grievance meeting called by the University occurs when the grievant or the grievant's representative have bargaining unit assignments which cannot be rescheduled, the parties with the unresolved scheduling conflicts shall be eligible to receive leave with pay for the period of the assignments which cannot be rescheduled, provided the request for such leave is made at least five (5) calendar days in advance of the meeting. Leave requests shall be made either before or at the time dates and times for the meeting are being considered, whereupon the meeting will be scheduled to provide for the five (5) calendar day request period.

2. Arbitration

- a. The parties shall endeavor to schedule arbitration hearings which do not conflict with the bargaining unit assignments of the grievant or the grievant's representative which cannot be rescheduled. If arbitration hearings occur when the grievant, or the grievant's representative have bargaining unit assignments which cannot be rescheduled, the parties with the unresolved scheduling conflict shall be eligible to receive leave with pay for the period of the assignments which cannot be rescheduled, provided the request for such leave is made at least fifteen (15) calendar days in advance of the hearing date.
- b. The parties will make efforts to schedule the testimony of ASE witnesses when the ASE witnesses do not have bargaining unit assignments that cannot be rescheduled. ASE witnesses who are called by the parties to testify shall be eligible to receive leave with pay only for time required for testifying when the ASE has a bargaining unit assignment which cannot be rescheduled, if the request for such leave is made at least fifteen (15) calendar days in advance of the hearing.

N. ARBITRATOR PANEL

1. 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. If agreement cannot be reached on all thirteen (13) arbitrators, the remaining number needed to complete the panel will be selected alternately by the parties.
2. The procedure for modifying the panel shall be as follows:
 - a. Each party shall have the right to eliminate up to two (2) arbitrators from the panel once each calendar year. The party exercising this right shall notify the other party in writing of the name(s) of the arbitrator(s) to be stricken from the panel.
 - b. In replacing an arbitrator who has been eliminated, declined to participate or who has resigned, or in adding (an) arbitrator(s) to complete the panel, the parties will exchange nominations within sixty (60) calendar days. The party selecting first shall be determined by the flip of a coin. Any arbitrator eliminated in Section M.2.a above may not be placed on the panel again.
 - c. The parties shall jointly send letters to arbitrators chosen for placement on the standing panel and shall request that they agree to participate and comply with the provisions of this agreement.