

## **ARTICLE 27 - ARBITRATION PROCEDURE**

### **A. Request for Arbitration**

A request for arbitration may be made only by the Union and only after exhaustion of the Grievance Procedure except as provided in Article 25, Section E of this Agreement. The written request for arbitration must be sent by certified mail and received by the Campus Labor Relations Director or designee within thirty (30) calendar days of the receipt of the campus grievance decision by the Union from the designated University official. Proof of service must accompany these mailings.

### **B. Selection of Arbitrators**

Within fourteen (14) calendar days of a request for arbitration, the parties shall meet and attempt to reach agreement on an arbitrator. If no agreement is reached, the parties shall use the arbitrators listed herein by randomly drawing three names. The first arbitrator's name drawn shall be contacted and if the arbitrator's first available date is more than sixty (60) calendar days from the date of the request, the parties may agree to contact the second arbitrator's name drawn. If the second arbitrator's first available date is more than sixty (60) calendar days from the date of request, the parties may agree to contact the third arbitrator. If the third arbitrator is not available as specified above, the selection process shall be repeated until an arbitrator is selected.

The arbitrator will be selected from the following:

Howard S. Block  
Kenneth A. Perea  
Walter Daugherty  
Jill Klein  
Robert Berguson  
Chester Brisco  
Michael Prihar  
Mickey Rappaport  
Frederick Horowitz  
Joseph E. Grabuskie

### **C. 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 Article(s) filed with the grievance. 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 C.2 below.
2. When practicable, the University shall inform SETC-United in writing of its intent to assert the issue of arbitrability prior to the selection of the arbitrator. The issue(s) of arbitrability shall be resolved prior to and separate from the hearing (if any) about the substantive facts and/or allegations in dispute, except as provided in Section C.3 below. In such case, the parties shall use the selection process described in Sections A and B above to select two arbitrators simultaneously. The first arbitrator will be selected to determine the issues of arbitrability based on written memoranda submitted by the parties and the second arbitrator will be selected to decide the merits of the case at a

hearing if the issues are determined to be arbitrable. The first arbitrator shall issue a written decision within 7 calendar days of the submission of the parties' written memoranda. If the first arbitrator finds the grievance is eligible for arbitration, the University will pay the costs associated with the first arbitrator's issuance of a decision. If the first arbitrator finds the grievance ineligible for arbitration, the substantive facts of the case need not be heard, and the grievance shall be denied and the Union will pay the costs associated with the first arbitrator's issuance of a decision.

3. If the University raises the issue of arbitrability for the first time after the selection of an arbitrator, a single hearing on the issue of arbitrability and the substantive facts will be held, unless the parties agree otherwise. The hearing(s) shall proceed as described in Section D below.
4. Section C.1 and Section C.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 or from agreeing to separate hearings on the arbitrability and the merits of the case before a single arbitrator.

#### **D. Arbitration Procedure**

1. The arbitration procedure shall provide an opportunity for the Union and the University to examine and cross-examine witnesses under oath and to submit relevant evidence. Relevant material and the names of all witnesses who are to be called shall be identified and provided to the opposing party prior to the hearing. To the extent possible, witnesses and material should be identified at least seven (7) calendar days prior to the hearing.
2. The arbitrator may not admit settlement offers as evidence at the arbitration hearing.
3. Prior to the arbitration, the Union and the University shall attempt to stipulate as to the issue(s) to be arbitrated and to as many facts as possible.
4. Settlement proposals may be offered at any stage prior to or during arbitration.
5. The arbitration hearing shall be closed to the public unless the parties otherwise agree.
6. The arbitrator, following the close of the record of the hearing, shall consider the evidence presented and render a written decision. The written decision shall include a brief description of each issue under submission, the position of the parties, the findings of fact, the arbitrator's conclusion(s) as to violation of the Agreement, if any, and, where appropriate, a remedy.

The arbitrator shall be limited to interpreting the written provisions of the Agreement regarding the issues submitted and shall have no power to add to, delete from, or otherwise alter the terms of the Agreement. If the arbitrator determines that a grievance was not received by the University within the time limits set forth in Article 26, Section B, the arbitrator shall have no jurisdiction to decide the merits of the grievance. The arbitrator shall have no jurisdiction to decide issues not specifically identified on the initial grievance form.

7. The arbitrator's fees shall be borne equally by the parties. Expenses for stenographic or other services or facilities shall be borne by the party requesting such services or facilities unless the parties agree otherwise in advance.

## **E. Decision and Remedy**

1. If the grievance is sustained in whole or in part, and subject to the limitations set forth in Paragraph 2 below, the remedy shall not exceed restoring to the employee the pay, benefits, or rights lost as a result of a violation of the Agreement, less any compensation and benefits received from any source, including, but not limited to, Workers' Compensation and Unemployment Insurance benefits. The decision of the arbitrator shall be final and binding and distributed to the parties within thirty (30) calendar days of the close of the record of the hearing, unless the arbitrator notifies the parties that the time frame can not be met.
2. The arbitrator shall have no authority to award back wages or other monetary reimbursement, nor shall the University be liable on a grievance claiming back wages or other monetary reimbursement for:
  - a. Any period of time during which an extension of time limits has been granted by the University at the request of the Union; or,
  - b. Any period of time between the first date the arbitrator is available for an arbitration hearing and the date of the hearing, when the first date is rejected by the Union; or,
  - c. Any period of time greater than sixty (60) calendar days prior to the date of the Informal Review, Step 1 of the Grievance Procedure, except for the correction of mathematical, calculation, recording or accounting errors. For grievances involving the correction of an error in the payment of wages or the correction of mathematical calculations, recording or accounting errors relating to the payment of wages (for example vacation leave, holidays, overtime, military leave or the amount of shift differentials, if any) shall not be made retroactive to a date earlier than two years prior to the date of the Informal Review, Step 1 of the Grievance Procedure.

## **F. Release Time and Pay Status**

Whenever an arbitration hearing or a meeting convened to resolve an arbitration is scheduled during the regular work time of an employee who is a grievant or a representative, release time with pay shall be granted to the employee(s) and his/her representative involved in said hearing or meeting so long as a request for release time is received at least twenty-four (24) hours in advance. Employees so released shall be granted leave with pay. For purposes of release time, it shall be assumed the employee is a day shift employee. University employees called as witnesses shall be released from work with reasonable advance request and granted leave with pay for reasonable time spent in meetings convened to resolve the arbitration and for the arbitration hearing. Time spent in preparation for arbitration shall be on pay status as follows:

- a. a maximum of ten (10) hours per month will be granted for arbitration-related activity; and,
- b. a request for the release time described in subsection (a) above must be made to the grievant's and/or the representative's immediate supervisor at least twenty-four (24) hours in advance of the activity.