

**ARTICLE 12  
GRIEVANCE AND ARBITRATION**

**A. GENERAL PROVISIONS**

1. 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.
2. Only the UAW has standing to file a grievance on the following:
  - a) A campus' failure to establish a campus-wide website that lists the ASE positions anticipated by the date agreed to in Article 22, Posting.
  - b) A campus' failure to provide ASE lists in accordance with Article 28, Union Access and Rights, and Article 29, Union Security.
  - c) "Locking out" employees in accordance with Article 19 – No Strikes.
  - d) Failure to provide the necessary information to the UAW as set forth in Article 29, Union Security.
3. A grievant shall have the right to be represented at all steps of the Grievance Procedure by the UAW, another representative, be self-represented or by any person of their choice other than a University employee who has been designated as supervisory, managerial or confidential within the meaning of the Higher Education Employee-Employer Relations Act (HEERA). The grievant shall provide the University written notice of the name and contact information of their representative, if applicable. The grievant's representative may be assisted in grievance meetings by one other representative and/or, if applicable, a union representative.

**B. FILING GRIEVANCES**

1. All grievances must be filed with the campus labor relations office at the campus that employs the grievant and within the time frames specified in this Article. Grievances must be filed on the form agreed to by the parties in Appendix A.
2. The grievance form must be signed and dated by the employee(s) or the

employee's representative upon submission to the University. Union grievances must be signed by UAW's representative.

### 3. Proper Filings – Initial Grievances, Responses and Appeals

Grievances, responses and appeals must be filed via email at the campus labor relations office in accordance with the procedures and timelines below:

- a) Electronic – the date of filing shall be the date received as indicated on the University's email server. The grievance initiation/appeal form must be in a PDF format attachment.
- b) All subsequent University responses shall be sent via email to [contractenforcement@uaw2865.org](mailto:contractenforcement@uaw2865.org) and the email address designated by the Grievant/Representative on the grievance form as provided in Appendix A.
- c) If a filing is received after 5 pm, the first following business day will be deemed the filing date.
- d) Deadlines that fall on a day that is not a regular business day will automatically be extended to the next regular business day.
- e) The grievance shall be filed on the form as provided in Appendix A. A grievance may be considered ineligible for processing unless it contains the following:
  - I. A specific description of the dispute;
  - II. The facts giving rise to the dispute;
  - III. A listing of the article and section violated;
  - IV. A statement as to how the article and section were violated;
  - V. The date(s) of the violation;
  - VI. Requested remedy or remedies.
- f) Receipt of the grievance shall be acknowledged in writing by the University as soon as practicable following receipt, and shall be sent to the address or email listed on the grievance form.
- g) The timelines and meetings for the processing of grievances shall be in accordance with the steps addressed below.

## C. **GRIEVANCE STEPS**

### 1. Step 1 (Optional) Informal Resolution

The grievant may discuss the grievance with their 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 (including grievances that alleged violation of harassment or discrimination) do not extend the thirty (30) calendar day time limit to file at Step 2.

## 2. Step 2 – Formal Campus Level

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

- a) A written grievance must be filed with the campus labor relations office using the grievance form agreed to by the parties (Appendix A). The grievance must be filed no later than thirty (30) calendar days from the following instances, whichever occurs first: a) the date of the event/action which gave rise to the grievance, or b) the date on which either the grievant or the representative knew or reasonably should have known of the alleged violation of the Agreement.
- b) If the UAW requested a meeting on the grievance form, or if the University requests a meeting, the campus labor relations office shall convene a meeting with the grievant(s) and the grievant's representative, if any, to attempt to resolve the grievance. The meetings shall be convened no later than fifteen (15) calendar days following receipt of the Step 2 grievance filing. During the Step 2 meeting, the parties shall discuss information and contentions relative to the grievance.
- c) A written decision shall be issued within fifteen (15) calendar days following the Step 2 meeting, or receipt of the Step 2 grievance filing if it is agreed that no meeting will be held. If the University does not respond within the time limit, the procedures below will apply.

## 3. Step 3 – Review (Office of the President)

- a) If the grievance has not been resolved at Step 2, the grievant and/or the grievant's 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 issuance of the University's Step 2 response, or the date

on which the Step 2 response would have been due.

b) An appeal to Step 3 shall be accomplished as follows:

I. Email to [AppealAGrievance@ucop.edu](mailto:AppealAGrievance@ucop.edu).

- 1) Email submissions must include PDFs of all documents, information and signatures necessary to be in compliance with the Grievance Procedure provisions of this Agreement.
- 2) The date of filing for emailed Appeals to Step 3 shall be the date received on the University server, provided that the appeal is received during business hours. If a Step 3 appeal is received outside of normal business hours, the first following business day will be deemed the filing date of the Appeal to Step 3.
- 3) The University shall acknowledge the Union's Appeal to Step 3 through a computer-generated, automatic email response. If the Union does not receive a confirmation email within 30 minutes of the time of submission, the date of filing shall be the sent time and date.

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

III. The University must assert any and all known arbitrability issues no later than the date the Step 3 Decision is issued.

IV. The UCOP official or the UCOP official's 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.

V. The UCOP official or the UCOP official's designee shall have the authority to settle grievances appealed to Step 3.

D. Attendance at the Step meetings held pursuant to Section C. are limited to the grievant, the grievant's representative, if any, and one other individual from

UAW. Advanced requests for additional attendees to present directly relevant information pertaining to the grievance shall not be unreasonably denied.

- E. In the event the union alleges a contract violation as a direct result of an Office of the President action, the grievance shall be filed directly at the Office of the President within thirty (30) calendar days from the following instances, whichever occurs first: a) the date the event /action which gave rise to the grievance occurred, or b) the date on which either the grievant or their representative knew or should have known of the alleged violation of the Agreement. At the time of filing, the UAW must provide specific evidence that the violation is occurring on multiple campuses.
- F. Failure by the UAW to comply with the time limits set forth herein shall render the grievance ineligible for further processing or appeal, and the grievance shall be considered closed.
- G. Offers of settlement are inadmissible at any step of the grievance or arbitration procedures.

H. **EXTENSION OF TIME LIMITS**

With the exception of the 30-day Step 2 grievance filing deadline, the time limits set forth in this Article may be extended only by written agreement of the parties. Except that, each party shall be entitled to one (1) seven (7) calendar day extension upon request in advance of the deadline at either Step 2 (after timely grievance filing) or Step 3.

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

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 that 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.

J. **APPEAL TO ARBITRATION**

1. Content

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, with a copy to the campus labor relations office of origin, 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:

- a) 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;
- b) a copy of the completed grievance form; and a statement setting forth the unresolved issue(s), the articles and sections of the agreement alleged to have been violated, and the remedy requested.
- c) If a grievance is not appealed to arbitration, the University's Step 3 response shall be final.

## 2. Procedure

An appeal to arbitration shall be made in the following way:

- a) Email to [AppealAGrievance@ucop.edu](mailto:AppealAGrievance@ucop.edu):
  - I. Email submissions must include PDFs of all documents, information and signatures necessary to be in compliance with the Arbitration provisions of this Agreement.
  - II. The 'date of filing' for emailed Appeals to Arbitration shall be the date received on the University server, provided that the appeal is received during business hours. If an appeal to Arbitration is received outside of normal business hours, the following business day will be deemed the filing date of the Appeal to Arbitration.
  - III. The University shall acknowledge receipt of the UAW's Appeal to Arbitration through a computer-generated, automatic email response.

## K. **SELECTION OF THE ARBITRATOR/PRE-ARBITRATION CONFERENCE**

1. The UAW representative shall contact the designated University official at the Office of the President within thirty (30) calendar days of the appeal to arbitration in order to select an arbitrator from the panels 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 designated University official within the established time frame shall constitute a withdrawal of the appeal to arbitration.

2. If the parties cannot agree to an arbitrator from the panels, the parties shall alternately strike one name each from the list of statewide 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.
3. At the Pre-Arbitration Conference, the parties shall:
  - a. Select an arbitrator from Appendix B - Panel of Arbitrators in accordance with K.1. above;
  - b. Discuss all arbitrability claims raised by the University, if any, with the goal of resolution;
  - c. Discuss the merits of the grievance, with the goal of resolution.
  - d. Discuss and decide engaging in grievance mediation in accordance with Section Mf. below.
4. At the time the University and the UAW schedule the Pre-Arbitration Conference, each party shall identify the names of the participants.
5. If the arbitrability issues are not resolved, the parties shall set the dates for the briefing schedule, inform the arbitrator of the process for resolving arbitrability, and request provisional dates for a hearing on the merits should a hearing be needed. Such hearing shall take place after the arbitrator's decision on arbitrability and at least four weeks before the arbitrator's cancellation deadline.
6. If arbitrability is resolved, but the merits are not settled, the matter shall go forward to a hearing.
7. Following the Pre-Arbitration Conference, the UCOP Representative shall notify the Union whether the Office of the President shall remand the case to the location or retain the case at the Office of the President.
8. 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.

## L. BIFURCATION

1. The University shall be precluded from raising arbitrability claims if it has not done so by the Step 3 response, unless such issues arise after the Step 3 response is issued. Arbitrability claims must include facts and arguments to substantiate such claims.
2. The arbitration process shall be bifurcated where the University and Union do not resolve properly made arbitrability claims at the pre-arbitration conference.
3. Any party requesting a hearing on the issue of arbitrability, must do so within seven (7) business days of selecting an arbitrator. If such a request is not made within seven (7) business days of choosing an arbitrator, the issue of arbitrability shall be resolved by briefs, not hearing.
4. Written Briefs

The issue(s) of arbitrability shall be resolved in a written decision based on arguments submitted by the parties prior to and separate from the hearing (if any) on the merits of the claim. Such arguments shall be submitted to the arbitrator in brief form according to the following schedule:

- a. The University shall submit its brief no later than thirty (30) calendar days from selection of an arbitrator at the pre-arbitration conference.
  - b. The Union shall submit its response brief no later than thirty (30) calendar days from receipt of the University's brief.
  - c. The arbitrator shall issue their response no later than thirty (30) calendar days from receipt of the Union's brief.
5. If the University fails to meet the timeline, it is precluded from making arbitrability claims, and the grievance shall proceed to a hearing on the merits.
  6. If the Union fails to submit a response brief, the arbitrator shall issue a ruling based on the record from the University's brief.



7. Hearing on Arbitrability

Where a party timely requests a hearing on arbitrability, such hearing shall be held. If a hearing on arbitrability has been timely requested, the moving party shall contact the arbitrator within five (5) calendar days of making such a request to request two (2) dates (or sets of dates) for a separate hearing on arbitrability and a hearing on the merits which shall take place after the arbitrator's decision on arbitrability and at least four weeks before the arbitrator's cancellation deadline. If the moving party does not request two (2) dates (or sets of dates) for separate hearings within five (5) days of requesting a hearing on arbitrability, the issue of arbitrability shall be resolved by briefs, instead of a hearing.

8. 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.

**M. MEDIATION (optional step)**

The parties may mutually agree to engage in grievance mediation and request a state mediator or choose a different arbitrator from the panel to serve as a mediator in order to resolve cases prior to a hearing. Mediation shall occur at least four (4) weeks before the arbitrator's cancellation deadline, unless another timeline is mutually agreed to. 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. Such agreement shall not be precedent-setting.

**N. PROCEDURAL/EVIDENTIARY ISSUES AT HEARING**

1. At least seven (7) calendar days prior to the arbitration the parties shall exchange lists of known witnesses and discuss exhibits.
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 2 of the grievance procedure.
3. Upon request by either party but not upon the arbitrator's 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 and the burden of proof. In all cases, the burden of proof is preponderance of the evidence.
6. Hearings shall be held in-person, unless the parties agree to conduct the arbitration hearing remotely using virtual platforms. If there is no agreement by the parties on the modality of conducting the hearing, the decision shall be made by the arbitrator and shall be final.

#### **O. SCOPE OF ARBITRATOR'S AUTHORITY**

1. 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 their judgment for that of the University and its agents.
2. 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.

3. The arbitrator's fees and the costs of transcripts requested by the arbitrator or both parties shall be equally borne by the parties. Costs for transcripts requested by only one party, shall be borne by the requesting party.
4. Unless the parties mutually agree otherwise, the party that cancels or postpones an arbitration will be liable for any cancellation/postponement fees charged by the arbitrator or courtreporter.

**P. RELEASE TIME FOR ARBITRATION FOR THE ASE GRIEVANT AND ASE REPRESENTATIVE**

1. 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.
2. 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.

**Q. APRBITRATOR PANEL**

1. The parties agree that there will be a standing panel of seventeen (17) arbitrators to hear arbitration cases scheduled for hearing pursuant to the provision of this article. If agreement cannot be reached on all seventeen (17) 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 Q.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.

