

ARTICLE 35
ARBITRATION PROCEDURE

A. General Conditions

1. Only UAPD may file an appeal to arbitration after the timely exhaustion of Article 34 – Grievance Procedure. The appeal to arbitration must be filed with the Director of Labor Relations, Office of the President, with Proof of Service and must be signed by the UAPD Executive Director or his/her designee.
2. For purposes of this Article, time limits are calculated in calendar days, and any deadline falling on a day that is not a University business day shall automatically be extended to the next business day.
3. Time limits set forth in this Article may be extended by written agreement of the parties in advance of the expiration of the time limit.
4. 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 last answer will be considered final.
5. If the appeal to arbitration is withdrawn or an arbitration hearing otherwise does not take place, the University’s last answer will be considered final, except where a settlement agreement between the parties has been reached.
6. The decision of the arbitrator on any issue properly before her/him shall be final and binding.
7. An appeal to arbitration shall not prohibit efforts by the University and the UAPD to resolve the grievance during the time the appeal is pending and until such time that an arbitrator has rendered her/his final decision.
8. UAPD shall have full and exclusive authority to settle, withdraw or otherwise dispose of any grievance appealed to arbitration on behalf of the Union and/or employees. A settled, withdrawn, or otherwise disposed grievance appeal to arbitration shall be binding upon the grievant(s).
9. Where two (2) or more grievances are appealed to arbitration, such 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.
10. In all cases appealed to arbitration pursuant to the terms of this Article, the UAPD has the burden of initiating the procedure’s steps.

B. Filing

An appeal to arbitration may be filed in the following ways:

1. Hand Delivery: When hand-delivered, the date of receipt will be used to determine the date of filing.
2. United States Mail: 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 filing for mailed appeals.
3. Email to: AppealAGrievance@ucop.edu.
 - a. Email submissions must include PDFs of all documents, information and signatures necessary to be in compliance with the provisions of this Agreement.
 - b. When emailed, the date of filing for an appeal shall be the date received on the University server, provided that the appeal is received during business hours. If an emailed appeal is received outside of normal business hours, the filing date shall be the following business day.
 - c. The University shall acknowledge receipt of the Union's appeal through a computer-generated, automatic email response.

C. Time Limits – UAPD Appeals

1. Initial Filing: The appeal to arbitration must be filed with the Office of the President within thirty (30) calendar days of the mailing of the Office of the President's Step 3 written response to UAPD, or thirty (30) calendar days from the date the Office of the President's response would have been due, whichever occurs earlier. In the appeal, UAPD must set forth the issues and remedies remaining unresolved.
2. University Acknowledgement of Receipt: Within twenty (20) calendar days of the postmark or, in the case of hand delivery and emailed submissions, the date of receipt of the Union's appeal to arbitration, the Office of the President shall mail to the Union an acknowledgement of the Union's appeal to arbitration, specifying the location responsible for further handling of the arbitration. Proof of Service shall accompany such acknowledgement.
3. Scheduling of the Hearing Date
 - a. Within forty-five (45) days from the date the grievance was originally appealed to arbitration, UAPD shall initiate contact with the University to select an arbitrator in accordance with §D., below.
 - b. The scheduling of the arbitration hearing date must be accomplished no later than ninety (90) calendar days from the date the grievance was originally appealed to arbitration. Should the parties be unable to agree to a hearing date, the authority to schedule the hearing rests with the arbitrator.

- c. The parties may extend the ninety (90) calendar day limit for scheduling the arbitration by mutual written agreement in advance of the expiration of the time limit.
- d. Failure to schedule the arbitration within ninety (90) calendar days will render the grievance ineligible for arbitration and the last preceding University written answer shall become final, unless it has been the arbitrator who is unable to schedule the date within the ninety (90) day period.

D. Panel of Arbitrators

- 1. UAPD and the University shall select an arbitrator from the lists below. The Northern list of arbitrators shall be used for arbitrations arising at the Davis, 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. Each panel shall consist of eight (8) active arbitrators.

- a. North List-

- John Kagel
 - Paul Roose
 - Barry Winograd
 - Alexander Cohn
 - Norman Brand
 - Joe Henderson
 - Katherine Thompson
 - William Riker

- b. South List-

- Fred Horowitz
 - Edna Francis
 - Christopher Cameron
 - Ken Perea
 - Lou Zigman
 - Mei Liang Bickner
 - Terri Tucker
 - Mark Burstein

Unless the parties mutually agree on an arbitrator, the parties shall alternately strike one (1) name each from the above appropriate list, the first strike being

determined by a flip of a coin, and the last name remaining shall be the selected arbitrator.

2. The procedure for replacing an arbitrator shall be as follows:
 - a. In replacing an arbitrator who has resigned, retired, or deceased, the party who originally appointed that arbitrator shall appoint his/her replacement. The parties shall notify each other of any such panel appointment within five (5) days of confirmation of the new arbitrator's agreement to serve on the panel.
 - b. The parties are not precluded from including an arbitrator on both the north and south lists.

E. Scope of Arbitration

1. The arbitration proceeding shall provide an opportunity for UAPD and the University to examine and cross-examine witnesses under oath and to submit relevant evidence. The parties shall not seek to introduce new issues and allegations at the arbitration hearing which were not introduced by Step 3 of the grievance procedure.
2. When practicable, the University shall inform UAPD 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 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 §E.3., below. In the event an arbitrator, as a result of the arbitrability hearing referenced above determines a matter to be arbitrable, s/he shall have no authority to decide the issues pursuant to the facts of the case unless the parties agree otherwise. A second arbitrator will be selected to decide the merits of the case using the selection process described in §D., above. Nothing in this Section shall prevent the parties from agreeing in writing to combine the arbitrability hearing with the hearing on the merits of the case.
3. If, following the selection of the arbitrator, 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 not be 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. Where the issue of arbitrability and substantive facts are to be heard in a single hearing pursuant to §E.3., above, if UAPD 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 become separate, and the provisions of §E.2., above shall apply.

F. Arbitration Proceeding

1. Settlement discussions, including but not limited to, settlement offers made anytime during the grievance and/or arbitration procedures shall not be introduced as evidence in arbitration.
2. With the exception of those cases in which the issue is that of actions taken by the University pursuant to Article 33 – Corrective Action, Discipline and Dismissal, the UAPD 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 33 – Corrective Action, Discipline and Dismissal, shall be the University's.
3. Prior to arbitration, UAPD and the University shall attempt to stipulate as to the issue(s) to be arbitrated and to as many facts as possible. To the extent possible, the names of all witnesses who are to be called shall be identified by the parties at least seven (7) calendar days prior to the hearing.
4. The arbitration hearing shall be closed to anyone other than the hearing participants, unless the parties otherwise agree in writing. Participants include designated representatives, the grievant(s), and other witnesses, who shall each be sequestered if providing testimony, with the exception of the grievant(s), unless otherwise agreed to by the parties.
5. Either party may file a written brief 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.

G. Authority of the Arbitrator

1. 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. The expense of service and appearance fees, if any, shall be borne entirely by the party requesting the subpoena of witnesses.
2. 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 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 the UAPD or the employee(s) any terms which were not obtained in the negotiation process.

H. Arbitration Remedies

1. If the grievance is sustained in whole or in part, the remedy shall not exceed restoring to the employee(s) the pay, benefits, or rights lost as a result of a violation of the Agreement, less any compensation from any source that the grievant(s) did not have at the time of the violation, including, but not limited to,

Workers' Compensation, Unemployment Insurance benefits, or other employment.

2. 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, plus any Step increases and/or salary increases the employee(s) would have received if not for 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 wages.
3. No remedy by an arbitrator shall in any case be made retroactive for:
 - a. Any period of time during which an extension of time limits has been granted at the request of UAPD;
 - b. Any period of time between the date a hearing was originally scheduled to be held, and due to a request from the UAPD to postpone or change the scheduled hearing, the rescheduled date of the hearing; or anytime the grievant was on strike; and
 - c. Any period of time greater than thirty (30) calendar days prior to the date of filing of Step 1 under Article 34 - Grievance Procedure, except for mathematical calculation, recording, or accounting errors relating to the payment of wages (such as vacation and sick leave accruals and the employee's share of payroll deductions). For grievances involving the correction of mathematical calculation, recording or accounting errors relating to the payment of wages (such as vacation and sick leave accruals and the employee's share of payroll deductions), an award of the 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. Disputes concerning UCRP service credit are subject to plan rules and regulations and are not subject to the grievance and arbitration procedures of this Agreement.
4. Upon the motion of either party, an arbitrator may retain jurisdiction in cases involving an award of retroactive monetary payment and/or credit.

I. Pay Status

1. **For the Grievant(s):** Upon advance request, which shall be within seven (7) days of a hearing date's confirmation, the grievant(s) shall be provided leave to attend arbitration hearing(s) and related settlement meeting(s) convened by the University, provided such hearings and meetings occur during the grievant's regularly scheduled hours of work. Such leave shall be without loss of compensation. Time spent in arbitration hearings and related settlement meetings convened by the University outside of an employee's regularly scheduled hours is without pay.

2. **For the Grievant(s)'s DX-Unit-Employee-Representative:** Upon advance request, which shall be within fourteen (14) days of a hearing date's confirmation, one (1) DX-Unit-Employee-Representative shall be provided leave to represent the grievant in such hearings and meetings that occur during the employee-representative's regularly scheduled hours of work. Such leave shall be without loss of compensation. Time spent in arbitration hearings and related settlement meetings convened by the University outside of an employee's regularly scheduled hours is without pay. If the DX-Unit-Employee-Representative is from the same Student Health Center or Counseling Center as the Grievant(s), operational needs shall be considered before the designated DX-Unit-Employee-Representative is provided leave without loss of compensation.
3. **For Witnesses:** Upon advance request, which shall be at least forty-five (45) days prior to the scheduled hearing date, Unit members who are called by the parties to testify shall be granted leave for the period of time required to testify. Such leave shall be without loss of compensation. Time spent in arbitration hearings outside of an employee's regularly scheduled hours is without pay. If more than one (1) witness is called from the same Student Health Center or Counseling Center, operational needs shall be considered in the scheduling of the leave.
4. Where advance notice is not provided in accordance with §§ I.1 through I.3., above, leave without loss of compensation shall be provided if operational needs permit.

J. Cost of Arbitration

1. The arbitrator's fees shall be borne equally by the parties. 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.

K. Expedited Arbitration

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