

### **ARTICLE 3 ARBITRATION PROCEDURE**

- A.** Grievances which have not been settled under the procedures provided in Article 9 - Grievance Procedure, may be appealed to arbitration. Only the Union shall have the right to submit a grievance to arbitration and only after the timely exhaustion of the procedures of Article 9 - Grievance Procedure. An appeal to arbitration must be received by the Office of the Director -- Labor Relations, Office of the President within 20 calendar days of the mailing of the last preceding University written answer to the Union. The appeal to arbitration must be signed by the AFSCME Local 3299 Director and Proof of Service must accompany the appeal to arbitration. An appeal to arbitration shall be accomplished through the following vehicles only:
1. U.S. Mail - the person mailing shall complete and sign the prescribed and appropriate Proof of Service form which shall indicate that they have personally deposited with or presented to the U.S. Postal Service the document(s) being mailed;
  2. Personal presentation - the person presenting the document(s) shall complete and sign the prescribed and appropriate Proof of Service form which shall indicate they have delivered the document(s) by hand and to whom the document(s) were delivered; or the person delivering the document(s) and the person accepting delivery of the document(s) shall mutually acknowledge the delivery/receipt by signing and dating the document(s) and a copy of the document(s) and each of them retaining one of the signed and dated document(s); or
  3. Email to [AppealAGrievance@ucop.edu](mailto:AppealAGrievance@ucop.edu).
    - a. Email submissions must include PDFs of all documents, information and signatures necessary to be in compliance with the Arbitration Procedure provisions of this Agreement.
    - b. 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 first following business day will be deemed the filing date of the Appeal to Arbitration.
    - c. The University shall acknowledge the Union's Appeal to Arbitration through a computer-generated, automatic email response.
- B.** Grievances which are not processed within the above time limit, and/or which do not contain the appropriate Union signature, will be considered ineligible for appeal to arbitration. If an unresolved grievance is not appealed to arbitration or

heard in arbitration, the last preceding University written answer shall become final.

- C.** A request for arbitration utilizing the expedited grievance procedure provided in Article 9 - Grievance Procedure, Section H.2.f., may be made only by AFSCME in accordance with Section A. above. Request for arbitration under this section must include a copy of the completed grievance form.
- D.** Within 15 calendar days of service upon the University of AFSCME's appeal to arbitration of a grievance, the University shall acknowledge receipt of the appeal and shall indicate the University's office of representation for the grievance. The acknowledgement shall indicate the location to which all correspondence and contact should be made relative to the Arbitration Procedure and shall include a Proof of Service.
- E.** Within 30 calendar days of service upon AFSCME of the University's acknowledgement of a grievance having been appealed to arbitration as indicated in C. above, the parties shall attempt to mutually agree to the selection of one arbitrator from the permanent panel to serve as arbitrator for the appealed grievance.
- F.** The scheduling of the arbitration hearing date must be accomplished no later than 180 calendar days from the date the grievance was originally appealed to arbitration. Failure to invoke the process described in Sections G. and H. below, within 180 calendar days will render the grievance ineligible for arbitration and the last preceding University written answer shall become final.
- G.** Time limits related to the Arbitration Procedure may be extended by mutual written agreement of the parties in advance of the expiration of the time limit. Deadlines which fall on a day which is not a campus/medical center/Laboratory business day will automatically be extended to the next business day.

#### **H. SELECTION OF THE ARBITRATOR**

1. If the parties mutually agree to the selection of the arbitrator, a letter signed by both parties shall promptly be sent to the arbitrator notifying him or her of his/her selection and requesting a hearing date. In the event the parties anticipate a hearing involving more than one day, they shall at the time of notice to the arbitrator of his or her selection estimate the number of days the hearing will require. Available arbitration date(s) shall not be any earlier than 21 calendar days from the arbitrator's receipt of his or her selection to hear the arbitration.
2. If the parties fail to reach mutual agreement as to the selection of an arbitrator for a grievance appealed to arbitration pursuant to Section D. above, selection shall be made as follows:

- a. The names of five members from the northern or southern permanent panel group shall be drawn by blind lot.
- b. The parties shall alternately strike names from the list of five. The flip of a coin shall determine the party to begin the alternate process of the striking of the names.
- c. The one name remaining after each party has stricken two names shall be the arbitrator designated to conduct the hearing.
- d. If both parties mutually disagree with the arbitrator name which has been selected using the above process, the process shall be repeated in its entirety in order to determine a selected arbitrator.
- e. If, after two attempts, the parties mutually disagree with the arbitrator selected, then one party, chosen by the flip of a coin, shall draw one name by blind lot from the northern or southern group and that arbitrator shall hear the arbitration case.

#### **I. SCHEDULING THE ARBITRATION HEARING**

1. Should the parties be unable to agree to a hearing date, the authority to schedule the hearing rests with the arbitrator. The parties may, however, mutually agree in writing in advance to extend the 180-day time limitation. In such cases the arbitrator shall be informed of the parties' mutual agreement and shall be provided with a copy of such written agreement.
2. Should the Union make a request that the grievance be placed in abeyance for any reason, the period of abeyance shall not exceed six months. The Union further agrees that grievances placed in abeyance shall have the time limits tolled during this period. Failure by the Union to reactivate the grievance within the six-month time limit following request that it be held in abeyance will render the grievance ineligible for arbitration and the last preceding University written answer shall become final.

#### **J. ARBITRATION PROCEDURE**

1. The Arbitration Procedure of this Agreement may be invoked only by AFSCME.
2. Unless there is mutual agreement by both parties to modify the scope of the hearing, the issue to be heard by the arbitrator shall solely and in its entirety be restricted to the matter which was the subject of the grievance as stated at Step 3 or in the case of an expedited grievance, as stated at the Step 2 hearing. The decision of the arbitrator will be restricted to whether there is a violation of the Agreement as set forth in the last preceding written answer of

the University. If such a violation is found, the arbitrator shall specify the remedy in accordance with the terms of this Agreement.

3. The arbitration hearing shall provide an opportunity for AFSCME and the University to examine and cross examine witnesses under oath or affirmation and to submit relevant evidence. AFSCME shall not seek to introduce new issues or allegations at the arbitration hearing. Evidence or facts which were known to AFSCME but not introduced during the last preceding formal grievance step of the Grievance Procedure shall not be introduced by AFSCME at the arbitration hearing.
4. Settlement offers made during the Grievance Procedure shall not be introduced as evidence in the arbitration hearing.
5. When the University has the information upon which to base a challenge to the arbitrability of a grievance and has such information prior to the selection of an arbitrator, the University shall inform the Union in writing of the intent to raise the issue of arbitrability prior to the selection of the arbitrator.
6. Should arbitrability of the subject matter be an issue, a separate arbitrator shall be appointed to determine the question of arbitrability unless the parties agree otherwise. Should procedural arbitrability be an issue in addition to subject matter arbitrability, two arbitration hearings will be held using two different arbitrators with the hearing on the arbitrability of procedure being held first, unless the parties agree otherwise.
7. Where two or more grievances are appealed to arbitration an effort will be made to consolidate the grievances and agree upon a single arbitrator.
8. Arbitration hearings conducted pursuant to this Article shall be closed unless the parties mutually agree otherwise in advance and in writing.
9. The arbitrator shall have the obligation of assuring that all necessary facts and considerations are brought before him or her by the representatives of the parties at the hearing. In all respects he or she 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.
10. The decision of the arbitrator on any issue properly before him or her shall be final and binding upon the University, the Union and all employees. 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 Union or the employee(s) any matters which were not obtained in the negotiation process.

11. The arbitrator shall have the authority to subpoena and require the attendance of witnesses upon the reasonable request of either party but not upon his/her own motion. The arbitrator shall have no authority to subpoena documents nor shall the parties be required or ordered to produce lists of witnesses prior to the hearing. The expense of service and appearance fees, if any, shall be borne entirely by the party requesting the subpoena of witnesses and the arbitrator shall, in advance of the hearing date, inform each party of the identity of witnesses subpoenaed by the other party.
12. 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 mutually agreed upon by the parties or as specified by the arbitrator. Briefing time limits may be extended if mutually agreed upon by the parties.
13. The arbitrator shall consider the evidence presented and render a written decision within 30 calendar days of the close of the record of the hearing.
14. With regard to a grievance appealed to arbitration for which in whole or in part the remedy sought involves back wages or other monetary reimbursement, the University shall not, in providing such remedy as a result of an arbitrator's award or a settlement, be required to make any payment of wages or any other monetary reimbursement for:
  - a. Any period of time during which an extension of time limits has been granted at the request of AFSCME;
  - b. Any period of time between the date a hearing was originally scheduled to be held and, due to a request from AFSCME to postpone or change the scheduled hearing, the rescheduled date of the hearing; and
  - c. Any period of time earlier than 30 days prior to the date of filing of the Step 1 written grievance.
15. 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 as a result of a violation of the Agreement less any compensation from any source, including, but not limited to, Workers' Compensation and Unemployment Insurance benefits. The decision of the arbitrator, within the limits described herein, shall be final and binding.

16. Except for the correction of mathematical, calculation, recording or accounting errors relating to the payment of wages, an award of an arbitrator with respect to any grievance which shall be submitted to him or her shall not in any case be made retroactive to a date earlier than 30 calendar days prior to the initiation of the written grievance in Step 1 of the Grievance Procedure. 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 initiation of the written grievance in Step 1 of the Grievance Procedure.
  17. In any settlement of a grievance appealed to arbitration involving retroactive payments, the appropriate University and Union 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 individual employee or group of employees may subsequently grieve the amounts received.
  18. Awards 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 and shall not include the awarding of interest or any other payment/credit unrelated to a benefit amount or an hourly wage. 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.
- K.** The cost of the arbitrator and expenses of the hearing will be shared equally by the University and AFSCME. If either party or both parties request that a stenographic record of the hearing be made and transcripts 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.
- L.** Witnesses who appear at the arbitration hearing at the request of the Union shall be in a without-loss-of-straight-time pay status for time spent actually giving testimony. Every effort shall be made by the Union to avoid the presentation of repetitive witnesses. The grievant (one grievant in a group grievance) shall be in a without loss-of-straight-time pay status at the arbitration hearing. The University shall not be responsible for any lodging, travel or other expenses incurred by grievants, witnesses or Union representatives with regard to the arbitration hearing. The University shall not be required to grant without-loss-of-straight-time pay status to more than one employee Union representative for attendance at any one arbitration hearing.
- M.** An appeal to arbitration shall not constitute a bar to efforts by the University and AFSCME to achieve resolution of the grievance appealed to arbitration during the

time the appeal is pending and until such time that an arbitrator has rendered his or her decision.

**N.** AFSCME 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 to settle, withdraw, or otherwise dispose of a grievance appealed to arbitration reached by and between the University and AFSCME shall be binding upon employees represented by AFSCME.

**O. PANEL OF ARBITRATORS**

1. The University and AFSCME agree that there will be a permanent panel of 32 arbitrators selected to hear arbitration cases which are scheduled for hearing pursuant to the provisions of this Article. Sixteen shall be selected to hear cases involving the northern campus/medical center/Laboratory locations and 16 shall be selected to hear cases involving the southern campus locations.
2. Annually each party shall have the right to eliminate up to two arbitrators from the panels. A party exercising this right shall notify the other party in writing of the name(s) of the arbitrators to be stricken from the panel(s).
3. In replacing arbitrators who were eliminated or removed themselves from the panels the parties will attempt to mutually agree upon replacements. If mutual agreement cannot be reached, replacement arbitrators will be selected alternately by the parties. The party selecting first shall be determined by the flip of a coin. Any arbitrator eliminated may not be placed back on a panel for two years.

**P.** In all cases appealed to arbitration pursuant to the terms of this Article and this Agreement, with the exception of those cases in which the issue is that of actions taken by the University pursuant to Article 7 - Discipline and Dismissal, AFSCME shall have the burden of proceeding and the burden of proof. The burden of proceeding and proof in cases in which the issue is that of actions taken by the University pursuant to Article 7 - Discipline and Dismissal, shall be the University's cases in which the issue is that of actions taken by the University pursuant to Article 7 - Discipline and Dismissal, shall be the University's.

**Q.** Under no circumstances shall any grievance involving employees engaged in the violation of Article 23 - No Strikes be discussed or processed by the University to the arbitration stage or heard by an arbitrator while such violation continues. This provision shall not, however, waive compliance with the time limits for filing grievances or appeals from decisions rendered with regard to grievances or appeals to the Arbitration Procedure. Any grievance settlements and arbitration awards regarding back pay and/or reinstatement of benefits for employees who engage in violations of Article 23 - No Strikes shall not be made for any period of the time during which violations of Article 23 - No Strikes are occurring or have occurred.

**R.** At all steps in the Grievance Procedure and in the Arbitration Procedure the grievant and the Union representatives shall materially expedite the resolution of the grievance by disclosing to the appropriate University representatives a full and detailed statement of the facts relied upon, the remedies sought, and the provision(s) of the Agreement relied upon.