

TENTATIVE AGREEMENT

For UC-AFT



Mia L. McIver

11/23/2021

For the University



Nadine B. Fishel

11-21-21

**ARTICLE 33
ARBITRATION**

A. GENERAL PROVISIONS

1. Only the Union may make an appeal to arbitration and only after the timely exhaustion of the Grievance Procedure of this MOU. The written appeal to arbitration must be received by the designee of the Office of Labor Relations of the Office of the President within forty-five (45) calendar days of the issuance of the final University decision to the Union (Article 32 — Grievance Procedure). The written appeal must be signed by the Union President, the Union Vice President for Grievances, the Union Executive Director, the Union Legal Director, or equivalent designee. The written appeal must include:
 - a. name, contact information, and campus location of the grievant(s);
 - b. name and contact information of the Union representative who is responsible for the appeal to arbitration and to whom all correspondence is to be sent;
 - c. a copy of the completed grievance form;
 - d. a statement setting forth the unresolved issue(s), the Articles of the MOU alleged to have been violated as identified in the written Step 2 appeal, and the remedy requested; and
 - e. a completed proof of service form.
2. **Appeal Format:**
 - a. **An appeal to arbitration may be made by email to AppealAGrievance@ucop.edu.**
 - b. **Email submissions must include PDFs of all documents *listed in A.1. a-e above including*, information and signatures necessary to be in compliance with the Arbitration provisions of this Agreement.**
 - c. **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.

d. The University shall acknowledge receipt of the Union's Appeal to Arbitration through a computer-generated, automatic email response.

2. ~~Within seven (7) business days, the University will provide an electronic acknowledgement that it received the appeal to arbitration.~~
3. Appeals to arbitration which are not filed within the above time limit and/or which do not contain the appropriate union signature, are ineligible for arbitration. If a grievance is not appealed to arbitration, the University's last written decision shall be final.
4. Absent resolution of the grievance during this time, the designee of the Office of Labor Relations of the Office of the President shall notify the Union of the University's agreement to proceed to arbitration within thirty (30) calendar days of the date of receipt of the appeal to arbitration. The University's response will include a proof of service and the name and contact information of the University's representative to whom all correspondence should be addressed.

B. SELECTION OF ARBITRATOR

1. Within fifteen (15) calendar days of the issuance of the University's response to the Union's appeal to arbitration, the Union will contact the University's representative responsible for the appeal to arbitration to initiate the selection of an arbitrator. Failure to contact the University's representative within the established time frame will be considered a withdrawal of the arbitration appeal.
2. Within thirty (30) calendar days after the Union contacts the University's representative responsible for the appeal to arbitration about selection of an arbitrator, the University will reply to the Union and engage in the selection process.
3. If the parties cannot mutually agree to the selection of 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.

4. The selection of the arbitrator shall be accomplished no later than thirty (30) calendar days after the University's representative has contacted the Union to begin the process for selecting the arbitrator.
5. Upon selection of an arbitrator, the University and the Union shall electronically transmit a joint letter to the arbitrator requesting hearing dates that are no earlier than thirty (30) calendar days from the date of transmission of the letter to the arbitrator.
6. The arbitrator shall respond to each party with available hearing dates.
7. Within thirty (30) calendar days of receipt of the arbitrator's availability, each party shall electronically notify the arbitrator (with a cc to the other party) which of the dates, if any, are acceptable.
8. If either party fails to respond to the arbitrator's letter pursuant to paragraph 6, the arbitrator shall schedule the hearing on the date(s) identified by the responding party; however, in such case, the initial hearing date selected by the arbitrator must be at least 45 days from the date of the arbitrator's initial letter offering hearing dates.

C. EXPEDITED ARBITRATION

If the parties agree to use an expedited form of arbitration, the following will occur:

1. the arbitrator will be selected in accordance with Section B. above;
2. the case shall be heard on the arbitrator's earliest available date, unless otherwise agreed by the parties;
3. there shall be no transcript of the proceedings;
4. post-hearing briefs will be waived; and
5. the arbitrator will issue a written decision within seven (7) calendar days following the close of the hearing record unless the parties agree, prior to the commencement of the arbitration, that the arbitrator rule on the issues at the close of the hearing in lieu of a written decision.

D. ARBITRATION PROCEDURE

1. In order for grievances to be considered timely and arbitrable under this Article, the scheduling of the arbitration hearing date must be accomplished no later than ninety (90) calendar days from the date the arbitrator is contacted by the parties. Should the parties be unable to agree to a hearing date, the authority to schedule the hearing rests with the arbitrator.
2. Prior to the arbitration hearing, the Union and the University shall attempt to stipulate as to the issue(s) to be arbitrated and to as many facts as possible. At least seven (7) calendar days prior to the arbitration hearing the parties shall exchange lists of known witnesses.
3. During the arbitration proceeding, the parties shall have an opportunity to examine and cross-examine witnesses under oath and to submit relevant evidence. Issues and allegations shall not be introduced at the arbitration hearing which were not introduced during Step 2 of the grievance procedure of this MOU. Settlement offers made during the grievance procedure shall not be introduced as evidence in arbitration.
4. The arbitrator shall have the authority to subpoena witnesses or documents, subject to the limitations set forth in Article 10 — Personnel Files, but only upon the request of either party.
5. Either or both parties may, at its discretion, file briefs with the arbitrator. The order and time limits of briefing shall be either as agreed to by the parties or as specified by the arbitrator. Briefing time limits may be extended if agreed upon by the parties. Prior to the commencement of the Arbitration, the parties may agree to waive the filing of briefs, and in lieu of a written decision, the parties may also agree that the arbitrator will rule at the close of the hearing.
6. The arbitration hearing shall be closed unless the parties otherwise agree in writing.
7. Unless the parties agree otherwise, where arbitrability is an issue, one arbitrator shall conduct a hearing and issue a decision on the question of arbitrability, and the merits of any arbitrable claim will be heard by a different arbitrator in a separate hearing.
8. An appeal to arbitration shall not inhibit efforts by the University and the Union to resolve the grievance. The Union shall have authority to withdraw a grievance or enter into an agreement with the University to settle a grievance appealed to arbitration. An agreement to settle or

withdraw a grievance appealed to arbitration reached between the University and the Union shall be binding on unit employees.

9. In all cases appealed to arbitration, except for actions taken pursuant to Article 30 — Discipline and Dismissal, the Union shall have the burden of proceeding.
10. 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 the issues submitted by the parties.
11. The arbitrator's fees and the costs of transcripts requested by the arbitrator or both parties shall be shared equally by both parties. Costs for transcripts requested by only one party, shall be borne by the requesting party.
12. A party that cancels or postpones an arbitration will be liable for any cancellation/postponement fees charged by the arbitrator and/or court reporter.

E. AUTHORITY OF THE ARBITRATOR

1. The arbitrator's authority shall be limited to determining whether the University has violated arbitrable provisions of this MOU. The arbitrator shall not have jurisdiction or authority to add to, amend, modify, nullify, or ignore in any way the provisions of this MOU.
2. Except to the extent provided in this MOU, the arbitrator shall not have the jurisdiction or authority to review the University's evaluation of an NSF's academic qualifications or performance, or whether courses shall be offered.
3. If the grievance is sustained in whole or in part, the remedy shall not exceed restoring to the NSF the pay, benefits, or rights lost as a result of a violation of the MOU, less any compensation from any source recognized by law as appropriate to offset such a remedy. The decision and award of the arbitrator shall be final and binding upon the parties to this MOU and the NSF. The University will not be liable for back wages or other monetary reimbursement for:
 - a. any period of time during which an extension of time limits has been granted at the request of the Union;

- a. 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; and
- b. any period of time greater than thirty (30) calendar days prior to the date the grievance was filed pursuant to Article 32 — Grievance Procedure.

F. EXTENSION OF TIME LIMITS

Time limits set forth in this Article may be extended by agreement of the parties in writing in advance of the expiration of the time limit.

G. RELEASE TIME

Upon advance request, the grievant and the Union representative, if the representative is a Unit 18 faculty member ~~NSF, s/he~~ they shall be granted leave with pay to attend arbitration hearings and related settlement meetings convened by the University. Unit members who are called by the parties to testify shall be granted leave with pay upon advance request for the period of time required to testify.

H. PANEL OF ARBITRATORS

1. Appendix B contains ~~The parties agree that there will be two (2) a~~ standing panels of ~~eleven (11)~~ twenty-one (21) arbitrators, ~~one designated North and one designated South,~~ to hear arbitration cases scheduled for hearing pursuant to the provisions of this Article.
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 North panel and up to two (2) arbitrators from the South~~ 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 lists of nominations within sixty (60) calendar days. If agreement cannot be reached on all twenty-one (21) ~~eleven (11)~~ arbitrators, the remaining number needed to complete the panel will be selected alternately by the

parties. The party selecting first shall be determined by the flip of a coin. Any arbitrator eliminated in 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 the MOU.