

## ARTICLE 6 - GRIEVANCE

### A. Preamble

It is the intention of the University and AFSCME to encourage and facilitate the resolution of alleged violations of this Agreement in an expeditious manner and at the lowest possible level. The parties further agree that no employee shall be subject to reprisal for using or participating in the Grievance Procedure.

### B. Definition

A grievance is defined as an alleged violation during the term of the Agreement of an express written provision of this Agreement.

### C. Eligibility

A grievance may be filed by an individual employee, a group of employees or by AFSCME on its own behalf or on behalf of an individual employee or groups of employees. The University may not file a grievance under this Article. The University shall have no obligation to consider and an Arbitrator shall have no jurisdiction to hear or decide a formal grievance which is not received in accordance with these procedures and within the time limits.

### D. Consolidation of Grievances

At the mutual agreement of the University and AFSCME, grievances may be consolidated for purposes of this Grievance Procedure.

### E. Representation

1. An employee grievant shall have the right to be represented at all steps of the Grievance Procedure by not more than two representatives of the employee's choice, including AFSCME, except that such representative shall not be a University employee who has been designated by the University as supervisory, managerial or confidential.
2. Should an employee or a group of employees choose a representative other than an AFSCME representative, the University shall provide AFSCME with a copy of the written grievance, inform AFSCME of the designation of the non-AFSCME representative, and advise AFSCME of any proposed resolution. Proof of service shall accompany such notification. Any comment which AFSCME wishes to make on a proposed resolution must be received in writing by the University before the end of the tenth working day after the date of the notification of AFSCME of a proposed resolution. The University shall not implement the proposed resolution of the grievance until timely receipt and review of any AFSCME comments.

## F. Procedure

### 1. Informal Review

Step 1. As soon as practicable, the grievant should discuss the grievance with his/her immediate supervisor who shall attempt to effect an informal resolution of the matter. If the grievance is not resolved through discussion with the immediate supervisor, the employee may seek additional discussion, as set forth below.

Step 2. The grievant may seek additional discussion with the Superintendent of Lick Observatory (Mount Hamilton), the Building and Utility Manager, the Academic Assistant Dean, or the U.C. designee, as appropriate, under the same conditions as are provided in Step 1, above.

Status of Informal Resolutions. Informal resolutions, although final, shall not be precedent-setting. Settlement offers proposed at any step by either party shall not be raised by a party in subsequent steps of the Grievance Procedure and shall not be admissible as evidence at arbitration.

Time Limits. Attempts at resolution of the grievance at Step 1 or 2 do not extend the time limits for filing a formal grievance as described below, unless an exception is granted in advance and in writing by the Labor Relations Manager.

### 2. Formal Review

Step 3. If the grievance is not resolved at an informal step, the grievant may file a formal grievance for a written response by the U.C. designee, as appropriate. The grievance must be filed in writing on a form mutually agreed upon by the University and AFSCME. The written grievance must be received by the campus Office of Labor Relations within twenty (20) working days of the date on which the grievant or AFSCME knew or could have been expected to have known of the event or circumstance giving rise to the grievance. If the grievance concerns dismissal, the grievance must be filed within ten (10) working days after the issuance of the notification of the dismissal. Grievances involving dismissal may be introduced at Step 3 of this Procedure.

The formal written grievance must include a clear and concise statement of the grievance by indicating: 1) the provision(s) of the Agreement allegedly violated; 2) the action being grieved and the way in which it violated these provisions; 3) the date on which the alleged violation took place; 4) the date on which the grievant and/or AFSCME became aware of the alleged violation; 5) the identification of the grievant(s) who were adversely affected by the alleged violation; and 6) the date as of which AFSCME or the grievant(s) seeks to make any remedy or award effective.

The U.C. designee, as appropriate, shall render a written decision within ten (10) working days of their receipt of the formal grievance. A copy of this decision will be mailed to the grievant(s) and AFSCME. Proof of Service indicating the date on which the decision was mailed must accompany the decision. Such date of mailing shall be the "date of issuance" of the decision. The decision of the U.C. designee becomes final on the tenth working day after its issuance unless the grievance is appealed to Step 4, as set forth below. Decisions at this level shall not set precedent.

Step 4. If the written decision does not resolve the grievance, a copy of the grievance

shall be submitted by the grievant to the campus Office of Labor Relations within ten (10) working days of the date of issuance of the response by the U.C. designee, as appropriate.

Labor Relations Review. Within ten (10) working days from receipt of the appeal to Step 4 the campus Office of Labor Relations shall complete a review of the grievance. If either the grievant, AFSCME, or the designated management official requests a meeting, one shall be conducted as soon as reasonably possible to discuss the grievance. The grievant must, at this step, present all facts, allegations and evidence relevant to the grievance, which were reasonably known and available at the time.

Decision. The campus Office of Labor Relations shall render a written decision within ten (10) working days following the close of the review. Copies of the decision will be mailed to the grievant(s) and AFSCME. A Proof of Service indicating the date on which the decision was mailed must accompany the decision. Such date of mailing shall be the "date of issuance" of the decision. The decision of the campus Office of Labor Relations becomes final on the fifteenth working day after issuance of the decision unless the designated management official receives a written request for arbitration prior to that date.

#### G. Extension of Time Limits

The time limits specified in this Article may be extended by mutual agreement of the University and AFSCME, in writing, in advance of the expiration of the time limits. If a grievance is not appealed to the next step of the procedure within applicable time limits, and an extension has not been agreed to in advance, the grievance will be considered resolved on the basis of the last University response to the grievance. If the University does not respond to a grievance within the applicable time limits, the grievance may proceed to the next step in the Grievance Procedure.

#### H. Pay Status

So long as the request for release time is received in advance, an employee who is a grievant or a representative shall be granted reasonable release time with pay for meetings convened to resolve grievances during the regular work time of the grievant or representative. Such meetings may include: 1) one-on-one meetings between a grievant and a representative concerning a filed grievance, or an alleged violation of this Agreement which is at the informal review and resolution stage of this article; 2) meetings with the University representative to whom written grievances are presented or to whom documents related to filed grievances are presented/signed or with whom time limit agreements are achieved; 3) informal review and resolution meetings held pursuant to this Article. When such meetings are convened outside an employee's scheduled work time, no employee release time shall be granted. University employees called as witnesses shall be released from work with reasonable advance request and shall be granted release time with pay for reasonable time spent in meetings required by this grievance procedure.

It is understood that to the extent possible, the amount of time an employee spends away from his or her assigned duties and workplace in authorized meetings shall be kept to a minimum. Whenever possible, such meeting shall take place during the employee's break or meal period. In the event it is necessary for such meetings to occur during work time prior approval to meet must be obtained by the employee from his/her immediate

supervisor who shall take into account operational needs, when considering such requests.

## **ARTICLE 7- ARBITRATION**

### **A. Procedure**

A request for arbitration may be made only by AFSCME and only after exhaustion of the grievance procedure. The request for arbitration must be received by the campus Office of Labor Relations within fifteen (15) working days of the date of the issuance of the University response at Step 4 of the Grievance Procedure (Article 6). The request must be submitted by AFSCME, and must set forth the issues and remedies remaining unresolved. Proof of Service must accompany these submissions. AFSCME shall not introduce new issues, allegations, evidence or facts at the arbitration hearing. Prior to the arbitration AFSCME and the University shall attempt to stipulate to the issue(s) to be arbitrated. Settlement offers made during the Grievance Procedure shall be excluded from use in arbitration. The arbitration hearing shall be closed unless the parties otherwise agree in writing. The Voluntary Labor Arbitration Rules of the American Arbitration Association effective January 1, 1984, shall apply to all arbitrations raised under this Article except as provisions herein govern.

### **B. Selection of Arbitrator**

A list of seven (7) names shall be requested from the American Arbitration Association in a manner to be jointly agreed upon by the University and AFSCME. The American Arbitration Association Rules concerning Appointment from Panel shall apply except that if the parties fail to agree upon any of the persons named on the lists, the parties will request a new list and the procedures for Appointment from Panel will be repeated.

### **C. Conduct of Arbitration**

1. The Arbitration proceeding shall provide an opportunity for AFSCME and the University to examine and cross-examine witnesses under oath and to submit relevant evidence. Relevant material to be introduced and the names of all witnesses who are to be called shall be identified by the parties prior to the hearing. To the extent possible, witnesses and material should be identified at least five (5) working days prior to the hearing.
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 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 the interpretation 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 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 and benefits received 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.

#### D. Pay Status

Whenever an arbitration hearing or a meeting convened by the University and AFSCME to resolve the arbitration is scheduled during the regular work time of an employee who is a grievant or witness required to be present reasonable release time with pay shall be granted so long as the request for release time is received in advance. Employee time spent at these meetings shall be considered time actually worked. Time spent in meetings outside the employee's scheduled work time shall not be on pay status. Time spent in investigation and preparation for arbitration shall not be on pay status although reasonable release time for witness interviewing may be granted at the discretion of the University. The University may, at its sole discretion, require that such release time be documented to indicate a record of the person(s) with whom the representative met, the identification of the arbitration issue involved, where the meeting took place, the length of the meeting, and the total time used by the representative for the activity being reported.

#### E. Back Pay and Monetary Reimbursement Liability

Except as otherwise specifically provided, the University will not be liable on a grievance claiming back wages or other monetary reimbursement for:

1. any period of time during which an extension of time limits has been granted at the request of AFSCME; or
2. 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 AFSCME; or
3. any period of time greater than twenty (20) working days prior to the date of the Informal Review, Step 1, or of the written Formal Grievance at Step 3, in the case of expedited procedure.

#### F. Arbitration Costs

The American Arbitration Association fee for its services in the selection of and notice to the arbitrator shall be borne equally by the parties. 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. If the arbitrator requires stenographic or other services or facilities, the parties shall share the expenses for these.

#### G. Extension of Time Limits

The time limits specified in this Article may be extended by mutual agreement of the University and AFSCME, in writing, in advance of the expiration of the time limits.

#### H. Location of the Hearing

AFSCME and the University shall mutually agree to the hearing place and shall inform the arbitrator in writing of the place where the arbitration is to be held.