

ARTICLE 7 ARBITRATION PROCEDURE

A. ARBITRATION PROCEDURE – GENERALLY

1. **Headings:** The headings of the sections contained in this Article are for convenience only and shall not be deemed to control or affect the meaning or construction of any provision of this agreement.
2. **Eligibility:** Only FUPOA (or employee if appealing disciplinary action) shall have the right to submit a grievance to arbitration and only after the timely exhaustion of the procedures of Article 6 - Grievance Procedure. The Arbitration Procedure shall be available only for grievances that allege a claimed violation, misapplication, or misinterpretation of a specific provision of this agreement.
3. **Failure to Adhere to Article 7 Requirements:** Appeals to arbitration which do not contain the appropriate Association signature, or otherwise do not meet the requirements of this Article, shall be rendered ineligible for appeal to arbitration.
4. **Grievances Not Appealed/Heard:** If an unresolved grievance is not appealed to arbitration or heard in arbitration, the last preceding University written answer shall become final and binding upon both parties.
5. **Consolidation:** Where two or more grievances involving the same grievant and/or same set of circumstances are appealed to arbitration an effort will be made to consolidate the grievances and agree upon a single arbitrator.
6. **Non-Business Days:** Deadlines which fall on a day which is not a campus/Laboratory business day will automatically be extended to the next business day.
7. **Extensions of Time Limits:** 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.
8. **Postponement/Cancelation of Scheduled Arbitration:** Other than a withdrawal of the grievance by the party filing the Appeal to Arbitration, a scheduled arbitration may be postponed or canceled only by the mutual agreement of the parties or with permission of the arbitrator.
9. **Abeyance:** Should the Association make a request that the grievance be placed in abeyance for any reason, and should there be mutual agreement to place the grievance in abeyance, the period of abeyance shall not exceed 90 calendar days. The Association further agrees that grievances placed in abeyance shall have the time limits tolled during this period. Failure by the Association to reactivate the grievance within the 90 calendar day time limit following the request that it be held in abeyance will render the grievance ineligible for arbitration and the last preceding University written answer shall become final and binding.
10. **Violation of No Strike Provision:** Under no circumstances shall any grievance involving employees engaged in the violation of Article 33 - 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

33 - No Strikes shall not be made for any period of the time during which violations of Article 33 - No Strikes are occurring or have occurred.

B. APPEAL TO ARBITRATION – FILING

1. **Time to File:** An appeal to arbitration must be received by the University's Director of Labor Relations, Office of the President, within 20 calendar days of the issuance of the last preceding University written answer to the Association. Appeals to arbitration which are not submitted within the time limit shall be rendered ineligible for appeal to arbitration.
2. **Method of Delivery:** Appeals to arbitration Grievances may be hand-delivered to the University's Director of Labor Relations, Office of the President or submitted via email (e-mail address: appealagrievance@ucop.edu) – but will not be accepted by mail or fax. Hand-delivered and emailed appeals to arbitration will be submitted in the same manner as a Step 3 grievance appeal.
3. **Content of Appeal to Arbitration:** Each appeal to arbitration, regardless of whether hand-delivered or electronically filed, shall adhere to the following requirements:
 - a. The appeal to arbitration must identify the grievance by the both the campus/location number (if any) and the systemwide number (if assigned) and state that FUPOA is appealing the grievance to arbitration.
 - b. The appeal to arbitration must be signed by the President of FUPOA or designee.
 - c. The appeal to arbitration must include a copy of the completed grievance form.

C. DESIGNATION OF UNIVERSITY REPRESENTATIVE

Within 15 calendar days of receipt of FUPOA'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 acknowledgment shall indicate the location to which all correspondence and contact should be made relative to the Arbitration Procedure. The acknowledgment shall be directed to grievance@fupoa.org.

D. ARBITRABILITY DISPUTES

1. 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 Association in writing of the intent to raise the issue of arbitrability prior to the selection of the arbitrator.
2. Should arbitrability be an issue, a separate arbitrator shall be appointed to determine the question of arbitrability unless the parties mutually agree otherwise. Should procedural arbitrability and/or subject matter arbitrability be raised by the University, two arbitration hearings will be held, if necessary, using two different arbitrators with the hearing on the arbitrability of procedure and/or subject matter being held first, unless the parties agree otherwise.

E. ARBITRATOR SELECTION

1. **Time Lines:** Within 30 calendar days of the University's acknowledgment of a grievance having been appealed to arbitration, the Association shall initiate the contact with the designated University representative and take actions necessary to make the selection.

2. **Selection by Mutual Agreement:** If the parties mutually agree to the selection of the arbitrator, a letter signed by either parties, or an email copied to 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.
3. **Selection Absent Mutual Agreement:** On a case by case basis, the parties may agree to the selection of any qualified and available person to serve as an arbitrator. Absent such agreement, the parties must select an arbitrator by alternately striking names from the agreed upon panel contained in Appendix D. The flip of a coin shall determine the party to begin the alternate process of the striking of the names. The remaining name shall be the arbitrator designated to conduct the hearing. This process must be completed within 30 calendar days following the inability of the parties to mutually agree to an arbitrator.
4. **Failure to Select Arbitrator:** The failure to select an arbitrator within 30 calendar days of the University's acknowledgement of a grievance or to complete the procedure of C.3 within 30 calendar days following the inability of the parties to mutually agree to an arbitrator (if applicable) shall render the grievance withdrawn and the last preceding University written answer shall become final and binding.

F. SCHEDULING ARBITRATION HEARING

1. **Time Lines:** The scheduling of the arbitration hearing date must be accomplished no later than 90 calendar days from the date the grievance was originally appealed to arbitration. Failure to invoke the arbitrator selection process and the arbitration scheduling process, within 90 calendar days will render the grievance ineligible for arbitration and the last preceding University written answer shall become final and binding.
2. **Inability to Agree to Arbitration Hearing Date:** 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 90-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.

G. ARBITRATION HEARING - GENERALLY

1. **Scope of Hearing:** 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.
2. **Closed Hearings:** Arbitration hearings conducted pursuant to this Article shall be closed unless the parties mutually agree otherwise in advance and in writing.
3. **Fair Hearing:** 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 the arbitrator shall assure that the hearing is a fair one.
4. **Burden of Proof:** 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 8 - Discipline and Dismissal, FUPOA 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 8 - Discipline and Dismissal, shall be the University's.

5. **Costs:**

- a. **Hearing Costs:** The cost of the arbitrator and expenses of the hearing will be shared equally by the University and FUPOA. 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 arbitration.
- b. **Canceled Arbitration Hearings:** Absent mutual agreement, the party canceling an arbitration hearing shall be responsible for payment of all cancelation costs, if any.
- c. **Other Expenses:** The University shall not be responsible for any lodging, travel or other expenses incurred by grievants, witnesses or Association representatives with regard to the arbitration hearing.

H. **ARBITRATION HEARING – EVIDENCE, SUBPOENAS, AND BRIEFING**

1. **Evidence and Testimony:**

- a. **Examination of Witnesses:** The arbitration hearing shall provide an opportunity for FUPOA and the University to examine and cross examine witnesses under oath or affirmation and to submit relevant evidence.
- b. **Relevance and Materiality:** 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 evidentiary documents to be considered by the arbitrator shall be noticed or filed at the hearing.
- c. **New Issues/Evidence/Allegations:** FUPOA or the University shall not be able to introduce new issues or allegations at the arbitration hearing. Facts which were known to FUPOA and/or the University but not introduced during the last preceding formal grievance step of the Grievance Procedure shall not be introduced by FUPOA or the University at the arbitration hearing. Rebuttal evidence or testimony is excluded from this limitation.
- d. **Settlement Offers Not Admissible:** Settlement offers made during the Grievance Procedure shall not be introduced as evidence in the arbitration hearing.

2. **Subpoenas/Discovery:**

- a. **Subpoena Witnesses:** 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 expense of service and appearance fees, if any, shall be borne entirely by the party requesting the subpoena of witnesses.
- b. **Subpoena Documents/Witness Lists:** The arbitrator shall have no authority to subpoena documents or records nor shall the parties be required or ordered to produce lists of witnesses prior to the hearing.
- c. **No Discovery:** There shall be no discovery process nor shall either party be required to produce documents or records.

3. **Briefing:** 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.

I. ARBITRATION HEARING – PAY STATUS OF PARTICIPANTS

1. **Representative:** The University shall not be required to grant without-loss-of-straight-time pay status to more than one employee Association representative for attendance at any one arbitration hearing
2. **Grievant:** The grievant (one grievant in a group grievance) shall be in a without loss-of-straight-time pay status at the arbitration hearing.
3. **Witnesses:** Witnesses who appear at the arbitration hearing at the request of the Association shall be in a without-loss-of-straight-time pay status for time spent actually giving testimony.
4. **Repetitive Witnesses:** Every effort shall be made by the Association and University to avoid the presentation of repetitive witnesses.

J. ARBITRATOR AUTHORITY/LIMITATIONS ON AWARD

1. 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 Association or the employee(s) any matters which were not obtained in the negotiation process.
2. 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. 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.
4. 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.
5. 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 FUPOA;
 - b. Any period of time between the date a hearing was originally scheduled to be held and, due to a request from FUPOA to postpone or change the scheduled hearing, the rescheduled date of the hearing;
 - c. Any period of time earlier than 30 days prior to the date of filing of the Step 1 written grievance; and

- d. Any period of abeyance.
- 6. 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.
- 7. No award shall provide or require the payment of interest, damages, mental state considerations, pain and suffering, or any other forms of punitive damages, or attorney fees or representative(s) fees, or any other form of payment not related to the employee(s) regular hourly rate of pay and benefits associated therewith.
- 8. Upon the mutual agreement of the parties an arbitrator may retain jurisdiction in cases involving an award of retroactive monetary payment and/or credit.

K. SETTLEMENT

- 1. FUPOA shall have full authority to settle, withdraw, or otherwise dispose of any grievance brought on behalf of the Association 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 FUPOA shall be binding upon employees represented by FUPOA.
- 2. An appeal to arbitration shall not constitute a bar to efforts by the University and FUPOA 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.
- 3. In any settlement of a grievance appealed to arbitration involving retroactive payments, the appropriate University and Association 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.

L. ARBITRATION DECISION

- 1. **Timing of Decision:** 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.
- 2. **Final and Binding Decision:** The decision of the arbitrator on any issue properly before him or her and within the limits of this article shall be final and binding upon the University, the Association and all employees.