

ARTICLE 7

GRIEVANCE AND ARBITRATION PROCEDURES

A. GENERAL PROVISIONS

1. Representation

A grievant shall have the right to be represented at all steps of the grievance procedures by a UAW representative, or any other one (1) person of the grievant's choice other than a University employee who has been designated as supervisory, managerial, or confidential. In the event that more than one (1) representative attends a meeting in the grievance process, it is expressly understood there shall be only one Union spokesperson.

2. Settlements not precedential

Resolution of the grievance at any step of the grievance or arbitration procedures, although final, shall not be precedent-setting.

3. Settlement offers not admissible

Offers of settlement are inadmissible at any step of the grievance or arbitration procedures.

4. Grievance and arbitration file separate from personnel file

Materials generated as a result of the filing of a grievance or arbitration, including the grievance form, shall be maintained by the University in a file separate from the Academic Researcher's personnel file.

5. Attendance

Attendance at the Step meetings held pursuant to Section D are limited to the grievant(s), the grievant's representative, if any, and one other individual from UAW. Advance requests for additional attendees to present directly relevant information pertaining to the grievance shall not be unreasonably denied.

B. FILING GRIEVANCES

1. Filing Status

A grievance is a claim by an individual Academic Researcher, a group of Academic Researchers, or UAW, that the University has violated a specific provision of this Agreement during the term of this Agreement.

2. Individual grievance

An individual grievance is defined as a grievance the UAW files on behalf of an individual employee. An individual grievance must be so designated on the grievance form at Step 2 and signed by the grievant or their representative. The grievant or their representative may sign the grievance form electronically.

3. Group grievance

A group grievance is defined as a grievance that covers more than one employee, and that involves like circumstances and facts. A group grievance must be so designated on the grievance form at Step 2, and all employees covered by the grievance or their representative must sign the grievance form (Appendix G) at the time of filing of the Step 2 grievance. The grievants or their representative may sign the grievance form electronically. If an employee wishes to withdraw from a group grievance represented by UAW, the employee shall notify UAW. UAW shall in turn notify the University in writing if the employee is to be withdrawn.

4. Union grievance

A union grievance is defined as a grievance the UAW files on behalf of itself. A union grievance must be so designated on the grievance form at Step 2.

5. Consolidation of grievances

Grievances related to two (2) or more Academic Researchers may be consolidated by written agreement of the University and UAW.

6. Proper filing of grievances and appeals

a. Method of filing used by UAW

All grievances and appeals must be in writing and submitted to the designated campus and/or medical center labor relations office at the location where the alleged violation occurred. All grievances and appeals must be filed on the Academic Researcher grievance form (Appendix G). Grievances may be submitted via email. Upon request, the University shall inform the Union which department or hiring unit is assigned to which local labor relations office.

1). Email Filing

- a) Emailed grievances must be received by the appropriate office designated to receive the grievance or appeal. If the date and time on the electronic transmission falls outside the University business

hours, the following business day shall constitute the official date of receipt. Any attachments must be in PDF format or similar electronic document format.

- b) Each campus/medical center labor relations office shall notify the Union of the email address where grievances and appeals may be electronically filed.
- c) Filing at the Office of the President may be sent by email to appealagrievance@ucop.edu. The Office of the President shall acknowledge the Union's grievance filing through a computer-generated, automatic email response.
- d) The University shall acknowledge the Union's grievance filing through an automatic email response. If the Union does not receive a confirmation email within 30 minutes of the time of submission, the date of filing shall be the sent time and date.
- e) The University shall respond to grievances or any subsequent appeals via email. All University responses shall be sent by email to uaw5810@uaw5810.org, which shall constitute service of any written response as outlined in this Article.
- f) In the event the union alleges a contract violation as a result of an Office of the President action, the grievance shall be filed directly at the Office of the President. The University shall issue a Step 3 response within thirty (30) calendar days from the date the grievance was filed at the Office of the President.

C. TIME LIMITS

1. The date of initial filing shall be the date the grievance is received at the designated campus/medical center labor relations office. Filings received after the close of business at that campus/medical center shall be deemed filed the next business day. The time limits and meetings for the processing of grievances shall be in accordance with the formal grievance review steps addressed below.

2. Extensions

The parties may mutually agree to extend the time limits in advance of the expiration of the time limit. Such agreements shall be documented in writing. Each party shall be entitled to one (1), seven (7) calendar-day extension upon request, with the exception of the initial filing of the grievance, which

must be timely filed.

3. Failure to comply with the time limits

a. By the UAW

If the grievant or the grievant's representative does not comply with a timeline set forth in this Article, the grievance shall be considered resolved on the basis of the last preceding University response and ineligible for further processing.

b. By the University

If the University does not comply with a timeline set forth in this Article, the grievant or their representative has the right to appeal the grievance to the next step of the Grievance or Arbitration procedure in accordance with the timelines provided in this Article.

D. GRIEVANCE PROCEDURE

1. Optional/informal resolution

Before commencing formal grievance processes, the grievant may discuss the grievance with the grievant's immediate supervisor in a timely manner. Informal resolutions, although final, shall be neither precedential nor inconsistent with this Agreement. If the grievance is not resolved through informal discussion, the grievant may seek review as set forth below. Attempts at informal resolution do not extend the thirty (30) calendar day time limit to file an initial grievance at Step 2.

2. Formal grievance review steps

a. **Step 2 – Initial Grievance (campus).** A written grievance must be filed as set forth below:

1) **Receipt of grievance.** A written grievance must be received by the designated campus/medical center labor relations office on the grievance form agreed to by the parties (Appendix G) within thirty (30) calendar days from the following instances, whichever occurs first: a) the date the event / action which gave rise to the grievance occurred, or b) the date on which either the grievant or their representative knew or should have known of the alleged violation of the Agreement.

2) **Completeness of grievance.** The written grievance shall be filed on the form as provided in Appendix G and must contain

the following information or it shall be ineligible for processing:

- a) An inclusive list of all Article(s), Section(s), and subsections of the Agreement alleged to have been violated;
- b) A specific description of the action(s) grieved and how it violated the above-mentioned provision(s);
- c) How the grieving employee was adversely affected;
- d) The name of the grievant's representative(s) if any;
- e) A list of the affected individual(s) known at the time of filing or detailed description of the group of affected Academic Researchers;
- f) The specific date(s) of the alleged violation(s);
- g) The specific remedy or remedies requested; and
- h) The signature(s) of the grievant(s) or their representative. The signature(s) may be electronic.

3) **Step 2 Meeting**

- a) A Step 2 meeting shall be held within fifteen (15) calendar days from the date the Step 2 grievance was filed. The parties may mutually agree in writing to waive the Step 2 meeting.

- b) Step 2 response deadline

The University shall issue a written response to the grievance within fifteen (15) calendar days of the date on which the Step 2 grievance was filed or the date of the Step 2 meeting, whichever is later.

- c) If the University has not provided a Step 2 response, it shall be deemed a denial of the grievance(s).

b. **Step 3 – Review (Office of the President)**

- 1. If the grievance has not been resolved at Step 2, the grievant and/or the grievant's representative may file an appeal in writing to the Office of the President. Such appeal must be received by the Office of the President no later than fifteen (15) calendar days after the University's Step 2 response is issued or was due.
- 2. An appeal to Step 3 shall be accomplished as follows:
 - a. Email to AppealAGrievance@ucop.edu.

- 1) Email submissions must include PDFs of all documents, information and signatures necessary to be in compliance with the Grievance Procedure provisions of this Agreement.
 - 2) The date of filing for emailed Appeals to Step 3 shall be the date received on the University server, provided that the appeal is received during business hours. If a Step 3 appeal is received outside of normal business hours, the first following business day will be deemed the filing date of the Appeal to Step 3.
 - 3) The University shall acknowledge the Union's Appeal to Step 3 through a computer-generated, automatic email response. If the Union does not receive a confirmation email within 30 minutes of the time of submission, the date of filing shall be the sent time and date.
3. The subject of the grievance as stated in Step 2 shall constitute the sole and entire subject matter of the appeal to Step 3.
 4. The UCOP official or the UCOP official's designee shall issue the University's Step 3 decision within thirty (30) calendar days of the receipt of the appeal. Proof of Service shall accompany the written decision. The Step 3 decision shall be served upon the grievant and/or the grievant's representative.
 5. The UCOP official or the UCOP official's designee shall have the authority to settle grievances appealed to Step 3.
 6. If UCOP has not provided a Step 3 response, it shall be deemed a denial of the grievance(s).

E. ARBITRATION PROCEDURE

1. Proper filing:

Only the UAW may file an appeal to arbitration and only after the timely exhaustion of the Grievance Procedure. The written appeal must be signed by an authorized representative of the UAW, filed with the Office of the President - Labor Relations, and must include:

- a. the name, email, and address of the UAW representative who is

responsible for the appeal to arbitration and to whom all correspondence relating to the arbitration is to be sent;

- b. a copy of the completed grievance form; and
- c. a statement setting forth the unresolved issue(s), the articles and sections of the agreement alleged to have been violated, and the remedy requested.

2. Appeal Format:

An appeal to arbitration shall be made in the following way:

- a. Email to AppealAGrievance@ucop.edu.
 - 1. Email submissions must include PDFs of all documents, information and signatures necessary to be in compliance with the Arbitration provisions of this Agreement.
 - 2. 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.
 - 3. The University shall acknowledge receipt of the Union's Appeal to Arbitration through a computer-generated, automatic email response. If the Union does not receive a confirmation email within 30 minutes of the time of submission, the date of filing shall be the sent time and date.
- b. Appeals to arbitration that are not processed within the time limit below are ineligible for arbitration.
- c. If a grievance is not appealed to arbitration, the University's Step 3 response shall be final. The UAW shall be considered to have withdrawn its appeal if the UAW fails to follow the time limits in Section E. If the appeal to arbitration is withdrawn or an arbitration hearing otherwise does not take place, the University's Step 3 response will be final.

3. Time limits

- a. The written appeal to arbitration must be received by the Office of the President within forty-five (45) calendar days of the date on which the University issued its Step 3 response, or within forty-five (45) calendar days of the final date on which the University's response

was due if no response was issued.

4. Selection of the arbitrator / Pre-Arbitration Conference

- a. The UAW representative shall contact the designated University official at the Office of the President within thirty (30) calendar days of the appeal to arbitration in order to select an arbitrator from the panel set forth in Appendix H. The arbitrator shall be selected within forty-five (45) calendar days from the date of the appeal. Failure to contact the designated University official within the established time frame will be considered as a withdrawal of the appeal to arbitration.
- b. If the parties cannot agree to an arbitrator from the panel, the parties shall alternately strike one name from the list of panel members. Unless the parties agree otherwise, the party striking first shall be determined by the flip of a coin. The one name remaining shall be designated as the arbitrator.
- c. At the Pre-Arbitration Conference, the parties shall:
 - 1) Select an arbitrator from Appendix H - Panel of Arbitrators in accordance with 4a and 4b above;
 - 2) Discuss all arbitrability claims raised by the University, if any, with the goal of resolution;
 - 3) Discuss the merits of the grievance, with the goal of resolution;
 - 4) Discuss and decide engaging in grievance mediation in accordance with 5. below.
- d. At the time the University and the UAW schedule the Pre-Arbitration Conference, each party shall identify the names of the participants.
- e. If the arbitrability issues are not resolved, the parties shall set the dates for the briefing schedule, inform the arbitrator of the process for resolving arbitrability, and request provisional dates for a hearing on the merits should a hearing be needed. Such hearing shall take place after the arbitrator's decision on arbitrability, and shall be scheduled to allow at least 4 weeks between when the arbitrator's decision on arbitrability is due and the arbitrator's cancellation deadline.
- f. If arbitrability is resolved, but the merits are not settled, the matter shall go forward to a hearing.
- g. Following the Pre-Arbitration Conference, the UCOP Representative shall notify the Union whether the Office of the President shall

remand the case to the location or retain the case at the Office of the President.

- h. Within sixty (60) calendar days from selection, the parties shall attempt to agree to a hearing date, but if they are unable to agree, the authority for scheduling a hearing date shall reside with the arbitrator.
- i. The parties shall select an arbitrator from the panel in Appendix H; however, on a case by case basis, the parties may agree to the selection of any arbitrator not from the panel in Appendix H.

5. Mediation (optional step)

The parties may mutually agree to engage in grievance mediation and request a state mediator in order to resolve cases prior to a hearing. Mediation shall occur at least four (4) weeks before the arbitrator's cancellation deadline, unless another timeline is mutually agreed to. However, if the parties agree to engage in grievance mediation, nothing in this paragraph shall supplant the grievance process timelines from continuing, unless mutually agreed by the parties. If a settlement is reached in grievance mediation, the settlement shall be in writing and signed by the parties. Such agreement shall not be precedent-setting.

6. International Grievant who is Dismissed

If the Grievant is required to leave the country prior to the arbitration hearing, the UAW may request that the University issue a letter to explain to the appropriate immigration authorities the purpose of the visit in order for the Academic Researcher to return to California to be present for the arbitration hearing. However, should the Grievant either elect not to return to California or is unable to obtain an appropriate visa, the parties shall agree to alternative options in order for the Grievant to participate remotely.

7. Bifurcation

- a. The University shall be precluded from raising arbitrability claims if it has not done so by the Step 3 response, unless such issues arise after the Step 3 response is issued. Arbitrability claims must include facts and arguments to substantiate such claims.
 - 1. The arbitration process shall be bifurcated where the University and Union do not resolve properly made arbitrability claims at the Pre-Arbitration Conference.
 - 2. Any party requesting a hearing on the issue of arbitrability, must do so within seven (7) business days of selecting an

arbitrator. If such a request is not made within seven (7) business days of choosing an arbitrator, the issue of arbitrability shall be resolved by briefs, not hearing.

3. Written Brief

The issue(s) of arbitrability shall be resolved in a written decision based on arguments submitted by the parties prior to and separate from the hearing (if any) on the merits of the claim. Such arguments shall be submitted to the arbitrator in brief form according to the following schedule:

- 1) The University shall submit its brief no later than thirty (30) calendar days from selection of an arbitrator at the Pre-Arbitration Conference.
- 2) The Union shall submit its response brief no later than thirty (30) calendar days from receipt of the University's brief.
- 3) The arbitrator shall issue their response no later than thirty (30) calendar days from receipt of the Union's brief.

4. If the University fails to meet the timeline, it is precluded from making arbitrability claims, and the grievance shall proceed to a hearing on the merits.

5. If the Union fails to submit a response brief, the arbitrator shall issue a ruling based on the record from the University's brief.

6. Hearing on Arbitrability

Where a party timely requests a hearing on arbitrability, such hearing shall be held. If a hearing on arbitrability has been timely requested, the moving party shall contact the arbitrator within five (5) calendar days of making such a request to request two (2) dates (or sets of dates) for a separate hearing on arbitrability and a hearing on the merits which shall take place after the arbitrator's decision on arbitrability. Such hearing shall be scheduled to allow at least 4 weeks between when the arbitrator's decision on arbitrability is due and the arbitrator's cancellation deadline. If the moving party does not request two (2) dates (or sets of dates) for separate hearings within five (5) days of requesting a hearing on arbitrability, the issue of arbitrability shall be resolved by briefs, instead of a hearing.

8. Procedural/evidentiary issues at hearing

- a. Prior to the arbitration hearing, the UAW and the University shall make a good-faith attempt to stipulate as to the issue(s) to be arbitrated and to as many undisputed facts as possible. At least seven (7) calendar days prior to the arbitration, the parties shall exchange lists of known witnesses.
- b. During the hearing, the parties shall have the opportunity to examine and cross-examine witnesses under oath and to submit relevant evidence. If the grievant cannot testify in person, the grievant may testify through electronic means. Issues and allegations shall not be introduced at the hearing unless they were introduced prior to or during Step 3 of the Grievance Procedure.
- c. Upon request by either party, but not upon the arbitrator's own motion, the arbitrator shall have the authority to subpoena relevant documents and/or witnesses.
- d. The arbitration hearing shall be closed to anyone other than the participants in the hearing unless the parties agree otherwise in writing.
- e. In all cases appealed to arbitration, except for actions taken pursuant to Article 6, Corrective Action and Dismissal, the UAW shall have the burden of proceeding and the burden of proof. In all cases, the burden of proof is preponderance of the evidence.
- f. Hearings shall be held in-person, unless the parties agree to conduct the arbitration hearing remotely using virtual platforms. If there is no agreement by the parties on the modality of conducting the hearing, the decision shall be made by the arbitrator and shall be final.

9. Scope of arbitrator's authority

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 shall set forth the findings of fact, reasoning, and conclusions on issues submitted by the parties. The arbitrator's authority shall be limited to determining whether the University has violated arbitrable provisions of this contract and to ordering corresponding remedies. The arbitrator shall not have jurisdiction or authority to add to, amend, modify, nullify, or ignore in any way the provisions of this contract nor shall the arbitrator have the authority to review any academic judgment. To the extent that the University's action is based upon academic judgment, the arbitrator shall have no authority or jurisdiction to substitute the arbitrator's judgment for that of the University.

and its agents.

- a. If the grievance is sustained in whole or in part, the remedy shall not exceed restoring to the grievant the lost contractual rights, benefits or pay, less any compensation from any source including but not limited to Workers' Compensation, Unemployment Compensation or other employment. The decision and award of the arbitrator shall be final and binding upon the parties to the contract and the Academic Researchers. The University will not be liable for back wages or other monetary reimbursement for:
 - 1) any period of time during which an extension of the time limits has been granted at the request of the UAW;
 - 2) any period of time greater than thirty (30) calendar days prior to the date the grievance was filed pursuant to this article.
- b. The arbitrator's fees and the costs of transcripts requested by the arbitrator or both parties shall be equally borne by the parties. Costs for transcripts requested by only one party, shall be borne by the requesting party.
- c. The party that cancels or postpones an arbitration will be liable for any cancellation/postponement fees charged by the arbitrator or court reporter.

10. Pay Status

- a. The University and the UAW shall establish a reasonable schedule for the arbitration proceedings. The UAW shall provide the names of witnesses in advance in order to facilitate the University's provision of release time as discussed below.
- b. The Academic Researcher grievant(s) shall be in a without-loss-of-pay-status for the entire arbitration hearing. Academic Researcher witnesses will be in a without-loss-of-pay-status for travel to and from the arbitration hearing, for time actually giving testimony or waiting to give testimony, at the hearing. Total release time for the grievant, employee representative and witness(es) for travel to/from the hearing and for participation in the hearing shall not exceed either their normally scheduled hours of work for the day(s) of the hearing or their actual participation in the hearing. Participants shall travel to/from the hearing via the most expeditious method of transportation available.
- c. No more than one (1) Academic Researcher representative shall be

in without-loss-of-pay-status for an arbitration hearing.

- d. The University shall not be responsible for any lodging, travel expenses or other expenses incurred by a grievant, witnesses, employee or UAW representatives with regard to the union's presentation in the arbitration hearing.

11. Arbitrator Panel

The parties agree that there will be a standing panel of seventeen (17) arbitrators to hear arbitration cases scheduled for hearing pursuant to the provision of this article. The panel is listed in Appendix H.

F. NONDISCRIMINATION ACKNOWLEDGMENT AND WAIVER

1. If the UAW appeals a grievance to arbitration that contains allegations of a violation of Nondiscrimination but does not allege violation of another Article that is arbitrable, the Union's notice must include an Acknowledgment and Waiver Form signed by the affected Academic Researcher. The Acknowledgment and Waiver Form will reflect:
 - a. that the Academic Researcher has elected to pursue arbitration as the exclusive forum for the claim; and
 - b. that the Academic Researcher understands the procedural and substantive differences between arbitration and the other remedial forum or forums in which the dispute might have been resolved, including the differences in the scope of remedies available in arbitration as compared to other forums.
2. The UAW may request an extension of thirty (30) calendar days to file its appeal to arbitration to enable the Academic Researcher to make an informed choice about whether to sign the Acknowledgement and Waiver Form, when a grievance contains allegations of a violation of Nondiscrimination but not allegations of a violation of another Article that is arbitrable.