

ARTICLE ____
ARBITRATION PROCEDURE

A. GENERAL PROVISIONS

1. Representation

A grievant shall have the right to be represented at all steps of the arbitration procedure by a UAW representative.

2. Extension of time limits

Time limits set forth in this article may be extended only by agreement of the parties in writing.

3. Settlements not precedential

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

4. Settlement offers not admissible

Offers of settlement are inadmissible at any step of the arbitration procedure.

5. Arbitration file separate from personnel file

Materials generated as a result of an appeal to arbitration shall be maintained by the University in a file separate from the academic researcher's personnel file.

6. Effect of resignation or retirement

Grievants who voluntarily resign or retire their employment with the University shall have their pending arbitrations immediately withdrawn and will not benefit by any subsequent settlement or disposition of any individual, union, or group grievance.

B. 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 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 of the agreement alleged to have been violated, and the remedy requested.
2. Appeal Format:
3. An appeal to arbitration may be made in the following ways:
- a. ~~Hand Delivery:~~
~~When hand delivered, proof of service must accompany the appeal to arbitration. The date of receipt will be used to determine the date of the appeal for hand-delivered appeals.~~
 - b. 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 Step 3.
 - (3) The University shall acknowledge receipt of the Union's Appeal to Arbitration through a computer-generated, automatic email response.
 - c. Appeals to arbitration that are not processed within the time limit below are ineligible for arbitration.
 - d. If a grievance is not appealed to arbitration, the University's Step 3 response shall be final. 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.
4. 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.
- b. Within fifteen (15) calendar days of the date of email delivery or date of personal delivery, the University shall acknowledge receipt of the appeal and the identity of the University official to whom all relevant correspondence should be directed.

5. Selection of the arbitrator

- a. The UAW representative shall contact the designated University official within thirty (30) calendar days of the appeal to arbitration in order to select an arbitrator from the panel set forth in Appendix XX. 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 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.
- c. 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.

6. Bifurcation for procedural and/or arbitrability issues

- a. **Bifurcation when procedural issues might preclude hearing on merits**
The arbitration process shall be bifurcated where the University asserts that there are procedural (e.g., timeliness, standing) and/or arbitrability issues that preclude the UAW from proceeding to a hearing on the merits of the claim.
- b. **Notification of arbitrability issue**

The University shall inform the UAW in writing of its intent to assert the issue of arbitrability prior to the selection of the arbitrator or at least forty-five (45) calendar days prior to the scheduled arbitration.

c. **Arbitrability decided in writing or separate hearing**

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.

- 1) **The Brief is default method for deciding arbitrability.** Such argument will be submitted to the arbitrator in brief form where practicable.
- 2) **Hearing available upon request.** However, where either party requests a hearing on arbitrability, such hearing shall be held. Any hearing to resolve the issue of arbitrability shall be resolved in a hearing prior to and separate from the hearing (if any) on the merits of the claim.

d. **Selection of arbitrator for hearing on the merits**

After the decision on arbitrability, if the arbitrator deciding the issue of arbitrability determines that the dispute is arbitrable and the arbitration is not precluded by any procedural defects, the parties will use the arbitrator selection procedure in Section B.3. above to select an arbitrator to hear the dispute's merits. The parties are not required to select, nor are they precluded from selecting, the same arbitrator for both the arbitrability and merits hearings.

7. Procedural/evidentiary issues at hearing

- a. Prior to the arbitration hearing, the UAW 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, 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 XX, Corrective Action and Dismissal, the UAW shall have the burden of proceeding.

8. 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 will 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 pay, benefits or contractual rights lost 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.

9. 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.

10. Arbitrator Panel

The parties agree that there will be a standing panel of ~~thirteen (13)~~ **seventeen (17)** arbitrators to hear arbitration cases scheduled for hearing pursuant to the provision of this article. The panel is listed in Appendix ___.

C. 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.