

ARTICLE \_\_\_\_

**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 Settlements not precedential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. Effect of resignation or retirement

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their employment with the University shall have their pending grievances **or appeals to arbitration** immediately withdrawn and will not benefit by any subsequent settlement or disposition of any individual, union, or group grievance **or arbitration**.

**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 XX) 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 \_\_\_). 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](mailto: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 respond to grievances or any subsequent appeals via email. All University responses shall be sent by email to [uaw5810@uaw5810.org](mailto:uaw5810@uaw5810.org), which shall constitute service of any written response as outlined in this article.
- e. 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. ~~and shall be considered waived and withdrawn by the employee and/or the Union.~~

b. **By the University**

~~Grievances not answered by the University within the designated time limits of any step of the grievance procedure may be appealed to the next step of the grievance procedure by giving written notice of the appeal within fifteen (15) calendar days of the expiration of the designated time limits. That notice of appeal should be filed with the campus appropriate University official, at the location or the Office of the President, responsible for the next step of the grievance procedure.~~

**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. **Step 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:
- i. **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 \_\_\_) within thirty (30) calendar days from the date on which either the grievant or the grievant's representative knew or could have been expected to know of the event or action which gave rise to the grievance.
- ii. **Completeness of grievance.** The written grievance must contain the following information or it shall be ineligible for processing:
- a) The specific Article(s) and section(s), ~~and provision(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.

**iii. Step 2 Meeting**

1. 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.
2. 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.

- 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](mailto:AppealAGrievance@ucop.edu).
      - i. Email submissions must include PDFs of all documents, information and signatures necessary to be in compliance with the Grievance Procedure provisions of this Agreement.
      - ii. 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.
      - iii. 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.

#### 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 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:

An appeal to arbitration may be made in the following ways:

- 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 Step 3.
  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. 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.
- 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.

4. 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.



5. International Grievants who are 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 gain an appropriate visa, the parties shall agree to alternative options in order for the Grievant to participate remotely.**

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.

a) **The Brief is default method for deciding arbitrability**

Such argument will be submitted to the arbitrator in brief form where practicable. **The University's briefs are due twenty (20) calendar days after the selection of the arbitrator and the Union's response brief is due twenty (20) calendar days after receiving the University's brief. The Arbitrator shall issue a written decision within thirty (30) calendar days from the date the Union's response brief is received.**

b) **Hearing available upon request**

~~However, where either party requests a hearing on arbitrability, such hearing shall be held. **When either party asserts an arbitrability issue cannot be decided through briefs, a 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 Union shall contact the University within ten (10) calendar days** parties will use the arbitrator selection procedure in Section B.3. above to select an arbitrator, **using the procedure in Section B.3.** above 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.~~

~~**The hearing on the merits shall be scheduled at the time the arbitrator is selected. If the University asserts an arbitrability claim, the hearing on the merits shall not be scheduled to take place less than 90 days after the arbitrator takes the arbitrability claim under submission.**~~

**In the event a party asserts arbitrability, the parties shall use the selection procedure in Section E.4. above to select two (2) arbitrators. One arbitrator will be selected to hear the issues of arbitrability and a second arbitrator will be selected to decide the merits of the case if the case is deemed arbitrable. The hearing on the merits shall be scheduled at the time a separate arbitrator is selected for the hearing on arbitrability. If the University asserts an arbitrability claim, the hearing on the merits shall not be scheduled to take place less than 90 days after the arbitrator takes the arbitrability claim under submission.**

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:

- a) any period of time during which an extension of the time limits has been granted at the request of the UAW;
  - b) 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 seventeen (17) arbitrators to hear arbitration cases scheduled for hearing pursuant to the provision of this article. The panel is listed in Appendix \_\_\_.

**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.