

California Faculty Association
California State University
A Labor/Management Project

**A Statutory Grievance
Administrative Hearing
Manual**

March 20, 2008

A Statutory Grievance Administrative Hearing Manual for Faculty Hearing Committees

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I. Executive Summary

- The Collective Bargaining Agreement now incorporates two alternate means of resolving disputes between a grievant and the CSU; the contractual procedure and the statutory procedure. This “new” statutory procedure is a mandatory requirement of the grievance process by virtue of the operation of Education Code §89542.5.
- Grievants may select either the contract grievance procedure or the statutory hearing procedure at the time the grievance is filed.
- The statutory hearing procedure relies upon Faculty Hearing Committees as the first line of dispute resolution. Three person Faculty Hearing Committees are drawn from a campus-wide elected Faculty Hearing Panel, made up of full-time faculty elected by their peers.
- A broad range of issues can be brought before the Faculty Hearing Committees, including rights accruing to job classification, benefits, working conditions, appointment, reappointment, tenure, promotion, reassignment, or the like.
- Issues requiring legislative action (such as the salary structure), merit pay, and grievances filed on behalf of CFA as a union (as opposed to those brought by CFA on behalf of individuals or groups of individuals), may not be decided in the statutory hearing process.
- Any Unit 3 faculty unit employee who has been employed for more than one semester or quarter may file grievances under the statutory procedure.
- Grievants are entitled to the representative of their choosing, or may represent themselves.
- Faculty Hearing Committees should base their decisions on relevant and reliable evidence.
- Faculty Hearing Committee decisions must be issued within 14 calendar days of the hearing.
- Findings of the Faculty Hearing Committees are advisory. If the campus president agrees with the finding, that is the end of the case. If the Faculty Hearing Committee finds for the grievant and the president disagrees with the decision or the remedy, the grievant may request binding arbitration by a neutral third party arbitrator. The cost of arbitration shall be paid by the CSU unless CFA officially represents the grievant, in which case the costs of the case will be split equally between CSU and the CFA.

II. Background: New Statutory Hearings

A. *History*

In 1999 CFA worked with the legislature to pass a bill to make the rights in the Education Code related to the grievance procedure a floor below which negotiated contracts could not go, for CSU employees bargaining Unit 3.

In order to implement this change in the law, the parties have set up a "statutory" grievance track in addition to the traditional contract grievance process. It is based on Faculty Hearing Committees that make recommendations to the university presidents. If the university president overrules the Faculty Hearing Committee, the grievant may elect to submit the continuing dispute to binding arbitration or may accept the president's decision. If neither the panel nor the president rules for the grievant, the case does not go on to arbitration, but is ended.

B. *The Importance of Faculty Participation*

This peer-centered dispute resolution process will only work if faculty participate. CFA and CSU will strongly encourage all eligible faculty to participate on the Faculty Hearing Panel and serve on Hearing Committees when called. The parties will have to experiment with methods of encouraging faculty participation.

C. *Election of Faculty Panel Members*

Each campus panel shall consist of no less than twenty-five percent (25%) of the full-time equivalent faculty (FTEF). Campus administrators and local CFA chapters should work together cooperatively to develop mutually agreeable election procedures. All full-time faculty including tenured faculty, probationary faculty, lecturers, counselors, librarians, and coaches are eligible for election to the Faculty Hearing Panel. Faculty who work full-time by virtue of appointment to or service in multiple departments may be eligible to serve on the Faculty Hearing Panel, the group from which the three person Faculty Hearing Committees are drawn to hear individual cases (see 10-8-07 MOU Re: Faculty Hearing Panels for more specifics on eligibility).

D. *What Is a Grievance?*

Simply put, a grievance alleges (claims) that the faculty member was directly wronged in connection with the rights accruing to his or her job, classification, benefits, working conditions, appointment, reappointment, tenure, promotion, reassignment or the like, including but not limited to rights arising under the collective bargaining agreement. (See Article 10.2 of the collective bargaining agreement.)

E. How Should a Grievance Be Evaluated?

In order to evaluate whether or not an incident is a grievance, Hearing Committees should ask themselves:

1. What is the direct wrong the faculty member is grieving?
2. Is it associated with a right? Is it a violation of the collective bargaining agreement? Of campus policy, procedure or established practice? Of external law?

The allegation presented in the written grievance, supporting documentation, and the Administration's answer to the grievance should be the focus of the Faculty Hearing Committee's deliberations.

For more information on the contract see: www.calfac.org or http://www.calstate.edu/LaborRel/Contracts_HTML/CFA_CONTRACT/CFAtoc.shtml

F. Information Requests

It is the responsibility of the administration and the grievant or his/her representative to seek and obtain all information that they want the Committee to consider. In cases where it is necessary for the grievant or his/her representative to obtain information from the administration for the purpose of investigating, resolving, or presenting a grievance, the grievant or his/her representative shall make a written request prior to the hearing to the appropriate administrator for reasonably specific information pursuant to Article 10.40. The grievant or his/her representative shall have the right to receive, within thirty (30) days, such information not defined as confidential or personal under law as would assist in investigating, resolving, or presenting the grievance. (See Article 10.40 of the collective bargaining agreement).

If the administrator and grievant are unable to agree on what information should be supplied, then the issue should be referred by the parties to the CFA Director of Representation and the CSU Director of Collective Bargaining for their consideration. In the event that agreement still cannot be reached, then the issue shall be sent to a third-party umpire who will be required to make a determination within 48 hours of the referral of the question to the umpire. The umpire will be selected from the current CFA/CSU panel of arbitrators. In order to expedite this process, it is anticipated that electronic mail will be the normal means by which such requests are made and by which responses are provided. The costs of referring such issues to an umpire will be shared equally by the parties.

III. Overview of Statutory Grievance Hearings

A. *The Purpose of the Statutory Grievance Hearings*

The purpose of these "statutory" hearings is to resolve workplace disputes.

B. *What Kinds of Issues Can Be the Basis for Statutory Grievances?*

Any issue involving an allegation that the employee was directly wronged in connection with the rights accruing to his or her job classification, benefits, working conditions, appointment, reappointment, tenure, promotion, reassignment, or the like may be the basis of a statutory grievance. Typical grievances include (but are not limited to) promotion, retention, tenure, reappointment of lecturers and all other lecturer issues, workload, harassment on the job, prohibited discrimination, disciplinary actions, discrimination or retaliation for CFA activity, health and safety concerns, and any other employment disputes.

C. *What Kinds of Issues Are Excluded from Statutory Hearings?*

A statutory grievance may not include matters (such as the salary structure) that require legislative action. The statutory grievance procedure does not apply to merit pay or to grievances brought on behalf of CFA as an organization (as opposed to those brought by CFA on behalf of individuals or groups of individuals).

D. *Who Can File a Statutory Grievance?*

All faculty unit employees who have been employed for more than one semester or quarter may file grievances that, if not settled early in the process, may result in hearings before Faculty Hearing Committees.

E. *Who Represents Grievants in Statutory Hearings?*

Grievants may be assisted in filing the grievance, in the investigation, in the administrative review, in the hearing before the Faculty Hearing Committee, and (potentially) in the arbitration process by a representative of their choosing, or they may represent themselves. CFA may decline to represent grievants in particular cases, and may decline to provide representation at arbitration for grievants it has represented in the Faculty Hearing Process.

F. Who Decides Whether a Grievance Goes Through the Statutory Hearing Process or the Regular Grievance Procedure?

At the time of the initial grievance filing, the grievant must choose to pursue either the contract grievance procedure or the statutory hearing procedure. CFA faculty rights representatives can advise grievants on which process is more suited to their case.

G. Who May Serve on Faculty Hearing Committees?

Any elected member of the Faculty Hearing Panel who does not have a material conflict of interest may serve on Faculty Hearing Committees.

H. How Are the Faculty Hearing Committees Selected?

Faculty Hearing Committees should be selected by lot on a case-by-case basis. The process shall be overseen by the Panel chair and the Associate Vice President for Academic Affairs, or his/her designee. If an individual is selected who would clearly be prohibited from participation on that committee by reference to a published CSU policy and or the CFA/CSU agreement, then the CSU administrator and Panel chair should void that selection and replace it with another name until such time as four eligible names have been selected. Faculty members within the same department as that in which the controversy arose shall not be deemed eligible for service on a Faculty Hearing Committee assigned to hear that particular grievance. The fourth name selected shall be the nominated alternate. Faculty may be required to serve on no more than one Faculty Hearing Committee each academic year. When a faculty member's name is selected for committee service, his/her name shall be removed from the Panel roster. If no hearing is ultimately held or if an alternate is not required to serve, that faculty member's name shall be returned to the Panel roster. The grievant shall be notified at least 14 days in advance of the hearing as to the identity of the members of the Faculty Hearing Committee.

I. What If a Committee Member Has a Conflict of Interest?

If an individual selected for a specific committee believes that he or she should not sit on a Faculty Hearing Committee in a particular case because of a provision in the CFA/CSU agreement, other controlling CSU policy, personal or professional association with the grievant, or other material reason, then the individual should notify the Faculty Hearing Panel chair of his or her intent to withdraw. If the chair and administrator agree that the individual should not participate, then he or she will then be replaced by the alternate. If a committee is reduced at any stage to less than three members, then the administrator and panel chair shall select by lot such additional members as are needed to reconstitute the panel to three members plus one alternate. No less than 7 days prior to the commencement of the hearing, the grievant may request removal of a Hearing Committee member for cause. The grievant shall be required to state in writing the specific grounds for such objection. If the CSU administrator and Faculty Hearing Panel chair agree, the challenged Hearing

Committee member shall be removed and replaced by the alternate. If they do not agree, the matter shall be referred to the systemwide level and the procedure described in Section 11 will be followed

J. Confidentiality

Members of Faculty Hearing Committees may be privy to information that is private and sensitive in nature. All efforts must be made to protect the confidentiality of the parties in such circumstances. It would be highly unethical for a Faculty Hearing Committee member to disclose confidential information except to those who have a legitimate interest in hearing that information, or those who are required to have that information provided to them by law, or otherwise under the terms of the Agreement.

K. Questions the Faculty Hearing Committee Should Be Able to Answer at the End of the Hearing

- What is the nature of the "wrong" that the grievant is claiming?
- What remedy does the grievant want?
- Who has the burden of proof?
- What are both parties' positions?
- What happened?
- When did it happen? Where did it happen?
- Who was involved in the incident or pattern of incidents?
- What documentary proof is available?
- What did witness testimony (if any) show?
- What rights have been violated (if any)?

IV. Evidence, Proof, Standards, and Committee Discretion

A. *Evidence*

Although a Faculty Hearing Committee has the authority to set its own procedures, it is very important for neutral decision-makers like Faculty Hearing Committee members to focus clearly on the evidence relating to and relevant to the complaint.

1. Relevant Evidence

The Faculty Hearing Committee must distinguish clearly between evidence that is or is not relevant. Relevant evidence is defined as that which tends to prove (or disprove) a fact in question.

2. Testimony Based on Personal Knowledge Is Always the Best Evidence

Third hand evidence (hearsay – for instance, someone told you that Mr. A said something nasty about Ms. B) should have limited weight. The rumor mill is often incorrect, and is not a proper basis for rulings in faculty rights matters.

3. What Is the Best Evidence? What Is the Most Efficient and Reliable Way of Proving Facts?

Faculty Hearing Committee members should think about what will provide the best evidence in the most efficient manner. For instance, if an employee's personnel file shows the person's teaching history and there is no disagreement as to its accuracy, rather than spending a lot of time having someone lay it out, committees should get the basic documents and have the parties agree that they are accurate, or at least that they are official university records and may be submitted into evidence without objection. Committees can ask advocates to summarize documents (subject to the other party's comments), but particularly regarding disputed matters, they should make certain to get the "best evidence", either the document itself or a copy of it that no one objects to, in terms of its authenticity. Business records (from university files) are good documentary evidence. Listings on the university web page may be used as evidence, but they must be reduced to print, with copies made available to the Faculty Hearing Committee, the grievant, and the advocates on the other side.

4. Documentary Evidence

All documentary (written or visual) evidence must be presented in a clear and digestible form. Faculty hearing committee members should not be asked to "surf the web" looking for items referred to by the parties. It is the responsibility of the parties and/or their advocates to provide printed documentary evidence. Panel members may request additional documentation at the time of the hearing, if documentation is incomplete.

The record may be held open to receive additional documentary evidence, if necessary, for a limited time. Copies of all documents should be provided for each Faculty Hearing Committee member (unless the committee indicates it will share a copy), each advocate, and the grievant. A set of any documents to which witnesses will be referring in their testimony should also be provided for the witnesses.

5. Stipulate to Undisputed Facts When Possible

When facts are not in dispute, it is helpful for the parties to enter into stipulations (agreements as to undisputed facts). Typical areas in which the parties frequently enter into stipulations include dates of employment, salary levels, the department in which the grievant is or was employed, the fact that certain documents were in the Personnel Action File, academic degrees held by parties to the case, and any undisputed facts leading up to the grievance. Stipulations regarding undisputed matters will save time and allow the Faculty Hearing Committee to spend more time focusing on disputed matters. Once facts have been agreed to by way of stipulation, it is not necessary to submit evidence to re-prove those facts.

B. Who Has the Burden of Proof?

The grievant has the burden of proof, except in discipline cases, where the administration has the burden of proof.

C. Standards of Proof

Having heard all the evidence, the Faculty Hearing Committee will then have to make determinations about the weight, relevancy and authenticity of the evidence they have received. The decision they will then have to make is whether the evidence supports either the grievant or the CSU in relation to all material matters in controversy between the parties.

1. In all cases other than discipline cases, the burden is on the grievant to prove his or her case by a "preponderance of the evidence." Under that standard, the grievant has met his or her burden if all the evidence taken together favors the grievant, however slightly (more than 50%).
2. In discipline cases (*e.g.*, written reprimand, suspension without pay, or termination), the burden is on the administration to prove it had "just cause" to impose the discipline. It is up to the Committee to decide whether to require the administration to prove just cause by a "preponderance of the evidence" (see above) or by a higher standard of proof, such as "clear and convincing evidence" (somewhere in the middle between 50% and 100%) or even "beyond reasonable doubt" (very close to 100%). Many arbitrators apply the "clear and convincing evidence" standard in discipline cases, some apply the "preponderance of the evidence" standard, and a few apply the "beyond reasonable doubt" standard. Some arbitrators distinguish between discipline cases in which the alleged conduct that gave rise

to the discipline would not also give rise to social stigma or criminal liability (*e.g.*, unsatisfactory performance) and cases in which it would (*e.g.*, theft or fraud). These arbitrators apply the “preponderance of the evidence” standard in the former cases and a higher standard of proof in the latter. Other arbitrators distinguish between the severity of the discipline and apply a “preponderance of the evidence” standard in reprimand cases but a “clear and convincing evidence” standard in termination cases. Yet others answer the question as to the applicable standard of proof simply along the following lines: “The employer has to convince me that the grievant did what he (or she) was accused of and that the discipline was appropriate under the circumstances.”

D. Faculty Hearing Committee Recommendations

The Faculty Hearing Committee will make a written recommendation within 14 days of the commencement of the hearing. That recommendation may support one or other of the parties in whole or in part. Like an arbitrator, the Faculty Hearing Committee has discretion in making determinations of fact and fashioning appropriate remedies. However, that discretion does not extend to engaging in acts that are illegal (for example gender or race discrimination) or that are “arbitrary and capricious” (making decisions that are totally unsupported by the evidence).

E. What If the University President Doesn't Agree with the Faculty Hearing Committee?

The recommendations of the Faculty Hearing Committees are advisory. If the University President doesn't agree, the grievant may choose to proceed to arbitration. The CSU pays the cost of the arbitration, except that each side pays for its representation costs, witness and advocate travel, and related representation expenses.

V. Conduct of the Hearing and Role of The Committee Members

A. *Pre-Hearing Matters*

1. Setting Up the Time and Place of the Hearing

The Faculty Hearing Panel chair, working in conjunction with a designated administrator, will make the necessary arrangements (room reservation, notice to the parties, etc.) and will coordinate meeting times to best accommodate all participants to the degree possible. Because the grievant may elect an open/public hearing process, the grievant's wishes must be ascertained before room arrangements are made. A reasonable effort must be made to accommodate the expected number of observers if an open hearing is elected.

2. The Hearing Room

There should be plenty of table space and enough chairs in the room reserved for the hearing. The room should be large enough to accommodate, at a minimum, the grievant and one or two CFA representatives, and administration representatives. If the grievant wishes to have observers present or open the hearing to the public, the room must be large enough to accommodate additional observers. There should be copying facilities available during the meeting, someone to make copies if needed, and telephone access nearby.

3. Prior to the Hearing, the Faculty Hearing Committee Should Choose a Chair to Facilitate the Hearing

The Hearing Committee Chair is in charge of the event, and keeps things fair, efficient and orderly. This person is selected by the entire three member Hearing Committee.

4. Recording the Hearing

It is important to have a reliable record of what took place during the hearing. In the absence of agreement to the contrary, the hearings will be recorded digitally. The University will supply the recording equipment. The Faculty Hearing Committee chair has responsibility for overseeing the recording process. A copy of the record will be supplied in the form of a digital audio recording (WAV/MP3 file) to the appropriate administrator and to the grievant in the event that the issue is not resolved by the committee. The original digital record of the hearing will be retained by the Faculty Hearing Panel chair and his/her successors in the position. The CSU shall provide the equipment necessary for maintaining the official record.

B. *Responsibilities of the Faculty Hearing Committee*

1. Running the Hearing

The Hearing Committee Chair is in charge of the hearing.

2. During the Hearing

It is the responsibility of the Faculty Hearing Committee to take evidence; make factual determinations; apply the facts to the applicable standards; make fair, unbiased decisions; and issue written decisions within the applicable timelines.

3. Ways to Make All Parties Feel “Heard”

Members of the Faculty Hearing Committee should pay close attention to both sides. They should attempt to run the hearing in such a way that the parties all feel that the panel understood the issues clearly and considered all the relevant evidence before making the decision.

4. What Are the Rules About Decisions?

Drafting: Committees should decide prior to the hearing who will take notes and after the hearing who will draft the decision.

Length of Decisions: Recommendations normally should be as brief and succinct as the facts and the issues will allow. It is anticipated that few cases (if any) will necessitate a recommendation in excess of three pages.

How Are Decisions Made? Decisions should be voted on by members of the Faculty Hearing Committee. Decisions should be either unanimous or, if there is a minority opinion, the decision may reflect both the majority and minority opinions, at the option of the members of the Faculty Hearing Committee hearing the particular case.

When Are Decisions Due? Hearing Decisions should be provided to all the involved parties within 14 fourteen calendar days of the date of the hearing.

What Information Should Be Included in the Written Decision? The decision should include the following information: The names of the grievant(s), advocates, witnesses, and Faculty Hearing Committee members; the grievant's department; the issue; findings of fact; whether the Faculty Hearing Committee is granting or denying the grievance; the remedy ordered (if any); and a statement of the reasons upon which the decision is based.

C. *Getting the Hearing Started*

1. Setting the Tone

It is important to set a good tone right from the beginning. The Faculty Hearing Committee chair should let the parties know:

- The schedule;
- Where the restrooms are;
- Where coffee and water can be located; and
- Anything else necessary for the participants' comfort.

2. Establishing Expectations and Rules

It's important for the Faculty Hearing Committee chair to take charge of the hearing process right at the beginning, while reassuring the grievant that he or she will have a chance to tell the story that led to the grievance.

3. Finding Out What Will Be Presented

The Hearing Committee chair should find out how many witnesses and documents the grievant or advocate wishes to present, and emphasize that each side's presentation, including witnesses, should take no longer than 3 hours if at all possible. Many will take considerably less.

CFA or other outside advocates, grievants, and local administration representatives should be encouraged to agree ahead of time on joint exhibits and stipulated facts.

D. Requesting Issue Statements by the Parties

In order for the hearings to be focused and completed within appropriate timeframes, the parties should agree on a statement of the issue(s). If agreement is not possible, each party should provide a BRIEF statement of the issue, using a few sentences at the most. The Hearing Committee can then create a statement of the issue to be outlined in their written recommendation.

E. Stipulations

The Hearing Committee chair should ask the parties to make a list of all facts that are not disputed, and, if possible, have the parties agree to stipulations, preferably in writing. If stipulations are not in writing, the chair should verbally review the stipulations to which the parties have agreed and have all parties indicate their agreement to the stipulations on the audiotape.

Sample Opening Comments and Basic Questions for Faculty Hearing Committees at 2007 Statutory Hearings

1. Good morning. My name is _____. I will be facilitating this hearing today. The other members of the Faculty Hearing Committee are _____ and _____. The purpose of the hearing is to resolve a workplace dispute. The members of the panel are volunteering their time as part of their university service. Each party will have a chance to explain its position.
2. The grievant is (name here)
(Note: The Faculty Hearing Committee chair should find out who everyone in room is, and the capacity in which they are attending (grievant, CFA representative, friend, colleague, etc.). A sign-up sheet should be sent around, and/or business cards collected.)
3. The advocates are: (names here)
Note, In some cases, CFA staff will be training faculty members to handle these hearings, so there may be two or more advocates. One may be designated as "lead" advocate, at the university administration's request.
4. Housekeeping details are as follows:(restrooms, water, copy facilities if needed).
5. We have (or need) a copy of the grievance form.
6. Can we get a brief statement of the issue?
7. Are there joint exhibits? Any other exhibits you wish to share with the panel?
8. Number the documents that the parties wish to provide as:
 - Joint exhibit 1, etc.
 - Grievant or CFA exhibit 1, etc.
 - Administration exhibit 1, etc.
9. Are there any stipulations (agreements regarding undisputed facts)?
10. Are the parties ready to proceed? If so, (the party with the burden of proof) please proceed.

F. Evidence

1. Is the Evidence Relevant?

Evidence is relevant if it tends to prove or disprove a fact at issue in the hearing. If evidence is not relevant, it's not useful to spend time on it. Parties may have years worth of hurt feelings and misunderstandings by the time they get to the Faculty Hearing process. The Faculty Hearing Committee will want to set some clear parameters regarding how far afield the parties can go in introducing evidence that may not be relevant. It is good to make people feel heard, but also important to let them know what kinds of evidence will make a difference in their case.

2. Is the Evidence Reliable?

Evidence based upon the personal knowledge of the witness is generally much more reliable than indirect or hearsay evidence. Rumors should not be the basis of decision-making in these proceedings.

3. How to Weigh the Evidence

In weighing the evidence, the Faculty Hearing Committee should think about the following factors:

- Credibility
- Relevance
- Strength of the evidence
- Relationship between the facts, laws, contract provisions, and policies.

G. Opening Statements

1. Purpose

Opening statements are a road map of the case. What is the theory of the case? What will the evidence show? The parties should be asked to give a brief opening statement. Opening statements should focus on facts the party will prove and how these facts fit into the overall theory of the case.

2. Time Limits

Cases are not to exceed more than one day in length, absent mutual written agreement by the parties for more time. In view of this time limit, it is strongly suggested that opening statements be no more than 10-15 minutes in length. Grievants and advocates should be informed of recommended time allocations ahead of time. It is important to allow plenty of time for the actual presentation of evidence. Longwinded speeches that go beyond outlining the basics of the case are not helpful at this stage. They can cut into the time needed to present evidence.

3. Asking Questions While Maintaining Control of the Hearing.

Faculty Hearing Committee members should not hesitate to ask questions if they are confused by the grievant's or advocates' presentations. However, the Hearing Committee chair should not let the parties interrupt each other's opening statements or become argumentative with witnesses. Direct and cross-examination should be handled in an orderly manner. If a party wishes to object to a question, the witness should be instructed not to respond until the panel decides whether the question is proper.

H. Admission of Documentary (Written) Evidence

Advocates may enter documentary evidence any stage in the proceedings, until the hearing has been concluded. For ease of identification, mark documents as Joint Exhibit # __, Employer Exhibit # __, Grievant/CFA Exhibit # __, etc., as appropriate. Each category of exhibit (Joint exhibits, employer exhibits, CFA/grievant exhibits) should be marked in numerical sequence (Joint Exhibits 1- 4, etc.).

I. Testimony

1. Direct Testimony

Witnesses may testify on behalf of the grievant, the union, or the administration. However Faculty Hearing Committees do not have the power to subpoena witnesses (compel testimony).

2. Cross-Examination

Each side may ask questions of the other side's witnesses. If cross-examination becomes repetitive or argumentative, the Faculty Hearing Committee chair may ask the party asking the questions to move along.

J. Closing Statements

Advocates may, time permitting, make short closing statements. It is good, if time permits, to give the parties a few minutes to complete preparation of their closing statement. The purpose of a closing statement is to allow the parties to summarize the evidence, apply it to the applicable standards, and make arguments as to why their position is correct and the grievance should either be granted or denied.

VI. Remedies

Traditionally, arbitrators are given a certain discretion as to how they arrive at their decisions and fashion their remedies, provided that their decisions are based on the evidence, not contrary to law, and otherwise consistent with the Collective Bargaining Agreement that provides them with their authority to determine the issue(s) in controversy.

Considerations in deciding on a remedy include:

A. Threshold Questions:

- Has the committee decided to sustain or deny the grievance?
- If the grievance is to be sustained, what is the remedy?

B. Questions about Fashioning a Remedy:

How serious was violation?

Was the violation prejudicial?

What loss, if any, did the grievant suffer as a result of the violation? Remedies that make the grievant whole for any losses suffered are the norm

If the grievant is still employed at the university (or will be as a result of this decision), what steps will promote proper and constructive interaction between the grievant and others in the workplace, and proper compliance with other legal, contractual, and procedural requirements?

VII. Written Recommendations

Written recommendations are due within fourteen (14) days of the date of the Hearing. The members of the Faculty Hearing Committee may use their discretion as to whether they want to give an oral ruling at the end of the hearing, but they shall not be required to do so. All cases shall result in written decisions. Such decisions shall be forwarded to CFA, the grievant, and the local campus administration.

VIII. Tips for Faculty Hearing Committees

Do

- Create a positive environment where everyone (especially the grievant) feels heard and respected.
- Accept evidence in an orderly manner. Be very clear about what is going into the official record and handle it carefully. Mark all evidence, indicating who submitted it and giving it a number in sequence. Keep all exhibits in sequence with the official record (audio tape). Keep a clear list of exhibits entered.
- Make sure you find out the source of the evidence you are hearing. Did the witness hear the conversation she is testifying to, or did she hear about it in the rumor mill? Did the witness establish personal knowledge of the facts? The reliability of evidence will affect the weight that should be given to the evidence in making factual determinations.
- Be clear as to what is evidence BASED UPON PERSONAL KNOWLEDGE, and what is HEARSAY. Direct evidence generally means people testifying about things they personally observed. Hearsay is usually something the witness did not personally observe, but learned about through someone else. Different kinds of testimony should be given different amounts of weight when it comes time to weigh the evidence. Chairs and committee members should discourage grievants from spending too much time on unreliable or irrelevant evidence.
- Ask questions if important facts are not clear to you.
- Write a clear, understandable decision indicating the Faculty Hearing Committee's decision, stating what evidence was relied upon in reaching the decision, and setting forth the reasoning on which the decision is based.

Don't

- Don't let the hearings get out of control. The Faculty Hearing Committee's job is to create a forum where both sides can present their case in an orderly and dignified manner. If this is not happening, don't be afraid to control the situation. Take a short break. When you return, set some ground rules for respectful communication.
- Don't forget or be afraid to ask questions related to any facts that will influence your decision.
- Don't be afraid to discuss any concerns about the case with the advocates, in case they can clarify anything.

IX. Acknowledgements

Thank you to the following organizations for creating this publication:

California Faculty Association and the California State University

Thank the groups below, who permitted us to use their materials:

The National Paralegal Institute
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May the Faculty Hearings provide a constructive, peer-led avenue of dispute resolution in the CSU.

Nina Fendel,
Attorney and Legal Educator
Consultant, California Faculty Association

Bill Candella
Sr. Director
Collective Bargaining, CSU

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The Administrative Guide is a useful reference. For specifics or additional information on the CFA/CSU contract, please see: the CFA web site at www.calfac.org, and CSU (562) 951-4400 or <http://www.calstate.edu/HR/index.shtml>

California Education Code §89542.5

(a) The Trustees of the California State University shall establish grievance and disciplinary action procedures for all academic employees, including all temporary employees who have been employed for more than one semester or quarter, whereby all of the following requirements are satisfied:

(1) Grievances and disciplinary actions shall be heard by a faculty hearing committee composed of full-time faculty members, selected by lot from a panel elected by the campus faculty, which shall make a recommendation to the president of the state university.

(2) The grievance or disciplinary hearing shall be open to the public at the option of the person aggrieved or the person charged in a disciplinary hearing.

(3) Each party to the dispute shall have the right of representation by a faculty adviser or counsel of his or her choice and to be provided access to a complete record of the hearing.

(4) If there is disagreement between the faculty hearing committee's decision and the state university president's decision, the matter shall go before an arbitrator whose decision shall be final.

(5) The costs incurred in arbitration shall be paid by the state university.

(6) If the parties cannot agree upon an arbitrator, either party may petition the Federal Mediation Service, the State Conciliation Service, or the American Arbitration Association for a list of seven qualified, disinterested persons, from which list each party shall alternate in striking three names, and the remaining person shall be designated as the arbitrator.

(7) (a) The grievance procedure established pursuant to this section shall be exclusive with respect to any grievance that is not subject to a State Personnel Board hearing. In the case of a grievance or disciplinary action that is subject to a State Personnel Board hearing, pursuant to Sections 89535 to 89539, inclusive, and Section 89542, the procedures provided for in those sections or those provided for in this section may be utilized. The academic employee shall have the choice of which procedures shall be utilized.

(b) For purposes of this section, a "grievance" is an allegation by an employee that the employee was directly wronged in connection with the rights accruing to his or her job classification, benefits, working conditions, appointment, reappointment, tenure, promotion, reassignment, or the like. A grievance does not include matters such as the salary structure which require legislative action.

(c) If a memorandum of understanding is agreed to pursuant to Chapter 12 (commencing with Section 3560) of Division 4 of Title 1 of the Government Code, and it provides for merit pay for

academic employees of the university, the arbitration provisions of this section shall not apply to grievances concerning merit pay.

(d) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Chapter 12 (commencing with Section 3560) of Division 4 of Title 1 of the Government Code, the memorandum of understanding shall be controlling without further legislative action, except that, if the provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

Excerpt from 2007 CFA/CSU Collective Bargaining Agreement

ARTICLE 10

GRIEVANCE PROCEDURES

- 10.1 The purpose of this Article is to provide a prompt and effective procedure for the resolution of disputes. The procedures hereinafter set forth shall, except for matters of discipline as set forth in Article 19 herein, be the sole and exclusive method for the resolution of disputes arising out of issues covered by this Agreement and those matters subject to grievance under Section 89542.5 of the Education Code. It is the express understanding of the Parties that these procedures meet or exceed the requirements of the Education Code pursuant to Government Code Section 3572.5 (3)(b)(1).

Definitions

- 10.2 As used herein:
- a. The term "grievance" when CFA or an employee(s) is (are) the grievant shall mean an allegation that the CFA, an employee or a group of employees have been directly wronged by a claimed violation, misapplication, or misinterpretation of a specific term or provision of this Agreement. The term "grievance" when an employee is the grievant shall mean an allegation that the employee was directly wronged in connection with the rights accruing to his or her job classification, benefits, working conditions, appointment, reappointment, tenure, promotion, reassignment, or the like, including but not limited to rights arising under this Agreement. A grievance does not include matters such as salary structure, which require legislative action; or the merit pay programs (Post Promotion Increases and Equity Increases) as defined in Article 31, which provide for their own binding appeals processes.
 - b. The term "grievant" or "grievants" shall mean:
 1. For statutory grievances: any faculty unit employee(s) who has/have been employed for more than one semester or quarter who allege(s) s/he/they has/have been directly wronged as defined in section 10.2(a) above, either individually or as a group.
 2. For contract grievances: any faculty unit employee(s) who allege(s) s/he/they has/have been directly wronged as defined in section 10.2a. The term "grievant" shall also mean the CFA when alleging a grievance on behalf of itself, or on behalf of a unit member or a group of unit members in accordance with section

10.2(a) above. The CFA shall not grieve on behalf of unit members who do not wish to pursue individual grievances.

- c. The term "employee" in this Article shall mean a member of the bargaining unit.
- d. The term "appropriate administrator" as used in this Article shall mean the individual who has been designated by the President to act pursuant to the procedures set forth in this Article.
- e. The terms "respond" and "file" as used in this Article shall mean either personal delivery or delivery through the U.S. mail, certified mail, return receipt requested. If personal delivery is used, the grievant or appropriate administrator shall provide a written receipt to the person delivering the document. If certified mail is used, the return receipt shall establish the date of delivery. The terms "respond" and "file" as used in regards to Level II of this Article shall also mean transmittal by telefax or electronic mail. If telefax or electronic mail transmittal is used either to file or to respond at Level II, the telefax transmittal cover letter or the electronic mail must be returned and shall include the signature of the receiving party acknowledging receipt, as well as the date of receipt. A response or filing at Level II shall not be considered accomplished in the absence of such date and signature on the returned cover letter or electronic mail.

Grievance Forms

- 10.3
 - a. All grievances, requests for review, or appeals shall be submitted in writing on the form attached to this Agreement as Appendix E, and shall be signed by the grievant(s). Except for the initial filing of a grievance, if there is difficulty in meeting any time limit, a CFA representative may sign the grievance form for the grievant.
 - b. The appropriate administrator may refuse consideration of a grievance not filed on a grievance form required by this Article. In the event the potential grievant does not file on the prescribed form, the appropriate administrator shall provide the potential grievant with a copy of the appropriate form. Subsequent refiling utilizing the appropriate form shall take place within seven (7) days of receipt of the appropriate form.

Grievance Procedure

Level I – Campus Level

- 10.4 A grievant eligible to grieve pursuant to provision 10.2 of this Article may file a Level I grievance with the President no later than forty-two (42) days after the event giving rise to the grievance, or no later than forty-two (42) days after the grievant knew or reasonably should have known of the event giving rise to the grievance. In all grievances, the grievant shall state clearly and concisely on a grievance form:
 - a. with regard to a statutory grievance, the right(s) the grievant alleges were violated as set forth in provision 10.2a above. When claiming a violation of the collective bargaining

Agreement, the term or terms of the Agreement alleged to have been violated, misinterpreted, or misapplied;

- b. a description of the grounds of the grievance including names, dates, places, times, necessary for complete understanding;
- c. a proposed remedy;
- d. the name, department or equivalent unit, address at which the grievant shall receive all correspondence relating to the grievance, position/classification of the grievant and the grievant's signature;
- e. the name and address of the grievant's representative, if any; and
- f. the date of submission.
- g. No later than the Level I meeting, the grievant shall also identify to the appropriate administrator the source(s) of the right(s) alleged to have been violated.

When claiming a violation of the collective bargaining Agreement, if the grievance derives from an action or decision by the Chancellor's Office or is a case seeking a statewide contract interpretation, CFA may file the grievance directly with the Chancellor's Office, at Level II.

10.5 The grievant may, in the written grievance, request the postponement of any action in processing the grievance formally for a period of up to twenty-five (25) days, during which period the grievant may pursue efforts to resolve the grievance informally and shall be entitled to a good faith review of the issue(s) presented. The initial postponement request shall be granted, and upon the grievant's further written request, additional twenty-five (25) day extensions shall be liberally granted unless to do so would seriously impede resolution of the grievance.

- a. Upon request of the grievant during the postponement period(s), the President shall arrange an informal conference between the appropriate administrator and the grievant.
- b. The grievant may at any time terminate the postponement period by giving written notice to the President that the grievant wishes to proceed with the Level 1 meeting provided for below. If the postponement period, or any extension thereof, expires without the filing of a request for a further postponement the grievance shall proceed to formal Level I.
- c. The grievant shall have the right to representation by CFA during attempts at informal resolution of the grievance.

10.6 At the time of filing of a grievance by an individual employee or group of employees the grievant shall make an election by using the appropriate grievance form between the two procedures set forth below: (1) Faculty Hearing

Committee or (2) Contractual Procedure. Failure of the employee(s) to make an election in the appropriate box on the grievance form as between Faculty Hearing Committee and Contractual Procedure shall result in the automatic processing of his/her grievance under the Contractual Procedure. In the cases of grievances filed by the CFA, the CFA may not, on behalf of itself or an employee or group of employees, elect to process a grievance under the Faculty Hearing Committee procedure, but must in all cases process its grievances under the Contractual Procedure.

10.7

Within fourteen (14) days after the Level I filing as provided in provision 10.4a. above, the appropriate administrator shall hold a meeting with the grievant and the grievant's representative, if any, at a mutually acceptable time at the campus where the grievant is employed. At this meeting the grievant shall fully present its case, including all relevant facts, arguments and proposed remedies being sought. In the event that the grievant and appropriate administrator cannot successfully resolve the grievance, then the appropriate administrator shall respond in writing to the grievant no later than fourteen (14) days after the Level I meeting. Such response shall include a statement of reasons for any denial of the grievance.

Faculty Hearing Panel and Faculty Hearing Committee Procedures

Faculty Hearing Panel Election Procedures

10.8 The panel of full-time faculty members shall be elected by the members of bargaining unit 3 on a campus. Each campus panel shall consist of no less than twenty-five percent (25%) of the full-time equivalent faculty (FTEF), and no campus panel shall have membership of fewer than forty (40) persons.

10.9

Each campus department or equivalent unit with at least 4.0 FTEF shall elect from its own members a number equivalent to twenty-five percent (25%) of its full-time equivalent faculty (FTEF) rounded up to the next whole number to serve on the panel. Each campus department or equivalent unit with less than 4.0 FTEF shall elect one of its own members to serve on the panel. The terms of the panels shall be two years. Service as a member of the panel or the grievance hearing committee, if selected, is a normal obligation of each full-time member of Unit 3 during the

periods of the year when required to render services and shall not result in or require additional compensation. Service on Faculty Hearing Committees by Lecturers shall be voluntary.

10.10

Faculty with less than a 0.5 time base shall be entitled to 0.5 vote in the department election. Faculty with a 0.5 or greater time base shall be entitled to one vote in the election.

Appeal to Faculty Hearing Committee

10.11

In the event the grievance is not settled to the grievant's satisfaction at the Level I meeting or by the Level I response by the appropriate administrator, the individual employee grievant (or group of employees) may file a grievance appeal with the Academic Vice President/Provost President or designee no later than fourteen (14) days after receipt of the Level I response, for hearing before a Faculty Hearing Committee composed of full-time faculty members, selected by lot from a Campus Faculty Hearing Panel elected by the campus faculty pursuant to the election procedures set forth above. The grievant shall attach a copy of the Level I grievance filing and the Level I response together with any documents presented at Level I.

10.12

Within seven (7) days after the filing of the grievance appeal as provided in a. above, the Academic Vice President/Provost or designee and Chairperson of the Faculty Hearing Panel shall jointly schedule the selection of the Faculty Hearing Committee. The membership of the Faculty Hearing Committee shall be selected by lot from the Campus Faculty Hearing Panel and shall consist of three (3) members and one (1) alternate. No Faculty Hearing Panel member may serve on a Faculty Hearing Committee if s/he has been directly involved with or a party to matters related to a grievance submitted by the employee to a faculty hearing. Each Faculty Hearing Committee shall be appointed and serve on an ad hoc basis until the Committee has issued its decision on the grievance in question. Participation on a Faculty Hearing Committee shall be considered "service" to the campus community for all applicable purposes.

- 10.13 Upon selection, the Academic Vice President/Provost or designee shall provide written notice to the grievant, appropriate administrator, and committee members of the selection.
- 10.14 A hearing of the grievance in question shall be scheduled to occur within fourteen (14) days from the date of notification to all parties of the selection of the Faculty Hearing Committee at a mutually acceptable time at the campus where the grievant is employed.
- 10.15 There shall be no post-hearing briefs. The hearing will not exceed one (1) day with equal time for each party, except by written agreement of the parties.
- 10.16 Conduct of the hearing shall be at the discretion of the Faculty Hearing Committee but shall be open to the public at the discretion of the person aggrieved.
- 10.17 The Chairperson shall also ensure that an official record of the proceedings is taken in a manner agreed to by the Parties. If no agreement is possible, the proceedings shall be tape-recorded by the Faculty Hearing Committee and the grievant and the appropriate administrator shall each be provided a single copy of the tape if the grievance is not resolved by the Faculty Hearing Committee's Decision.
- 10.18 The grievant shall have the right of representation before the Faculty Hearing Committee by a faculty adviser or other representative of his or her choice. The University shall be represented by the appropriate administrator.
- 10.19 The Faculty Hearing Committee shall file its written grievance decision recommendation within fourteen (14) days of the commencement of the hearing. Such recommendation shall include a statement of reasons for any denial or granting of the grievance. All limitations on the authority of an arbitrator, including those specified in 10.27.i below, apply to the recommendations of the Faculty Hearing Committee.

Presidential Review

- 10.20 The Faculty Hearing Committee shall provide the President, the grievant and the grievant's representative (if any) with a copy of its written grievance decision recommendation at the time it is

issued. Within twenty-one (21) days of the President's receipt of the decision, s/he shall inform the grievant and Faculty Hearing Panel Chairperson in writing of her/his determination to accept and implement the recommended decision of the Faculty Hearing Committee or to reject said determination. In the event the President determines to reject the recommended decision of the Faculty Hearing Committee, s/he shall provide a statement of reasons for said decision.

- 10.21 If the President rejects a recommended decision of the Faculty Hearing Committee to sustain the grievance in question, the grievant may elect to go before an arbitrator whose decision shall be final. Such election shall be made by certified mail, return receipt requested, directed to the Office of Labor Relations in the Office of the Chancellor within seven (7) days of receipt of the President's decision. The grievant may also request arbitration by transmittal by telefax. If telefax transmittal is used, the receiving party shall fax back a copy of the cover letter with the signature of the receiving party acknowledging receipt, as well as the date of receipt. A telefax transmittal request for arbitration shall not be considered accomplished in the absence of such date and signature on the cover letter. Failure to request arbitration within seven (7) days of receipt of the President's decision shall constitute a waiver of the right to an arbitration hearing, and the President's decision shall be final and binding. Said arbitration shall be conducted according to the rules and procedures set forth in Article 10.27 below.
- 10.22 If the President concurs with a decision of the Faculty Hearing Committee to deny the grievance in question, said decisions shall be final and binding, and not subject to arbitration .

General Provisions

- 10.34 Wherever a time limit is provided by this Article, the participants at that level may extend the period by mutual consent in writing. However, the time limit for filing the initial grievance at Level I may only be extended by the President. It is understood that the purpose of the procedure is to resolve grievances promptly and that extensions shall be sought only for good cause.
- 10.35 When meetings, conferences, Faculty Committee hearings or arbitration hearings are held under this Article, employees who are entitled to attend, including Faculty Hearing Committee members, or who are called as witnesses by a party, shall be excused for that purpose from

- other duties without penalty, provided that arrangements are made for coverage of the employee's duties.
- 10.36 No reprisals shall be taken against any employee for the filing and processing of any grievances.
- 10.37 Except for good cause shown, only those events, issues, and sections of this Agreement cited in the initial filing at Level I may be considered at subsequent levels.
- 10.38 After the grievance has been filed at Level I, a representative and the grievant shall be provided reasonable release time for the purpose of preparation and presentation of the grievance at Levels I and II or the Faculty Hearing Committee, provided that such release time shall not conflict with any scheduled classes and office hours.
- 10.39 Upon failure of the Employer or its representatives to provide a decision within the time limits provided in this Article, the grievant or CFA, where appropriate, may appeal to the next step. Upon the failure of the grievant or CFA, where appropriate, to file an appeal within the time limits provided in this Article, the grievance shall be deemed resolved by the decision at the prior step.
- 10.40 In cases where it is necessary for the grievant or his/her representative to have information for the purpose of investigating a grievance, the grievant or his/her representative shall make a written request for reasonably specific information to the appropriate administrator. The grievant or his/her representative shall have the right to receive, within thirty (30) days, such information not defined as confidential or personal under law, which would assist in adjusting the grievance. The CSU shall notify the grievant or his/her representative whenever the information cannot be provided within this thirty (30) day period.
- 10.41 When a party has made a request for data or documents which it is legally entitled to receive, and if the responding party failed to provide such data or documents in a timely manner, then the party failing to provide the materials shall be prohibited from introducing or relying upon that material in the arbitration hearing. Among the factors to be considered in determining whether such data or documents were provided in a timely manner is availability of the data or documents, the form in which the material is available, the amount of labor involved in producing the materials, as well as the cost of such production. Production shall include providing access to data and documents readily available on line.
- 10.42 A decision to submit a grievance to arbitration shall be a waiver of all other remedies except as provided otherwise by statute.
- 10.43 A grievance settlement shall not set a precedent, except as otherwise mutually agreed in writing by the CSU and the CFA.
- 10.44 A grievance may be withdrawn at any time. The grievant shall not file any subsequent grievance on the basis of the same event.

- 10.45 The CSU and CFA may mutually agree to consolidate grievances on similar issues at any level.
- 10.46 No resolution of any individually processed grievance shall be inconsistent with the terms of this Agreement. The CSU will not agree to a resolution of the grievance until the CFA has received a copy of the grievance and the proposed resolution and has been given the opportunity to file a response. If the CFA is neither a party to the proceeding nor the grievant's designated representative in the proceeding, any recommendation of the Faculty Hearing Committee or decision of an Arbitrator shall not operate as a precedent.
- 10.47 The parties agree that all grievance files and/or the content of grievance meetings shall be confidential. Grievance records shall be kept in a file separate from the grievant's Personnel Action File.
- 10.48 Time limits shall be considered tolled when personnel are unavailable due to illness, vacations, or professional reasons.

Grievance Administration

- 10.49 From time to time, the CFA Central Office and the Office of the Chancellor shall compare grievance records for the purpose of developing and maintaining a common systemwide grievance docket.
- 10.50 Grievance rights pursuant to this Article shall not be curtailed on the last date of employment if said grievance rights are exercised in accord with provision 10.4 of this Article and such other filing requirements as may apply