

ARTICLE 10

GRIEVANCE PRCEDURE

Definitions

10.1 Grievance - The term "grievance" as used in this Article refers to a written allegation by a grievant that there has been a violation, misapplication, or misinterpretation of a specific term of this Agreement.

Grievant - The term "grievant" as used in this Article refers to a:

- a. permanent employee;
- b. probationary employee; or
- c. temporary employee employed at least thirty (30) consecutive days immediately prior to the event giving rise to the grievance

who alleges in a grievance that he/she has been directly wronged by a violation of a specific term of this Agreement.

The term "grievant" as used in this Article may refer to the Union when alleging a grievance on behalf of itself, or on behalf of a unit member or group of unit members. The Union shall not grieve on behalf of unit members who do not wish to pursue individual grievances. Whether filing on behalf of itself, a member, or a group of members, there shall be no financial remedy of any kind or any retroactive remedy in cases where the Union fails to identify by the pre-arbitration conference (10.5.E) the unit member(s) who have been directly wronged by a violation of a specific term of this Agreement.

Appropriate Administrator - The term "appropriate administrator" as used in this Article refers to the immediate non-bargaining unit supervisory or management person to whom the employee is accountable, or who has been designated to respond to the grievance informally or at Level I.

Representative - The term "representative" as used in this Article shall be an employee or APC representative who, at the grievant's request, may be present at the Informal Level through Level II. Representation of the employee at Level III shall be by the exclusive representative.

Respond and File - The terms "respond" and "file" as used in this Agreement refer to personal delivery or deposit in the U.S. mail, or transmittal by facsimile or electronic mail ("e-mail"). If mail delivery is used, the postmark shall establish the date of response or filing. If personal delivery is used, the calendar date of delivery shall establish the date of response or filing.

If facsimile or e-mail is used to either file or to respond, the facsimile transmittal cover letter or the e-mail must be acknowledged as received by the other party.

Informal Level

- 10.2
- a. An employee shall have the right to present a potential grievance and to have the potential grievance considered in good faith by an appropriate administrator.
 - b. An employee, whenever possible, shall attempt to resolve a potential grievance informally with an appropriate administrator. A resolution of a potential grievance at the informal stage shall not be precedent-setting.
 - c. If the potential grievance is not resolved through informal discussions, the employee may file a formal Level I grievance with the President no later than either twenty-one (21) days after the event giving rise to the grievance, twenty-one (21) days after the employee knew or reasonably should have known of the event giving rise to the grievance, or twenty-one (21) days after the informal meeting to resolve the grievance.

Level I - Presidential Review

- 10.3
- a. The formal grievance shall state clearly and concisely on a grievance form, an example of which appears as Appendix E:
 1. the specific term of the Agreement alleged to have been violated;
 2. a detailed description of the specific grounds of the grievance, including names, dates, places, and times necessary for reasonably understanding;
 3. the remedy sought;

4. the name, classification, address, telephone number, and signature of the grievant;
 5. the name, address, and telephone number of the representative, if any; and
 6. the date of submission at each level.
- b. The President or his/her designee shall hold a meeting with the grievant and the grievant's representative within twenty-one (21) days after receipt of the Level I filing at a mutually acceptable time and location. At this meeting, pertinent information may be presented, orally or in writing, to the President or his/her designee who shall respond to the grievant in writing with a copy to the indicated representative, if any, no later than twenty-one (21) days after the Level I meeting.
- c. In the event the grievance is not settled at Level I, the grievant may file, no later than twenty-one (21) days after the Level I response, a Level II grievance with the Office of the Chancellor. The grievant shall attach a copy of the Level I response together with any documents presented at that level.
- d. Prior to the Level I response date, the President may waive all procedures at Level I and expedite the grievance to Level II. The President shall notify the grievant of the expedited grievance. Level II time limits shall commence on the date the grievant was so notified.

Level II - Chancellor's Office

- 10.4 a. A designated individual in the Office of the Chancellor shall make every effort to a meeting with the grievant and/or a designated representative of the grievant at the Office of the Chancellor within twenty-one (21) days of the Level II filing. The parties may conduct this meeting by telephone conference call in the event they are unable to conduct the meeting in person. If the parties are not available to meet within twenty-one (21) days, this period may be extended by mutual agreement, pursuant to provision 10.12. The designated individual in the Office of the Chancellor shall respond to the grievant in writing, with a copy to the indicated representative, if any, no later than twenty-one (21) days after the Level

II meeting, forty-two (42) days after the Level II filing, or twenty-one (21) days after the end of any extension.

- b. No amendments and/or modifications to the grievance shall be made by the grievant after the Level II filing date.
- c. The parties shall present at Level II all issues and evidence related to the grievance. No additional issues and evidence may be presented by the parties after Level II.
- d. In the event the grievance is not settled at Level II, the exclusive representative may, by written notice to the Office of the Chancellor no later than thirty (30) days after the Level II response, file for arbitration of the grievance.

Level III - Arbitration

- 10.5 a. Grievances filed for arbitration following both parties' ratification of this Agreement shall be submitted for hearing to a Permanent Arbitrator. The parties appoint Paul Crost and Michael Prihar to serve as Permanent Arbitrators subject to the provisions in 10.5.B. below. This appointment is subject to its acceptance by the Permanent Arbitrators. Each arbitrator shall be assigned cases on an alternating basis. If one arbitrator is assigned a case for which he is temporarily unavailable, the parties may appoint a temporary arbitrator by mutual agreement to hear the specific case. If no agreement is reached then the other permanent arbitrator shall be assigned to the case and each permanent arbitrator shall thereafter again be assigned cases on an alternating basis.

Grievances filed for arbitration prior to both parties' ratification of this Agreement shall be processed in accordance with the prior Agreement. Grievances under this Agreement shall be normally heard in the order that they were filed for arbitration unless the parties mutually agree otherwise.

- 1. If a witness or advocate for either party will not be available on the date the grievance is scheduled for arbitration, the grievance shall be scheduled on the next date when the Arbitrator, witnesses and advocates are available. In such cases the Parties will work together to try to substitute another case on the date the case was first scheduled.

2. If one or both parties must postpone a scheduled arbitration within the penalty period that would require the payment of cancellation fees, the Permanent Arbitrator will be requested to utilize any cancelled, reserved hearing dates to complete the writing and issuance of pending arbitration awards from previously held hearings. Should there be no pending work for the Arbitrator, cancellation fees shall be borne by the canceling party(ies).
- b. In the event that (1) the appointment is not accepted by either Permanent Arbitrator or (2) or either Permanent Arbitrator becomes unavailable, for any reason, to hear cases for a period of four (4) months or more, the parties shall attempt to agree upon a successor Permanent Arbitrator during the next thirty (30) day period. If no agreement is reached, the parties will use the remaining Permanent Arbitrator. If both Permanent Arbitrators become unavailable as described above the parties shall attempt to agree upon a successor Permanent Arbitrator or Arbitrators during the next thirty (30) day period. If no agreement is reached, the parties will use the procedures of the Voluntary Labor Arbitration Rules of the American Arbitration Association to select arbitrators to hear grievance disputes on a case-by-case basis. Permanent Arbitrators may be replaced at any time upon mutual agreement of the parties.
 - c. If an arbitrability question exists, a two-stage hearing will be required. The parties, pursuant to the procedures described herein, shall select an arbitrator to convene a formal hearing and render a written decision relative to the question of arbitrability.
 1. If the grievance is found not arbitrable, the grievance shall be deemed null and void.
 2. If the grievance is found arbitrable, the arbitrator shall hear the merits of the grievance. This provision shall not prohibit the parties from mutually agreeing to address both the arbitrability and merits of the grievance in one hearing, or from mutually agreeing to select a second arbitrator to hear the merits of the grievance.
 3. Nothing contained herein shall prevent the parties from settling the grievance prior to the second arbitration hearing.
 4. The arbitrator's decision on arbitrability shall be in writing and shall set forth his/her findings, reasonings, and conclusions on the issues submitted.

- d. At least twenty-one (21) days prior to the scheduled date of arbitration, there shall be a pre-arbitration conference at which representatives of the parties shall discuss issue statements, documents and evidence to be presented at the hearing.
- e. The Voluntary Labor Arbitration Rules of the American Arbitration Association shall apply at Level III, except when the specific language of this Agreement is in conflict, in which case the specific language of the Agreement shall apply.
- f. It shall be the function of the arbitrator to rule on the specific grievance. The arbitrator shall be subject to the following limitations:
 - 1. The arbitrator's awards shall be based solely upon the evidence and arguments appropriately presented in the hearing and upon any post-hearing briefs.
 - 2. The arbitrator shall have no power to alter, add to, detract from, or amend the provisions of this Agreement. The arbitrator shall be without power to make any recommendation which requires the commission of an act prohibited by law, or which is violative of the specific terms and conditions of this Agreement.
 - 3. The arbitrator shall not consider any issue not raised by the parties at Level II of this Agreement.
 - 4. The arbitrator shall not make an award which will supersede the substance of the President's professional judgment. The arbitrator shall not make awards concerning the amount, or granting or denial of performance pay, nor shall he/she have authority to order monetary relief in any grievance concerning the performance pay program.
 - 5. The award of the arbitrator may or may not include back pay provided, however, that any back pay award shall not be in excess of twenty-four (24) months salary less the difference of any compensation including unemployment benefits that the employee received. Under no circumstances may interest be included in an award.
 - 6. Except as provided in Article 4, the standard of review for the arbitrator is whether the CSU violated a specific term of the Agreement.

7. The arbitrator's decision on the merits shall be in writing and shall set forth his/her findings, reasonings, and conclusions on the issues submitted.
 8. A final decision or award of the arbitrator shall be made within thirty (30) calendar days of the close of the hearing or submission of post-hearing briefs.
- g. The arbitrator's award shall be final and binding upon both parties.
 - h. Each party shall bear the expenses of preparing and presenting its own case. Expenses, wages, and other compensation of any witnesses called before the arbitrator shall be borne by the party calling such witnesses. The cost for the services of the arbitrator shall be borne equally by the parties, except as provided in provision 10.5.A.2.
 - i. Upon appointment, the Arbitrator shall have authority to rule on pre- and post-hearing procedural disputes between the parties, including hearing continuances and/or extensions of briefing schedules. Such decisions shall be in writing and made on a case-by-case basis based on the facts of the situation.
 - j. Except as provided in this provision 10.5.J, all hearings shall be held on the campus on which the formal Level I grievance arose and was filed. The following types of hearings shall, at the request of either party, be held at a mutually agreeable location in the Los Angeles area: (1) arbitrability hearings that do not involve any campus witnesses (excluding APC stewards and the campus Employee Relations Designee), and (2) arbitrability or merits hearings for a grievance accepted by the Chancellor's Office as a systemwide grievance.

General Provisions

- 10.6 Failure of the grievant to comply with the time limitations of this Article shall render the grievance null and void and bar subsequent filing of the grievance. Failure by the appropriate administrator, President, or designated individual in the Office of the Chancellor to timely respond under this Article shall permit the grievance to be filed at the next level.

- 10.7 Prior to filing a grievance, the potential grievant and representative, if any, shall each be provided with one (1) hour release time for grievance preparation and reasonable time for grievance presentation at the Informal Level.
- 10.8 After the grievance has been filed, a representative and the grievant shall be provided reasonable release time for the purpose of preparation and presentation of the grievance.
- 10.9 A reasonable number of witnesses for a grievant who are CSU employees shall be provided with reasonable release time for presenting testimony at an arbitration hearing. Within one (1) year of such arbitration hearing, such a witness shall arrange with the appropriate administrator and work an amount of reassigned time equal to the amount of worktime lost due to serving as a witness.
- 10.10 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 file.
- 10.11 An employee may present grievances and have such grievances adjusted without the intervention of the exclusive representative as long as adjustment is reached prior to arbitration. Such adjustment shall be consistent with the terms of the written Agreement then in effect. Once a request for arbitration has been made, the Employer will not agree to a resolution of a grievance until the exclusive representative has received a copy of the grievance and the proposed resolution and has been given the opportunity to file a response.
- 10.12 Time limits set forth in this Article may be extended by mutual agreement.
- 10.13 In cases where it is necessary for the grievant or his/her representative to have access to information for the purpose of investigating a grievance, the grievant or his/her representative shall make a written request for such information to the appropriate administrator. The grievant or his/her representative shall have access to all information which would assist in pursuing the grievance exclusive of information defined as "confidential" or "personal" pursuant to the Information Practices Act of 1977 or the HEERA.
- 10.14 Except for cases already assigned to an arbitrator, the processing of grievances filed and unresolved prior to the effective date of this Agreement shall proceed under the provisions of the grievance procedure as amended by this Agreement.

- 10.15 By mutual agreement, a grievance may be filed at the step at which the authority to resolve the grievance resides.
- 10.16 A grievant may withdraw a grievance at any time. The grievant shall not file any subsequent grievance on the same alleged incident.
- 10.17 The parties, by mutual agreement, may consolidate grievances on similar issues at any level.
- 10.18 A grievance settled prior to a final arbitration award shall not be precedent-setting.
- 10.19 A decision by the APC to submit a grievance to arbitration shall automatically be a waiver of all other remedies (except as provided otherwise by statute).
- 10.20 No representative or agent of the exclusive representative may solicit complaints or grievances during the employee's worktime.
- 10.21 An employee shall not suffer reprisals for participation in the processing of a grievance filed pursuant to this Article.