

ARTICLE 6

GRIEVANCE AND ARBITRATION PROCEDURES

A. GRIEVANCE PROCEDURE

1. A grievance is a claim by an individual Postdoctoral Scholar, a group of Postdoctoral Scholars or the UAW, that the University has violated a specific provision of this Agreement during the term of this Agreement.
2. A Postdoctoral Scholar may be represented at all stages of the grievance and arbitration procedures. Representation is to be provided by one (1) person, only. However, a University employee designated as managerial, supervisory or confidential by the University shall not represent any Postdoctoral Scholar or group of Postdoctoral Scholars at any step of the Grievance Procedure or in any activity or role provided for in the Grievance Procedure.
3. Resolutions shall be consistent with this Agreement, and shall not be precedential unless agreed to in writing by the parties to this Agreement.
 - a. The University shall provide the UAW with a copy of the grievance and the proposed resolution.
 - b. The University shall not implement the proposed resolution of the grievance until timely receipt and review of the UAW's written comments, if any.
4. Only the UAW has standing to file a grievance on the following:
 - a. A designated campus and/or medical center's failure to provide Postdoctoral Scholar lists in accordance with Article 29, Union Access and Rights, and Article 30, Union Security.
 - b. "Locking out" Postdoctoral Scholars in accordance with Article 14, No Strikes.
5. Filing grievances/appeals
 - a. Grievances must be filed by email to the designated campus and/or medical center (UCLA and UCSD) labor relations office at the location where the alleged violation occurred. The University shall acknowledge the Union's grievance filing through an automatic email response. If the Union does not receive a confirmation email within 30 minutes of the time of submission, the date of filing shall be the sent time and date.
 - b. Any attachment(s) to the email must be in PDF format or similar electronic document. The Union also agrees that by filing a grievance or appeal by email, all subsequent University responses may be sent by email and shall constitute service of any written response as outlined in

this article.

- 1) Each campus/medical center labor relations office shall notify the Union of the email address where grievances and appeals may be electronically filed.
 - 2) All subsequent University responses may be sent by email to uaw5810@uaw5810.org.
 - 3) Filing at the Office of the President may be sent by email to appealagrievance@ucop.edu.
- c. 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 within thirty (30) days of the day the union knew or should have known of the action giving rise to the grievance. The University shall issue a Step 3 response within thirty (30) calendar days from the day the grievance was filed at the Office of the President.
- d. **Time Limits** – The date of 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 shall be deemed filed the next business day. The parties may mutually agree to extend the time limits in advance of the expiration of the time limit and such agreements shall be documented in writing. The time limits and meetings for the processing of grievances shall be in accordance with the steps addressed below:
- e. **Step 1 – Informal (Optional) Grievance Resolution** – Before commencing formal grievance processes, the grievant may discuss the grievance with their immediate supervisor in a timely manner. Informal resolutions, although final shall not be precedential nor inconsistent with this Agreement.
- 1) If the grievance is not resolved through informal discussion, the grievant may seek review as set forth below.
 - 2) Attempts at informal resolution do not extend the thirty (30) calendar day time limit to file at Step 2.
- f. **Step 2 – Formal Grievance Review** – A written grievance must be filed as set forth below.
- 1) 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 E). The grievance must be filed no later than thirty (30) calendar days from the following instances, whichever occurs first: a) the date the event / action which gave rise to the grievance occurred, or b) the date on which either the grievant or their representative knew or should have known of the alleged violation of the Agreement.

- 2) The written grievance shall contain the following information:
 - a) a specific description of the dispute including the name(s) of the affected Postdoctoral Scholars or description of the group of the affected Postdoctoral Scholars,
 - b) the facts giving rise to the dispute,
 - c) an inclusive list of all article(s) and section(s) violated,
 - d) a statement as to how the article and section were violated,
 - e) the date(s) of the violation, and
 - f) the requested remedy/remedies.
- 3) At the time the Step 2 grievance is filed, either party may request a meeting prior to the issuance of the Step 2 response. If a meeting is requested, it shall be held within fifteen (15) calendar days of the date on which the Step 2 grievance was filed.
- 4) The parties may bring individuals to the meeting who have relevant information to present regarding the grievance.
- 5) 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.

g. **Step 3 – UC Office of the President Review**

- 1) If the grievance has not been resolved at Step 2, the grievant and/or their 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.
- 2) An appeal to Step 3 shall be accomplished as follows:
 - a) Email to AppealAGrievance@ucop.edu.
 - (1) Email submissions must include PDFs of all documents, information, and signatures necessary to be in compliance with the Grievance Procedure provisions of this Agreement.
 - (2) The 'date of filing' for emailed Appeals to Step 3 shall be the date received on the University server, provided that the appeal is received during business hours. If a Step 3 appeal is received outside of normal business hours, the first following

business day will be deemed the filing date of the Appeal to Step 3. 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 University must assert any and all arbitrability issues known to date no later than in the Step 3 Decision.
- 5) The UCOP official or their designee shall issue the University's Step 3 decision within thirty (30) calendar days of the receipt of the appeal. The Step 3 decision shall be served upon the grievant and/or the grievant's representative.
- 6) The UCOP official or their designee shall have the authority to settle grievances appealed to Step 3.

6. **Failure to comply with the time limits**

- a. If the grievant or their representative does not comply with a timeline set forth in this Article, the grievance shall be ineligible for further processing.
 - b. 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 procedure in accordance with the timelines provided in this Article.
7. Time limits may be extended at any stage of the grievance procedure by mutual agreement and codified in writing.
 8. Offers of settlement are inadmissible at any step of the grievance or arbitration procedures.
 9. **Consolidation of Grievances** – Grievances may be consolidated by written agreement of the University, and the grievant or the grievant's representative.
 10. **Grievance File** – Materials generated as a result of the filing of a grievance including the grievance form shall be maintained by the University in a file separate from the Postdoctoral Scholar's personnel file.

B. APPEAL TO ARBITRATION

1. **General Provisions**

- a. 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:
 - 1) the name, email, and address of the UAW representative who is responsible for the appeal to arbitration and to whom all correspondence relating to the arbitration is to be sent;
 - 2) a copy of the completed grievance form; and
 - 3) a statement setting forth the unresolved issue(s), the articles of the Agreement alleged to have been violated, and the remedy/remedies requested.
 - 4) 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 Arbitration.
 - (3) The University shall acknowledge receipt of the Union’s Appeal to Arbitration through a computer-generated, automatic email response. If the Union does not receive a confirmation email within 30 minutes of the time of submission, the date of filing shall be the sent time and date.
- b. Appeals to Arbitration that are not processed within the time limit in §B. 2.a., 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 shall be final.

2. **Time Limits**

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.

3. Selection of the Arbitrator/Pre-Arbitration Conference

- a. The UAW representative shall contact the designated University official at the Office of the President within thirty (30) calendar days of the appeal to arbitration in order to select an arbitrator from the panel set forth in Appendix F. 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 shall constitute 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 statewide 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. At the Pre-Arbitration Conference, the parties shall:
 - 1) Select an arbitrator from Appendix F - Panel of Arbitrators in accordance with 3a and 3b above;
 - 2) Discuss all arbitrability claims raised by the University, if any, with the goal of resolution;
 - 3) Discuss the merits of the grievance, with the goal of resolution;
 - 4) Discuss and decide engaging in grievance mediation in accordance with 4. Below.
- d. At the time the University and the UAW schedule the Pre-Arbitration Conference, each party shall identify the names of the participants.
- e. If the arbitrability issues are not resolved, the parties shall set the dates for the briefing schedule, inform the arbitrator of the process for resolving arbitrability, and request provisional dates for a hearing on the merits should a hearing be needed. Such hearing shall take place after the arbitrator's decision on arbitrability, and shall be scheduled to allow at least 4 weeks between when the arbitrator's decision on arbitrability is due and the arbitrator's cancellation deadline.
- f. If arbitrability is resolved, but the merits are not settled, the matter shall go forward to a hearing.
- g. Following the Pre-Arbitration Conference, the UCOP Representative shall notify the Union whether the Office of the President shall remand the case to the location or retain the case at the Office of the President.
- h. Within sixty (60) calendar days from selection, the parties shall attempt to

agree to a hearing date, but if they are unable to agree, the authority for scheduling a hearing date shall reside with the arbitrator.

4. **Mediation (optional step)**

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

5. **Bifurcation**

a. The University shall be precluded from raising arbitrability claims if it has not done so by the Step 3 response, unless such issues arise after the Step 3 response is issued. Arbitrability claims must include facts and arguments to substantiate such claims.

1) The arbitration process shall be bifurcated where the University and Union do not resolve properly made arbitrability claims at the pre-arbitration conference.

2) Any party requesting a hearing on the issue of arbitrability, must do so within seven (7) business days of selecting an arbitrator. If such a request is not made within seven (7) business days of choosing an arbitrator, the issue of arbitrability shall be resolved by briefs, not hearing.

3) Written Brief

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

a) The University shall submit its brief no later than thirty (30) calendar days from selection of an arbitrator at the pre-arbitration conference.

b) The Union shall submit its response brief no later than thirty (30) calendar days from receipt of the University's brief.

c) The arbitrator shall issue their response no later than thirty (30) calendar days from receipt of the Union's brief.

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

hearing on the merits.

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

- 6) Hearing on Arbitrability

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

- 7) If the arbitrator finds the grievance to be not arbitrable, the substantive facts of the case need not be heard and the grievance shall be denied. If the arbitrator finds in favor of arbitrability, the hearing shall proceed to the substantive issues raised.

6. **International Grievants Who Are Dismissed**

In recognition of the large number of international Postdoctoral Scholars in the bargaining unit, the University and the UAW agree to the provisions of this Section.

- a. If the grievant was required to leave the country prior to the arbitration hearing due to a change in visa status as a result of the grieved action, but elects to participate in person on a travel visa, the University will assist in sponsoring the travel visa if necessary.
- b. By mutual agreement, the parties may allow the grievant to testify and attend the arbitration hearing virtually.
- c. If the arbitrator makes the determination that the grievant was not dismissed for just cause, the University shall reimburse for actual travel costs incurred, for the grievant only, to appear at the hearing. Such reimbursement shall be limited to a travel visa and airfare, in accordance with University Travel Policy.

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.

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.

- b. Upon request by either party but not upon their own motion, the arbitrator shall have the authority to subpoena relevant documents and/or witnesses.
- c. The arbitration hearing shall be closed to anyone other than the participants in the hearing unless the parties mutually agree otherwise in writing.
- d. In all cases appealed to arbitration except for actions taken pursuant to Article 5, Discipline 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 shall set forth the findings of fact, reasoning, and conclusions on issues submitted by the parties. The arbitrator's authority shall be limited to determining whether the University has violated arbitrable provisions of this contract and to ordering corresponding remedies. The arbitrator shall not have jurisdiction or authority to add to, amend, modify, nullify, or ignore in any way the provisions of this contract nor shall the arbitrator have the authority to review any academic judgment. To the extent that the University's action is based upon academic judgment, the arbitrator shall have no authority or jurisdiction to substitute their 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 and/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 Postdoctoral Scholars. The University will not be liable for back wages or other monetary reimbursement for:
 - 1) any period of time during which an extension of the time limits has been granted at the request of the UAW;

2) any period of time greater than thirty (30) calendar days prior to the date the grievance was filed pursuant to this article.

- b. The arbitrator's fees and the costs of transcripts requested by the arbitrator or both parties shall be equally born by the parties. Costs for transcripts requested by only one party, shall be born by the requesting party. The party that cancels or postpones an arbitration will be liable for any cancellation/postponement fees charged by the arbitrator and/or court reporter.

9. Extension of Time Limits

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

10. Pay Status

- a. The University and the UAW shall establish a reasonable schedule for the arbitration proceeding. The UAW shall provide the names of witnesses in advance in order to facilitate the University's provision of release time in accordance with §B.10.b below.
- b. The Postdoctoral Scholar grievant(s) shall be in a without-loss-of-pay-status for the entire arbitration hearing. Postdoctoral Scholar 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) Postdoctoral Scholar representative shall be in without-loss-of-pay-status for an arbitration hearing.
- d. The University shall not be responsible for any lodging, travel expenses or other expenses incurred by a grievant, witnesses, employee or UAW representatives with regard to the union's presentation in the arbitration hearing.

11. Arbitrator Panel

The parties agree that there will be a statewide standing panel of twenty-one (21) arbitrators to hear arbitration cases scheduled for hearing pursuant to the provision of this article. Such panels are listed in Appendix F.

C. NONDISCRIMINATION ACKNOWLEDGMENT AND WAIVER

1. If the UAW appeals a grievance to arbitration that contains allegations of a violation of Nondiscrimination but does not allege violation of another Article that is arbitrable, the Union's notice must include an Acknowledgment and Waiver Form signed by the affected Postdoctoral Scholar. The Acknowledgment and Waiver Form shall reflect:
 - a. that the Postdoctoral Scholar(s) has/have elected to pursue arbitration as the exclusive forum for the claim and
 - b. that the Postdoctoral Scholar 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 such other forums.
2. The timeline to appeal to arbitration set forth in this Article will be extended by thirty (30) calendar days for such grievance to enable the Postdoctoral Scholar to make an informed choice.