

ARTICLE 7

GRIEVANCE PROCEDURE

7.X A grievant shall have the right to present a grievance and to have that grievance considered in good faith. An effective grievance process is one that facilitates the resolution of the grievance in a timely manner.

Definitions

7.1 Grievance - The term "grievance" as used in this Article refers to the specific stated allegation by a grievant that there has been a violation, misapplication, or misinterpretation of a specific term(s) of this Agreement.

7.2 Grievant - The term "grievant" as used in this Article refers to a CSUEU-represented employee who is a:

- a. permanent employee(s); or
- b. probationary employee(s); or
- c. temporary employee(s) employed for more than ninety (90) consecutive days immediately prior to the event giving rise to the grievance; or
- d. intermittent employee(s); and

who allege(s) in a grievance that he/she/they has/have been directly wronged by a violation, misapplication, or misinterpretation of a specific term(s) of this Agreement.

The term "grievant," as used in this Article, may refer to the Union when alleging a violation, misapplication, or misinterpretation of a specific term(s) of this Agreement.

7.3 Representative - The term "representative" as used in this Article shall be a Union Representative or an employee who, at the grievant's request, may be present at all levels through Level III. Representation at Level IV shall be by the Union only.

7.4 Respond and File - The terms "respond" and "file" as used in this Article refer to personal delivery or deposit in the U.S. mail or transmittal by facsimile or e-mail. The Union and the CSU shall endeavor to use email whenever practicable.

- a. If mail delivery is used, it shall include a proof of service by mail which 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.

- b. If facsimile transmittal is used either to file or respond to a grievance, the facsimile transmittal cover letter 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 shall not be considered accomplished in the absence of such date and signature on the cover letter.
- c. If e-mail is used, the receiving party must respond acknowledging receipt and date of receipt of the e-mail transmission.
- d. A copy of all responses shall be concurrently served on the grievant's representative. If the grievant has not provided an **email** or facsimile number, the grievant may be served by U.S. mail.

Informal Level (Optional)

~~7.5 A grievant shall have the right to present a grievance and to have that grievance considered in good faith.~~

7.6 If an informal meeting is requested, it shall be held within ~~twenty-one (21)~~ **fourteen (14)** days of the request.

7.7 The grievant and one representative, if any, may discuss the grievance with the immediate non-bargaining unit supervisor no later than thirty (30) days after the event giving rise to the potential grievance, or no later than thirty (30) days after the grievant knew or reasonably should have known of the event giving rise to the potential grievance. The grievant or his/her representative must identify the meeting as an Informal Grievance meeting. If the employee chooses to have an additional representative present during this informal discussion, then the immediate non-bargaining unit supervisor may also have an additional University administrator present during the discussions.

7.8 The grievant may attempt to resolve the grievance informally with the immediate non-bargaining unit supervisor. The immediate non-bargaining unit supervisor shall provide a verbal written response to the grievant ~~as soon as possible~~ within fourteen (14) days after the Informal meeting. The immediate non-bargaining unit supervisor who conducted the informal meeting shall not serve as the designated administrator for any subsequent levels or render any subsequent level decisions.

7.9 A resolution of a grievance at the informal level shall not be precedent setting.

Level I – Appropriate Administrator

- 7.10 If the potential grievance is not resolved at the Informal level or if the informal step is not invoked by the grievant, the grievant may file a Level I grievance with the ~~appropriate administrator~~ **Human Resources Office** no later than thirty (30) days after the event giving rise to the grievance or after the grievant knew or reasonably should have known of the event giving rise to the potential grievance or twenty-one (21) days after the Informal meeting, if one was held. The **Human Resources Office will refer the grievance to the appropriate administrator. Notification of the designated administrator will be provided in writing to the grievant and his/her representative.** The grievant shall state on a grievance form agreed to by the parties and provided by CSUEU:
- a. the specific term(s) of the Agreement alleged to have been violated;
  - b. a detailed description of the grounds of the grievance including names, dates, places, and times;
  - c. a proposed remedy;
  - d. the name, classification, mailing address, and signature of the grievant;
  - e. the name and telephone number of the representative, if any;
  - f. the name and address of the Union, if the representative is acting as an agent of the Union;
  - g. date of submission; and,
  - h. facsimile and/or e-mail addresses, if any, of the grievant and/or representative.
- 7.11 Failure to provide the required information in items 7.10 (a) through (h) will be grounds for the return of the grievance to the grievant. A copy of the grievance shall also be sent to the union representative handling the case and to CSUEU Headquarters. If the grievance is not amended and returned within twenty-one (21) days, the grievance will be deemed withdrawn.
- 7.12 The appropriate administrator shall hold a meeting with the grievant and the grievant's representative, if any, at a mutually acceptable time and location within twenty-one (21) days after receipt of the grievance. The grievant may bring additional representative(s) to the meeting by advising the appropriate administrator in advance. If the grievant(s) has/have additional representatives, the appropriate administrator may have an equivalent number of additional representatives of management present at the meeting. If there are multiple grievants, the appropriate administrator may have an additional representative.

The appropriate administrator shall respond to the grievant no later than twenty-one (21) days after the Level I meeting.

Level II – Campus President or Designee

7.13 In the event the grievance is not settled at Level I, the grievant may file the Level II grievance with the President or designee no later than twenty-one (21) days after the Level I response. If a settlement is proposed at Level I, the grievant should include a written statement relevant to the settlement proposal.

7.X Within twenty-one (21) days ~~after receipt~~ of the Level II filing, the President or designee shall hold a meeting with the grievant and the grievant's representative, if any, at a mutually acceptable time and location. The grievant may bring additional representatives to the meeting by advising the appropriate administrator in advance. If the grievant(s) has/have additional representatives, the appropriate administrator may have an equivalent number of additional representatives of management present at the meeting. If there are multiple grievants, the appropriate administrator may have an additional representative. The President shall respond to the grievant no later than twenty-one (21) days after the Level II meeting.

7.14 The grievant shall present at each level all issues and evidence related to the grievance. Additional issues and/or evidence which become known after the Level II meeting shall be allowed to be presented and may be cause for the grievance to be remanded to the prior level only upon mutual agreement of the parties. Issues and/or evidence must be made known before filing the grievance at Level IV.

7.15 Amendments and/or modifications to the grievance shall not be made by the grievant after the Level III filing date, except by mutual agreement.

7.16 The parties may, by mutual agreement between the system-level representatives of both parties, expedite the grievance to Level III. Level III time limits shall commence on the date the agreement to expedite was reached.

Level III – Office of the Chancellor

7.17 In the event the grievance is not settled at Level II, the grievant may file a written request for review with the Office of the Chancellor no later than twenty-one (21) days after the Level II response. The grievant shall attach a copy of the Level I and Level II responses together with any documents presented at those levels.

7.18 Within twenty-one (21) days ~~of receipt~~ of the Level III filing, the representative of the grievant shall schedule a conference, at a mutually acceptable date, time and location with a designated individual in the Office of the Chancellor for the purpose of reviewing the matter. If there is no mutually acceptable location, then

the conference shall take place via a telephonic or teleconference meeting. The designated individual in the Office of the Chancellor shall respond no later than twenty-one (21) days after the conference. The original Level III response from the Office of the Chancellor shall be sent to the Union representative handling the case at Level III. A copy of the Level III response shall be sent to the grievant as long as the grievant provides an address on the grievance form. A copy of the response shall be sent to CSUEU Headquarters. If the grievant has not provided an address, the grievant's copy shall be sent to CSUEU Headquarters and CSUEU will deliver it to the grievant.

#### Level IV - Arbitration

- 7.19 If the grievance has not been settled at Level III, the Union alone may, no later than forty (40) days after the Level III response, submit the grievance to arbitration by giving notice to that effect by **email or** certified mail, return receipt requested, directed to the Office of the Vice Chancellor for Human Resources. **A grievance not submitted to arbitration by the union within forty (40) days from the date of the Level III response shall be considered as having been withdrawn.**
- 7.20
- a. The parties hereby designate ~~a minimum of nine (9) arbitrators, including, but not limited to Tom Angelo, Norman Brand, Fred D'Orazio, Terry Tucker, Walt Daugherty, Michael Rappaport and other~~ mutually agreed ~~to~~ upon arbitrators as to be members of the Arbitration Panel under this Agreement. The panel members shall be designated to serve in ~~the an~~ order of rotation ~~noted above~~, provided the panel member reached has an available day within one hundred and twenty (120) days of notification, or the parties mutually agree to a later date.
  - b. Either party to the Agreement may peremptorily challenge one panel member at any time during the term of this Agreement and such panel member shall be removed from the panel and replaced with a mutually acceptable replacement.
  - c. When a party peremptorily challenges an arbitrator, that arbitrator shall continue to hear and determine all cases where there has been a hearing, including a hearing on arbitrability issues. In cases where an assignment has been made, but no hearing has taken place, then the case shall be reassigned to the next arbitrator on the rotation. If the challenge is made at a time when the parties are subject to a cancellation fee, then the cost of any such cancellation shall be paid by the party who has made the challenge. Notice to the arbitrator as to his/her removal from the panel shall only be given once he/she has issued final awards in respect of all outstanding grievances over which he/she is exercising jurisdiction.

- 7.21 If an arbitrability question exists, the arbitrator shall determine the arbitrability question prior to hearing the merits of the grievance. The arbitrator may proceed to hear the merits of the grievance prior to meeting the requirements of Provision 7.23 below.
- a. When the grievance is found not arbitrable, the grievance shall be deemed null and void.
  - b. When the grievance is found to be arbitrable, the arbitrator shall hear the merits of the grievance.
  - c. Provision 7.21 shall not prohibit the parties from mutually agreeing to a second arbitration hearing on the merits of the grievance or from mutually agreeing to select a second arbitrator to hear the merits of the grievance.
- ~~7.22 The arbitrator may conduct the hearing as mediation-arbitration upon the mutual agreement of the parties and the arbitrator (following the guidelines set forth in the Side Letter of Agreement).~~
- 7.23 The arbitrator's award shall be in writing and shall set forth his/her findings, reasoning, and conclusions on the issue(s) submitted.
- 7.24 The Voluntary Labor Arbitration Rules of the American Arbitration Association shall apply at Level IV.
- 7.25 It shall be the function of the arbitrator to rule on the specific grievance. The arbitrator shall be subject to the following limitations:
- a. The arbitrator's award shall be based solely upon the evidence and arguments appropriately presented in the hearing and upon any post-hearing briefs.
  - b. The arbitrator shall have no power to alter, add to, detract from, or amend the provisions of this Agreement.
  - c. The arbitrator shall not consider any issue not raised by the parties prior to Level IV of this Article. The arbitrator shall not consider any evidence which was known or reasonably should have been known and not raised by the parties prior to Level IV of this Article.
  - d. Under no circumstances may an arbitrator make an award which will supersede the President's judgment on subjective business decisions.
  - e. The award of the arbitrator may or may not include back pay. Any back pay award shall be less any compensation that the employee received, including unemployment compensation. Under no circumstances may interest be included in an award.

- f. The standard of review for the arbitrator is whether the CSU violated, misapplied, or misinterpreted a specific term(s) of this Agreement.

7.26 The arbitrator's award shall be final and binding on both parties.

7.27 A witness who is an employee shall be excused from worktime to appear at an arbitration hearing with no loss of pay. Other expenses of any witness called before the arbitrator shall be borne by the party calling the witness. If more than one employee from a department is a witness and such appearances may disrupt department operations, the arbitrator will resolve the scheduling of the witnesses.

7.28 Each party shall bear the expense of preparing and presenting its own case. The cost of arbitration, excluding advocate, unilateral withdrawal, postponement, or cancellation fee, shall be borne equally by the parties.

7.29 The process to schedule a grievance for an arbitration hearing shall be initiated by a written request from the representative of the Union to the designated individual in the Office of the Chancellor. The request shall be for the parties to select an arbitrator pursuant to Provision 7.20. Any grievance filed into arbitration shall be considered withdrawn by the Union if it has not been scheduled within twelve (12) months of the filing to arbitration from Level IV or rescheduled within six (6) months of a previously scheduled or canceled arbitration date, whichever is later. Within the twelve (12) months of the request for arbitration, the parties shall confirm with an arbitrator that a hearing date has been set.

7.30 Upon mutual agreement, the parties may agree to use the expedited AAA arbitration procedures for Health and Safety grievances.

#### Mediation

7.31 The parties may agree to participate in a mediation for the purpose of compromising, settling, or resolving a grievance. **Mediation may be invoked at any stage of the grievance process, including the informal level.** Grievances may be subject to mediation in accordance with the following:

- a. ~~The party requesting mediation shall request mediation within thirty (30) calendar days after the Union has appealed the grievance to Level III or IV.~~
- b. Grievances shall not proceed to mediation except by the mutual agreement of both parties.
- c. **The mediator shall be selected through the mutual agreement of the parties. The mediator may be a member of the panel established in (e) below, or it may be a person identified by the parties as someone who it**

**is believed could assist the parties in facilitating a resolution of the grievance, and who is willing to serve in that role.**

- d. The timelines and order of the scheduling of grievances for arbitration pursuant to this Article shall not be affected by the parties' desire to invoke mediation.
- e. The parties shall establish a panel of ~~three (3)~~ mediators by mutual agreement, to serve in the north and in the south and who shall serve in alphabetical rotation. The panel shall consist of ~~Louis Zigman, Ken Cloke and Kathy Kelly~~. Members of the arbitration panel established pursuant to this Article shall not be eligible to serve on this mediation panel. ~~The parties may add to this panel at any time by mutual agreement, including one-time use of a mediator.~~ **The parties may also agree to use a mediator from the State Mediation and Conciliation Service (SMCS).**
- f. The procedures set forth in California Evidence Code Section ~~1152.5~~ **1119** shall be applicable to mediation conducted pursuant to this Agreement.
- g. All costs of mediation shall be borne equally by both parties.
- h. The recommendations of a mediator, if any, shall be advisory only and shall not be binding upon the parties. Neither party shall attempt to enter into evidence at a subsequent arbitration hearing any recommendation(s) of the mediator.

Mediation/Arbitration Procedure

- 7.32 “Med/Arb” is a process under which the mediator begins the hearing by attempting to mediate a settlement. If unable to settle the grievance, the mediator assumes the role of arbitrator and the hearing changes from a mediation to an arbitration.
- 7.33 Grievances may be subject to “Med/Arb” for the purpose of compromising, settling, or resolving a grievance in accordance with the following guidelines:
  - a. Either party may request “Med/Arb” at any time following the Level III response and prior to the grievance being scheduled for arbitration.
  - b. Both parties must agree to use the “Med/Arb” procedure.
  - c. Should a settlement not be reached during the mediation portion of the “Med-Arb” hearing, the award of the mediator/arbitrator from the arbitration portion of the “Med-Arb” shall be final and binding on both parties and is not subject to arbitration under Level IV of the Grievance Procedure.



- d. The parties shall establish a panel of ~~three (3)~~ mediators/arbitrators by mutual agreement, to serve in alphabetical rotation. **~~The panel shall consist of Louis Zigman, Kathy Kelly, and Walt Dougherty.~~**
- e. All costs of “Med/Arb” shall be borne equally by both parties.
- f. At least forty (40) calendar days prior to the “Med/Arb” hearing, the parties shall conduct a Pre-Hearing Conference to try to reach agreement on an issue statement, stipulations, exhibits, and witnesses.
- g. At or after the “Pre-hearing Conference” but prior to encumbering a cancellation fee, should either party determine it did not wish to participate in a “Med/Arb” hearing, the “Med/Arb” shall be cancelled, and the Union may pursue their appeal in accordance with provision 7.19.

7.34 “Med/Arb” hearings shall be conducted in accordance with the following procedure:

- a. The parties shall submit to the arbitrator any joint stipulations and exhibits agreed upon. Each side may also submit its own exhibits.
- b. The parties shall make opening statements during which they will describe the facts and evidence they intend to submit should the hearing become an arbitration.
- c. The mediator/arbitrator will then assist the parties to pursue a resolution. If the mediator/arbitrator concurs, witnesses may be called during the mediation phase of the hearing.
- d. If the parties are unable to reach agreement, the mediator/arbitrator shall end the mediation phase of the hearing and begin the arbitration phase of the hearing.
- e. During the arbitration phase, both sides may call witnesses and enter evidence into the record.
- f. Each side is limited to no more than three (3) witnesses, unless they mutually agree to additional witnesses.
- g. At the conclusion of the hearing the parties shall present oral arguments. Unless the parties mutually agree or the mediator/ arbitrator so requests, the parties will not submit written briefs.
- h. The provisions of 7.25 through 7.28 apply to “Med/Arb” hearings.

- i. The arbitrator shall issue a decision without any supporting opinion or analysis within thirty (30) calendar days of the “Med-Arb” hearing.

General Provisions

- 7.35 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 this 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.
- 7.36 Time limits set forth in this Article may be extended by mutual agreement. If the grievant, grievant’s representative, if any, or appropriate administrator is on a leave, vacation or holiday for five (5) days or more, but less than one year, the time limits shall be extended by the length of time of such leave, vacation, or holiday. The parties must give advance notice of the need to extend time limits, whenever possible.
- 7.37 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 necessary and relevant information within the policies and procedures defining confidentiality which would assist in adjusting the grievance.
- 7.38 To ensure the integrity of the grievance process, at every level a different administrator shall hear and respond to the grievant with the exception of Level IV, arbitration.
- 7.39 The processing of grievances filed and unresolved prior to the effective date of the Agreement may continue under the grievance procedure in effect at the time of the initial filing.
- 7.40 A decision by the Union to submit a grievance to arbitration shall automatically be a waiver of all other remedies except as provided otherwise by statute.
- 7.41 A grievance settled prior to arbitration shall not be precedent setting.
- 7.42 A grievant may withdraw a grievance at any time. The grievant shall not file any subsequent grievance on the same alleged incident.
- 7.43 The parties, by mutual agreement, may consolidate grievances on similar issues at any level.
- 7.44 By mutual agreement, a grievance may be filed at the level at which the authority to resolve the grievance resides.

- 7.45 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.
- 7.46 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.
- 7.47 For training purposes, the Union may have a steward-in-training attend a grievance meeting at all levels of the Grievance Procedure, provided the steward-in-training is on his/her own time or on 5.11 (d) time and provided the steward-in-training does not participate in the meeting. The Union shall submit to the campus Human Resources Department a list of new stewards who are to be considered in training under this article.
- 7.48 The procedures for securing release time for grievance processing shall be:
- a. Representatives and potential grievants shall notify the appropriate administrator or their designee if release time is required to prepare and present a grievance. Such notification shall be made prior to leaving the work area whenever possible. Notification shall include, but not be limited to, personal contact, written notification, text message, or e-mail. The representative and potential grievant shall be required to cite only Provision 7.45 or 7.46 as a statement of need.
  - b. The appropriate administrator shall grant the contractually specified release time after considering the needs of the operation of the University. If the requested release time is denied for operational need, the deadline for the grievance shall be extended until such time as the release time is provided.
  - c. Requests for release time shall include: (1) at what time and location; and (2) the anticipated duration of the meeting.
- 7.49 Both parties agree that all grievance files shall be confidential. Both parties agree that specific statements made and records used in grievance meetings shall be confidential.
- 7.50 An employee may present grievances and have such grievances adjusted without the intervention of the Union as long as adjustment is reached prior to Level IV; provided such adjustment is not inconsistent with the terms of a written agreement then in effect; and provided that the CSU will not agree to a resolution of the grievance until the Union has received a copy of the grievance and the proposed resolution, and has been given the opportunity to file a response.
- 7.51 The procedure (Article 7, Grievance Procedure, or Article 8, Complaint Procedure) utilized by the employee at the Level II filing shall indicate a final and

binding selection of procedures. Prior to the Level II filing, the employee may convert to the alternative procedure without interruption of time limits nor sequence of levels. If both a grievance and a complaint are filed at Level II on the same issue, either the grievance or the complaint shall be withdrawn prior to the Level II hearing.

Except as provided for in the paragraph above, an employee may not utilize both Article 7, Grievance Procedure, and Article 8, Complaint Procedure, to adjust the allegations arising from a single set of circumstances.

Release Time for State Personnel Board (SPB)

- 7.52        The CSU shall provide release time without loss of compensation for appellants to attend hearings conducted by the State Personnel Board (SPB) .The CSU shall accommodate a shift change request for such appellant on the day of an SPB hearing.