

December 19, 2023

Grievance and Arbitration

X.1. Definition of a Grievance

X.1.1. A grievance is a complaint, dispute, or allegation by one or more bargaining unit members or by the Union regarding a claimed violation, misinterpretation, or improper or inequitable application of the provisions of this Agreement or of policies or past practices of the University.

X.1.2. The term “Grievant” when used below is understood to include a bargaining unit member(s) or the Union on behalf of a bargaining unit member(s) who raised the grievance claim. A grievance may also be filed by the Union under its own name.

X.2. Individual and Group Rights

X.2.1. Any individual bargaining unit member, or group of bargaining unit members, or the Union itself, may at any time present grievances according to the mechanisms of this Agreement or through other procedures as set forth herein.

X.2.2. The Grievant has the right for a representative from the Union to be present at any meeting and at any step of the process set forth in this article. All personal information about the Grievant shall be held in confidence and not disclosed to anyone outside the process without the Grievant's permission. This shall not unduly restrict communication between managerial employees and Union representatives who have a need to know.

X.2.3. Bargaining unit members who believe they have been discriminated against or harassed on the basis of categories including but not limited to those covered by: (1) Federal, state or local laws (including but not limited to: Title VII, Title IX, and ADA violations), (2) this Agreement, (3) Human Resources, and/or (4) the Office of Equal Employment Opportunities (OEEEO) may seek relief through procedures and policies implemented by the Ohio Civil Rights Commission, Human Resources, and/or OEEEO before seeking relief through (and without waiving the right to file) a grievance under the terms of this Agreement. If grievant(s) chooses to pursue such a claim through any University office (e.g., Human Resources, OEEEO), that office shall provide the grievant(s) with a document created by the Union that outlines their full rights under this

37 Agreement. The Union shall be notified of any such claims within three (3)
38 calendar days.

39 X.2.4. Nothing in this agreement shall be construed to waive or limit the right of any
40 bargaining unit member(s) to bring an action against the University under
41 applicable local, state or federal law.

42 X.2.5. A bargaining unit member who participates in the grievance procedure shall not
43 be subject to discipline, reprisal, and/or retaliation relating to or because of such
44 participation.

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46 **X.3. Role of Faculty Rights and Responsibilities Committee (FR&R)**

47 X.3.1. The FR&R Committee is not a venue for interpreting or applying this Agreement
48 or pursuing violations of this Agreement. However, it may continue to hear other
49 types of complaints and requests by faculty members to the University, conduct
50 investigations, and issue reports including findings of fact, conclusions drawn
51 from these facts, and recommendations. The composition and procedures of the
52 FR&R Committee shall remain unchanged except as explicitly provided in this
53 Agreement or as the parties otherwise may agree. Copies of any and all reports of
54 the FR&R committee shall be sent to the Union within three (3) calendar days.

55 X.3.2. Notwithstanding the previous paragraph, the FR&R committee may also continue
56 to hear appeals of negative decisions on tenure and/or promotion, according to a
57 procedure which will be codified in [Article X: Rights of a Candidate Who Has
58 Received a Negative Recommendation or Been Denied Tenure or Promotion].

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60 **X.4. General Provisions**

61 X.4.1. If a resolution is reached at any step of the process set forth in this article, the
62 parties will document the resolution in a signed writing and the University shall
63 implement the terms of the agreement in a timely manner and according to any
64 agreed schedule.

65 X.4.2. Nothing contained in this Agreement shall be construed to prevent the informal
66 resolution of any grievance. All parties to a dispute are encouraged, but not
67 required, to resolve grievances informally. All parties are encouraged to engage in
68 free and open communication and consultation in order to resolve differences,
69 disputes, and misunderstandings by clarification and conciliation in recognition of
70 shared governance. Any resolution must be consistent with the terms of this
71 agreement. Any resolution reached without the agreement of the Union shall not
72 be considered precedential or binding on the Union or on any other bargaining
73 unit member.

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75 **X.5. Time Limits**

76 X.5.1. Either party may be granted, by mutual agreement, a reasonable extension of any
77 time limit defined in this and related articles.

78 X.5.2. In addition, there are instances within the grievance process where the time limits
79 are suspended while those steps are in progress.

80 X.5.3. If the University fails to respond at any step within the time limits provided in this
81 article, the grievance is upheld.
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83 **X.6. Step One (Optional)**

84 X.6.1. All grievants, including but not limited to those with grievances related to
85 discrimination or harassment, may choose to bypass this step at their sole
86 discretion.

87 X.6.2. If a Grievant chooses to pursue resolution at Step One, they may present an
88 alleged violation to their Department Chair, or to an administrator below the level
89 of Provost alleged to be responsible for the violation, and request in writing a
90 meeting to discuss the alleged violation. If requested, such a meeting shall occur
91 between the Grievant and the Chair (or other appropriate administrator) at a
92 mutually agreeable time and place not later than fourteen (14) calendar days after
93 the request. The Chair or other administrator shall notify the Union of any such
94 meeting at least three (3) calendar days in advance and allow a representative of
95 the Union to attend the meeting.

96 X.6.3. If such a meeting results in a resolution, the Department Chair (or other
97 appropriate administrator) shall provide to the Grievant and to the Union within
98 seven (7) calendar days a written statement of the terms of the resolution. Such a
99 written statement, once agreed to, may not be altered or withdrawn by either
100 party, except by mutual consent.
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102 **X.7. Step Two**

103 X.7.1. If the Grievance has not been resolved in Step One, or the Grievant chooses to
104 skip Step One, the Grievant in conjunction with the Union shall summarize the
105 grievance in a written complaint, stating the facts and listing the Articles and
106 Sections of the Agreement or policy or past practice upon which the grievance is
107 based, and stating the remedy sought, and submit the written grievance to the
108 Dean or their designee.

109 X.7.2. Within seven (7) calendar days following the receipt of the written grievance, the
110 Dean or their designee shall meet with the Grievant and a representative of the
111 Union at a mutually agreeable time and place to discuss the matter and attempt to

112 resolve the grievance. Within five (5) calendar days after this meeting, the Dean
 113 or their designee shall submit a written response to the Grievant and the Union.

114 X.7.3. The Union may choose to elevate the grievance to Step Three (described herein)
 115 by sending notice to the Provost within fourteen (14) calendar days of the Dean's
 116 response.

117 X.7.4. In the case of a grievance alleging a violation of this agreement by the Dean
 118 (including but not limited to discrimination or harassment) the Union may choose
 119 to skip this step and initiate the grievance procedure directly at Step Three.

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121 **X.8. Step Three**

122 X.8.1. If the grievance has not been resolved at Step Two, then within seven (7) calendar
 123 days of the receipt of notice from the Union, the Provost or their designee shall
 124 meet with the Grievant and a representative of the Union at mutually agreeable
 125 time and place to further attempt to resolve the grievance. Within five (5)
 126 calendar days after the meeting, the Provost or their designee shall send a written
 127 response to the Grievant and the Union.

128 X.8.2. In the case of a grievance alleging a violation of this agreement by the Provost
 129 (including but not limited to discrimination or harassment) the President will be
 130 substituted for the Provost in this step.

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132 **X.9. Mediation**

133 X.9.1. Upon receipt of a written response from the Provost or their designee in Step
 134 Three, The Union and the University may, by mutual consent, choose to contact
 135 the Federal Mediation and Conciliation Service (FMCS) for grievance mediation
 136 within twenty (20) calendar days of receipt of the demand. All time limits shall be
 137 suspended while mediation is pending. The Union and the University shall share
 138 equally in any mediation costs. The parties shall provide to each other and to the
 139 mediator equal access to relevant persons and information, appropriate to timely
 140 resolution. If the mediation takes place during the grievant's and/or Union
 141 representative's work hours, the grievant and/or Union representative shall not
 142 suffer any loss of pay or benefits to attend the mediation.

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144 **X.10. Binding Arbitration**

145 X.10.1. If the grievance has not been resolved at a previous step, then within twenty (20)
 146 calendar days of the receipt of the written response from Step Three or failure of
 147 mediation, the Union, but not the individual bargaining unit faculty member(s),
 148 has the sole right to refer a grievance to arbitration and to conduct the proceeding

- 149 as a party, by submitting written notice to the Provost or their designee and to the
 150 Federal Mediation and Conciliation Service (FMCS).
- 151 X.10.2. Within seven (7) calendar days following receipt of a list of arbitrators from
 152 FMCS, all of whom must be members of the National Academy of Arbitrators, if
 153 the arbitrator is not selected by mutual agreement, each party shall alternately
 154 strike a name until one remains. Which party strikes first shall be determined by a
 155 random method such as the flip of a coin, or may be determined in another way if
 156 the parties so agree. If the arbitrator thus chosen cannot serve, the parties shall
 157 request a new list and begin the selection process anew.
- 158 X.10.3. In the event either party finds the initial list of arbitrators to be unacceptable, it
 159 may reject the list and request a new list at its expense. The party which did not
 160 reject the first list shall have the option of having the parties alternately strike
 161 from the second list only or from both lists.
- 162 X.10.4. The procedural format for arbitration shall be either the FMCS rules for voluntary
 163 labor arbitration or the FMCS rules for expedited labor arbitration. If the parties
 164 cannot agree on the format in advance of the notice of intent to submit the
 165 grievance to binding arbitration, the arbitration shall be conducted under the
 166 FMCS rules for voluntary labor arbitration.
- 167 X.10.5. If the arbitration takes place during the grievant's or Union representative's work
 168 hours, the grievant or Union representative shall not suffer any loss of pay or
 169 benefits to attend the arbitration.
- 170 X.10.6. Four (4) calendar days prior to the hearing, the parties shall exchange the names
 171 of all witnesses to be called, and all exhibits to be introduced, during their case in
 172 chief.
- 173 X.10.7. All decisions of the selected arbitrator shall be final and binding on the University
 174 and the Union, and may be enforced in any court of competent jurisdiction.
- 175 X.10.8. The cost of the arbitration shall be borne equally by the parties, including the
 176 arbitrator's fees and expenses and the cost of the hearing room. Each party shall
 177 pay its own individual expenses, including transcripts and the fees and
 178 reimbursement of its representatives and witnesses.
- 179 X.10.9. The arbitrator shall be requested to issue their decision within thirty (30) calendar
 180 days after the hearing or receipt of the transcript of the hearing.
- 181 X.10.10. No recordings may be made of the hearing, except as needed by the preparer of a
 182 transcript.
- 183 X.10.11. Cases involving denial of tenure and/or promotion
- 184 X.10.11.1. In a case involving denial of tenure and/or promotion, if appeal to the
 185 FR&R Committee does not result in a decision by the University favorable
 186 to the candidate, or if the candidate chooses not to appeal to the FR&R

187 Committee, the Union may choose to initiate a grievance directly at the
188 arbitration step within twenty (20) calendar days of receiving the
189 President's decision on the case. The basis for such a grievance may
190 include alleged procedural errors, claims of an arbitrary, capricious, or
191 discriminatory decision, inadequate consideration, academic freedom
192 violations, or any other basis for a grievance arising during or before the
193 original review process or (if there was an appeal) during the appeals
194 process.

195 X.10.11.2. If the denial was previously appealed to the FR&R Committee, the
196 arbitrator shall duly consider the committee's report, including its
197 recommendations and findings of fact.

198 X.10.11.3. The arbitrator shall have the authority to remand the tenure and/or
199 promotion decision being grieved with directions as to which of the
200 existing procedures in this Agreement or in applicable department,
201 college, or university policies or bylaws are to be followed, and may, if
202 appropriate, grant an additional terminal year to the candidate. The
203 arbitrator may advise on altering procedures and time limits to expedite
204 the remand process. Individuals and committees to whom a promotion or
205 tenure case is remanded shall duly consider all advice and
206 recommendations of the arbitrator.