

January 31, 2024

Grievance and Arbitration

X.1. Definition of a Grievance

X.1.1. A grievance is ~~an complaint, dispute, or~~ allegation by one or more bargaining unit members or by the Union ~~that there has been a 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. A Union representative may be present at any meeting at any step of the grievance procedure set forth in this section.~~

X.2.3. 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.2.2-X.2.4. Nothing in this article is intended to prevent a bargaining unit member from filing a claim of unlawful discrimination, harassment, or retaliation with any administrative agency or court of competent jurisdiction.~~

~~X.2.3-X.2.5. 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 (OEEO) may seek relief through procedures and policies implemented by the Ohio Civil Rights Commission, Human Resources, and/or OEEO 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 Agreement. The Union shall be notified of any such claims within three (3) calendar days.

~~X.2.4.X.2.6.~~ Nothing in this agreement shall be construed to waive or limit the right of any bargaining unit member(s) to bring an action against the University under applicable local, state or federal law.

~~X.2.5.X.2.7.~~ A bargaining unit member who participates in the grievance procedure shall not be subject to discipline, reprisal, and/or retaliation relating to or because of such participation.

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

X.3.1. The FR&R Committee is not a venue for interpreting or applying this Agreement or pursuing ~~violations of this Agreement~~grievances as defined in this article. However, it may continue to hear other types of complaints and requests by faculty members to the University, conduct investigations, and issue reports including findings of fact, conclusions drawn from these facts, and recommendations. The composition and procedures of the FR&R Committee shall remain unchanged [from 01/31/2024, as recorded in Appendix ___ : Committee on Faculty Rights and Responsibilities] ~~except for the addition of one (1) TCPL faculty member and one (1) librarian, as explicitly provided in this Agreement~~ or as the parties otherwise may agree. Copies of any and all reports of the FR&R committee shall be sent to the Union- within three (3) calendar days.

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

X.4. General Provisions

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

X.4.2. Nothing contained in this Agreement shall be construed to prevent the informal resolution of any grievance at any step of this procedure. ~~All parties to a dispute are encouraged, but not required, to resolve grievances informally. All parties are~~

~~encouraged to engage in free and open communication and consultation in order to resolve differences, disputes, and misunderstandings by clarification and conciliation in recognition of shared governance.~~ Any resolution must be consistent with the terms of this agreement. Any resolution reached without the agreement of the Union shall not be considered precedential or binding on the Union or on any other bargaining unit member.

X.5. Time Limits

- X.5.1. Either party may be granted, by mutual agreement, a reasonable extension of any time limit defined in this and related articles. Any extension to the time limits set forth herein must be by written agreement of the parties.
- X.5.2. In addition, there are instances within the grievance process where the time limits are suspended while those steps are in progress.
- X.5.3. If the University fails to respond at any step within the time limits provided in this article, the grievance is upheld.

X.6. Step One (Optional)

- X.6.1. All grievants, including but not limited to those with grievances related to discrimination or harassment, may choose to bypass this step at their sole discretion.
- X.6.2. If a Grievant chooses to pursue resolution at Step One, they may present an alleged violation to their Department Chair, or ~~designee to an administrator below the level of Provost alleged to be responsible for the violation~~, and request in writing a meeting to discuss the alleged violation. If requested, such a meeting shall occur between the Grievant and the Chair (or ~~designee~~ other appropriate administrator) at a mutually agreeable time and place not later than ~~fourteen~~ five (5) calendar days after the request. The Chair or ~~designee~~ other administrator shall notify the Union of any such meeting at least three (3) calendar days in advance and allow a representative of the Union to attend the meeting.
- X.6.3. If such a meeting results in a resolution, the Department Chair or their designee ~~(or other appropriate administrator)~~ shall provide to the Grievant and to the Union within ~~seven~~ five (5) calendar days a written statement of the terms of the resolution. Such a written statement, once agreed to, may not be altered or withdrawn by either party, except by mutual consent.

X.7. Step Two

- X.7.1. If the Grievance has not been resolved in Step One, or the Grievant chooses to skip Step One, the Grievant in conjunction with the Union shall summarize the

114 grievance in a written complaint, stating the facts and listing the Articles and
 115 Sections of the Agreement or policy or past practice upon which the grievance is
 116 based, and stating the remedy sought, and submit the written grievance to the
 117 Dean or their designee.

118 X.7.2. Within seven (7) calendar days following the receipt of the written grievance, the
 119 Dean or their designee shall meet with the Grievant and a representative of the
 120 Union at a mutually agreeable time and place to discuss the matter and attempt to
 121 resolve the grievance. Within five (5) calendar days after this meeting, the Dean
 122 or their designee shall submit a written response to the Grievant and the Union.

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

126 X.7.4. In the case of a grievance alleging a violation of this agreement by the Dean
 127 (including but not limited to discrimination or harassment) the Union may choose
 128 to skip this step and initiate the grievance procedure directly at Step Three.
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130 X.8. Step Three

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

137 X.8.2. In the case of a grievance alleging a violation of this agreement by the Provost
 138 (including but not limited to discrimination or harassment) the President will be
 139 substituted for the Provost in this step.
 140

141 X.9. Mediation

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

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153 **X.10. Binding Arbitration**

154 X.10.1. If the grievance has not been resolved at a previous step, then within twenty (20)
 155 calendar days of the receipt of the written response from Step Three or failure of
 156 mediation, the Union, but not the individual bargaining unit faculty member(s),
 157 has the sole right to refer a grievance to arbitration and to conduct the proceeding
 158 as a party, by submitting written notice to the Provost or their designee and to the
 159 Federal Mediation and Conciliation Service (FMCS).

160 X.10.2. Within seven (7) calendar days following receipt of a list of arbitrators from
 161 FMCS, all of whom must be members of the National Academy of Arbitrators, if
 162 the arbitrator is not selected by mutual agreement, each party shall alternately
 163 strike a name until one remains. Which party strikes first shall be determined by a
 164 random method such as the flip of a coin, or may be determined in another way if
 165 the parties so agree. If the arbitrator thus chosen cannot serve, the parties shall
 166 request a new list and begin the selection process anew.

167 X.10.3. In the event either party finds the initial list of arbitrators to be unacceptable, it
 168 may reject the list and request a new list at its expense. The party which did not
 169 reject the first list shall have the option of having the parties alternately strike
 170 from the second list only or from both lists.

171 X.10.4. The procedural format for arbitration shall be either the FMCS rules for voluntary
 172 labor arbitration or the FMCS rules for expedited labor arbitration. If the parties
 173 cannot agree on the format in advance of the notice of intent to submit the
 174 grievance to binding arbitration, the arbitration shall be conducted under the
 175 FMCS rules for voluntary labor arbitration.

176 X.10.5. If the arbitration takes place during the grievant's or Union representative's work
 177 hours, the grievant or Union representative shall not suffer any loss of pay or
 178 benefits to attend the arbitration.

179 X.10.6. Four (4) calendar days prior to the hearing, the parties shall exchange the names
 180 of all witnesses to be called, and all exhibits to be introduced, during their case in
 181 chief.

182 X.10.7. All decisions of the selected arbitrator shall be final and binding on the University
 183 and the Union, and may be enforced in any court of competent jurisdiction.

184 ~~X.10.7.~~ X.10.8. The arbitrator shall have no authority to add to, subtract from, or modify this
 185 agreement or modify any procedures set forth herein.

186 ~~X.10.8.~~ X.10.9. The cost of the arbitration shall be borne equally by the parties, including the
 187 arbitrator's fees and expenses and the cost of the hearing room. Each party shall
 188 pay its own individual expenses, including transcripts and the fees and
 189 reimbursement of its representatives and witnesses.

- 190 ~~X.10.9~~.X.10.10. The arbitrator shall be requested to issue their decision within thirty (30) calendar
191 days after the hearing or receipt of the transcript of the hearing.
- 192 ~~X.10.10~~.X.10.11. No recordings may be made of the hearing, except as needed by the preparer of a
193 transcript.
- 194 ~~X.10.11~~.X.10.12. Cases involving denial of tenure and/or promotion
- 195 ~~X.10.11.1~~.X.10.12.1. In a case involving denial of tenure and/or promotion, if appeal to the
196 FR&R Committee does not result in a decision by the University favorable
197 to the candidate, or if the candidate chooses not to appeal to the FR&R
198 Committee, the Union may choose to initiate a grievance directly at the
199 arbitration step within twenty (20) calendar days of receiving the
200 President's decision on the case. The basis for such a grievance may
201 include alleged procedural errors, claims of an arbitrary, capricious, or
202 discriminatory decision, inadequate consideration, academic freedom
203 violations, or any other basis for a grievance arising during or before the
204 original review process or (if there was an appeal) during the appeals
205 process.
- 206 ~~X.10.11.2~~.X.10.12.2. If the denial was previously appealed to the FR&R Committee, the
207 arbitrator shall duly consider the committee's report, including its
208 recommendations and findings of fact.
- 209 ~~X.10.11.3~~.X.10.12.3. The arbitrator shall have the authority to remand the tenure and/or
210 promotion decision being grieved with directions as to which of the
211 existing procedures in this Agreement or in applicable department,
212 college, or university policies or bylaws are to be followed, and may, if
213 appropriate, grant an additional terminal year to the candidate. The
214 arbitrator may advise on altering procedures and time limits to expedite
215 the remand process. Individuals and committees to whom a promotion or
216 tenure case is remanded shall duly consider all advice and
217 recommendations of the arbitrator.