

March 13, 2024

# Grievance and Arbitration

## X.1. Definition of a Grievance

- X.1.1. A grievance is an allegation by one or more bargaining unit members or by the Union that there has been a 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. 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, except as required by law. This shall not unduly restrict communication between managerial employees and Union representatives who have a need to know.
- 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.2.5. 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.2.6. 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.2.7.—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 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, 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 hear appeals of candidates denied tenure, promotion, or reappointment as provided in Article [Appealing a Denial of Tenure, Promotion, or Reappointment]. The composition of the FR&R Committee shall remain unchanged except for the addition of one (1) TCPL faculty member and one (1) librarian, or as the parties otherwise may agree. ~~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. 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

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The Union reserves the right to add to, delete from, alter or amend this proposal. This proposal is made without precedent or prejudice to existing rights and entitlements, regardless of the character or source of same. Any tentative agreements reached between the parties on any proposals shall not become final until (1) the parties have reached final agreement on a full collective bargaining agreement, and (2) the Union membership has ratified the full collective bargaining agreement.

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

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## 82 **X.6. Step One (Optional)**

- 83 X.6.1. All grievants, including but not limited to those with grievances related to  
84 discrimination or harassment, may choose to bypass this step at their sole  
85 discretion.
- 86 X.6.2. If a Grievant chooses to pursue resolution at Step One, they may present an  
87 alleged violation to their Department Chair, or designee, and request in writing a  
88 meeting to discuss the alleged violation. If requested, such a meeting shall occur  
89 between the Grievant and the Chair (or designee) at a mutually agreeable time and  
90 place not later than five (5) calendar days after the request. The Chair or designee  
91 shall notify the Union of any such meeting at least three (3) calendar days in  
92 advance and allow a representative of the Union to attend the meeting.
- 93 X.6.3. If such a meeting results in a resolution, the Department Chair or their  
94 designee shall provide to the Grievant and to the Union within five (5) calendar  
95 days a written statement of the terms of the resolution. Such a written statement,  
96 once agreed to, may not be altered or withdrawn by either party, except by mutual  
97 consent.

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## 99 **X.7. Step Two**

- 100 X.7.1. If the Grievance has not been resolved in Step One, or the Grievant chooses to  
101 skip Step One, the Grievant in conjunction with the Union shall summarize the  
102 grievance in a written complaint, stating the facts and listing the Articles and  
103 Sections of the Agreement or policy or past practice upon which the grievance is  
104 based, and stating the remedy sought, and submit the written grievance to the  
105 Dean or their designee.
- 106 X.7.2. Within seven (7) calendar days following the receipt of the written grievance, the  
107 Dean or their designee shall meet with the Grievant and a representative of the  
108 Union at a mutually agreeable time and place to discuss the matter and attempt to  
109 resolve the grievance. Within five (5) calendar days after this meeting, the Dean  
110 or their designee shall submit a written response to the Grievant and the Union.

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

114 X.7.4. In the case of a grievance alleging a violation of this agreement by the Dean  
 115 (including but not limited to discrimination or harassment) the Union may choose  
 116 to skip this step and initiate the grievance procedure directly at Step Three.  
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## 118 **X.8. Step Three**

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

125 X.8.2. In the case of a grievance alleging a violation of this agreement by the Provost  
 126 (including but not limited to discrimination or harassment) the President will be  
 127 substituted for the Provost in this step.  
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## 129 **X.9. Mediation**

130 X.9.1. Upon receipt of a written response from the Provost or their designee in Step  
 131 Three, The Union and the University may, by mutual consent, choose to contact  
 132 the Federal Mediation and Conciliation Service (FMCS) for grievance mediation  
 133 within twenty (20) calendar days of receipt of the demand. All time limits shall be  
 134 suspended while mediation is pending. The Union and the University shall share  
 135 equally in any mediation costs. The parties shall provide to each other and to the  
 136 mediator equal access to relevant persons and information, appropriate to timely  
 137 resolution. If the mediation takes place during the grievant's and/or Union  
 138 representative's work hours, the grievant and/or Union representative shall not  
 139 suffer any loss of pay or benefits to attend the mediation.  
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## 141 **X.10. Binding Arbitration**

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

- 148 X.10.2. Within seven (7) calendar days following receipt of a list of seven (7) arbitrators  
 149 from FMCS, all of whom must be members of the National Academy of  
 150 Arbitrators, if the arbitrator is not selected by mutual agreement, each party shall  
 151 alternately strike a name until one remains. The University shall strike the first  
 152 name. Which party strikes first shall be determined by a random method such as  
 153 the flip of a coin, or may be determined in another way if the parties so agree. If  
 154 the arbitrator thus chosen cannot serve, the parties shall request a new list and  
 155 begin the selection process anew.
- 156 X.10.3. In the event either party finds the initial list of arbitrators to be unacceptable, it  
 157 may reject the list and request a new list at its expense. The party which did not  
 158 reject the first list shall have the option of having the parties alternately strike  
 159 from the second list only or from both lists.
- 160 X.10.4. The procedural format for arbitration shall be either the FMCS rules for voluntary  
 161 labor arbitration or the FMCS rules for expedited labor arbitration. If the parties  
 162 cannot agree on the format in advance of the notice of intent to submit the  
 163 grievance to binding arbitration, the arbitration shall be conducted under the  
 164 FMCS rules for voluntary labor arbitration.
- 165 X.10.5. If the arbitration takes place during the grievant's or Union representative's work  
 166 hours, the grievant or Union representative shall not suffer any loss of pay or  
 167 benefits to attend the arbitration.
- 168 X.10.6. Four (4) calendar days prior to the hearing, the parties shall exchange the names  
 169 of all witnesses to be called, and all exhibits to be introduced, during their case in  
 170 chief.
- 171 X.10.7. All decisions of the selected arbitrator shall be final and binding on the University  
 172 and the Union, and may be enforced in any court of competent jurisdiction.
- 173 X.10.8. The arbitrator shall have no authority to add to, subtract from, or modify this  
 174 agreement or modify any procedures set forth herein.
- 175 X.10.9. 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.10.10. 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.10.11. No recordings may be made of the hearing, except as needed by the preparer of a  
 182 transcript.
- 183 X.10.12. Cases involving denial of tenure and/or promotion  
 184 ~~X.10.12.1. 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.10.12.2. 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.10.12.3.X.10.12.1. 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.