

June 5, 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 employment-related 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.~~X.2.1. A Union representative may be present at any meeting at any step of the grievance procedure set forth in this ~~section~~article.

~~X.2.3.~~X.2.2. 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.~~X.2.3. 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.~~X.2.4. 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.~~X.2.5. 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.3. Role of Faculty Rights and Responsibilities Committee (FR&R)

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.

39 X.3.1. The FR&R Committee is not a venue for interpreting or applying this Agreement
40 or pursuing grievances as defined in this article.

41 X.3.2. Notwithstanding the previous paragraph, the FR&R committee may hear appeals
42 of candidates denied tenure, promotion, or reappointment as provided in Article
43 [Appealing a Denial of Tenure, Promotion, or Reappointment]. The composition
44 of the FR&R Committee shall remain unchanged except for the addition of one
45 (1) TCPL faculty member and one (1) librarian, or as the parties otherwise may
46 agree.

47

48 X.4. General Provisions

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

53 X.4.2. Nothing contained in this Agreement shall be construed to prevent the informal
54 resolution of any grievance at any step of this procedure. Any resolution must be
55 consistent with the terms of this agreement. Any resolution reached without the
56 agreement of the Union shall not be considered precedential or binding on the
57 Union or on any other bargaining unit member.

58 ~~X.4.2-X.4.3.~~ Steps of the grievance procedure may be waived or modified in writing and by
59 mutual agreement of both parties.

60

61 X.5. Time Limits

62 X.5.1. Either party may be granted, by mutual agreement, a reasonable extension of any
63 time limit defined in this and related articles. Any extension to the time limits set
64 forth herein must be by written agreement of the parties.

65 X.5.2. Should the University fail to respond at any step within the timeframes contained
66 in this provision, the grievance will be deemed denied and the Union may proceed
67 to the next step in the procedure. No timeframe shall be binding upon the Union
68 until a required response is given. In addition, there are instances within the
69 grievance process where the time limits are suspended while those steps are in
70 progress.

71 ~~X.5.3.~~ If the University fails to respond at any step within the time limits provided in this
72 article, the grievance is upheld.

73

74 X.6. Step One (Optional)

75 ~~X.6.1.~~ All grievants, including but not limited to those with grievances related to
76 discrimination or harassment, may choose to bypass this step at their sole
77 discretion.

78 ~~X.6.2.X.6.1.~~ Within one hundred and twenty (120) calendar days after becoming aware of the
 79 occurrence giving rise to the grievance, excluding days on which the University is
 80 closed and/or the bargaining unit faculty member is not on contract, a bargaining
 81 unit member or the Union ~~If a Grievant chooses to pursue resolution at Step One,~~
 82 ~~they may present an alleged violation~~ a grievance in an informal writing to their
 83 Department Chair, or designee, and request ~~in writing~~ a meeting to discuss the
 84 alleged violation. If requested, such a meeting shall occur between the Grievant
 85 and the Chair (or designee) at a mutually agreeable time and place not later than
 86 five (5) calendar days after the request. The Chair or designee shall notify the
 87 Union of any such meeting at least three (3) calendar days in advance and allow a
 88 representative of the Union to attend the meeting.

89 ~~X.6.3.X.6.2.~~ Within five (5) calendar days after this meeting, the Chair or their designee shall
 90 submit a written response to the Grievant and the Union. ~~If such a meeting results~~
 91 ~~in a resolution, the Department Chair or their designee shall provide to the~~
 92 ~~Grievant and to the Union within five (5) calendar days a written statement of the~~
 93 ~~terms of the resolution. Such a written statement, once agreed to, may not be~~
 94 ~~altered or withdrawn by either party, except by mutual consent.~~

95

96 X.7. Step Two

97 X.7.1. If the ~~G~~grievance has not been resolved in Step One, ~~or the Grievant chooses to~~
 98 ~~skip Step One,~~ the Grievant ~~in conjunction with~~ the Union shall reduce the
 99 grievance to a formal writing summarize the grievance in a written complaint,
 100 stating the facts and listing the Articles and Sections of the Agreement or policy
 101 or past practice upon which the grievance is based, and stating the remedy sought,
 102 and submit the written grievance to the Dean or their designee within twenty (20)
 103 calendar days of receipt of the University's Step One response.

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

109 X.7.3. The Union may appeal the grievance to the next step within twenty (20) calendar
 110 days of the University's denial. ~~The Union may choose to elevate the grievance to~~
 111 ~~Step Three (described herein) by sending notice to the Provost within fourteen~~
 112 ~~(14) calendar days of the Dean's response.~~

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

116

117 **X.8. Step Three**

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

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

127
 128 **X.9. Mediation**

129 X.9.1. ~~In the event that the parties cannot resolve the grievance at Step Three, before the
 130 grievance has been appealed to arbitration, the Union and the University may, by
 131 mutual consent, contact the State Employee Relations Board (“SERB”) or Federal
 132 Mediation and Conciliation Service (“FMCS”) for grievance mediation. Upon
 133 receipt of a written response from the Provost or their designee in Step Three, The
 134 Union and the University may, by mutual consent, choose to contact the Federal
 135 Mediation and Conciliation Service (FMCS) for grievance mediation within
 136 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.

143
 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 seven (7) arbitrators
 152 from FMCS, all of whom must be members of the National Academy of
 153 Arbitrators, if the arbitrator is not selected by mutual agreement, each party shall
 154 alternately strike a name until one remains. The University shall strike the first
 155 name. The person remaining shall be the arbitrator. If the arbitrator thus chosen

- 156 cannot serve, the parties shall request a new list and begin the selection process
 157 anew. ~~The conduct of the arbitration shall be in accordance with FMCS's then-~~
 158 ~~applicable rules of procedure.~~
- 159 X.10.3. In the event either party finds the initial list of arbitrators to be unacceptable, it
 160 may reject the list and request a new list ~~at its expense, at their cost, of arbitrators~~
 161 ~~from the FMCS. No more than three (3) requests for another panel of arbitrators~~
 162 ~~may be made by either party. The party which did not reject the first list shall~~
 163 ~~have the option of having the parties alternately strike from the second list only or~~
 164 ~~from both lists.~~
- 165 X.10.4. ~~The process of expedited arbitration, under the FMCS rules, may be utilized by~~
 166 ~~the mutual written agreement of the University and the Union, on a case-by-case~~
 167 ~~basis. Neither party is required to agree to expedited arbitration. The procedural~~
 168 ~~format for arbitration shall be either the FMCS rules for voluntary labor~~
 169 ~~arbitration or the FMCS rules for expedited labor arbitration. If the parties cannot~~
 170 ~~agree on the format in advance of the notice of intent to submit the grievance to~~
 171 ~~binding arbitration, the arbitration shall be conducted under the FMCS rules for~~
 172 ~~voluntary labor arbitration.~~
- 173 X.10.5. If the arbitration takes place during the grievant's or Union representative's work
 174 hours, the grievant or Union representative shall not suffer any loss of pay or
 175 benefits to attend the arbitration.
- 176 X.10.6. Four (4) calendar days prior to the hearing, the parties shall exchange the names
 177 of all witnesses to be called, and all exhibits to be introduced, during their case in
 178 chief.
- 179 X.10.7. All decisions of the selected arbitrator shall be final and binding on the University
 180 and the Union, ~~and may be enforced in any court of competent jurisdiction.~~
- 181 X.10.8. The arbitrator shall have no authority to add to, subtract from, or modify this
 182 agreement or modify any procedures set forth herein.
- 183 X.10.9. The cost of the arbitration shall be borne equally by the parties, including the
 184 arbitrator's fees and expenses and the cost of the hearing room. Each party shall
 185 pay its own individual expenses, including transcripts and the fees and
 186 reimbursement of its representatives and witnesses.
- 187 X.10.10. The arbitrator shall be requested to issue their decision within thirty (30) calendar
 188 days after the hearing or receipt of the transcript of the hearing.
- 189 X.10.11. No recordings may be made of the hearing, except as needed by the preparer of a
 190 transcript.
- 191 X.10.12. Cases involving denial of tenure and/or promotion
- 192 X.10.12.1. The arbitrator shall have the authority to remand the tenure and/or
 193 promotion decision being grieved with directions as to which of the
 194 existing procedures in this Agreement or in applicable department,

195 college, or university policies or bylaws are to be followed, and may, if
196 appropriate, grant an additional terminal year to the candidate. The
197 arbitrator may advise on altering procedures and time limits to expedite
198 the remand process. Individuals and committees to whom a promotion or
199 tenure case is remanded shall duly consider all advice and
200 recommendations of the arbitrator.