

August 7, 2024

Grievance and Arbitration

X.1. Definition of a Grievance

X.1.1. A grievance is an allegation by a bargaining unit member, a group of bargaining unit members, or 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 relating to terms and conditions of employment of bargaining unit members.

X.2. Individual and Group Rights

X.2.1. A Union representative may be present at any meeting at any step of the grievance procedure set forth in this article.

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.2.3. 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.2.4. If grievant(s) chooses to pursue such a claim through any University office (e.g., Human Resources, OEEO), 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.2.5. 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)~~

~~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.~~

~~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~~

39 ~~[Appealing a Denial of Tenure, Promotion, or Reappointment]. The composition~~
 40 ~~of the FR&R Committee shall remain unchanged except for the addition of one~~
 41 ~~(1) TCPL faculty member and one (1) librarian, or as the parties otherwise may~~
 42 ~~agree.~~

43
 44 ~~X.4.X.3.~~ **General Provisions**

45 ~~X.4.1.X.3.1.~~ If a resolution is reached at any step of the process set forth in this article, the
 46 parties will document the resolution in a signed writing and the University shall
 47 implement the terms of the agreement in a timely manner and according to any
 48 agreed schedule.

49 ~~X.4.2.X.3.2.~~ Nothing contained in this Agreement shall be construed to prevent the informal
 50 resolution of any grievance at any step of this procedure. Any resolution must be
 51 consistent with the terms of this agreement. Any resolution reached without the
 52 agreement of the Union shall not be considered precedential or binding on the
 53 Union or on any other bargaining unit member.

54 ~~X.3.3.~~ Steps of the grievance procedure may be waived or modified in writing and by
 55 mutual agreement of both parties.

56 ~~X.4.3.X.3.4.~~ Where more than one grievance involves similar issues, the Union may
 57 consolidate the grievances prior to arbitration.

58
 59 ~~X.5.X.4.~~ **Time Limits**

60 ~~X.5.1.X.4.1.~~ Either party may be granted, by mutual agreement, a reasonable extension of any
 61 time limit defined in this and related articles. Any extension to the time limits set
 62 forth herein must be by written agreement of the parties.

63 ~~X.5.2.X.4.2.~~ Should the University fail to respond at any step within the timeframes contained
 64 in this provision, the grievance will be deemed denied and the Union may proceed
 65 to the next step in the procedure. No timeframe shall be binding upon the Union
 66 until a required response is given.

67
 68 ~~X.6.X.5.~~ **Step One**

69 ~~X.6.1.X.5.1.~~ Within one hundred and twenty (120) calendar days after becoming aware of the
 70 occurrence giving rise to the grievance, excluding days on which the University is
 71 closed and/or the bargaining unit faculty member is not on contract, a bargaining
 72 unit member or the Union may present a grievance in an informal writing to their
 73 Department Chair, or designee, and request a meeting to discuss the alleged
 74 violation. If requested, such a meeting shall occur between the Grievant and the
 75 Chair (or designee) at a mutually agreeable time and place not later than five (5)
 76 calendar days after the request. The Chair or designee shall notify the Union of

77 any such meeting at least three (3) calendar days in advance and allow a
78 representative of the Union to attend the meeting.

79 ~~X.6.2.X.5.2.~~ Within five (5) calendar days after this meeting, the Chair or their designee shall
80 submit a written response to the Grievant and the Union.

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82 ~~X.7.X.6.~~ Step Two

83 ~~X.7.1.X.6.1.~~ If the grievance has not been resolved in Step One, the Grievant or the Union
84 shall reduce the grievance to a formal writing , stating the facts and listing the
85 Articles and Sections of the Agreement or policy or past practice upon which the
86 grievance is based, and stating the remedy sought, and submit the written
87 grievance to the Dean or their designee within twenty (20) calendar days of
88 receipt of the University's Step One response.

89 ~~X.7.2.X.6.2.~~ Within seven (7) calendar days following the receipt of the written grievance, the
90 Dean or their designee shall meet with the Grievant and a representative of the
91 Union at a mutually agreeable time and place to discuss the matter ~~and attempt to~~
92 ~~resolve the grievance.~~ Within five (5) calendar days after this meeting, the Dean
93 or their designee shall submit a written response to the Grievant and the Union.

94 ~~X.7.3.X.6.3.~~ The Union may appeal the grievance to the next step within twenty (20) calendar
95 days of the University's denial.

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97 ~~X.8.X.7.~~ Step Three

98 ~~X.8.1.X.7.1.~~ If the grievance has not been resolved at Step Two, then within seven (7) calendar
99 days of the receipt of notice from the Union, the Provost or their designee shall
100 meet with the Grievant and a representative of the Union at mutually agreeable
101 time and place to further attempt to resolve the grievance. Within five (5)
102 calendar days after the meeting, the Provost or their designee shall send a written
103 response to the Grievant and the Union.

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105 ~~X.9.X.8.~~ Mediation

106 ~~X.9.1.X.8.1.~~ In the event that the parties cannot resolve the grievance at Step Three, before the
107 grievance has been appealed to arbitration, the Union and the University may, by
108 mutual consent, contact the State Employee Relations Board (“SERB”) or Federal
109 Mediation and Conciliation Service (“FMCS”) for grievance mediation. All time
110 limits shall be suspended while mediation is pending. The Union and the
111 University shall share equally in any mediation costs. The parties shall provide to
112 each other and to the mediator equal access to relevant persons and information,
113 appropriate to timely resolution. If the mediation takes place during the grievant’s
114 and/or Union representative’s work hours, the grievant and/or Union
115 representative shall not suffer any loss of pay or benefits to attend the mediation.

116

117-10.X.9. Binding Arbitration

118 X.10.1.X.9.1. If the grievance has not been resolved at a previous step, then within twenty (20)
 119 calendar days of the receipt of the written response from Step Three or failure of
 120 mediation, the Union, but not the individual bargaining unit faculty member(s),
 121 has the sole right to refer a grievance to arbitration and to conduct the proceeding
 122 as a party, by submitting written notice to the Provost or their designee and to the
 123 Federal Mediation and Conciliation Service (FMCS).

124 X.10.2.X.9.2. Within seven (7) calendar days following receipt of a list of seven (7) arbitrators
 125 from FMCS, all of whom must be members of the National Academy of
 126 Arbitrators, if the arbitrator is not selected by mutual agreement, each party shall
 127 alternately strike a name until one remains. The University shall strike the first
 128 name. The person remaining shall be the arbitrator. If the arbitrator thus chosen
 129 cannot serve, the parties shall request a new list and begin the selection process
 130 anew. The conduct of the arbitration shall be in accordance with FMCS's then-
 131 applicable rules of procedure.

132 X.10.3.X.9.3. In the event either party finds the initial list of arbitrators to be unacceptable, it
 133 may reject the list and request a new list, at their cost, of arbitrators from the
 134 FMCS. No more than three (3) requests for another panel of arbitrators may be
 135 made by either party.

136 X.10.4.X.9.4. The process of expedited arbitration, under the FMCS rules, may be utilized by
 137 the mutual written agreement of the University and the Union, on a case-by-case
 138 basis. Neither party is required to agree to expedited arbitration.

139 X.10.5.X.9.5. If the arbitration takes place during the grievant's or Union representative's work
 140 hours, the grievant or Union representative shall not suffer any loss of pay or
 141 benefits to attend the arbitration.

142 X.10.6.X.9.6. Four (4) calendar days prior to the hearing, the parties shall exchange the names
 143 of all witnesses to be called, and all exhibits to be introduced, during their case in
 144 chief.

145 X.10.7.X.9.7. All decisions of the selected arbitrator shall be final and binding on the University
 146 and the Union.

147 X.10.8.X.9.8. The arbitrator shall have no authority to add to, subtract from, or modify this
 148 agreement or modify any procedures set forth herein.

149 X.10.9.X.9.9. The cost of the arbitration shall be borne equally by the parties, including the
 150 arbitrator's fees and expenses and the cost of the hearing room. Each party shall
 151 pay its own individual expenses, including transcripts and the fees and
 152 reimbursement of its representatives and witnesses.

153 X.10.10.X.9.10. The arbitrator shall be requested to issue their decision within thirty (30) calendar
 154 days after the hearing or receipt of the transcript of the hearing.

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.

155 ~~X.10.11.X.9.11.~~ No recordings may be made of the hearing, except as needed by the preparer of a
156 transcript.

157 ~~X.10.12.X.9.12.~~ Cases involving denial of tenure and/or promotion

158 ~~X.10.12.1.X.9.12.1.~~ The arbitrator shall have the authority to remand the tenure and/or
159 promotion decision being grieved with directions as to which of the
160 existing procedures in this Agreement or in applicable department,
161 college, or university policies or bylaws are to be followed, and may, if
162 appropriate, grant an additional terminal year to the candidate. The
163 arbitrator may advise on altering procedures and time limits to expedite
164 the remand process. Individuals and committees to whom a promotion or
165 tenure case is remanded shall duly consider all advice and
166 recommendations of the arbitrator.