

FAM, AAUP-AFT Counter to Miami University

September 17, 2024

GRIEVANCE AND ARBITRATION

- I. The primary purpose of this procedure is to secure, at the lowest procedural level possible, a solution to the grievance of bargaining unit faculty members.
- II. The parties agree that any individual bargaining unit faculty member, at any time, may present grievances to the University and have the grievances resolved, without intervention of the Union, if the resolution is not inconsistent with the terms of this collective bargaining agreement now in effect, and as long as the bargaining representatives have the opportunity to be present at the adjustment.

III. Definition and Scope

1. A “grievance” is an allegation by the Union, a bargaining unit faculty member, or a group of bargaining unit faculty members ~~or University~~ that there has been a violation involving the interpretation or administration of an Article(s) and Section(s) of the Agreement. The Union and all bargaining unit faculty members agree this Article is the exclusive procedure applicable to alleged violations of this Agreement, including disciplinary action taken with respect to bargaining unit faculty, and waive the right to any alternative procedure unless expressly provided for herein or provided under Ohio law.
2. Unlawful discrimination or harassment in violation of Art. __ [Nondiscrimination and Anti-Harassment] ~~shall~~ may be reported through the University’s Office of Equal Employment Opportunity (“OEEEO”), and the claim shall be investigated in accordance with applicable policies and procedures, including but not limited to those relating to confidentiality. The grievance and arbitration process set forth in this Article is the exclusive procedure for challenging any discipline of a bargaining unit faculty member resulting from the University’s investigation of any such claim, and such grievance shall be filed at Step Three. Nothing herein is intended to prevent a bargaining unit faculty member from filing a claim of unlawful discrimination, harassment, or retaliation with any administrative agency or court of competent jurisdiction.

IV. Grievance Procedure

A Union representative may be present at any meeting at any step of the grievance procedure set forth in this Section. Nothing contained in this Agreement shall be construed to prevent the informal resolution of any grievance, at any step of this procedure, which shall be documented in writing. ~~Unless the parties agree otherwise, any such resolution or settlement shall be made without precedential effect.~~

The University will hold all personal information about the Grievant related to the disciplinary matter in confidence, and will only disclose such information to individuals involved in the disciplinary or grievance process (including individuals with administrative responsibilities for processing discipline and grievances), unless otherwise required by law.

Where more than one grievance involves similar issues, the Union may consolidate the grievances prior to arbitration~~the additional grievances shall be held in abeyance without prejudice, pending disposition of the appeal to Step Three of the representative grievance.~~

Steps of the grievance procedure may be waived or modified in writing and by mutual agreement of both parties. The Union and/or grievant may withdraw a grievance at any step of the procedure. Grievance so withdrawn shall not be reinstated.

STEP ONE

Within ~~twenty (20)~~ninety (90) calendar days after becoming aware of the occurrence giving rise to the grievance, the Union or bargaining unit faculty member shall present a grievance in an informal writing to their Chair or other unit head or their designee. The Chair or their designee will investigate the grievance as they deem appropriate, discuss the matter with the grievant and Union where appropriate, and respond in writing to the Union and/or grievant within ~~twenty (20)~~fifteen (15) calendar days.

STEP TWO

If the grievance has not been resolved at Step One, the Union or grievant shall reduce the grievance to a formal writing, stating the facts and listing the Articles and Sections of the Agreement upon which the grievance is based, and submit the written grievance to the Dean or their designee within twenty (20) calendar days of receipt of the University's Step One response. The Dean or their designee will have ~~twenty (20)~~fifteen (15) calendar days following the receipt of the written grievance to investigate the matter as they deem appropriate, meet with the grievant and Union to discuss the matter and ~~, where appropriate,~~ submit a written response to the grievant and Union. The Union may appeal the grievance to the next step within twenty (20) calendar days of the University's denial.

STEP THREE

If the grievance has not been resolved at Step Two, the Provost, or their designee, will have fifteen (15) calendar days following the appeal to this step to meet with a designated representative of the Union to attempt to resolve the grievance and within twenty (20) calendar days of the appeal to this step. ~~If the parties are unable to resolve the grievance, the University shall, within twenty (20) calendar days of the meeting,~~ present the Union with a written response.

For purposes of computing time under this Article, dates on which the University is closed or in recess for faculty (as listed in the Academic Calendar) shall be excluded.

Any extension to the time limits set forth herein must be by written agreement of the parties. Should the University fail to respond at any step within the timeframes contained in this provision, the grievance will be deemed denied and the Union may proceed to the next step in the procedure. No timeframe shall be binding upon the Union until a required response is given. ~~University grievances shall be presented at Step Three and the Union's response shall be subject to the time limits therein.~~

V. Mediation

In the event that the parties cannot resolve the grievance at Step Three, before the grievance has been appealed to arbitration, the Union and the University may, by mutual consent, contact the State Employment Relations Board ("SERB") or Federal Mediation and Conciliation Service ("FMCS") for grievance mediation. All time limits shall be suspended while mediation is pending. The Union and the University shall share equally in any mediation costs. If the mediation takes place during the grievant's and/or Union representatives work hours, the grievant and/or Union representative shall not suffer any loss of pay or benefits to attend the mediation.

VI. Arbitration

1. If the grievance has not been resolved at Step Three, the Union, but not the individual bargaining unit faculty member(s), has the sole right to refer a grievance to arbitration and to conduct the proceeding as a party. Within twenty (20) calendar days of the receipt of the written response from Step Three, or failure of mediation, the Union shall submit a written notice to the Provost, or their designee, of its intent to submit the grievance to binding arbitration. Failure by the Union to request arbitration within twenty (20) days of a denial or mediation will result in the grievance being denied and the right to arbitration is deemed waived.
2. The parties shall have the right to mutually agree upon the arbitrator, but in the event they cannot so agree within ~~twenty (20)~~fifteen (15) calendar days of receipt of the above notice, the parties shall notify the FMCS of their intent to arbitrate a grievance. FMCS shall submit a panel of seven (7) arbitrators to each Party, each of whom shall be members of the National Academy of Arbitrators. In the event that either party finds the initial list of arbitrators to be unacceptable, it may reject the list and request a new list, at their cost, of arbitrators from the FMCS. No more than three (3) requests for another panel of arbitrators may be made by either party. Each party shall alternately strike a name until one remains. The University shall strike the first name. The person remaining shall be the arbitrator. If the arbitrator thus chosen cannot serve, the parties shall request a new list and begin the selection process anew. The selection of the arbitrator and conduct of arbitration shall be in accordance with FMCS's then applicable rules of procedure.

3. The process of expedited arbitration, under the FMCS rules, may be utilized by the mutual written agreement of the University and the Union, on a case-by-case basis. Neither party is required to agree to expedited arbitration.
4. All decisions of the selected arbitrator shall be final and binding on the University, the Union, and all relevant members of the bargaining unit.
5. The arbitrator shall have no authority to add to, subtract from, or modify this Agreement or modify any procedures ~~(including any time limits)~~ set forth herein.
6. The decision of the arbitrator shall be limited to only the question or questions submitted to the arbitrator, and the arbitrator shall have no authority to determine any other issues not so submitted to them.
7. A bargaining unit faculty member's denial of tenure or promotion may be grieved only on the basis of an alleged violation of this Agreement or inequitable treatment. In decisions involving academic matters, the arbitrator shall not make their own judgment on the merits of a candidate's performance, except insofar as a judgment may be implied in a finding of inequitable treatment. The arbitrator shall have the authority to direct that a candidate who has been denied tenure be considered during the following academic year.~~The arbitrator shall have no jurisdiction or authority to issue an award that changes, modifies or restricts any action taken by the University with respect to the exercise of management rights under Article of this Agreement, and shall have no authority to substitute their judgement for that of the University regarding decisions involving academic matters.~~
8. If there is a question as to whether the arbitrator has jurisdiction to hear a case, this question must be heard and an immediate bench ruling issued by the arbitrator prior to their hearing and deciding the merits of the case.
- ~~9. In disciplinary cases, evidence of all relevant prior offenses and misconduct shall be deemed admissible.~~
- ~~10.~~9. If the arbitration takes place during the grievant's and/or Union representatives work hours, the grievant and/or Union representative shall not suffer any loss of pay or benefits to attend the arbitration.
- ~~11.~~10. Four (4) calendar days prior to the scheduled hearing, the parties shall exchange the names of any witnesses to be called during their case in chief.
- ~~12.~~11. The cost of the arbitration shall be borne equally by the parties, including the arbitrator's fees and expenses and the cost of the hearing room. Each party shall pay its own individual expenses, including transcripts and the fees and reimbursement of its representatives and witnesses.

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.

~~13.~~12. The arbitrator shall be requested to issue their decision within thirty (30) calendar days after the hearing or receipt of the transcript of the hearing.

~~14.~~13. No recordings may be made of the hearing, except as needed by the preparer of a transcript.