

## **ARTICLE 25 ARBITRATION**

### **A. APPEAL TO ARBITRATION**

An appeal to arbitration may be made only by the UC-AFT and only after the timely exhaustion of the Grievance Procedure, Article 24, of this Agreement.

1. **Time to File:** The written appeal to arbitration must be filed with the Director of Labor Relations, Office of the President as listed in Appendix B within forty-five (45) calendar days of electronic transmission of the final University decision by the UC-AFT (Article 24, Step 3). Appeals to arbitration which are not filed within this time limit or which do not contain the appropriate UC-AFT signature are ineligible for arbitration. An appeal is considered filed on the date it is received by the designee in the Office of the Director of Labor Relations Office of the President, if delivered in person, or on the date sent, if sent by email. The written appeal must be signed by the UC-AFT President, Vice-President of Grievances and/or the UC-AFT Executive Director and must include:
  - a. Name, mailing address and campus location of the grievant(s);
  - b. Name and address of the UC-AFT representative who is responsible for the appeal to arbitration and to whom all correspondence is to be sent;
  - c. A copy of the completed grievance form; and
  - d. A statement setting forth the unresolved issue(s), the Articles of the Agreement alleged to have been violated, and the remedy requested.
2. If a grievance is not appealed to arbitration, the University's written Step 3 answer shall be final.
3. **Hand-Delivered Appeals:** Hand-delivered appeals to arbitration must be received during the normal business hours of the Office of the President and are considered filed on the date the appeal is received.
4. **Acknowledgement of Hand-Delivered Appeals:** Hand-delivered appeals to arbitration must receive mutual acknowledgement from the person delivering the document(s) and the person accepting delivery of document(s) by either (1) affixing the date stamp of the receiving office, and each of them retaining one of the stamped document(s); or (2) the person accepting delivery of the documents(s) signing and dating the document(s), and each of them retaining one of the signed, dated document(s).
5. **Appeals Filed by Email:** Emailed appeals to arbitration must be received by the Office of the Director of Labor Relations, Office of the President as listed

in Appendix B. If the electronic transmission falls outside of regular business hours, the following business day shall constitute the official date of receipt. Appeals to arbitration transmitted by email shall be directed to [AppealAGrievance@ucop.edu](mailto:AppealAGrievance@ucop.edu).

6. Acknowledgment of Arbitration Appeals Filed by Email. The email address designated by the University to receive appeals to arbitration shall acknowledge the filing of an appeal with a computer-generated automatic email response. If no automatic acknowledgement is received after electronic transmittal, the date of filing shall be the date of the receipt of the transmission.
7. Absent resolution of the grievance during this time, the designee of the Office of Labor Relations of the Office of the President shall respond via email to the UC-AFT within twenty (20) calendar days of filing of the appeal to arbitration as defined in Section A.1. above. The University's response will include the name and mailing address of the University's representative who is responsible for the appeal to arbitration and to whom all correspondence should be addressed.

## **B. WHEN ARBITRABILITY IS AT ISSUE**

1. When practicable, the University shall inform the UC-AFT in writing of its intent to assert the issue of arbitrability prior to the selection of the arbitrator. The issue of arbitrability shall be resolved in an expedited arbitration hearing prior to and separate from the hearing (if any) about the substantive facts and/or allegations in dispute, except as provided in Section B.2. below. In the event an arbitrator, as a result of the Arbitrability hearing referenced above, determines a matter to be arbitrable, s/he shall have no authority to decide the issues pursuant to the facts of the case unless the parties agree otherwise.
2. If following the selection of the arbitrator, the University raises for the first time issue(s) of arbitrability a single hearing on the issue of arbitrability and the substantive facts will be held, unless the parties agree otherwise. If the arbitrator finds the grievance to be not arbitrable, the substantive facts of the case need not be heard and the grievance shall be denied. If the arbitrator finds in favor of arbitrability, the hearing shall proceed to the substantive issues raised.

## **C. SELECTION OF ARBITRATOR**

1. Within fifteen (15) calendar days of the electronic transmission of the University's response to the UC-AFT's appeal to arbitration or within 15 days of when the University should have responded, the UC-AFT will contact the University's representative responsible for the appeal to arbitration to initiate the selection of an arbitrator. Failure to contact the University's

- representative within the established time frame will be considered a withdrawal of the appeal to arbitration.
2. If the parties cannot mutually agree on the selection of an arbitrator from the panel, the parties shall alternately strike one (1) name each from the list of panel members. Unless the parties agree otherwise, the party selecting first shall be determined by the flip of a coin. The last remaining name shall be designated as the arbitrator.
  3. The selection of the arbitrator shall be accomplished no later than fifteen (15) calendar days from the date the UC-AFT contacts the University pursuant to C.1 above.
  4. Upon selection of an arbitrator from the panel, the University or the UC-AFT will notify the arbitrator and request hearing date(s). The hearing date(s) shall be no earlier than twenty-one (21) calendar days from the arbitrator's agreement to hear the case. The University shall simultaneously send a letter of confirmation to the arbitrator and to the UC-AFT representative responsible for the appeal to arbitration.
  5. The scheduling of the arbitration hearing date must be accomplished no later than ninety (90) calendar days from the date the grievance was originally appealed to arbitration. Should the parties be unable to agree on a hearing date, the authority to schedule the hearing rests with the arbitrator.

#### **D. EXPEDITED ARBITRATION**

For purposes of arbitrability issues, if the parties agree to use an expedited form of arbitration, the following will occur:

1. The arbitrator will be selected in accordance with Section C. above;
2. The case shall be heard on the arbitrator's earliest available date feasible for the parties, unless otherwise agreed by the parties;
3. By mutual agreement of the parties, there shall be no transcript of the proceedings;
4. By mutual agreement of the parties, post-hearing briefs may be waived; and,
5. the arbitrator will issue a written decision within seven (7) calendar days following the close of the hearing record unless the parties agree, prior to the commencement of the arbitration, that the arbitrator rule on the issues at the close of the hearing in lieu of a written decision.

#### **E. ARBITRATION PROCEDURE**

1. Prior to the arbitration hearing, the UC-AFT and the University shall attempt to stipulate as to the issue(s) to be arbitrated and to as many facts as possible. When possible, the parties shall inform each other who shall be witnesses at least five (5) calendar days prior to the hearing.
2. During the arbitration preceding the parties shall have an opportunity to examine and cross-examine witnesses under oath and to submit relevant evidence. The parties shall not seek to introduce new issues and allegations at the arbitration hearing which were not introduced during Step 2 of the Grievance Procedure, Article 24, unless they were unknown at the time and could not have been discovered with reasonable diligence. Settlement offers made during the Grievance Procedure shall be inadmissible in arbitration.
3. Upon request by either party but not upon the arbitrator's own motion, the arbitrator shall have the authority to subpoena relevant witnesses or documents subject to the University's ability to withhold or redact confidential or privileged material pursuant to University policy, the provisions of this contract, or state and federal law.
4. Either or both parties may, at their discretion, file briefs with the arbitrator. The order and time limits of briefing shall be either as agreed to by the parties or as specified by the arbitrator. Briefing time limits may be extended if agreed upon by the parties.
5. The parties may agree that in lieu of a written decision, the arbitrator will rule at the close of the hearing.
6. The arbitration hearing shall be closed unless the parties agree otherwise in writing.
7. An appeal to arbitration shall not inhibit efforts by the University and the UC-AFT to resolve the grievance. The UC-AFT shall have the authority to withdraw a grievance or enter into an agreement with the University to settle a grievance appealed to arbitration. An agreement to settle or withdraw a grievance appealed to arbitration reached between the University and the UC-AFT shall be binding on librarians.
8. The arbitrator shall consider the evidence presented and render a written decision within thirty (30) calendar days of the close of the record of the hearing. The arbitrator's decision will set forth the arbitrator's findings of fact, reasoning, and conclusions on the issues submitted by the parties. The arbitrator's authority shall be limited to determining whether the University has violated arbitrable provisions of this Agreement. The arbitrator shall not have jurisdiction or authority to add to, amend, modify, nullify, or ignore in any way the provisions of this Agreement.

9. Where there is an issue of pay, benefits, or rights, if the grievance is sustained in whole or in part, the remedy shall not exceed restoring to the librarian the pay, benefits, and/or rights lost as a result of a violation of the Agreement, less any compensation from any source recognized by law as appropriate to offset such a remedy. The decision and award of the arbitrator shall be final and binding upon the parties to this Agreement and the librarians in the bargaining unit. The University will not be liable for back wages or other monetary reimbursement for:
  - a. any period of time during which an extension of time limits has been granted at the request of the UC-AFT;
  - b. any period of time between the first date the arbitrator is available for an arbitration hearing and the date of the hearing, when the first date, as agreed to in Section C.4. above, is rejected by the UC-AFT, or where it is set at the request of the University under the provisions of Section C.5. above; and,
  - c. Any period of time greater than thirty (30) calendar days prior to the date the grievance was filed pursuant to Article 24. Grievance Procedure.
10. The arbitrator shall have the authority to determine whether the University has violated a procedure set forth in Article 5. However, in any grievance alleging a violation of Article 5, the arbitrator shall not have the authority to review any decision to:
  - a. Initiate an academic review;
  - b. Award or deny a merit increase;
  - c. Award or deny a promotion;
  - d. Award or withhold career status;
  - e. Terminate a librarian following academic review.

If the arbitrator finds that the alleged violation had a material, negative impact on the outcome of the review, the arbitrator's remedy shall be limited to directing the University to repeat, to the extent practicable, the review process from the point at which the violation occurred.
11. The arbitrator's fees and the costs of transcripts requested by the arbitrator or both parties shall be borne equally by the parties. Costs for transcripts requested by only one party shall be borne by the requesting party.
12. A party who cancels or postpones arbitration will be liable for any cancellation or postponement fees.

## **F. TIME LIMITS**

1. Deadlines which fall on days which are not business days at the appropriate location will be automatically extended to the next business day.
2. Any time limit herein may be extended by mutual agreement of the parties in advance of the expiration of that time limit. Such extension shall be confirmed in writing.
3. The parties agree to extend a time limit accordingly in the event that a failed electronic delivery at any step of this procedure prevents the addressee from responding in a timely manner or would result in a filing being considered untimely.

## **G. PAY STATUS**

Upon advance request, the grievant and the UC-AFT representative, if the representative is a librarian, shall be granted leave with pay to attend arbitration hearings and meetings convened by the University. Librarians who are called by the parties to testify shall be granted leave with pay upon advance request for the period of time required to testify.

## **H. PANEL OF ARBITRATORS**

1. The parties agree that there will be a standing panel of thirteen (13) arbitrators to hear arbitration cases scheduled for hearing pursuant to the provisions of this Article.
2. If agreement cannot be reached on all thirteen (13) arbitrators, the remaining number needed to complete the panel will be selected alternately by the parties. The party selecting first shall be determined by the flip of a coin.
3. The procedure for modifying the panel shall be as follows:
  - a. Each party shall have the right to eliminate up to two (2) arbitrators from the panel once each calendar year. The party exercising this right shall notify the other party in writing of the name(s) of the arbitrator(s) to be stricken from the panel.
  - b. In replacing an arbitrator who has been eliminated, declined to participate, or who has resigned, or in adding an arbitrator to complete the panel, if the parties cannot agree on a replacement, the parties will exchange lists of nominations within sixty (60) calendar days. The parties shall alternately strike names from the combined lists, with the party striking first determined by a flip of a coin. Any arbitrator eliminated under Section H.3.a. above may not be placed on the panel again.

4. The parties shall jointly send letters inviting arbitrators to serve on the panel. The invitations shall state that if they agree to participate, they will comply with the provisions of this Agreement.