

CSU UPI Contract, 2015-18
ARTICLE 6
GRIEVANCE PROCEDURE

6.1. Purpose

The Board and the Union encourage the informal resolution of grievances, agree that problems should be resolved before the filing of a grievance and encourage open communication so that resort to the formal grievance procedure will not normally be necessary. The purpose of this Article is to promote a prompt and efficient procedure for the investigation and resolution of grievances. The procedures hereinafter set forth shall be the sole and exclusive method of resolving the grievances of employees.

6.2. Resort to Other Procedures

If, prior to filing a grievance hereunder, or while a grievance proceeding is in progress, an employee seeks resolution of the matter in any other forum, whether administrative or judicial, the Board shall have no obligation to entertain or proceed further with the matter pursuant to this grievance procedure. This waiver does not apply in cases where the grievant has sought resolution of the matter by filing a complaint of illegal discrimination with the EEOC or through any other forum established by state or federal law to resolve complaints of discrimination prohibited on the basis specified by those laws. Further, since the Board and the Union do not intend that this grievance procedure be a device for appellate review, a response by the Board or its representatives to a recommendation of a hearing officer, or other individual or group, having appropriate jurisdiction in any other procedure, shall not give rise to a grievance under this procedure.

6.3. Definitions

a. The term "grievance" shall mean a dispute concerning the interpretation or application of a specific term or provision of this Contract, subject to those exclusions appearing in other Articles of this Contract.

b. The term "grievant" shall mean an employee or group of employees in a dispute over a term or provision of this Contract as it relates to them, or the Union in a dispute over a term or provision of this Contract as it relates to the Union as an organization.

6.4. Representation

The Union may, with the consent of the employee, represent an employee in a grievance filed under this Article. An employee may also represent herself or himself in a grievance at Step One filed under this Article. If an employee chooses to represent herself or himself, she or he shall so inform the Union President and the Administration at the time of filing. No resolution of any individually processed grievance shall be inconsistent with the terms of this Contract, and for this purpose, the Union President shall have the right to have an observer present at all grievance meetings. The Union grievance representative shall be notified at least 48 hours in advance of any such meeting.

6.5. Grievance Representatives

Within 30 working days after the execution of this Contract, the Union President shall furnish to the Board a list of all persons authorized to act as grievance representatives at the University and shall

update the list as changes occur. A grievance representative shall be an employee of the University and shall have the responsibility to meet classes, office hours, and other assigned duties and responsibilities. If the responsibilities of a Union grievance representative require rescheduling of the representative's University duties, the representative may, with the approval of the appropriate University Vice President, arrange for the rescheduling of such duties or their coverage by colleagues. Such approval shall not be unreasonably withheld.

6.6. Appearances

If it is necessary for an employee to participate in a mediation, grievance, or arbitration proceeding during working hours, the employee's salary shall neither be reduced nor increased for time spent in such activities. Prior to participation in any such proceeding, the employee shall make arrangements acceptable to the appropriate University Vice President for the performance of the employee's duties. Approval of such arrangements shall not be unreasonably withheld. All parties involved in a grievance must make themselves available for a grievance hearing within a reasonable time period.

6.7. Grievance Forms

All grievances and requests for review must be submitted in writing on forms as attached to this Contract in Appendices A, B, and C, and shall be signed by the grievant. Except for the initial filing of the grievance, if there is a difficulty in meeting any time limit, the Union representative may sign such documents for the grievant and later file a copy signed by the grievant.

6.8. Compliance with Procedure

All grievances must be filed in accordance with the procedures in this Article. All grievances will cite the specific Article(s) allegedly violated. The Board or the University President shall be under no obligation to process or consider a grievance that is not filed in accordance with the procedures of this Article.

6.9. Procedure for Handling Grievances

a. Step One: Mediation

(1) A grievance shall be filed with the University President or her/his designee within 30 working days following the date of the act or omission giving rise thereto, or the date on which the employee knew or reasonably should have known of such act or omission if that date is later. In the written grievance which is filed, the grievant may, for the purpose of seeking informal resolution of the grievance, request the postponement of any action in processing the grievance formally for a period of up to 30 working days. If such a request is made, it shall be granted. Upon the grievant's written request, additional 30 working day extensions will be granted unless to do so would impede the resolution of the grievance. During a postponement period, the University President shall, upon request, arrange an informal conference between the appropriate University representative(s) and the grievant. The grievant may terminate the postponement period at any time by giving written notice to the University President that the grievant wishes to proceed with the mediation meeting provided for below. If the postponement period, or any extension thereof, expires without such written notice, the grievance shall be deemed informally resolved to the grievant's satisfaction and need not be processed further.

(2) After a grievance has been filed, the University President or her/his designee shall notify

the Mediation Panel, which shall conduct an initial meeting with the grievant no later than 30 working days following:

- (a) Receipt of the grievance if no postponement is requested or
- (b) Receipt of written notice that the grievant wishes to proceed with the mediation meeting.

In advance of the mediation meeting, the grievant and the administration shall mutually exchange, upon request, a copy of any existing identifiable documents relevant to the grievance. At the mediation meeting, the grievant and respondent shall have the right to present any evidence in support of the grievance.

(3) The Mediation Panel shall be composed of a mediation officer designated by CSU/UPI and a mediation officer designated by the Provost. CSU/UPI and the Provost will each designate two additional persons as alternates to be available in the event the originally appointed person is unable to participate or where there may be a conflict of interest. The primary mediators will work together to provide appropriate training for the alternates.

(4) The Mediation Panel shall conduct meetings in a manner they deem appropriate to the resolution of the matter. The mediation process shall be conducted as expeditiously as possible. The Mediation Panel shall not function as advocates for any side in the conflict; rather, the panel shall work in concert for the sole purpose of resolving the grievance. Should the mediation be successful, a written report of the resolution shall be made, including the withdrawal of the grievance, signed by all parties involved and kept on file. If the mediation is not successful, a written report of the proceedings with evidence considered shall be given to the University President or his/designee and the Union, within 20 working days following the conclusion of the meetings.

b. Step Two

If the grievance is not satisfactorily resolved through Step One mediation, the Union may, upon request of the grievant, file a written request for review with the University President or her/his designee within 30 working days following receipt of the mediation report, who will then notify the Chair of the Step Two Grievance Committee.

(1) The Grievance Committee shall be composed of one faculty member appointed by CSU/UPI and one member appointed by the Provost, and one other member chosen by a consensus of the other two members. If consensus is not able to be reached, the third person will be designated by the Provost. The committee shall choose a Chairperson.

(2) The committee's sole responsibility will be to hear the facts surrounding the issues and to make a recommendation to the University President. The committee and the Union shall schedule a conference for the purpose of reviewing the matter not later than 30 working days following receipt of the request for review. The union representative shall present evidence in support of the grievance. The Chair of the Step Two Grievance Committee shall issue a written report of the proceedings with evidence considered, and it shall be given to the University President and the Union within 15 working days following the conclusion of the review conference. The President shall issue a decision, stating the reasons therefore, within 15 working days following receipt of the report of the committee.

(3) Only those acts or omissions and terms or provisions of the Contract identified in Step Two may be considered at subsequent steps.

c. Step Three

If the grievance is not satisfactorily resolved at Step Two, the Union may, upon the request of the grievant, proceed to arbitration by filing a written notice of intent to do so. Notice of intent to proceed to arbitration must be filed with the University President within 30 working days after receipt of the Step Two decision and shall be signed by the grievant and the Union President. No later than 30 working days after filing a written notice of intent to arbitrate, the Union and the Board will select an arbitrator and date after the filing of the intent to arbitrate. All dates may be extended by mutual consent of the Union and the Board.

d. Withdrawal of Grievance

A grievance may be withdrawn at any time by the grievant or by the Union representative at any point during Step Two or Three.

e. The periods between academic terms as listed in the University Academic Calendar (*i.e.*, (1) from the end of the fall term to the beginning of the spring term; (2) from the end of the spring term to the beginning of the summer school; and (3) from the end of the summer school to the beginning of the fall term) shall be excluded as working days for purposes of calculating all deadlines under this Article.

6.10. Arbitration Procedure

a. Selection of an Arbitrator

Representatives of the Board and the Union shall meet within 90 calendar days after the execution of this Contract for the purpose of electing an Arbitration Panel of no more than 15 members.

Selection of an arbitrator to hear a grievance shall be by mutual agreement or by alternately striking names from the Arbitration Panel list until one name remains. The right of the first choice to strike from the list shall be determined by the flip of a coin. If the parties are unable to agree to a panel of arbitrators, they shall follow the normal American Arbitration Association procedure for the selection of an arbitrator. The parties may mutually select as the arbitrator an individual who is not a member of the Arbitration Panel.

b. Authority of the Arbitrator

(1) The arbitrator shall neither add to, subtract from, nor modify or alter the terms or provisions of this Contract. Arbitration shall be confined solely to the application and/or interpretation of this Contract and the precise issue(s) submitted for arbitration. The arbitrator shall have no authority to determine any other issue(s). The arbitrator shall refrain from issuing any statements of opinion or conclusions not essential to the determination of the issue(s) submitted.

(2) Where an administrator has made an academic judgment, such as a judgment concerning application of evaluation criteria in decisions on retention, reappointment and multiple year appointments, promotion, or tenure, or a judgment concerning the academic

acceptability of a sabbatical/Administrative Educational leave proposal, the arbitrator shall not substitute her/his judgment for that of the administrator. Nor shall the arbitrator review such decision except for the purpose of determining whether the decision has violated this Contract. If the arbitrator determines that the Contract has been violated, the arbitrator shall direct the University to take appropriate action. An arbitrator may award back salary where the arbitrator determines that the employee is not receiving the appropriate salary from the University, but the arbitrator may not award other monetary damages or penalties. If notice that further employment will not be offered is not given on time, the arbitrator may direct the University to renew the appointment only upon a finding that no other remedy is adequate, and that the notice was given so late that (a) the employee was deprived of reasonable opportunity to seek other employment, or (b) the employee actually rejected an offer of comparable employment which the employee otherwise would have accepted.

An arbitrator's decision awarding employment beyond the sixth year shall not entitle the employee to tenure. In such case the employee shall serve during the seventh year without further right to notice that the employee will not be offered employment thereafter.

c. Arbitrability

In all proceeding, the arbitrator shall first decide jurisdiction to act. Upon concluding that the arbitrator has no such power, the arbitrator shall make no decision or recommendation as to the merits of the grievance. Upon concluding that the issue is arbitrable, the arbitrator shall normally proceed with the hearing at the time, provided that either party may seek judicial review of the arbitrator's decision as to jurisdiction, and have the hearing on the merits of the grievance delayed until such review is completed.

d. Conduct of Hearing

The arbitrator shall hold the hearing in the Chicago area unless otherwise agreed to by the parties. The hearing shall commence within 21 calendar days of the arbitrator's acceptance of selection, or as soon thereafter as is practicable, and the arbitrator shall issue the decision within 30 calendar days of the close of the hearing or the submission of briefs, whichever is later, unless additional time is agreed to by the parties. The decision shall be in writing and shall set forth findings of fact, reasoning, and conclusions on the issue(s) submitted. Except as modified by the provisions of this Contract, arbitration proceedings shall be conducted in accordance with the rules and procedures of the American Arbitration Association.

e. Effect of Decision

The decision or award of the arbitrator shall be final and binding upon the Board, the Union, and the grievant, to the extent permitted by and in accordance with applicable law and this Contract.

f. Fees and Expenses

All fees and expenses of the arbitrator shall be divided equally between the parties. Each party shall bear the cost of preparing and presenting its own case. Any party desiring a transcript of the proceedings shall bear the cost. The cost of any transcripts required by the arbitrator shall be divided equally between the parties.

6.11. Miscellaneous Provisions

a. Settlement Implementation

All formal grievance settlements shall specify a time by which the settlement shall be implemented. The time limit may be extended by mutual agreement between the University President and the Union President.

b. Time Limits

All time limits contained in this Article may be extended by mutual agreement of the parties, except that the time limits for the initial filing of a grievance may be extended only by agreement between the University President and the Union President. Upon failure of the University President to provide a decision within the time limits provided in this Article, the Union may appeal to the next step. Upon the failure of the Union to file an appeal within the time limits provided in this Article, the grievance shall be deemed to have been resolved by the decision at the prior step.

c. All grievances, requests for review, notices, and decisions shall be transmitted in person or by certified or registered mail, return receipt requested. In the event of a question as to the timeliness of any grievance, request for review, notice or decision, the date of receipt shall be determinative.

d. Precedent

No complaint informally resolved or grievance resolved at either Step One or Two shall constitute a precedent for any purpose unless agreed to in writing by the University President and the Union President.

e. Retroactivity

An arbitrator's award may be retroactive as the equities of a case may demand, but in no case shall an award, including an award of back salary, be retroactive to a date earlier than 30 calendar days prior to the date the grievance was initially filed in accordance with this Article, or the date on which the act or omission occurred, whichever is later.

f. Processing

The filing or pendency of any grievance, or of arbitration proceedings, under this Article shall not operate to impede, preclude, or delay the Board from taking action. Reasonable efforts, including the shortening of time limits when practical, shall be made to conclude the processing of a grievance prior to the expiration of the grievant's employment. In no event shall any employee, as a result of a pending grievance, receive compensation following cessation of employment.

g. Reprisal

No reprisal of any kind will be made by the University or Union against any grievant, witness, or other participant in the grievance procedure by reason of such participation.

h. Records

All written materials pertinent to a grievance shall be filed separately from the personnel file of the grievant or witness, except decisions resulting from arbitration or settlement.