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## ARTICLE 25 – GRIEVANCE AND COMPLAINT PROCEDURE

25.1 The purpose of this procedure is to provide a process for the prompt and appropriate resolution of grievances. In the interest of promoting harmonious and cooperative relations between the University and the Union, the parties hereby agree to the following terms for the resolution of disputes.

### 25.2 Definitions.

25.2.1 A “grievance” is an allegation by the Union on behalf of one or more bargaining unit members (see Article 2.2) or itself, alleging a violation of a specific section of this Agreement.

25.2.2 A “complaint” is an allegation by the Union involving substantive academic judgments in matters of workload, reappointment, promotion, tenure, and post-tenure review.

25.2.3 A “day” is a working day, Monday through Friday, on which the University is open for business, even if classes are not scheduled.

25.2.4 A “filing” is the receipt of a written grievance or complaint by appropriate notice.

### 25.3 General Provisions.

25.3.1 Bargaining unit members shall be entitled to Union representation at all steps of the grievance procedure. In the event that a bargaining unit member waives his or her right to Union representation, the Union will be notified. A Union representative shall have the right to be present, either as an advocate for the complainant or as an observer, in all meetings that occur as part of the complaint procedure. The role of the representative shall be decided by the complainant.

~~25.3.2~~ 25.3.2 All grievances, complaints and requests for arbitration must be submitted to the Office of Faculty Relations, by hard copy or electronic mail. The University’s responses will be submitted to the Union by hard copy and/or electronic mail to a location or Union email address designated determined by the UFC President by hard copy or electronic mail.

~~25.3.3~~ 25.3.3 The time limits set forth in this Agreement shall be strictly enforced.

~~25.3.4~~ 25.3.4 Time limits may be waived by mutual written consent of both parties. Requests for a waiver of time limits shall be responded to in a timely manner.

~~25.3.5~~ 25.3.5 A grievance or complaint may be withdrawn, in writing, at any time.

~~25.3.5~~25.3.6 No bargaining unit member shall be subject to reprisals of any kind for filing a grievance or complaint, for being a witness in a grievance, or for participating in any way in the grievance or complaint process.

~~25.3.6~~25.3.7 The University shall maintain grievance files separate from regular personnel files.

~~25.3.7~~25.3.8 The University shall supply the grievant and the Union with information reasonably needed to process a grievance.

25.4 Grievance Resolution Process. This grievance procedure is the sole and exclusive process for resolving grievances as defined in this Article. Grievances challenging an act or omission at a level above the dean/director shall be initially considered by the Office of the Provost at Level Two.

25.4.1 Level One.

The Union, on behalf of the aggrieved faculty member(s), shall submit the grievance in writing within thirty (30) days after the event giving rise to the grievance, or within thirty (30) days of the date the grievant or Union knew or reasonably should have known of the events giving rise to the grievance, whichever is later. The written grievance shall be signed by the Union representative and shall be submitted using the form in Appendix D of this Agreement. If requested by either party, a meeting between the appropriate dean/director and a UFC representative shall be held within twenty (20) days of receipt of the grievance by the Office of Faculty Relations~~the AVP~~. The dean/director will respond to the grievance in writing within fifteen (15) days of its receipt by the Office of the AVP Faculty Relations, or within fifteen (15) days of the meeting of the parties, whichever is later.

25.4.2 Level Two.

Should the dean's/director's response at Level One fail to resolve the grievance, the Union shall submit the grievance at Level Two within ten (10) days of the Union's receipt of the Level One response, or the day the response was due, whichever date is earlier. If requested by either party a meeting between the Office of the Provost and a UFC representative shall be held within twenty (20) days. The Office of the Provost will respond to the grievance in writing within fifteen (15) days of its receipt by the Office of Faculty Relations~~the AVP~~ or the meeting between the parties, whichever is later.

25.4.3 Level Three.

- (a) If the Union is not satisfied with the response at Level Two it may advance the grievance to binding arbitration by submitting a written demand for arbitration within ten (10) days of the Union's receipt of the response or the day after the response was due, whichever occurs first.
- (b) If within five (5) days after the request is submitted, the parties have not agreed on an arbitrator, the Union shall submit a written request for arbitration to the American Arbitration Association (AAA) or the Federal Mediation & Conciliation Service (FMCS) and request that the parties be provided with the names of eleven (11) qualified arbitrators with experience in higher education issues. The list shall be limited to arbitrators from the western region unless both parties mutually agree otherwise.
- (c) Within ten (10) days following the receipt of the list of eligible arbitrators, the parties or their representatives shall confer to select an arbitrator. The parties shall each strike five (5) arbitrators from the list in an alternating order, and the remaining arbitrator shall hear the dispute. The party exercising the first strike shall be the loser of a flip of a coin.
- (d) Authority of the Arbitrator. The decision or award of the arbitrator will be final and binding and shall be issued within thirty (30) days of the last hearing date or submission of post hearing briefs, whichever is later.
  - (i) The arbitrator will have no authority to rule contrary to, amend, add to, subtract from, ignore or eliminate any of the terms of this Agreement. The arbitrator shall confine the decision solely to the application or interpretation of the express terms of the Agreement.
  - (ii) Where provisions of the Agreement call for the exercise of substantive academic judgment in matters of workload, reappointment, promotion, tenure, and post-tenure review, the arbitrator shall not have the authority to substitute his or her judgment for that of the entity or official making such judgment, but shall be confined to whether the procedural steps have been followed. If the arbitrator finds that the procedural steps have not been followed, and that the procedural error was substantially prejudicial to the substantive decision with respect to the grievant, the arbitrator shall remand the case to the level where the error occurred for reevaluation and may extend an appointment not to exceed one year. In no case shall the arbitrator have the authority to grant a remedy which includes

an appointment of greater than one year or has the effect of granting retention, promotion, or tenure.

- (iii) The decision of the arbitrator shall be final and binding on both parties to the extent permitted by the provisions of this Agreement and applicable law.
- (e) The expenses and fees of the arbitrator, and the cost of the hearing room will be shared equally by the parties.
- (f) If the Arbitration hearing is postponed or canceled because of one party, that party will bear the cost of the postponement or cancellation. The costs of any mutually agreed upon postponements or cancellations will be shared equally by the parties.
- (g) If either party desires a record of the arbitration hearing, a court reporter may be used. The requesting party will bear the expense of the court reporter. If one party purchases a transcript, a copy will be provided to the arbitrator, free of charge. If the other party desires a copy of the transcript, it will pay for half of the costs of the fee for the court reporter, the original transcript and a copy.
- (h) Each party is responsible for the costs of its staff representatives, attorneys, and all other costs related to the development and presentation of their case. When a faculty member is subpoenaed as a witness on behalf of the Union in an arbitration case, the a faculty member may appear without loss of pay if he or she appears during his or her scheduled work time, providing the testimony given is related to his or her job function or involves matters he or she has witnessed and is relevant to the arbitration case. A reasonable effort will be made to avoid the presentation of repetitive witnesses. The Union is responsible for paying any travel or per diem expenses for its witnesses, the grievant, and the Union steward.
- (i) The Arbitrator's award may include back pay to the grievant(s); provided that no such back pay award shall be retroactive to a date earlier than the date the grievance was filed. No award shall exceed the actual loss to the grievant.
- (j) The Union or the University will have the right to request the arbitrator to require the presence of witnesses and/or documents.
- (k) Unless otherwise agreed by the parties, challenges to the arbitrability of a grievance shall be resolved in a proceeding separate from and prior to arbitration on the merits of the grievance. Within ten (10) days following receipt of an arbitrator's decision ruling that a challenged grievance is subject to arbitration, the parties will begin the process

starting in Section 25.4.3(b) above to select an arbitrator to rule on the merits of the grievance.

- (l) Any material placed in the bargaining unit member's personnel file relating to misconduct will be removed when the employee has been fully exonerated of wrongdoing. The University may retain this information in a legal defense file to be used or released only when required by a regulatory agency, or in defense of legal action.

25.5 Complaint Resolution Process. The Complaint Resolution Process shall be the sole and exclusive process for resolving complaints as defined in this Article.

25.5.1 Level One.

The Union, on behalf of the aggrieved faculty member, shall submit the complaint in writing within thirty (30) days after the event giving rise to the complaint, or within thirty (30) days of the date the complainant or Union knew or reasonably should have known of the events giving rise to the complaint, whichever is later. The written complaint shall be signed by the Union representative and shall include:

- (a) a statement of the decision being appealed;
- (b) the reasons why the complainant disagrees with the decision;
- (c) the remedy sought;
- (d) the name(s), academic unit(s), telephone number, and address at which the complainant(s) shall receive all correspondence related to the complaint; and
- (e) the name, telephone number, and address of the complainant's representative.

At the request of either party, a meeting between the Office of the Provost or designee(s) and a UFC representative shall be held within twenty (20) days. The Office of the Provost will respond to the complaint in writing within fifteen (15) days of its receipt by the Office of Faculty Relations, or the meeting between the parties, whichever is later.

25.5.2 Level Two.

Should the response at Level One fail to resolve the complaint, the Union shall forward the complaint to an appeals board by submitting it at Level Two within ten (10) days of its receipt of the response from the Office of the Provost, or the day the response was due, whichever occurs first.

~~25.5.2~~ The Appeals Board.

- (a) Composition of the Appeals Board. Within fifteen (15) days of receipt by the Office of Faculty Relations of the Level Two submission, the Office of the Provost will form an appeals board. The appeals board shall be composed of three (3) unit members to be selected through a process defined by the Union and three (3) University representatives to be determined by the Provost. The Union will select the seventh member of the board who will serve as non-voting chair. Members shall be excused from considering any complaint if they have a professional or personal conflict such that they cannot render an impartial judgment. In the event a member of the board is excused, the original appointing party shall appoint a replacement.
- (b) Scope of the Appeals Board. The appeals board shall be empowered to consider complaints involving only those matters defined in the Complaint Resolution Process. The function of the board is to hear the evidence relating to a complaint and to render a majority recommendation. The evidence subject to review by the board is limited to the documentary evidence considered in the original academic decision being appealed. The board may seek testimony from witnesses for clarification of the documentary evidence.
- (c) Procedures of the Appeals Board. The board shall conduct its deliberations according to informal and non-adversarial procedures.
- (d) Recommendation of the Appeals Board. The board shall, within thirty (30) days of the receipt of the complaint from the Provost, prepare a written recommendation addressing each issue included in the complaint presented to the board. The board's recommendation shall be forwarded to the President as the final recommendation on the appealed decision. Members of the board not concurring with the majority opinion may submit a written minority recommendation along with the majority recommendation.
- (e) Decision by the President. Upon advance written notice to the chair of the board, the President may meet with the board at any time after receiving its recommendation for the sole purpose of seeking clarification concerning the basis and implications of its recommendation.
- (f) In those cases where the President does not accept the recommendation offered by the Appeals Board, the President shall set forth in writing the reasons for the rejection. The decision of the President shall be

rendered in writing within twenty (20) days of the receipt of the board's recommendations. The President's decision is final and binding and not subject to further review. Copies of the board's recommendations and the President's decision shall be transmitted by the Office of the President to the complainant and to the Union within ten (10) days of the decision.

(TA) RBY  
6/18/09

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6/18/09

