

**ARTICLE 3
ARBITRATION PROCEDURE**

A. GENERAL CONDITIONS

1. An appeal to arbitration may be made only by the union and only after the timely exhaustion of Article 7, - Grievance Procedure. The appeal to arbitration must be signed by the President of CUE, or designee, and filed with the Office of Labor Relations, Office of the President.
 - a. When hand delivered, proof of service must accompany the appeal to arbitration. The date of receipt will be used to determine the date of the appeal for hand-delivered appeals.
 - b. When mailed, the appeal must arrive in an envelope with a U.S. Postal Service Postmark. The U.S. Postal Service Postmark will be used to determine the date of the appeal for mailed appeals.
2. For the purposes of this Article, time limits are calculated in calendar days, unless otherwise stated and deadlines which fall on a day which is not a location business day will automatically be extended to the next business day. All time limits may be extended by written agreement of the parties in advance of the expiration of the time limit. The union's failure to meet any time limit, or extension to a time limit, will render the Appeal to Arbitration ineligible for further processing and the University's preceding written answer will be considered final.
3. If the appeal to arbitration is withdrawn, the last preceding University written response will be considered final.
4. The decision of the arbitrator on any issue properly before him or her shall be final and binding.
5. An appeal to arbitration shall not prohibit efforts by the University and CUE to resolve the grievance during the time the appeal is pending and until such time that an arbitrator has rendered his or her decision.
6. CUE shall have full authority to settle, withdraw or otherwise dispose of any grievance brought on behalf of the union and/or on the behalf of employees. An agreement by the parties to settle, withdraw, or otherwise dispose of a grievance appealed to arbitration shall be binding upon the grievant(s).
7. Where two or more grievances are appealed to arbitration, all grievances by or related to the same employee(s), or grievances which relate to the same incident, issue or course of action, may be consolidated by agreement of the parties.
8. An appeal of an expedited grievance to arbitration may be made only by CUE in accordance with this section. Requests for arbitration under the expedited grievance, §F.2.e. of Article 7, – Grievance Procedure must include a copy of the completed grievance form.

9. Time Limits

- a. Initial filing - An appeal to arbitration must be filed within 30 calendar days of the issuance of the University's Step 3 decision to the union or Step 2 decision in the case of an expedited grievance appealed to arbitration.
- b. University Acknowledgment of Receipt - Within 15 calendar days of the postmark or, in the case of hand delivery the date of receipt of the union's appeal to arbitration, the University shall mail to the union an acknowledgment of the receipt of the appeal and the identity of the location to which all relevant correspondence should be directed.
- c. Selecting the Arbitrator and Scheduling the Hearing Date
 - 1) Within 45 calendar days from the date the grievance was originally appealed to arbitration, CUE shall contact the University to select an arbitrator according to Section C of this Article. The scheduling of the arbitration hearing date must be accomplished no later than 90 calendar days from the date the grievance was originally appealed to arbitration, except as provided below in c.3. Should the parties be unable to agree to a hearing date, the authority to schedule the hearing rests with the arbitrator. The parties may extend the 90-day limit for scheduling the arbitration by mutual written agreement in advance of the expiration of the time limit.
 - 2) In such cases the arbitrator shall be provided with a copy of the written agreement. Failure to select the arbitrator and schedule the hearing according to this section will render the grievance ineligible for arbitration and the last preceding University written answer shall become final.
 - 3) If CUE initiates the selection process in writing to the University with a preferred arbitrator from the arbitration panel and there is no written University response by the deadline for selection of the arbitrator (45 days from CUE's appeal to arbitration), then the CUE choice shall be final unless CUE initiates the selection process within 15 business days of the deadline for selection of the arbitrator. In such case, the University shall have 15 business days to respond to CUE's choice of an arbitrator and the period for scheduling the arbitration hearing shall be extended by 10 business days.
- d. Should the Union make a request that the grievance which has been appealed to arbitration be placed in abeyance for any reason, the period of abeyance shall not exceed 90 days. The Union further agrees that grievances placed in abeyance shall have the time limits tolled during this period. Failure by the Union to reactivate the grievance within the 90-day limit following request that it be held in abeyance will render the grievance ineligible for arbitration and the last preceding University written answer

shall become final. If CUE requests selection of the arbitrator, it shall be according to the arbitration selection process in this section, including A.9.c.

B. EMPLOYEE REPRESENTATION

Union representation at the arbitration hearing may consist of two representatives, with only one representative eligible for without-loss-of-straight-time-pay status. Released time shall not be unreasonably denied. If a second representative requests released time for the hearing, it shall not be unreasonably denied and it shall be without pay. Only one representative may be designated as the employee advocate for the course of the hearing.

C. SELECTION OF ARBITRATOR

Within 45 calendar days of the date of the appeal to arbitration, the arbitrator shall be selected using the following procedures:

1. Until a permanent panel is selected by the parties, on a case-by-case basis, the parties may agree to the selection of any qualified and available person to serve as an arbitrator. Absent such agreement, the parties may agree to the selection of an arbitrator from a list provided by the American Arbitration Association.
2. Once the permanent panel is in place, the parties may mutually agree to an arbitrator. In the event the parties cannot agree to an arbitrator, the parties shall then alternately strike one name each from the 15 names. The first strike will be determined by a flip of a coin, and the last name remaining shall be the arbitrator.
3. If both parties disagree with the arbitrator who has been selected, the process shall be repeated once in its entirety.
4. A separate arbitrator shall be selected for each grievance appealed to arbitration, unless the parties agree otherwise in writing.
- ~~5.~~ Except as provided in Section A.9.c.iii of this Article, the parties may agree in writing to extend the 45-day limit for selecting the arbitrator. Failure to select the arbitrator within 45 calendar days, or to mutually agree to a written extension of the time period, will render the appeal to arbitration ineligible for further processing and the University's preceding written answer will be considered final.

D. SCOPE OF ARBITRATION

1. Unless there is an agreement by both parties to modify the scope of the hearing, the issue(s) to be heard by the arbitrator shall solely and in its entirety be restricted to the issue(s) stated by Step 3. Issues or allegations which were known or should have been known to either party but not introduced by the Step 3 process shall not be introduced by either party at the arbitration hearing, except as provided in Section D.2., below.

2. When practicable, the University shall inform CUE in writing of its intent to assert the issue of arbitrability prior to the selection of the arbitrator in its Acknowledgment of Receipt, according to A.9.b.above. The issue(s) of arbitrability shall be resolved in a hearing prior to and separate from the hearing (if any) about the substantive facts and/or allegations in dispute, except as provided in Section D.3., below. In such a case, the parties shall use the selection process described in Sections A.9 and C above to select two arbitrators. The first arbitrator will be selected to hear the issues of arbitrability and the second arbitrator will be selected to decide the merits of the case if the issues are determined to be arbitrable. Unless either party requests a full and complete arbitration proceeding on the arbitrability issue, the first arbitrator shall issue either a bench decision, or upon either party's request, a written decision within 7 calendar days of the completion of the arbitrability hearing. In the event that the first arbitrator, as a result of the arbitrability hearing referenced above determines a matter to be arbitrable, the first arbitrator shall have no authority to decide the issues pursuant to the merits of the case. A hearing on the merits of the case will be scheduled with the second arbitrator, unless the parties agree otherwise.
3. If, following the issuance of the University Acknowledgement of the appeal, 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 ineligible for arbitration, 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.
4. Section D.1. and Section D.2. above, shall not prevent the parties from agreeing in writing to combine the arbitrability hearing with the hearing on the merits of the case or from agreeing to separate hearings on arbitrability and the merits of the case before a single arbitrator.

E. ARBITRATION PROCEEDING

1. The parties will attempt to agree on a location for the arbitration hearing.
2. The arbitration hearing shall be closed to anyone other than the participants in the arbitration hearing, unless the parties otherwise agree in writing.
3. The arbitration hearing shall provide an opportunity for CUE and the University to examine and cross-examine witnesses under oath or affirmation, and to submit relevant evidence.
4. Settlement offers made any time during the Grievance and/or Arbitration Procedures shall not be introduced as evidence in the arbitration hearing.
5. Either or both parties may, at their discretion, file briefs with the arbitrator. The order and time limits of briefing shall, on a case-by-case basis, be as agreed upon by the parties or as specified by the arbitrator. Briefing time limits shall be extended by the Arbitrator upon the agreement of both parties.

6. The arbitrator shall consider the evidence presented and render a written decision within 30 calendar days of the close of the record of the hearing.
7. In all cases appealed to arbitration pursuant to the terms of this Article and this Agreement, CUE has the burden of initiating the steps in the procedure. With the exception of those cases in which the issue is that of actions taken by the University pursuant to Article 5, – Corrective Action/Discipline and Dismissal, CUE shall have the burden of proof. The burden of proof in cases in which the issue is that of actions taken by the University pursuant to Article 5, – Corrective Action/Discipline and Dismissal, shall be the University's.
8. Prior to the hearing, the parties shall endeavor to exchange the names of all known witnesses and relevant materials to be introduced at the hearing.

F. AUTHORITY OF THE ARBITRATOR

1. The arbitrator's authority shall be limited to determining whether the University has violated the provision(s) of this Agreement as set forth in the Union's Step 3 appeal or Step 2 appeal if expedited. If such a violation is found, the arbitrator shall specify the remedy in accordance with the terms of this Agreement.
2. The arbitrator shall not have jurisdiction or authority to add to, amend, modify, nullify or ignore in any way the provisions of this Agreement and shall not make any award that would, in effect, grant CUE or the employee(s) any terms which were not obtained in the negotiation process.
3. The arbitrator shall have the authority to subpoena documents and to require the attendance of witnesses upon the reasonable request of either party but not upon his or her own motion.
4. The expense of service and appearance fees, if any, shall be borne entirely by the party requesting the subpoena of witnesses and each party shall, in advance of the hearing date, inform the other party of the identity of witnesses it subpoenaed.
5. The arbitrator shall be the sole judge of the relevancy and materiality of the evidence and testimony offered. The arbitrator may receive and consider evidence but shall give appropriate weight to any objections made. All documents to be considered by the arbitrator shall be filed at the hearing, or within the post-hearing time lines agreed to by the parties during the hearing.

G. ARBITRATION REMEDIES

1. No remedy by an arbitrator shall be made retroactive to a date earlier than 30 calendar days prior to the filing of the Step 1 grievance, except for the correction of an error in implementation in payment of wages or the correction of mathematical, calculation, recording or accounting errors relating to the payment of wages. For grievances involving the correction of an error in implementation of payment of wages or the correction of mathematical, calculation, recording or

accounting errors relating to the payment of wages, an award of an arbitrator shall not in any case be made retroactive to a date earlier than three years prior to the initiation of the written grievance in Step 1 of the Grievance Procedure. Additionally, no remedy shall be provided for any period of time during the grievance and/or arbitration procedure for which an extension of time limits has been granted at the request of CUE or any time an employee was on strike.

2. In any decision of a grievance appealed to arbitration involving retroactive payments, the appropriate University and CUE representatives shall expeditiously determine the identity of the payees and the specific amount owed each payee. Such amount of payment shall be final and no employee or group of employees may subsequently grieve the amounts owed.
3. Remedies involving monetary payment and/or benefits shall be limited in their calculation to the utilization of the employee's actual and appropriate wage or benefit amount at the time of the violation and shall not include the awarding of interest or any other payment/credit unrelated to a University benefit amount or the employee's hourly wage.
4. Upon the motion of either party, or at his or her own discretion, an arbitrator may retain jurisdiction in cases involving an award of retroactive monetary payment (and/or benefits).
5. If the grievance is sustained in whole or in part, the remedy shall not exceed restoring to the employee the pay, benefits or rights lost less any compensation from any source, including but not limited to Workers' Compensation, Unemployment Compensation or other employment.

H. COST OF ARBITRATION

1. The cost of the arbitrator's fees and expenses of the hearing will be shared equally by the University and CUE. If either party requests that a stenographic record of the hearing be made and/or transcripts of the stenographic record or a taped record be provided, the parties shall equally share the entire cost of such service and the cost of the provision of a transcript to each party and the arbitrator.
2. In the event either party requests the cancellation or postponement of a scheduled arbitration proceeding which causes an arbitrator to impose a cancellation or postponement fee, the party requesting such cancellation or postponement shall bear the full cost of the cancellation/postponement fee. In the event the parties agree to settle or postpone the arbitration during the period of time in which the arbitrator will charge a cancellation/postponement fee, the parties will equally bear the cost of the fee, unless the parties agree otherwise.

I. PAY STATUS

1. The grievant (one grievant in a group grievance) shall be in a without-loss-of-straight-time-pay status at the arbitration hearing.

2. The University and CUE shall establish a reasonable schedule for witness(es)' testimony at the arbitration proceeding. Employee witnesses who appear at the arbitration hearing at the request of CUE shall be in a without-loss-of-straight-time-pay status for reasonable travel time, the time spent actually giving testimony and/or waiting to testify in accordance with the established schedule. Every effort shall be made by the University and CUE to avoid the presentation of repetitive witnesses.
3. Total release time for the grievant, employee representative and witness(es) for travel to/from the hearing and for participation in the hearing shall not exceed either their normally scheduled hours of work for the day(s) of the hearing or their actual participation in the hearing. Participants shall travel to/from the hearing via the most expeditious method of transportation available.
4. Not more than one employee representative will be released in without-loss-of-straight-time-pay status for attendance at any one arbitration hearing.
5. The University shall not be responsible for any lodging, travel expenses or other expenses incurred by grievants, witnesses, employee or CUE representatives with regard to the union's presentation in the arbitration hearing.

J. EXPEDITED ARBITRATION

The parties may agree to use an expedited form of arbitration to be agreed to by the parties and the arbitrator. Expedited arbitrations may be used in discipline cases involving suspensions of five (5) days or less, written warnings, minor pay claims or in any other case the parties stipulate to do so, provided it is by mutual agreement in advance of the scheduling of the arbitration.

K. ARBITRATION PANEL

1. The parties will make an attempt to agree on the panel of 30 arbitrators, with 15 on a Northern Panel and 15 on a Southern Panel. Nothing shall preclude the parties from including an arbitrator on both the northern and southern lists. If agreement cannot be reached on the names of the arbitrators on each list, the remaining number of arbitrators needed to complete a panel will be selected alternately by the parties. The party selecting first shall be determined by a flip of a coin.
2. After one year from the date the panel members were initially selected, and annually thereafter, each party shall have the right to eliminate up to one arbitrator from the panel. A party exercising this right shall notify the other party in writing of the name of the arbitrator to be stricken from the panel.
3. In replacing arbitrators who were eliminated from the panel, the procedure in Section K.1. shall be used again but any arbitrator eliminated in Section K.2. above, may not be placed back on the panel until at least one year from the date on which such arbitrator was stricken.

4. In the event one vacancy in the panel of arbitrators occurs, other than the elimination of an Arbitrator by the parties pursuant to Section K.2. above, such vacancy may be filled by the parties within 30 calendar days, using the procedures in Section K.1. above, if the parties agree that a replacement is necessary. In the event more than one vacancy in the panel of arbitrators occurs, such vacancy shall be filled by the parties within 30 calendar days by using the procedures in Section K.1. above, unless both parties agree that no replacement is necessary prior to the annual panel review.
5. The northern list of arbitrators shall be used for arbitrations arising at the Davis, the Office of the President, Lawrence Berkeley Laboratory, Berkeley, San Francisco, and Santa Cruz locations, unless the parties agree to use an arbitrator from the southern panel. The southern list of arbitrators shall be used for arbitrations arising at the Santa Barbara, Los Angeles, Merced, Irvine, Riverside, and San Diego locations, unless the parties agree to use an arbitrator from the northern panel.

The Lists of Arbitrators is attached as Appendix F.