

ARTICLE 7 GRIEVANCE PROCEDURE

The University and CUE agree the purpose of this Article is to encourage and facilitate the resolution of alleged violations, misinterpretations or misapplications of this Agreement as defined in A.1 below at the lowest level possible. This preamble is not grievable or arbitrable.

A. GENERAL CONDITIONS

1. A grievance is a written complaint by an individual employee, a group of employees, or CUE that the University has violated a specific provision of this Agreement. The University shall not have the right to use the grievance procedure.
2. No employee shall be subject to reprisal for using or participating in the grievance procedure of this Agreement.
3. Filing
 - a. All grievances must be filed with the campus/hospital/laboratory Labor Relations office at the campus that employs the grievant and within the time frames specified in this Article. Grievances must be filed on the form agreed to by the parties as set forth in appendix C.
 - b. The grievance form must be signed and dated by the employee(s) or the employee's representative upon submission to the University. Union grievances must be signed by the CUE President or his/her designee(s).
 - c. The grievance form (see appendix C) shall be furnished to the employee by CUE and may be furnished by the University. The University may provide employees with access to the form or direct the employee(s) to CUE.
 - 1) Only one incident shall be covered in any one grievance. A formal grievance must
 - a) Identify the specific Article(s) and section(s) of this Agreement alleged to have been violated; describe the action(s) which allegedly violated the identified Article(s) and Section(s), together with the date(s) of the action(s); and describe the remedy requested.
 - 2) Receipt of the grievance shall be acknowledged in writing by the University as soon as practicable following receipt, and shall be sent to the non-work address listed on the grievance form.
 - 3) For the initial filing of a grievance, the date filed shall be the date received. However, if the grievance is mailed, the date of the US Postal Service postmark shall be considered the date filed. For grievance appeals and responses, the date of issuance shall be

the date hand-delivered, or the date of the US Postal Service postmark, if mailed, provided the address used is the non-work address on the grievance form. If an address other than what is provided on the grievance form is used, then an additional 10 calendar days shall be granted for the grievance appeal. In order to obtain this extension, the grievant, or his/her representative, must provide the envelope bearing the incorrect address at the time the appeal is filed. The date of hand delivery shall be the date of the stamp or handwritten acknowledgement of receipt as noted by the Labor Relations office. The University shall acknowledge receipt by dating the form, and providing a copy of the dated form to the grievant or his/her representative.

- 4) If a grievance form is used for the initial filing of the grievance procedure, the grievance form, or a copy thereof, shall be completed and provided to each party unless the parties agree otherwise.
- d. No remedy shall exceed restoring to the grievant the pay, benefits or rights lost as a result of the violation of the contract, less any income earned from any other source including, but not limited to, workers' compensation, or any other employment.
4. Resolution of the grievance at any step, although final, shall not be precedent setting.

B. EMPLOYEE REPRESENTATION

A grievant shall have the right to be represented at all steps of the grievance procedure by a CUE representative or a CUE-designated employee representative, or any other one person of the grievant's choice other than a University employee who has been designated as supervisory, managerial, or confidential. CUE may have an additional advisor who shall not be a spokesperson and who shall not be on paid release time.

C. TIME LIMITS

1. Other than the time limits for the initial Step 1 filing of a grievance, the time limits as specified in this Article may be extended by mutual agreement of the parties. Extensions must be in writing and must be signed by the parties in advance. The parties may mutually agree to skip any steps of the grievance procedure. Such an agreement must be in writing and must be signed by the parties.
2. Deadlines that fall on a day that is not a regular business day will automatically be extended to the next business day.
3. If a grievance is not appealed to the next step of the procedure within applicable time limits, and an extension has not been agreed to in advance, the grievance will be considered resolved on the basis of the last University response to the grievance and shall be considered ineligible for further appeal.

4. If the University has not responded by the designated time limit in this Article, the grievance will be advanced to the next step in the grievance process if it is confirmed by CUE in writing by the deadline date for appeal to that step. If CUE does not confirm the advance to the next step, the grievance shall be considered withdrawn and ineligible for further processing.

D. GRIEVANTS WHO HAVE RESIGNED

Grievants who voluntarily resign their employment with the University, unless they retire, shall have their pending grievances immediately withdrawn and will not benefit by any subsequent settlement or disposition of any individual, union, or group grievance. However, if the grievance is related to compensation negotiated in a UC/CUE Agreement, the grievance may be continued if it has been appealed to Step 2 before the date of resignation.

E. GRIEVANCE PROCEDURE - INFORMAL REVIEW

Before commencing the formal grievance procedure, an individual employee, or group of employees, with or without their representative, may first attempt to resolve the alleged grievance informally. When an employee or representative requests such a meeting, an Informal Review meeting shall be held with the immediate supervisor within 15 calendar days of the request. Informal resolution of grievances at the lowest possible level is an objective shared by the University and CUE. Informal attempts of settlement to resolve the grievance shall not extend time limits including the initial 30-day filing deadline.

F. GRIEVANCE PROCEDURE - FORMAL REVIEW

1. Step 1:

- a. All grievances (individual, group, or union) must be filed either by U.S. mail or hand delivery, and received by the Labor Relations Office at the campus/hospital/Laboratory which employs the grievant(s) within 30 calendar days after the date on which the employee or CUE knew or could be expected to know of the event or action giving rise to the grievance. If hand delivered after business hours, the date of receipt shall be the next business day.
- b. Grievances received after the filing deadline will be processed solely for the purposes of determining whether the grievance was untimely.
- c. Resolution of grievances at the lowest possible level is an objective shared by the University and CUE. If no Informal Review meeting took place, and either party requests it, there shall be a meeting held at Step 1 that includes the supervisor and the grievant.
- d. University Review:

The University's written response will be issued to the grievant and the representative, if any, within 15 calendar days after the meeting is held or, if no meeting is held, 15 days after the formal grievance is filed. If the

response is not issued within this time limit, the grievance shall be processed in accordance with C.4 above. If the grievance is not resolved at Step 1, the grievance may be appealed to Step 2.

e. Sexual Harassment Complaint Resolution Procedures:

- 1) An employee alleging sexual harassment may elect to substitute a campus/hospital/laboratory Sexual Harassment Complaint Resolution Procedure for Step 1 of the Grievance Procedure. An employee who elects to use the Sexual Harassment Complaint Resolution Procedure may return to the grievance procedure only if he/she filed a grievance within the 30-day time limit for filing. An employee who elects to resume the regular grievance procedure in place of the Sexual Harassment Complaint Resolution Procedure shall do so by sending written notice to the University. The University's Step 1 Grievance response will be issued within 15 calendar days after the notice is received by the designated University official.
- 2) Grievances that allege a violation involving sexual harassment may, at the grievant's option, enter the grievance procedure at Step 2.
- 3) If no report issues from the sexual harassment complaint resolution process or the employee elects to use the sexual harassment complaint resolution process and for any reason the grievance remains in abeyance for one hundred eighty (180) days or more, the case will be considered withdrawn by the grievant, unless the grievant indicates in writing that the grievance should remain in abeyance.

2. Step 2:

- a. If the grievance is not resolved at Step 1, the grievant or the Union may proceed to Step 2 by filing a written appeal with the Labor Relations Office within 15 calendar days of the date the written response is issued.
- b. Unless the parties agree otherwise, the designated University local official shall convene a meeting with the grievant(s) and the grievant's representative, if any, to attempt to resolve the grievance. The meeting shall be convened no later than 15 calendar days following receipt of the appeal to Step 2. During the Step 2 meeting, the parties shall discuss information and contentions relative to the grievance.
- c. During the Step 2 process, the parties may agree in writing to amend the alleged violations stated in the original grievance.
- d. If requested by the grievant, a second CUE representative may participate in the Step 2 meeting. In the event a second CUE representative attends, only one representative may actively participate in

the grievance meeting, and the University shall pay release time for only one representative.

- e. If a grievance that alleges a violation of Article 5, – Corrective Action/Discipline and Dismissal only is not satisfactorily resolved at Step 2, CUE may appeal directly to arbitration in accordance with Article 3, – Arbitration Procedure.
- f. A written decision shall be issued within 15 calendar days following the Step 2 meeting, or receipt of the Step 2 appeal if it is agreed that no meeting will be held. If the University does not respond within the time limit, the procedures in C.4 will apply.
- g. A grievance appealed by the Union to the next step in the Grievance Procedure upon expiration of the time limits within which the University was to conduct a meeting and/or provide an answer shall not be remanded to the parties for completion of the meeting/provision of answer process unless there is mutual agreement of the parties to so remand.

3. Step 3

- a. All grievances that are not satisfactorily resolved at Step 2 may be appealed to Step 3. The appeal must be filed with the Director of Labor Relations in the Office of the President within 15 calendar days of the date the University's Step 2 written answer was issued. If the University has not issued its written decision to the Step 2 appeal by the deadline, the grievance shall be advanced to Step 3 if it is confirmed by CUE in writing by the deadline to appeal to Step 3. If CUE does not confirm the advance to the next step, the grievance shall be considered withdrawn and ineligible for further processing.
- b. The Step 3 appeal shall identify all unresolved issues, alleged violations proposed remedies and shall be signed and dated by the grievant(s) or their representative. The subject of the grievance as stated at Step 2 shall constitute the sole and entire subject matter of the appeal to Step 3.
- c. The Director of Labor Relations or designee shall issue the University's written answer to a Step 3 appeal within 30 calendar days of the receipt of the appeal. The answer will be issued to the grievant when self-represented, or to the employee's representative, and a copy shall be sent to the statewide CUE office.

G. UNION GRIEVANCES

CUE shall have the right to present grievances under this procedure on behalf of an individual employee, on behalf of a group of employees, or on behalf of itself. It shall be the Union's responsibility to inform an employee that it is bringing a grievance.

H. GROUP GRIEVANCE

A group grievance is defined as a grievance that covers more than one employee, and that involves like circumstances and facts. A group grievance must be so identified on the grievance form at Step 1.

If an employee wishes to withdraw from a group grievance represented by CUE, the employee shall notify CUE. CUE shall in turn notify the University in writing if the employee is to be withdrawn.

I. CONSOLIDATION OF GRIEVANCES

Grievances of two or more employees, as well as multiple grievances by or related to the same employee, or which relate to the same incident, issue, alleged violation, facts, or course of conduct, may be consolidated. Consolidation or severance of grievances shall occur by mutual, written agreement of the parties.

J. OFFERS OF SETTLEMENT

Settlement offers made during attempts at informal resolution or during the steps of the Grievance Procedure shall not be introduced as evidence in subsequent steps of the Procedure.

K. RETROACTIVITY

Settlement of grievances may or may not be retroactive as equities of a particular case may demand. In any case where it is determined that the settlement shall be applied retroactively, 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, the maximum period of retroactivity allowed shall not in any case be made retroactive to a date earlier than 30 calendar days prior to the initiation of the written grievance in Step 1. For grievances involving 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 shall not 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.

L. EXCLUSIVE PROCEDURE

The Grievance Procedure set out in this Article shall be exclusive and shall replace any other grievance procedure for adjustment of any disputes arising from the alleged violation of this Agreement. Unless otherwise indicated within this Agreement, any previous grievance procedure or other procedure in existence or adopted by the University shall not apply to employees covered by this Agreement for any purposes whatsoever.

M. RELEASE TIME AND PAY STATUS FOR GRIEVANTS, EMPLOYEE REPRESENTATIVES AND/OR WITNESSES

1. University-Convened Meetings

- a. If the University convenes a meeting involving the parties to a grievance for the purposes of resolving the grievance and/or completing the steps of

the Grievance Procedure, the grievant(s), witness(es), if any, and CUE-designated employee representative(s) eligible to attend such meeting pursuant to this Article and Article 1, – Access/Union Rights, § C. shall be in without-loss-of-straight-time-pay status during the meeting, provided:

- 1) Such meeting occurs during the regularly scheduled hours of work of the grievant(s), CUE-designated employee representative, and/or witness(es); and
- 2) Advance request is made and approval is received from the supervisor of the grievant(s), the witness(es), and/or the CUE-designated employee representative. Approval to attend shall be made on an operational needs basis and shall not be unreasonably denied.
- 3) A grievant or the representative may request the availability of bargaining unit employee witnesses for University-convened grievance meetings. The availability of bargaining unit employee witnesses shall be determined by their immediate supervisor(s) on the basis of operational needs, and such requests shall not be denied unreasonably. Witnesses shall be in a without-loss-of-straight-time-pay status only for time spent at the campus/hospital/laboratory meetings as a witness and reasonable travel time spent at the witness' respective campus/hospital/laboratory location. In instances where the witness' testimony is valuable and relevant to a grievant's case, paid release time for travel and testimony will not be unreasonably denied.

Grievants and CUE agree that every effort shall be made to provide witnesses that pertain solely to the subject matter and to avoid the presentation of repetitive witnesses and that the absence of any or all witnesses shall not require the meeting to be recessed or postponed.

- b. The University is not responsible for any travel or lodging expenses or any other expenses incurred by the representative, grievant or union witnesses.
- c. Paid release time for CUE designated employee representatives for purposes other than University convened meetings shall be provided in accordance with Article 1, – Access/Union Rights.

N. EXCLUSION OF FLOATER EMPLOYEES AND PROBATIONARY EMPLOYEES

The retention or release of floater employees and probationary employees (or temporary employees at LBNL) is at the sole discretion of the University, and shall not be subject to Article 7, – Grievance Procedure or Article 3, – Arbitration Procedure of this Agreement.

For Informational Purposes Only

When an action is taken by the University with respect to a floater employee which effectively terminates the floater employee during the term of his/her floater appointment and there are unique or unusual circumstances involved, the designated campus or Laboratory official, upon the specific request of the CUE president or designee will discuss the action taken. It is understood that such requests for discussion will occur on a very limited basis and will not be made with respect to actions including but not limited to those resulting from the expiration of appointment, programs or grant funds, or the decision not to continue, rehire or extend the employment of a floater employee. It is further understood that the opportunity for such discussion in very limited circumstances does not in any way confer upon a floater employee any property or process right and does not in any way obligate or commit a designated campus/Laboratory official to any specific course of action or procedure.

O. OTHER REPRESENTATION

Grievants may choose a representative other than a CUE representative for purposes of grievance representation and adjustment. In the event the University is involved in the resolution of a grievance from a grievant or group of grievants who are self-represented or represented by someone other than a CUE representative:

1. The University shall provide CUE with a copy of the grievance and the proposed resolution, indicating the grievant or grievants have chosen a representative other than CUE.
2. CUE shall have 10 calendar days from the date the University provides the material referenced above in which to comment in writing on the proposed resolution.
3. The University shall not implement the proposed settlement or resolution of the grievance until timely receipt and review of CUE's written comments, if any.
4. The resolution of grievances presented by someone other than a CUE representative shall be consistent with the terms of this Agreement.

P. GRIEVANCE FILE

Records involving the processing of an employee's grievance, such as the grievance form, step appeals/responses, and settlement documents, will be kept in a file separate from the employee's personnel file. It is not the intent of this section to exclude from the employee's personnel file final disciplinary action documents, including those that result from a settlement agreement. The University will keep grievance files confidential to the extent required by applicable law and will not disseminate their contents unless solicited for a legitimate University business purpose or obligated to provide for a pertinent regulation or law.