

## Article 9 - GRIEVANCE PROCEDURE

The purpose of this Article is to provide a fair and effective procedure for identifying issues, articulating and resolving problems, and disputes.

A. Grievances under this Procedure<sup>3</sup>.

A. 1. A grievance under this Article 9 is defined as:

Category One:

A Category One grievance is a grievance alleging a breach, misinterpretation or improper application of the terms of this Agreement involving a mandatory subject of negotiations, including an allegation of unjust discipline.<sup>4</sup>

Excluded from Category One are all allegations concerning provisions of this Agreement when those provisions specify that grievances concerning them shall be considered as a Category Two grievance.

or

Category Two:

A Category Two grievance is a grievance alleging: a.) a violation, misinterpretation or improper application of the terms of this Agreement involving a non-mandatory subject of negotiations; or b.) there has been a misrepresentation, misapplication or violation of University policies, agreements, or administrative decisions, which intimately and directly affect the work and welfare of members of the unit.

Also included in Category Two are allegations concerning any matter which is mandated by law to be a subject of a grievance procedure of the Agreement, and which has not been provided for under Category One.

Also included in Category Two are allegations of harassment of a member of the negotiations unit that are not covered under Article 4 of this Agreement. For purposes of this paragraph, harassment is intentional persistent or repeated differential treatment that negatively and directly affects the work and welfare of a member of the negotiations unit.

A. 2. Excluded from this grievance procedure are:

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<sup>3</sup> Grievances that allege violations of Article 4 of this Agreement shall be held in abeyance for 60 calendar days if the University or the grievant requests the Office of Employment Equity (OEE) to investigate the allegation(s) and/or if OEE initiates an investigation. Should the grievant refuse to participate in any ensuing OEE investigation, the related allegations in the grievance will be precluded from being processed and will be deemed denied.

<sup>4</sup> Discipline is the formal imposition of a penalty in response to alleged wrongdoing by a member of the negotiations unit (proceedings under Appendix H will be handled as Category One grievances).

- A. 2. a. All matters defined grievable under the terms of other grievance procedures between the University and the AAUP-AFT;
  - A. 2. b. An allegation regarding the evaluation of a grievant for reappointment, promotion and/or tenure as provided in Article 10, Article 13 or Article 11 of this Agreement;
  - A. 2. c. An allegation regarding a violation of the University Policies or this Agreement or established policy or practice regarding reappointment of Teaching Assistants/Graduate Assistants, as provided in Article 23 of this Agreement.
  - A. 2. d. Allegations concerning provisions of this Agreement when those provisions specify that they are not subject to the grievance and arbitration process.
- A. 3. A grievance under this Article may be filed by a unit member or members, if more than one member has been affected, or by the AAUP-AFT. A grievance filed by a member or members of the unit may only be filed with the AAUP-AFT and will be promptly transmitted to the Office of Academic Labor Relations by the AAUP-AFT.
- B. Requirements for Filing.
- B. 1. A grievance must be filed in writing with the Office of Academic Labor Relations within four (4) months of the date on which the grievant should reasonably have known of the occurrence of the alleged violation, or within twenty (20) working days of the occurrence of the alleged violation if the grievant is requesting an accelerated schedule. The written statement of the grievance shall specify which allegations in the grievance are being filed as Category One or Two; shall contain a statement of the facts surrounding the grievance; shall specify the provision or provisions of the Agreement, policies, agreements, or administrative decisions which allegedly have been violated, misapplied, or misinterpreted; and shall specify the relief sought. In addition, where the substance of the grievance concerns a dispute between unit members, the grievance filing shall show evidence of an effort to resolve the matter with the appropriate dean. Such efforts at informal resolution of grievances shall not affect the timeliness requirements of this procedure.
  - B. 2. The timeliness of a grievance submitted from the New Brunswick campuses shall be determined by the date on which the AAUP-AFT delivers it to the Office of Academic Labor Relations. The timeliness of a grievance submitted via e-mail to the Office of Academic Labor Relations shall be determined by the date of the e-mail to Office of Academic Labor Relations. Grievances submitted from the Camden, Newark, or other program locations beyond the New Brunswick campuses may also be mailed to the AAUP-AFT by United States Postal Service, in which case the timeliness of such a grievance shall be determined by the postmark. The AAUP-AFT shall deliver such grievances to the Office of Academic Labor Relations within one day of receipt.
  - B. 3. Responses to requests for information, material, and documents relevant to a grievance shall be provided, if available, by either party upon written request of the other party within 15 working days of such request. If either party is unable to meet

the 15 working day time limit, it shall so notify the other party in writing, explaining the reason.

C. Mediation

- C. 1. The goal of mediation is to resolve grievances informally.
- C. 2. A grievant may submit any grievance that the parties agree is properly raised under this Article to non-binding mediation prior to proceeding to Step One. Disputes between the parties as to grievability shall not be submitted to mediation. Notice of the desire to participate in non-binding mediation shall be given to the University with the grievance filing.
- C. 3. The mediation process will be completed within 30 working days of the University's receipt of the grievance filing, where possible.
- C. 4. A pool of six professional arbitrator/mediators, jointly agreed to by the University and the AAUP-AFT, shall be established for the duration of this Agreement except that twelve months after the establishment of the pool either of the parties may reopen negotiations about the membership of the pool. If any grievances are pending mediation at the time of a request to reopen negotiations, they shall be scheduled utilizing rotation of the pool as it exists at the time of the request. The AAUP-AFT and the University shall utilize a selection procedure that insures both rotation in the use of the mediators and random assignment of grievances to mediators.
- C. 5. No more than a total of six hours' service by the mediator shall be permitted for each grievance unless additional time is agreed to by the University and the AAUP-AFT.
- C. 6. Unless the parties agree otherwise, participants in mediation shall be limited to the mediator, the grievant, no more than two AAUP-AFT representatives, no more than two University representatives, and an individual, designated by the University, who is closely concerned in the grievance. The University representative may be the appropriate dean/director or the chancellor unless (a) he or she is alleged to have committed one or more of the violations that form the subject matter of the grievance or (b) the grievant, through the AAUP-AFT, notifies the University that he/she believes mediation with that individual as University representative would be pointless. In such cases, the Senior Vice President for Academic Affairs or his/her designee shall be the University representative. With the sole exception of the mediator, all participants in the mediation must be employees of the University or of the AAUP-AFT but shall not be individuals who bear the title of Counsel, Associate Counsel, or Assistant Counsel. Unless the mediator objects, the AAUP-AFT and the University may jointly agree that each may have one nonparticipant observer present at a mediation session. Such observers shall not participate in the mediation meeting in any manner.
- C. 7. The format for mediation shall be face-to-face discussions between the parties, with the assistance of the mediator. However, the parties may, during the mediation session, jointly agree to meet separately with the mediator, provided that at the

request of the parties, they again meet face-to-face before mediation is concluded. The mediator shall be provided by the University with the grievance filing in advance of the mediation session. The mediator shall decide whether other documents are needed to advise the parties. Provision of such documents by either of the parties shall be voluntary in response to requests from the mediator. No official record of the mediation process shall be kept. The names of individuals attending the mediation shall be provided to either side by the other if requested.

- C. 8. The mediator shall attempt to resolve the grievance. If a resolution is reached, it shall be reduced to writing. Resolution of a grievance shall not be a precedent in any other grievance.
  - C. 9. If no resolution is reached through mediation, the mediator shall present advice orally at the end of the mediation. This advice shall not be introduced at any subsequent grievance hearing or in any other proceeding.
  - C. 10. The costs of the mediator shall be borne equally by the University and the AAUP- AFT.
  - C. 11. If no resolution is reached through mediation, the grievance may be pursued at Step One of this grievance procedure. If the grievant requested both mediation and a Step One meeting and no resolution is reached through mediation, the AAUP-AFT and/or the grievant may opt to not have a Step One meeting by providing written notice to the Office of Academic Labor Relations within ten (10) working days of the mediation.
- D. STEP ONE
- D. 1. The Senior Vice President for Academic Affairs or his/her designee(s) may conduct such investigation as he or she may require in order to render a written response, including meeting(s) with the grievant and other individuals who are determined by the Senior Vice President for Academic Affairs or his/her designee or the AAUP-AFT to be concerned in or to have knowledge of the matter. If the grievant believes it necessary to meet with the Senior Vice President or his/her designee without other individuals concerned in the matter being present, the grievant shall be afforded the opportunity to do so.
  - D. 2. The grievant will have the opportunity to meet with the Senior Vice President or his/ her designee if the grievant requests such a meeting within 10 working days of the filing of the grievance. The meeting, whether requested by the grievant or by the Senior Vice President or his/her designee, shall be scheduled within 10 working days of the request or within 10 working days of the conclusion of mediation.
  - D. 3. In instances where the parties agree that the problem requires an accelerated schedule, if a meeting is requested at the time the grievance is filed, it shall be scheduled within five working days of the receipt of the grievance or the completion of the mediation, whichever is later, and a written Step One decision shall be rendered within 15 working days from the date of the Step One meeting. The accelerated Step One decision shall be sent via e-mail to the AAUP-AFT and the grievant simultaneously.

- D. 4. Should the grievant fail, without valid reason, or refuse to meet with the Senior Vice President for Academic Affairs or his/her designee when such a meeting has been requested either by the grievant or by the Senior Vice President or his/her designee, the AAUP-AFT shall not be permitted to invoke Step Two of the grievance procedure and the decision of the Senior Vice President for Academic Affairs or his/her designee at Step One shall be final.
- D. 5. Where the grievant alleges that the grievance concerns an immediate health or safety problem, the grievance shall be heard on an accelerated schedule.
- D. 6. The grievant may be assisted by up to two representatives approved by the AAUP-AFT. The University shall have the right to assume that any representative who appears with the grievant is approved by the AAUP-AFT. The grievant's representatives shall be members of the negotiations unit and/or AAUP-AFT staff. Although the University may request members of the negotiations unit to participate in the investigation of, and meetings about, a grievance, a member of the negotiations unit may not be a designee of the Senior Vice President for Academic Affairs or a formally designated representative of the University.
- D. 7. Within 45 working days of the conclusion of the mediation or within 45 working days of the notification of a waiver of the mediation step by the AAUP-AFT, or within 15 working days if the parties agree that the problem requires an accelerated schedule, the Senior Vice President for Academic Affairs or his/her designee shall render a written decision except that, in all events, the Senior Vice President or his/her designee shall have no fewer than 15 working days subsequent to the Step 1 meeting(s) concerning the grievance to render a written response.
- D. 8. The Senior Vice President for Academic Affairs or his/her designee shall simultaneously submit his/her written decision to the grievant and to the AAUP-AFT. The Step One decision shall be sent via e-mail to the AAUP-AFT and the grievant simultaneously.

E. STEP TWO - ARBITRATION

- E. 1. If the AAUP-AFT is not satisfied with the disposition of the grievance at Step One, the AAUP-AFT, upon written notification to the Senior Vice President for Academic Affairs within 30 working days of receipt of the Step One decision, or within 15 working days if the grievance has been heard on an accelerated schedule at Step One, may appeal a Category One or a Category Two grievance to arbitration.
- E. 2. The written notice shall set forth the issue or issues to be arbitrated and shall specify, as to each issue, whether the AAUP-AFT presents it as a Category One or a Category Two grievance.
- E. 3. For the purpose of arbitration, a pool of six professional arbitrators jointly agreed to by the University and the AAUP-AFT shall be established for the duration of this agreement except that twelve months after the establishment of the pool either of the parties may reopen negotiations about the membership of the pool. The pool as

it exists at the time of a request to reopen negotiations shall be utilized for all grievances filed up to the date of the request unless otherwise agreed to by the parties. The list of arbitrators may include individuals identified as mediators in C.4. but an individual used as a mediator in a grievance shall not also be used as the arbitrator in the same grievance.

- E. 4. If the AAUP-AFT determines that either it or an individual negotiations unit member(s) cannot arrive at a decision on whether to proceed to arbitration within the 30 working days provided herein, it will so notify the Senior Vice President for Academic Affairs during this period. This notice will extend the period for invoking arbitration for a period of 30 additional working days. Additional extensions may be agreed to by the parties, and if such an agreement is made it shall be set forth in writing. No extensions beyond the original 15 working days provided for filing of an appeal to arbitration shall be available in instances where the grievance has been heard on an accelerated schedule at Step One except by written mutual agreement of the parties.
  
- E. 5. If no Step One decision is rendered, the AAUP-AFT may appeal the grievance to arbitration within five months of the last day on which the Step One decision would have been timely rendered.
  
- E. 6. Where a grievance concerning a health or safety problem has been heard on an accelerated schedule at Step One and has been timely appealed to arbitration, the AAUP-AFT and the University will each make an effort to obtain a prompt hearing of the grievance at arbitration.
  
- E. 7. The arbitrator shall conduct a hearing and:
  - E. 7. a. Binding Arbitration  
  
In the case of Category One grievances, render a decision which shall be final and binding on the AAUP-AFT, the grievant(s), and the University;

or

  - E. 7. b. Advisory Arbitration  
  
In the case of Category Two grievances, render a recommendation to the Office of the President. The President's decision will be final and binding for all internal University purposes. Such decision will be rendered within 15 working days of receipt of the arbitrator's report. If the President modifies or rejects the recommendations of the arbitrator, he/she will set forth in writing the reasons for such modification or rejection.
  
- E. 8. The arbitrator's decision or recommendation shall be rendered in accordance with law and not later than 30 calendar days after receiving final submissions from the parties unless the parties agree that more time is needed. The arbitrator shall not have the authority to amend, alter, or in any way change a University policy, established practice, or provision of this Agreement.

- E. 9. Any party may request a stenographic record. If such transcript is agreed upon by the parties, or in appropriate cases determined by the neutral arbitrator, to be the official record of the proceeding, it must be made available to the arbitrator and to the other party for inspection at a time and place determined by the arbitrator. The total cost of such a record shall be shared equally by those parties that order copies. Either party may tape the arbitration proceeding, but the tape shall not constitute the official record. The tape may be used only for the purpose of preparing the case and may not be used for any other purpose or in any other forum.
- E. 10. The costs and expenses incurred by each party shall be paid by the party incurring the costs, except that the fees of the neutral arbitrator and the fee, if any, of the administering agency shall be borne equally by the University and the AAUP-AFT.
- F. Miscellaneous
  - F. 1. No reprisals shall be taken against any grievant, AAUP-AFT representative, witnesses, or other participant, or nonparticipant observer for participation in or observation of this Article 9 grievance process. Claims of such reprisals shall be grievable under Article 9, Category One.
  - F. 2. "Working Days" are all days on which the administrative offices of the University are open for business as specified in the administrative calendar. "Months" are calendar months, and they are unaffected by any of the University's working calendars.
  - F. 3. The time limits in this Article may be extended at any time by written agreement of the parties to this Agreement. Upon advance written notice to the AAUP-AFT and the Office of Academic Labor Relations, a grievant who is on an academic year appointment may request that some or all of the period between Commencement and September 1 be excluded from the time limits in this procedure. Such requests shall not be made unreasonably and shall include the reasons for the request. Requests to exclude time between Commencement and September 1 shall not be unreasonably denied.

If the AAUP-AFT contends that the University is in error in deciding that a grievance was not timely filed, that contention shall be expeditiously submitted to binding arbitration unless the parties to this Agreement mutually agree otherwise. Until the timeliness matter is resolved, the grievance filed shall remain in abeyance. However, if the University also has addressed the merits of the grievance in its Step One response, a contention by the AAUP-AFT that the University's decision on timeliness is in error shall be submitted as a threshold question to the arbitrator selected pursuant to this Article. The arbitrator's decision with regard to timeliness shall be binding. Similarly, if the University has determined that a grievance is not timely filed and has not addressed the merits, and if the arbitrator has found the grievance to be timely and has referred it back to Step One for a consideration of the merits, and if the AAUP-AFT appeals the subsequent Step One decision, and if less than a year has elapsed since the arbitrator's decision on timeliness, the appeal shall be heard by the same arbitrator who heard the timeliness issue.

- F. 4. In order to assist the AAUP-AFT in its determination as to whether or not the grievance should be pursued beyond Step One, the Senior Vice President for Academic Affairs or his/her designee, upon request of the AAUP-AFT, shall make available to the AAUP-AFT a copy of any written policy, agreement, or administrative decision cited in his/her written response as a basis of the answer to the grievance.
- F. 5. Whether or not pursued, this procedure shall constitute the sole and exclusive right and remedy of bargaining-unit members and the AAUP-AFT for any and all claims cognizable under this procedure. A written response at Step One which is not appealed to Step Two by written notification to the Senior Vice President for Academic Affairs in accordance with Section E.1. above shall be considered a binding and final settlement of the grievance. If there is no written response at Step One and the AAUP-AFT does not timely appeal to arbitration, the grievance shall be considered as having been withdrawn.
- F. 6. Exception as to Category Two Grievances: If the AAUP-AFT does not timely invoke Step Two in accordance with Section E.1. above, and the AAUP-AFT and/or the grievant(s) commence a court proceeding pertaining to the grievance within 45 working days of the last date upon which the AAUP-AFT could have timely invoked Step Two, the defenses of exhaustion of remedies or exclusivity of the grievance procedure will not be available to the University in such court proceeding. Nothing contained herein shall be construed or implied as a recognition by the University that the AAUP-AFT and/or grievant has any enforceable right against the University with respect to any misinterpretation, misapplication, or violation of University policy, agreement, or administrative decision.
- F. 7. The exclusivity of remedies and exhaustion of procedures provided for in this Article are not intended nor shall they apply to rights of individual bargaining-unit members that arise from sources independent of this Agreement, University policies, agreements, or administrative decisions.