

Know Your Rights As a CSU Faculty Member

It can be a formidable challenge to understand the Collective Bargaining Agreement (CBA or the contract) between CFA and the CSU administration. Yet, the contract is an essential document that protects your rights and benefits at work.

Among the many topics addressed by the contract, some of the most important are those that guarantee "due process" protections for faculty. These protections establish ground rules regarding personnel action files, evaluations and sundry university personnel decisions and actions.

To ensure that the faculty get a fair hearing when they feel that due process has been violated, the CBA establishes a grievance procedure for the faculty. If the grievance procedure does not resolve the problem, the contract also contains a binding arbitration clause, which allows faculty to challenge before an impartial third party those administration decisions that are arbitrary, capricious or prejudicial.

For this reason, it is critical that you know your rights, and that you come to CFA when problems arise. You must know your "rights" in order to stand up for them.

The rights for the faculty that are contained in the contract exist only as a result of the arduous process of collective bargaining between CFA and the CSU administration.

What is Grievable?

While many problems arise for faculty members, nearly every day, only certain kinds of problems are addressed by the contract. Only issues addressed by the contract may be the subject of a grievance.

Furthermore, grievances are not filed against individuals but against the CSU administration. Although most terms and conditions of employment are covered by provisions in the CBA there are always some activities and behaviors that are not.

Types of Grievances

A CONTRACT GRIEVANCE is a claim by a faculty member that specific provisions of the contract were violated, misapplied or misinterpreted by management.

A FACULTY STATUS DISPUTE is a claim by a faculty member that the CSU administration misapplied or misinterpreted the contract as well as their own policies and procedures by denying retention, tenure or promotion (RTP).

Both types of claims can be adjudicated by an impartial arbitrator if CFA decides to take the case forward via the arbitration procedure. Since every case is individual and revolves around a particular set of circumstances and conditions, CFA must review the specifics of each individual case to judge whether or not an actual grievance exists or has merit.

A DISCIPLINE CASE is an action by the administration against a faculty member for an alleged improper action. It can involve suspension without pay, demotion and/or termination.

The disciplinary action procedure in Article 19 of the CBA has accelerated timelines and unusually strong procedural protections such as a **SKELLY HEARING** (where you can present

your defense to an administrator) as well as the right to have the proposed sanction held in abeyance until the facts are adjudicated by an independent arbitrator.

When a faculty members receive a "notice of disciplinary action" from the administration, it is advisable that they contact a CFA representative immediately. CFA will review the materials provided and decide whether or not the sanction is too severe or appropriate under the circumstances.

CFA will represent you through arbitration unless it is honestly determined that the sanction is justified under the given circumstances. If CFA decides not to pursue the case to arbitration, the faculty member has a right to request a hearing before the State Personnel Board as provided in Section 89539 of the Education Code.

The Grievance Process — Getting Started

The grievance process starts with you — the individual faculty member. Although the CBA allows individuals to file their own grievances, it is advisable that you call your campus CFA chapter faculty-rights representative for assistance.

Make the call immediately. If you fail to meet the timelines spelled out in the contract, you may forfeit the grievance. The CFA faculty rights representative will listen to the facts of your situation and, if appropriate, help you file a grievance.

If a grievance is filed, the CFA Rep will also assist you at the first step that hopefully can resolve the problem — the **LEVEL 1 MEETING** with the designated CSU administrator.

If the problem is not resolved, CFA will consider the response from the administrator. If the case still has merit, CFA will represent you at the next **LEVEL 2 HEARING**.

Grievances at the **LEVEL 2** stage are argued by CFA professional staff and the Labor Relations managers in the Chancellor's Office. Unfortunately, grievances are rarely resolved or adjusted at this level. CSU management's written **LEVEL 2 RESPONSE** normally reiterates and expands the denial of the grievance at Level 1.

CFA then reviews the case and decides whether to pursue the case to arbitration. The faculty who initiated the grievance is notified of this decision in writing. Those who receive a negative decision may appeal to **CFA's STATEWIDE REPRESENTATION COMMITTEE**. The decision of that committee is final.

A Special Case — Faculty Status Disputes

FACULTY STATUS DISPUTES over the denial of retention, tenure or promotion are handled differently from other grievances. The faculty member must file a "notice of dispute" with the campus president within 21 days of receiving a negative decision.

The contract provides for a mandatory informal resolution meeting within 30 days after this notice of dispute is filed. Faculty members should have a CFA representative with them at this meeting.

Within 45 days of the notice of dispute, the faculty member has a choice. You may request CFA take the case to "binding arbitration" or you may choose a **PEER REVIEW PROCESS**, which results in a "recommendation" to the president.

If the faculty member chooses arbitration, CFA has a total of 90 days from the notice of dispute to review the case, make a decision and submit the case to arbitration. CFA decisions not to arbitrate can also be appealed the **STATEWIDE REPRESENTATION COMMITTEE**.

The Final Stage — Binding Arbitration

The final stage in the grievance process is **BINDING ARBITRATION**. This applies to disciplinary actions as well as to faculty status disputes.

Although the standards of evidence are different in arbitrations from civil courtroom proceedings, the "burden of proof" is on CFA to show that the CSU administration violated, misinterpreted or misapplied the various provisions of the CBA that apply to the grievance.

In **FACULTY STATUS CASES**, CFA must show that the final decision by the provost or campus president was not based upon "reasoned judgment" and was "arbitrary and capricious" in order to overturn a negative university decision.

Possible Remedies

Grievances can be adjusted or remedied at any point in the process.

Sometimes, CFA reps and grievants are able to settle cases at the campus before the Level 1 hearing is even held. Sometimes an informal resolution hearing for a faculty status dispute can result in a remedy of retention, tenure, or promotion. Sometimes the dean will agree to remove disputed materials from the personnel action file, or the administration will agree to modify a sanction in a discipline case.

More often than not, settlements at the campus level involve a compromise. For instance, negative tenure decisions are sometimes settled at the campus level with the provision of an extra year of probation. Or, an inaccurate document will be taken out of the file and replaced with a new document absent the inaccuracies. In exchange for these remedies, CFA withdraws the grievance. Most settlement remedies are in writing.

As noted above, Level 2 meetings rarely result in a remedy. The greatest number of settlements occur just prior to arbitration, after CFA has sent information requests and subpoenas. Many promotion denials are remedied with promotion and some back pay. Settlement discussions between CFA representatives and CSU become more serious just prior to arbitration when the opposing advocates discuss the case, the joint exhibits, the witnesses and the issue statements.

The ultimate type of remedy is a decision by an arbitrator. Arbitrators have the ability, for example, to overturn negative RTP decisions, to reinstate lecturers with back pay or to reduce or rescind disciplinary sanctions.

The arbitrator's remedy is binding, with an exception. California state law allows CSU administrators to challenge an arbitrator's decisions in court if they can show that the arbitrator has overstepped his or her legal authority in the particular case. In recent years, there has been an increase in the number of CSU administration court challenges to arbitrators' decisions in tenure cases.

Your Responsibilities

Individual faculty members have responsibilities in the grievance process.

First, if you find yourself in a potential grievance situation you should review the CBA and see if you can discover what contract rights may have been violated. Turn to the table of contents in the CBA and look for the specific Article that defines your situation.

For instance, if you have a problem with material that was placed in your personnel file, look up Article 11 (Personnel Action File). If it has to do with a pending discipline, review your procedural

rights as outlined in Article 19 (Discipline). If you think there has been a violation of the evaluation procedures, review Article 15 (Evaluation).

Any preliminary effort you make to know your rights can benefit both you and your advocate. Also, you should keep your own grievance file with documentation and any correspondence, evaluations, e-mails, notes, etc. that may be relevant to your case.

Furthermore, it is helpful for you to write a brief factual chronology explaining what, when, who and where.

Next you should contact your campus CFA chapter to set up a meeting with a CFA faculty-rights representative. CFA faculty-rights reps will walk you through the process for your particular case.

Bring to your meeting:

1 – The grievance form filled out, if you have one. You can print one out from CFA's web site.

2 – Copies of relevant documents with you when you meet with your CFA Faculty-Rights Rep. Your rep will ask questions and sometimes seek additional information from you. He or she may request permission to review your personnel action file.

If your grievance goes to Level 2, bring the items on the checklist noted in the box on this page.

Finally, if your case goes to arbitration, your CFA reps will need your complete cooperation in preparing the case for the arbitration hearing.

CONTACT YOUR CFA CHAPTER FOR MORE INFORMATION

**THIS DOCUMENT ALSO MAY BE FOUND ON THE CFA WEB SITE AT
www.calfac.org/grievances.html**