

## ARTICLE 10

### GRIEVANCE PROCEDURES

10.1 The purpose of this Article is to provide a prompt and effective procedure for the resolution of disputes. The procedures hereinafter set forth shall, except for matters of discipline as set forth in Article 19 herein, be the sole and exclusive method for the resolution of disputes arising out of issues covered by this Agreement and those matters subject to grievance under Section 89542.5 of the Education Code. It is the express understanding of the parties that these procedures meet or exceed the requirements of the Education Code pursuant to Government Code Section 3572.5 (3)(b)(1).

#### Definitions

10.2 As used herein:

- a. The term "grievance" when filed by the CFA shall mean an allegation that the CFA, an employee, or a group of employees, have been directly wronged by a claimed violation, misapplication, or misinterpretation of a specific term or provision of this Agreement. The CFA may only file a grievance under the contractual grievance process pursuant to provision 10.22.
- b. The term "grievance" when filed by an employee, or group of employees, under either the statutory grievance process pursuant to provision 10.11, or the contractual grievance process pursuant to provision 10.22, shall mean an allegation that the employee was directly wronged in connection with the rights accruing to their job classification, benefits, working conditions, appointment, reappointment, tenure, promotion, reassignment, or the like, including but not limited to rights arising under this Agreement. A grievance does not include matters such as salary structure, which requires legislative action, and Equity Increases as defined in Article 31, which provide for their own binding appeals processes.

- c. The term "grievant" or "grievants" shall mean:
  - 1. For statutory grievances: any faculty unit employee(s) who has/have been employed for more than one semester or quarter who allege(s) they have been directly wronged in connection with the rights accruing to their job classification, benefits, working conditions, appointment, reappointment, tenure, promotion, reassignment, or the like, including but not limited to rights arising under this Agreement, either individually or as a group.
  - 2. For contract grievances filed by an employee(s): any faculty unit employee(s) who allege(s) they have been directly wronged in connection with the rights accruing to their job classification, benefits, working conditions, appointment, reappointment, tenure, promotion, reassignment, or the like, including but not limited to rights arising under this Agreement, either individually or as a group.
  - 3. The term "grievant" shall also mean the CFA when alleging a grievance on behalf of itself, or on behalf of a unit member or a group of unit members in accordance with provision 10.2(a). The CFA shall not grieve on behalf of unit members who do not wish to pursue individual grievances.
- d. The term "employee" in this Article shall mean a member of the bargaining unit.
- e. The term "appropriate administrator" as used in this Article shall mean the individual who has been designated by the President to act pursuant to the procedures set forth in this Article.
- f. The terms "respond" and "file" as used in this Article shall mean either personal delivery or delivery through the U.S. mail, certified mail, return receipt requested, ~~facsimile~~, or electronically through use of email. The Union and the CSU shall endeavor to use email whenever practicable, and a copy of the email shall serve as receipt. If personal delivery is used, the grievant or appropriate administrator shall provide a written receipt to the person delivering the document. If certified mail is used, the return receipt shall establish the date of delivery. ~~If telefax/facsimile is used~~

~~either to file or to respond at Level II, the telefax/facsimile transmittal cover letter shall serve as receipt.~~ A response or filing shall not be considered accomplished in the absence of acknowledgement consistent with this provision of the Agreement.-

### Grievance Forms

10.3      a. All grievances, requests for review or appeals shall be submitted in writing on the form attached to this Agreement as Appendix E, and shall be signed by the grievant(s). Except for the initial filing of a grievance, if there is difficulty in meeting any time limit, a CFA representative may sign the grievance form for the grievant.

              b. The appropriate administrator may refuse consideration of a grievance not filed on a grievance form required by this Article. In the event the potential grievant does not file on the prescribed form, the appropriate administrator shall provide the potential grievant with a copy of the appropriate form. Subsequent re-filing utilizing the appropriate form shall take place within seven (7) days of receipt of the appropriate form.

### Grievance Procedure

#### Level I – Campus Level

10.4      A grievant eligible to grieve pursuant to provision 10.2 of this Article may file a Level I grievance with the President no later than forty-nine (49) days after the event giving rise to the grievance, or no later than forty-nine (49) days after the grievant knew or reasonably should have known of the event giving rise to the grievance. In all grievances, the grievant shall state clearly and concisely on a grievance form:

              a. with regard to a statutory grievance, the right(s) the grievant alleges were violated as set forth in provision 10.2. When claiming a violation of the Collective Bargaining Agreement, the term or terms of the Agreement alleged to have been violated, misinterpreted, or misapplied;

              b. a description of the grounds of the grievance including names, dates, places, times, necessary for complete understanding;

              c. a proposed remedy;

- d. the name, department or equivalent unit, email address and/or mailing address at which the grievant shall receive all correspondence relating to the grievance, position/classification of the grievant and the grievant's signature;
- e. the name, email address and/or mailing address of the grievant's representative, if any; and
- f. the date of submission.
- g. No later than the Level I meeting, or the Level II meeting where the grievance is filed directly at that Level pursuant to this provision, the grievant shall identify to the appropriate administrator in writing the source(s) of the right(s) alleged to have been violated.

When CFA is claiming a violation of the Collective Bargaining Agreement, if the grievance derives from an action or decision by the Chancellor's Office or is a case seeking a statewide contract interpretation, CFA may file the grievance directly with the Chancellor's Office, at Level II.

10.5 The grievant may, in the written grievance, request the postponement of any action in processing the grievance formally for a period of up to twenty-five (25) days in order that, the grievant may pursue efforts to resolve the grievance informally, and shall be entitled to a good faith review of the issue(s) presented. The initial postponement request shall be granted, and upon the grievant's further written request, additional twenty-five (25) day extensions shall be granted unless the appropriate administrator makes a determination that to do so would seriously impede resolution of the grievance.

- a. Upon request of the grievant during the postponement period(s), the President shall arrange an informal conference between the appropriate administrator and the grievant.
- b. The grievant may at any time terminate the postponement period by giving written notice to the President that the grievant wishes to proceed with the Level 1 meeting provided for below. If the postponement period, or any extension thereof, expires without the filing of a request for a further postponement, the grievance shall proceed to formal Level I.
- c. The grievant shall have the right to representation by CFA during attempts at informal resolution of the grievance.

10.6 At the time of filing of a grievance by an individual employee or group of employees the grievant shall make an election by using the appropriate grievance form between the two procedures set forth below: (a) Statutory Procedure or (b) Contractual Procedure. Failure of the employee(s) to make an election in the appropriate box on the grievance form as between the Statutory and Contractual Procedures shall result in the automatic processing of their grievance under the Contractual Procedure. In the cases of grievances filed by the CFA, the CFA may not, on behalf of itself or an employee or group of employees, elect to process a grievance under the Statutory Procedure, but must in all cases process its grievances under the Contractual Procedure.

10.7 All complaints of discrimination, including those under Article 16, shall be solely handled pursuant to procedures set forth in relevant CSU executive orders (as mandated by state and federal laws) and not subject to the grievance procedure. ~~At the conclusion of those complaint procedures, a Level I meeting shall be held with the grievant and the grievant's representative pursuant to 10.8. After the Level I meeting, the grievance shall proceed in accordance with the provisions of this Article. CFA shall not unreasonably refuse CSU's requests for extensions to the Article 10 timeline in order to complete the discrimination complaint procedures.~~

10.8 Within twenty-one (21) days after the Level I filing as provided in provision 10.4, the appropriate administrator shall hold a meeting with the grievant and the grievant's representative, if any, at a mutually acceptable time at the campus where the grievant is employed. At this meeting the grievant shall fully present their case, including all relevant facts, arguments and proposed remedies being sought. In the event that the grievant and appropriate administrator cannot successfully resolve the grievance, then the appropriate administrator shall respond in writing to the grievant no later than twenty-one (21) days after the Level I meeting. Such response shall include a statement of reasons for any denial of the grievance.

Faculty Hearing Panel and the Statutory Grievance Process

Faculty Hearing Panel Procedures

10.9 The panel shall consist of all full-time faculty unit members of Bargaining Unit 3 on a campus.

10.10 CSU and CFA shall each designate one individual to serve as panel co-chairpersons for each campus. Service as a member of the panel or the Faculty Hearing Committee, if selected, is a normal obligation of each full-time member of Unit 3 during the periods of the year when required to render services and shall not result in or require additional compensation. Service on Faculty Hearing Committees by full-time Temporary Faculty Unit Members shall be voluntary. Temporary Faculty Unit Members may opt out of participation. Participation on a Faculty Hearing Committee shall be considered "service" to the campus community for all applicable purposes. Service as the panel co-chairperson shall be voluntary.

#### The Statutory Grievance Process

10.11 In the event the grievance is not settled to the grievant's satisfaction at the Level I meeting, or by the Level I response by the appropriate administrator, the individual employee grievant (or group of employees) may file a grievance appeal with the Academic Vice President, Provost, President or designee no later than fourteen (14) days after receipt of the Level I response, for hearing before a Faculty Hearing Committee, selected by lot from the Campus Faculty Hearing Panel. The grievant shall attach a copy of the Level I grievance filing and the Level I response together with any documents presented at Level I.

10.12 Within seven (7) days after the filing of the grievance appeal as provided in 10.11, the Faculty Hearing Panel Co-chairpersons shall jointly schedule the selection of the Faculty Hearing Committee. The membership of the Faculty Hearing Committee shall be selected by lot from the Campus Faculty Hearing Panel and shall consist of three (3) members and one (1) alternate. No Faculty Hearing Panel member may serve on a Faculty Hearing Committee if they have been directly involved with or a party to matters related to the grievance before the Faculty Hearing Committee. Each Faculty Hearing Committee shall be appointed and serve on an ad hoc basis until the Committee has issued its decision on the grievance in question. Participation on a Faculty Hearing Committee shall be considered "service" to the campus community for all applicable purposes.

10.13 Upon selection of the Faculty Hearing Committee, the Academic Vice President/Provost or designee shall provide written notice to the grievant, appropriate administrator, and the selected committee members. Faculty

Hearing Committees will be constituted and convened only during the Academic Year.

- 10.14 A hearing of the grievance in question shall be scheduled to occur within fourteen (14) days from the date of notification to all parties of the selection of the Faculty Hearing Committee at a mutually acceptable time at the campus where the grievant is employed.
- 10.15 There shall be no post-hearing briefs. The hearing will not exceed one (1) day with equal time for each party, except by written agreement of the parties.
- 10.16 Conduct of the hearing shall be at the discretion of the Faculty Hearing Committee but shall be open to the public at the discretion of the grievant. The standard of review by a Faculty Hearing Committee is the same as the standard of review by an arbitrator as specified below in this Article. The grievant shall have the burden of proving the substance of the grievance by a preponderance of the evidence.
- 10.17 The panel co-chairpersons shall ensure that an official record of the proceedings is taken in a manner agreed to by the parties. If no agreement is reached, the proceedings shall be recorded by the Faculty Hearing Committee and the grievant and the appropriate administrator shall each be provided a single copy of the recording if the grievance is subsequently appealed to arbitration under provision 10.21.
- 10.18 The grievant shall have the right of representation before the Faculty Hearing Committee by a faculty adviser or other representative of their choice.
- 10.19 The Faculty Hearing Committee shall file with the appropriate administrator its written grievance decision within fourteen (14) days of the commencement of the hearing. Such decision shall include a statement of reasons for any denial or granting of the grievance. All limitations on the authority of an arbitrator, including those specified in 10.26(i), (j) and (k) below, apply to the recommendations of the Faculty Hearing Committee.

Presidential Review

10.20 The Faculty Hearing Committee shall provide the President, the grievant, the appropriate administrator, and the grievant's representative (if any) with a copy of its written grievance decision at the time it is issued. Within twenty-one (21) days of the President's receipt of the decision, they shall inform the grievant and Faculty Hearing Panel Co-Chairpersons in writing of their decision, which may be to accept the decision of the Faculty Hearing Committee; to accept the decision in part and reject the decision in part; or to reject said decision. In the event the President determines to reject the decision of the Faculty Hearing Committee, they shall provide a statement of reasons for said decision.

10.21

- a. If there is no disagreement between the Faculty Hearing Committee's decision and the President's decision, then the President's decision shall be final and binding.
- b. If the President rejects a decision of the Faculty Hearing Committee to sustain the grievance in question, the grievant may elect to go before an arbitrator whose decision shall be final and binding.
- c. Where the President agrees in part, and disagrees in part, with a decision of the Faculty Hearing Committee, then it is only the issue(s) with which the President disagrees that may be appealed to an arbitrator whose decision shall be final and binding. The President's decision on issues on which there is no disagreement shall be final and binding and not subject to arbitration.

Any election for arbitration pursuant to (b) or (c) preceding shall be made either by certified mail, return receipt requested, or electronic mail, directed to the Office of Labor Relations in the Office of the Chancellor within seven (7) days of receipt of the President's decision. If electronic mail is used, a copy of the email shall serve as receipt. ~~The grievant may also request arbitration by telefax/facsimile transmittal. If telefax/facsimile is used,~~

~~the transmittal cover letter shall serve as receipt.~~ Failure to request arbitration within seven (7) days of receipt of the President's decision shall constitute a waiver of the right to an arbitration hearing, and the President's decision shall be final and binding. Said arbitration shall be conducted according to the rules and procedures set forth in provision 10.26.

### Contractual Procedure

10.22 If the grievant elects to pursue the Contractual Procedure (and in all CFA-filed grievances), within twenty-one (21) days after the filing of the grievance, the appropriate administrator shall hold a meeting with the grievant and the grievant's representative, if any, at a mutually acceptable time and location. The appropriate administrator shall respond in writing to the grievant, no later than twenty-one (21) days after the Level I meeting. Such response shall include a statement of reasons for any denial of the grievance.

### Level II – Office of the Chancellor

This section is not applicable to any grievance filed under the Contractual Procedure challenging the non-appointment or non-reappointment to a probationary or tenured position or the denial of tenure or promotion.

10.23 In the event the grievance is not settled to the grievant's satisfaction at Level I, the grievant may file a Level II grievance with the Office of the Chancellor no later than twenty-one (21) days after the Level I response. The grievant shall attach a copy of the previous grievance response together with any documents presented at that level.

10.24 A designated individual in the Office of the Chancellor and the representative of the grievant, if any, shall schedule a grievance meeting ~~at the Office of the Chancellor~~ within twenty-one (21) of the Level II filing. The meeting shall be held via videoconference or telephone, unless the parties mutually agree to hold the meeting in a different manner.

- a. At the Level II meeting the grievant shall identify to the designated individual in the Office of the Chancellor the specific provision(s) of this Agreement and/or any other source(s) of the right(s) alleged to have been

violated. The grievant may include additional provisions/sources to those cited at any Level I meeting.

- b. In cases where CFA is the grievant, and is grieving on behalf of a group of employees, the grievant shall define in writing the class(es) of Unit 3 members on whose behalf the CFA is seeking a remedy.
  - i. Where the names of the grievants within the class are known to the CFA at the time of the Level II meeting, then the CFA shall identify the individuals within the class(es) by name.
  - ii. Where the CFA claims that it does not have sufficient information available for it to be able to identify the class(es) of grievants by name at the time of the Level II meeting, then the CFA shall nevertheless define the class(es) of grievants to the CSU with sufficient specificity so as to allow the CSU to identify, through further inquiry, the individuals within the said class(es) by name.
- c. The designated individual in the Office of the Chancellor shall respond no later than twenty-one (21) days after the meeting, and the written response shall specifically address the issues raised in the Level II meeting.

10.25 If the grievance is not settled at Level II, then within forty-two (42) days after receipt of the Level II response or the expiration of the time limits for filing such response, the CFA, upon the request of the grievant, may request arbitration by giving notice to that effect, by electronic mail, facsimile, or certified mail, return receipt requested, directed to the designated individual in the Office of the Chancellor consistent with 10.2f. The CFA may also request arbitration by electronic mail, facsimile, or certified mail, return receipt requested, directed to the designated individual in the Office of the Chancellor consistent with 10.2f. Representation at arbitration shall be by CFA only. CFA may not add or make any modifications, amendments to the grievance or make new claims at arbitration that were not raised in the Level I or Level II filing.

Arbitration

10.26 Unless the specific language of the Agreement is in conflict, the arbitration procedure shall be conducted in accordance with the AAA Labor Arbitration Rules, subject to the following provisions:

- a. The parties shall meet within thirty (30) days of the ratification of this Agreement to select a panel of at least twenty (20) members. If at least twenty (20) arbitrators are not selected for the list within a sixty (60) day period from the ratification of this Agreement, the unfilled position(s) will remain in the rotation. Each time a vacant position comes up in the rotation, the parties shall designate arbitrators for each case assigned to the vacant position(s) in accordance with AAA Labor Arbitration Rules. The parties shall split the administrative cost of obtaining a list from AAA by having the CSU pay the full cost for the first occurrence, with the cost of subsequent occurrences alternating between the parties. The parties will continue the traditional practice of splitting the arbitrator's fee. The parties may mutually agree to add arbitrators to the list at any time.
- b. If the parties agree to a panel of arbitrators, either party may peremptorily challenge two (2) members on the panel at any time during the term of this Agreement and such panel member shall be removed from the panel and replaced with a new mutually acceptable replacement. If the parties are not able to agree on a replacement within thirty (30) days, then the cases scheduled for that particular arbitrator, or any new cases that would otherwise have been scheduled for that arbitrator by virtue of the procedure detailed in 10.26(d), will be heard by an arbitrator designated by the parties in accordance with AAA Labor Arbitration Rules on a case by case basis until agreement on a replacement is reached. Once a party has notified the other party of its intention to remove an arbitrator, no new cases shall be heard by that arbitrator, and that arbitrator shall not be notified of their removal prior to the receipt by the parties of any of their pending awards.
- c. Grievances with continuing financial back pay liability, and grievances alleging an unsafe work environment, shall be scheduled for hearing in arbitration in the chronological order of their appeal to arbitration, prior to both the scheduling of any grievances with no continuing financial back pay liability, or any grievance which does not allege an unsafe work

environment. The parties recognize that from time to time it may be in the interest of both parties by mutual agreement to schedule cases for arbitration in other than chronological order. Absent such mutual agreement, arbitration hearings shall be scheduled in the same chronological order in which each case was appealed to arbitration.

- d. Any grievance, except those involving the denial of promotion, filed to arbitration shall be considered withdrawn if the parties have not, within twelve (12) months of the date of filing to arbitration, agreed upon a date and scheduled the case for hearing with the arbitrator assigned to the case. Disputes involving the denial of promotion shall be considered withdrawn if the parties have not, within eighteen (18) months of the date of filing to arbitration, agreed upon a date and scheduled the case for hearing with the arbitrator assigned to the case. In each case, this provision shall be extended for an additional thirty (30) days at a time, in cases where the Union has agreed to dates proposed by an arbitrator which are unacceptable to the CSU, or in cases where the CSU has not responded to the dates proposed by the Union. In order to assign arbitrators to cases and schedule hearings as expeditiously as possible, the parties shall observe the following procedures: Following selection of the panel, arbitrators shall be assigned numbers in alphabetical order by last name. Cases shall then be assigned at first instance to arbitrators in the order established by lot, and sequentially thereafter by reference to that established order.
- e. If any arbitrator assigned to hear a case through the procedure set forth in 10.26(d) is unable to offer at least one hearing date within one hundred and ten (110) days of the date they were assigned the case, the case shall be reassigned to the next arbitrator in the rotation, who shall be required to offer at least one hearing date within one hundred and ten (110) days of being assigned the case. If the next arbitrator in the rotation is not able to offer a date within one hundred and ten (110) days, then the process shall be repeated.
- f. The parties shall accept the first date offered pursuant to 10.26 e. Either party may request the date to be rescheduled based on witness availability or other issues that require rescheduling.

- g. In the event that vacancies occur in the agreed upon panel whether by challenge or unavailability of an arbitrator, such vacancies shall be filled by mutual agreement within fourteen (14) days of the date of the vacancy. If mutual agreement is not possible, each party shall submit to the other a list of five (5) preferred replacement arbitrators. The parties shall alternately strike from the combined list of ten (10) arbitrators until a single name remains who shall be designated as the replacement arbitrator. Option for the first strike shall be determined by a coin toss.
- h. No later than ten (10) days prior to the date of an arbitration hearing the parties shall confirm any arbitrability issue(s) to be raised, attempt to formulate a joint statement of issue, exchange the names of all anticipated witnesses, and provide (and identify as exhibits) copies of all documents anticipated to be entered into evidence. This provision shall not preclude either party from calling witnesses or entering documentary evidence not identified during this discussion. Scheduled hearings shall not be delayed or postponed due to the failure to complete this discussion.

Absent a mutual agreement to the contrary, if an arbitrability question exists, there shall be a bifurcated hearing in which the arbitrator shall determine the arbitrability question after the submission of post-hearing briefs and prior to a separate hearing, if any, on the merits of the grievance.

- i. The arbitrator's award shall be based solely upon the evidence and arguments appropriately presented by the parties in the hearing, the record of the Faculty Hearing Committee (if any) and upon any post-hearing briefs. Upon mutual agreement of the grievant and the CSU, a grievance may be submitted to an arbitrator for final determination based solely on the record of the Faculty Hearing Committee, documents and briefs submitted by the parties, without need for a hearing.
- j. The arbitrator shall have no authority to add to, subtract from, modify, or amend the provisions of this Agreement.
- k. 1. The standard for review of the arbitrator in statutory cases or contractual cases filed by individual faculty, except in grievances challenging the non-appointment or non-reappointment to a probationary or tenured position or the denial of tenure or

promotion, is whether the CSU directly wronged the grievant(s) in connection with the rights accruing to their job classification, benefits, working conditions, appointment, reappointment, tenure, promotion, reassignment, or the like. The arbitrator may not review matters, such as the salary structure, which require legislative action or merit pay.

2. The standard for review for the arbitrator in contractual cases filed by CFA is whether the CFA, an employee or a group of employees have been directly wronged by a claimed violation, misapplication or misinterpretation of a specific term or provision of this Agreement.
1. The standard of review of an arbitrator in grievances challenging the non-appointment or non-reappointment to a probationary or tenured position or the denial of tenure or promotion shall be as follows:

In grievances challenging the non-appointment or non-reappointment to a probationary or tenured position or the denial of tenure or promotion, the arbitrator shall recognize the importance of the decision not only to the individual in terms of their livelihood, but also the importance of the decision to the institution involved. The arbitrator shall not substitute their judgment for the decision of the President made in the RTP process, but may correct violations of procedure or arbitrary, capricious, or discriminatory decisions by a President only as follows:

The arbitrator shall not find that an error in procedure will overturn an appointment or re-appointment to a probationary or tenured position, promotion, or tenure decision on the basis that the proper procedure has not been followed unless:

1. The arbitrator finds on a preponderance of evidence that a procedural error occurred; and
2. that such error was prejudicial to the decision with respect to the grievant.

The normal remedy for such a procedural error will be to remand the case to the decision level where the error occurred for reevaluation, with the arbitrator having authority in their judgment to retain jurisdiction.

An arbitrator shall not grant appointment or re-appointment to a probationary or tenured position, promotion, or tenure, except in extreme cases where it is found on clear and convincing evidence that:

3. The final campus decision was not based on reasoned judgment;
4. but for that, it can be stated with certainty that appointment or re-appointment to a probationary or tenured position, promotion, or tenure would have been granted; and
5. no other alternative except that remedy has been demonstrated by the evidence as a practicable remedy available to resolve the issue.

The arbitrator shall make specific findings in their decision as to the foregoing.

- m. In arbitrations in which the CFA (or its agent) is either a grievant or a grievant's designated representative, the cost of the arbitrator's fee, including any cost of a transcript requested by both parties, shall be borne equally by the parties except
  1. In all cases, each party shall bear the costs of its advocate(s).
  2. Unilateral withdrawal, unilateral postponement and unilateral cancellation fees shall be borne by the party who requests the withdrawal, postponement or cancellation.
  3. Expenses for witnesses shall be borne by the party who calls them.
  4. In arbitrations in which the CFA is neither a grievant nor a grievant's designated representative, the costs incurred in arbitration shall be paid by the CSU in accordance with Education Code Section 89542.5.
- n. A final decision or award of the arbitrator shall be made within thirty (30) calendar days after the submission of briefs, and/or the close of the hearing

where the parties have agreed not to submit post-hearing briefs. Such decision or award shall be binding upon the CFA, the CSU, and the employee(s) affected thereby.

Grievances Pertaining to the Appointment, Reappointment, Work Assignments or Careful Consideration per Article 12 of Temporary Faculty: Permanent Umpire

10.27 If a grievant pursuing a grievance on a matter pertaining solely to appointment, reappointment, or work assignment under Article 12 is not satisfied with the resolution of their grievance by the Faculty Hearing Committee process, including presidential review (provisions 10.20 through 10.21), or by the Office of the Chancellor at Level II, then in lieu of the arbitration procedures set forth elsewhere in this Article, the grievant may submit the grievance to a special, permanent Article 12 Umpire jointly selected by CFA and CSU who shall hear all such grievances thus appealed. The deadlines for submission of the grievance to the Article 12 Umpire shall be the same as specified for submissions to Arbitration under this Article. The Umpire shall schedule a hearing on such cases within thirty (30) days of the Umpire's receipt of the appeal at a time and place acceptable to the parties. Since time is frequently of the essence in rendering a remedy that is meaningful for both temporary faculty members and the departments that need to make real time hiring decisions, hearing procedures shall be as determined by the Umpire, consistent with the principles of due process and the goals of expedition and efficiency, but shall provide for no more than one (1) day of hearing except by written agreement of the parties. Except upon the written agreement of the parties in a particular case, no briefs shall be filed. The Umpire's decision sustaining or denying the grievance shall be issued in the form of a bench ruling after a brief study period at the conclusion of the hearing, but in no event later than three (3) days from the close of the hearing, and need not include supporting rationale unless requested by a party. The Umpire's decision shall not set a precedent, and it shall not be cited in any other administrative or legal forum.

10.28 a. The parties shall meet within thirty (30) days of the ratification of this Agreement to select an umpire to hear cases pursuant to Sections 10.27-29 of this Agreement. If no agreement is reached, each party shall designate three (3) arbitrators for possible selection. The parties shall

alternately strike from the combined list of six (6) arbitrators until a single name remains who shall be designated as the Umpire. Option for the first strike shall be determined by a coin toss.

- b. If the Umpire thus selected is unable to provide the number of hearing dates required by provision 10.28(d), this process shall be repeated using another list of six (6) names designated by the parties until an Umpire is selected who can fulfill the requirements of Section 10.28(d). It shall not be a bar that any individual so designated had previously been submitted in any previous stage of this process. This process shall also be used if an Umpire selected withdraws from this position after selection and acceptance of the appointment.
- c. The term of the Umpire shall be one (1) year from the date of selection. At the end of this term, either party may decline the reappointment of the umpire. If an appointment is not renewed, the process described in the preceding will be repeated using a new group of six (6) nominees if mutual agreement on a successor Umpire is not reached.
- d. Upon selection by the parties, the Article 12 Umpire shall be scheduled for a minimum of two (2) hearing dates per month for the resolution of the previously-referenced temporary faculty Article 12 cases, unless there are insufficient pending cases to warrant the scheduling of the minimum two (2) hearing dates.

The costs of the Umpire procedures shall be allocated as provided in provision 10.26 for standard arbitration proceedings.

10.29 By mutual written agreement of the parties, issues other than grievances pertaining solely to appointment, reappointment or work assignment under Article 12 may be referred to the Umpire for adjudication through this Umpire procedure, provided that at least one of the issues being grieved pertains to appointment, reappointment or work assignment under Article 12.

### Mediation

10.30 Grievances appealed to arbitration under the Contractual Procedure or the Statutory Procedure may be subject to mediation in accordance with the following:

- a. The party requesting mediation shall request mediation within thirty (30) calendar days after the Union has filed a request for arbitration. This time period may be waived upon the mutual agreement of both parties.
- b. Grievances shall not proceed to mediation except by the mutual written agreement of both parties.
- c. The timelines and order of the scheduling of grievances for arbitration pursuant to this Article shall not be affected by the parties' desire to invoke mediation.
- d. The parties shall establish a panel of three (3) mediators by mutual agreement, who shall serve in alphabetical rotation. Members of the arbitration panel established pursuant to this Article shall not be eligible to serve on this mediation panel.
- e. The procedures set forth in California Evidence Code Section 1152.5 shall be applicable to mediation conducted pursuant to this Agreement.
- f. All costs of mediation shall be borne equally by both parties.
- g. The recommendations of a mediator, if any, shall be advisory only and shall not be binding upon the parties. If the parties agree to accept the mediator's recommendation, the decision shall be reduced to writing and signed by both parties. Neither party shall enter into evidence at a subsequent arbitration hearing any recommendation(s) of the mediator.

### General Provisions

10.31 Wherever a time limit is provided by this Article, the participants at that level may extend the period by mutual consent in writing. However, the time limit for filing the initial grievance at Level I may only be extended by the President. It is understood that the purpose of the procedure is to resolve grievances promptly and that extensions shall be sought only for good cause.

10.32 When meetings, conferences, Faculty Committee hearings or arbitration hearings are held under this Article, employees who are entitled to attend, including Faculty Hearing Committee members, or who are called as witnesses

by a party, shall be excused for that purpose from other duties without penalty, provided that arrangements are made for coverage of the employee's duties.

10.33 No reprisals shall be taken against any employee for the filing and processing of any grievances.

10.34

- a. Except for good cause shown, only those events, issues, and sections of this Agreement cited in the initial filing at Level II may be considered at subsequent levels.
- b. In cases where the CFA is the grievant, only the CFA and those members of the class described pursuant to provision 10.24(b), shall be eligible for a remedy.

10.35 After the grievance has been filed at Level I, a representative and the grievant shall be provided reasonable release time for the purpose of preparation and presentation of the grievance at Levels I and II or the Faculty Hearing Committee, provided that such release time shall not conflict with any scheduled classes and office hours.

10.36 Upon failure of the Employer or its representatives to provide a decision within the time limits provided in this Article, the grievant or CFA, where appropriate, may appeal to the next step. Failure of the grievant or CFA, where appropriate, to participate in the Level I meeting within the required 21-day timeframe, absent a mutually agreed-upon written extension, shall render the grievance non-arbitrable. If the grievance is not resolved at Level I and a Level II grievance is filed, the decision at Level II shall be final and binding on all Parties, with no further right to arbitration or appeal. Upon the failure of the grievant or CFA, where appropriate, to file an appeal within the time limits provided in this Article, the grievance shall be deemed resolved by the decision at the prior step.

10.37 In cases where it is necessary for the grievant or their representative to have information for the purpose of investigating a grievance, the grievant or their representative shall make a written request for reasonably specific information to the appropriate administrator. The grievant or their representative shall have the right to receive, within thirty (30) days, such information not protected from disclosure under the laws and regulations governing the right of privacy that would assist in adjusting the grievance. The CSU shall notify the grievant

or their representative whenever the information cannot be provided within this thirty (30) day period. Such notification shall include the grounds on which the CSU has determined that the requested information is protected from disclosure.

10.38 When a party has made a request for data or documents it is legally entitled to receive, and if an arbitrator determines that the responding party failed to provide such data or documents in a timely manner, then the party failing to provide the materials may be prohibited from introducing or relying upon that material in the arbitration hearing. Among the factors to be considered in determining whether the failure to produce such data or documents in a timely manner should lead to their exclusion are the availability of the data or documents, the form in which the material is available, and the amount of labor involved in producing the materials, as well as the cost of such production. Production shall include providing access to data and documents readily available on line.

10.39 A decision to submit a grievance to arbitration shall be a waiver of all other remedies except as provided otherwise by statute.

10.40 A grievance settlement shall not set a precedent, except as otherwise mutually agreed in writing by the CSU and the CFA.

10.41 A grievance may be withdrawn at any time. The grievant is then prohibited from filing any subsequent grievance on the basis of the same event.

10.42 The CSU and CFA may mutually agree to consolidate grievances on similar issues at any level.

10.43 No resolution of any individually processed grievance shall be inconsistent with the terms of this Agreement. The CSU will not agree to a resolution of the grievance until the CFA has received a copy of the grievance and the proposed resolution and has been given the opportunity to file a response. If the CFA is neither a party to the proceeding nor the grievant's designated representative in the proceeding, any recommendation of the Faculty Hearing Committee or decision of an Arbitrator shall not operate as a precedent.

10.44 The parties acknowledge that grievance records, including grievance files and the content of grievance meetings, may contain information subject to the right

of privacy. Grievance records shall be kept in a file separate from the grievant's Personnel Action File, and may be used in arbitrations. Access to information in grievance records is limited to personnel having legitimate business reasons to access it.

10.45 Time limits shall be considered tolled when personnel are unavailable due to illness, vacations, or professional reasons.

Grievance Administration

10.46 From time to time, the CFA Central Office and the Office of the Chancellor shall compare grievance records for the purpose of developing and maintaining a common systemwide grievance docket.

10.47 Grievance rights pursuant to this Article shall not be curtailed on the last date of employment if said grievance rights are exercised in accord with provision 10.4 of this Article and such other filing requirements as may apply.