

## ARTICLE VI

### GRIEVANCE PROCEDURE

#### A. Preface

Any member of the bargaining unit or the Association on behalf of any member of the bargaining unit or on its own behalf may grieve alleged violation of the Collective Bargaining Agreement, applicable policy(ies) and regulations and administrative determinations made without just cause affecting the bargaining unit member. There shall exist two (2) separate exclusive processes to respond to such grievances. All grievances except for those involving promotion, and/or tenure denial or non-reappointment of non-tenured faculty shall proceed through and in accordance with that process set out by provision B., Arbitrable Grievances, below. All grievances, by faculty, surrounding determinations regarding promotion, and/or tenure and all those regarding non-reappointment of non-tenured faculty shall proceed through and in accordance with that process set out by provision C., Faculty Tenure; Promotion; Non-Reappointment Grievances, below.

#### B. Arbitrable Grievances

##### 1. Time Parameters

The purpose of this process is to assure prompt and equitable solutions to the problems arising from the administration of this Agreement or other conditions of employment. Such promptness is an essential element. Failure of a grievant to meet any of the calendar limitations stipulated in the procedure below will constitute a waiver of his/her rights to claim grievance on the basis of the same alleged factual situation. Likewise, a failure on the part of a representative of the Employer to meet the obligations of any step in the grievance procedure within the prescribed period of time will give the grievant an automatic right to proceed to the next available step in that procedure. Time limits provided in this Article may be extended by mutual agreement of the parties. It is understood, however, that nothing contained in this procedure should be construed as limiting the right or propriety of a member of the bargaining unit to discuss any problem informally with an appropriate member of the administration.

##### 2. Procedure for Handling Grievances

###### a. Step One

A Grievant shall set forth his/her grievance, in writing, specifying the facts involved, the alleged improper action and the requested remedy. This grievance must then be discussed formally with the appropriate Dean or Director. The Dean or Director shall provide written response to the grievant, with a copy to the Vice President

of Human Resources within ten (10) days following the discussion. All settlements of grievances at this level are expressly without precedent.

b. **Step Two**

Within forty (40) calendar days after the date of the occurrence causing the grievance or of the time the grievant should have reasonably known of the occurrence causing the grievance, the grievant shall, if he/she is not satisfied or has not received response through the process provided for in Step One, submit in writing to the Vice President of Human Resources or Provost, the facts of the grievance and the desired adjustment. For grievances involving faculty, teaching staff and academic administrators, the Vice President of Human Resources shall forward the grievance to the Provost who shall designate a Step II Hearing Officer. Grievances brought by or on behalf of Professional Staff members shall be referred to the Vice President of Human Resources who shall then designate a Step II hearing officer.

The Association shall be notified by the Step II Hearing Officer in the event the grievant chooses not to be represented by the Association for the subject grievance, and an Association representative shall have the right to be present at this and all subsequent steps in the grievance procedure and to present the views of the Association. The Step II Hearing Officer, within fourteen (14) days after receipt of the written grievance, shall meet with the grievant in an effort to resolve the grievance. The Step II Hearing Officer shall indicate his or her disposition of the grievance, in writing, within fourteen (14) days of said meeting to the grievant, and the Association, with copies to the Vice President of Human Resources.

c. **Step Three**

If the grievance is not satisfactorily resolved at Step Two of this procedure, the grievant or the Association, on its own initiative, shall, within fourteen (14) days, from the date of notice of the Step Two response, transmit the grievance to the Provost or the Vice President of Human Resources, depending upon whether the grievance involves Professional Staff or faculty. The Provost, or the Vice President of Human Resources, as applicable (the Step III Hearing Officer) may hold a meeting on the grievance if he/she deems it necessary. The Step III Hearing Officer shall review the grievance record and shall issue a written response to the grievance within twenty (20) days following notice of the Step Three transmittal.

- d. **Step Four**  
If the grievance is one which can be carried beyond Step Three and no satisfactory solution has been reached, and the Association desires to institute binding arbitration proceedings, it must, within thirty (30) days of notification of the Step III reply, give proper notice to PERC with a copy to the Vice President of Human Resources, who shall provide copies to the General Counsel and the Provost. Such binding arbitration proceedings shall be in accordance with the rules and regulations of PERC.
- e. A grievance alleging a violation of the negotiated Agreement may be resolved by settlement only if agreed to in writing by the Employer and the Association.
- f. Copies of the written decision reached at each formal step of the grievance procedure together with all written documents specifically cited as rationale for the decision shall be provided to the Association within fourteen (14) days of specific request for documents by the Association.
- g. The grievance procedure shall be available only through Step Three in cases involving decisions related to salary increments.

3. **Parameters on Arbitration:**

- a. The only grievances which may be processed beyond Step Three and which may be arbitrated are those based upon an allegation that there has been a violation of this locally negotiated Agreement, including negotiated terms and conditions of employment embodied in university policy and regulation incorporated into the Agreement by reference.
- b. The Arbitrator shall have no authority to rule on grievances which concern actions taken by individuals or officials outside of the university, or which relate to governmental statutes or regulations affecting terms and conditions of employment.
- c. The decision of the Arbitrator shall not in any manner modify or cause anything to be added to or subtracted from this Agreement, any policy of the Employer, or any official agreement secured through faculty governance.
- d. Fees and expenses of the Arbitrator, as such occur, shall be shared equally by the Employer and the Association.

C. **Faculty Tenure; Promotion; Non-Reappointment Grievances**

**1. Grievance Process**

- a. The purpose of this exclusive process is specifically to provide the faculty recipient of an unfavorable tenure, promotion or non-reappointment determination, an opportunity to have such determination(s) expeditiously reviewed by the Employer, through an exclusive, binding and final process, to ensure the determination is not the result of a violation of procedure or capricious or discriminatory treatment of the grievant of substantial prejudicial affect upon the substantive academic decision rendered. A finding by the authorized designee of the Parties to the Agreement, of a substantial violation of procedure and/or caprice and/or discriminatory treatment, unduly prejudicing the affected faculty member, shall result in remand, only, to academic process for academic reconsideration absent those specific process irregularities and/or improprieties unduly affecting and prejudicing the original determination grieved pursuant hereto. Nothing herein shall modify or abridge the authority of the President and the Board of Trustees of the Employer from utilization of the management prerogatives specifically retained, pursuant to this Agreement, relative to promotion, reappointment and tenure.
- b. The provisions concerning the requirements of timely filing and notice, in Article VI, Grievance Procedure, provision B., Arbitrable Grievances, and D., Notice, herein, shall apply with equal force to all steps of Article VI, Grievance Procedure, provision C. Faculty Tenure; Promotion; Non-Reappointment Grievances, above. It is further expressly understood that no procedural defect in original academic determination grieved, pursuant hereto, or in the process hereafter set out, shall result in reappointment, tenure or promotion; these are deliberative processes that may not be gained through error, omission or default in action.

**2. Procedure for Handling Grievances**

a. **Step One**

The grievant must file his/her grievance, in writing, with the appropriate Dean, setting forth a summary of facts relied upon in making the specific claim of redressable impropriety in the promotion, tenure and/or reappointment process that serves as the basis of the grievance. Any and all grievances must be filed at Step One within thirty (30) calendar days of notice to the grievant of the academic decision grieved.

Within ten (10) days following formal filing with the Dean, consistent with the notice provisions herein, the Dean or his/her designee shall provide a meeting with the grievant (and Association representative if the grievant so desires) to hear the grievance and review its procedural and substantive merit. Within ten (10) calendar days following the grievance meeting, the Dean or his/her designee shall provide written response to the grievant, the Vice President of Human Resources and to the Association, disposing of the grievance, either affirmatively or negatively, and with or without conditions or qualifications.

b. **Step Two**

Within fourteen (14) days following noticed disposition of the grievance at Step One, if the grievant remains dissatisfied with the imposed or proposed resolution at Step One, the grievant may advance the grievance to Step Two for review and response from the Provost or his/her designee.

The grievance as submitted to Step Two must specifically identify those aspects of the Step One response that are unsatisfactory and why. It must explicitly state why the grievance is valid, attaching or identifying all evidence in support of such continuing claim. The redress demanded must be specified.

Within fourteen (14) days following formal filing with the Provost, consistent with the notice provisions herein, a hearing with the grievant and an Association representative, if the grievant so desires, shall be conducted for the purpose of procedural and substantive review of the merit of the claim(s). Within fourteen (14) days following the hearing, the Provost or his/her designee shall provide written response to the grievant disposing of the grievance, either affirmatively or negatively and with or without conditions or qualification(s), and setting forth specific reasons for the disposition. A copy of the disposition shall be forwarded to the Vice President of Human Resources and the Association.

c. **Step Three**

Within fourteen (14) days following noticed disposition of the grievance at Step Two, if the grievant and the Association remain dissatisfied with the imposed or proposed resolution at Step Two, the Association may file the grievance with the university Academic Process Review Committee ("APRC") in the manner set forth in D(4) of this Article, for final, exclusive, formal disposition of the grievance, within the parameters set out below:

**i. University Academic Process Review Committee (APRC) Term and Composition**

The APRC shall serve one (1) year terms to expire at the close of each fiscal year of this Agreement (June 30). However, the APRC shall retain jurisdiction to hear all grievances, formally filed and appropriately at Step Three herein, during its term. Subject to c.iii. below the APRC shall be comprised of four (4) university employees, two (2) selected by the Association and two (2) selected by the Employer. Selection may come only from among those faculty at the rank of Professor and Distinguished Professor. Additionally, neither the Provost, the University President, the Association President, the Association Grievance Chair nor any prior step hearing officer may serve as a member of the APRC.

- (1) All members of the APRC must, during his/her term, abstain from discussion and voting on promotion, tenure and/or reappointment decisions concerning faculty within the APRC members' respective academic department.

**ii. APRC Charge**

The APRC's purpose is expressly and exclusively directed and limited to review of the functioning of the academic process in issue, for a determination of whether there exists substantial process failure, resulting in capricious determination, or substantial procedural violation or discriminatory treatment by the university bodies so charged to render the academic and/or employment recommendation(s) or judgment(s) that serve as the subject of the grievance. The members of the APRC must reduce their collective findings to writing and failing consensus, each dissent therefrom must be express, in writing and available to the university, the Association and an arbitrator as selected pursuant to Agreement.

**iii. APRC Authority**

The APRC's disposition is expressly limited to either dismissal of the grievance with prejudice or remand to academic process, where process failure is found, for reconsideration, in compliance with university policy,

absent the process failure determined. Remand or Dismissal shall be unconditional. Recommendation may be made for disqualification, from remanded review, of an individual, group of individuals or entire APRC, if the APRC finds prejudice is unabateable upon remand, except that recommendation that the university President be disqualified in his/her role as Employer is prohibited.

iv. **Investigative Process**

The APRC shall be entitled to official minutes of deliberative meetings of the Department and University Promotion and Tenure APRC that pertain only to the grievant. Additionally, the APRC shall be entitled to that packet of material as submitted by the grievant for review in accordance with established procedures. The APRC may call pertinent witnesses from the recommending bodies, the Employer or others who the APRC has identifiable reason to believe hold information relevant to disposition. Disposition shall be in writing and noticed to the Employer and Association and shall be based upon majority determination. Under no circumstances shall the APRC substitute its judgment for the academic judgment rendered by the bodies/persons charged with making such judgments.

v. **Advocacy**

Within thirty (30) days after the filing of the grievance to Step Three, the grievant must submit a detailed statement to the APRC and the Employer setting forth the evidence (including a list of documents and a summary of testimony of proposed witnesses) which the grievant intends to submit in support of his/her grievance. Within twenty (20) days after the submission of the grievant's detailed statement, the Employer may submit a responsive statement to the APRC setting forth its evidence (including a list of documents and a summary of proposed witnesses) in opposition to the grievance. Within ten (10) days after receipt of the Employer's Statement, the APRC shall schedule one or more hearings at which evidence may be presented.

Representatives of the Employer and/or the Association may file written briefs and/or make oral argument in support of or in opposition to the grievance. Said advocacy

shall not be denied if and when opted, and must be considered in final determination to the extent such advocacy is timely submitted and relevant to the issue before the APRC. Briefs must be submitted, to the APRC, within fourteen (14) days of the final hearing date, in duplicate. One (1) copy shall be transmitted to the opposing advocate when all briefs are in. Argument not made before the APRC is discouraged from appearing in the brief for the first time. Such argument may be excluded from consideration by the APRC. Submission of reply briefs shall generally be unavailable. However, upon request to the APRC, based upon argument not made theretofore, reply briefs shall not be unreasonably denied the advocates.

vi. **Parameters on Remand**

While the APRC is free to offer recommendation on improved process it shall not direct a schedule of compliance nor impose substantive or procedural regulation of the outcome or the process, beyond that available as codified policy relative to reappointment, promotion and tenure. If on remand, a prior academic judgment is overturned and tenure and/or promotion and/or reappointment is awarded, a grievant shall be made whole by ensuring no contractually guaranteed salary at the rate paid for the new position (i.e., tenure and/or promotion and/or reappointment) at the time of the academic decision overturned is lost to the grievant. This is the only, exclusive restitution available to a grievant under this provision of the Agreement.

vii. **APRC Deadlock**

Should the APRC fail, following a total of one hundred and twenty (120) days for investigation and deliberation of the submitted grievance, to determine, through majority decision, the limited issue(s) before it, then and in that event, the parties shall stipulate the record before the APRC and present same to an arbitrator/mediator, selected by the parties or, failing agreement between the parties, by PERC for decision within the guidelines herein established. The arbitrator/mediator shall question the parties for purposes of clarification of the record, however, there will be no other further advocacy allowed. The mediator's/arbitrator's jurisdiction shall be limited to determination as to whether



the record before him/her compels remand under the enabling provision; C., Faculty Tenure; Promotion; Non-Reappointment Grievances, 1.a. Grievance Process, supra.

viii. **Decision Finality with Prejudice**

Remand shall be available only once per academic process determination, based upon the same set of facts. A grievance claiming failed academic process, for the limited enabling reasons set out, supra, shall therefore, be heard but once, through to its conclusion as set out herein, unless the grievance is based upon an entirely different claim from that of original grievance and charges a new set of factual errors, omissions or misconduct not in existence at the time of the original grievance.

D. **Notice**

1. **Grievant**

Notice to the grievant shall be deemed to have occurred upon actual receipt by grievant of such notice or five (5) days following posted mailing to the grievant's last known address, through the U.S. mail, whichever first occurs.

2. **Employer**

Notice to the Employer shall be deemed to have occurred upon actual receipt by the Employer's designated representative of such notice or, if mailed in the continental United States, five (5) days following posted mailing to the Employer's designated representative at the correct university address for such representative, through the U.S. mail, whichever first occurs. If not mailed in the continental United States, notice to the Employer shall only be deemed to have occurred upon actual receipt by the Employer's designated representative.

3. **Association**

Notice to the Association shall be deemed to have occurred upon actual receipt by the Association President or expressly authorized designee, of such notice or five (5) days following posted mailing to the Association President or expressly authorized designee at the last known address, through the U.S. mail, whichever first occurs.

4. **Academic Process Review Committee**

Notice to the APRC shall be deemed to have occurred upon actual receipt by the APRC, c/o Provost's Office, of such notice or if mailed in the Continental United States, five (5) days following posted mailing to the APRC, c/o Provost's Office, at the correct university address, through the

U.S. mail, whichever first occurs. If not mailed in the continental United States, notice to the APCR shall only be deemed to have occurred upon actual receipt by the APCR.

**1. Days**

For purposes of timely filing and advancement of grievances only, unless otherwise expressly referenced herein, days shall refer to calendar days, excluding all university holidays and recesses (including summer recess) and all federal holidays whereby the U.S. Postal Department closes services.