

# **USA ARTICLE 27 (Would replace current Article 27)**

## **GRIEVANCE AND ARBITRATION PROCEDURE**

### **SECTION 1. INTRODUCTION**

The parties recognize that G.L. c. 150E Section 8 provides a mechanism for arbitration of disputes between the parties to a collective bargaining agreement and further provides that the parties to an agreement may establish an independent grievance procedure culminating in final and binding arbitration. It is the intent of the parties to this Agreement to use their best efforts to encourage the informal and prompt settlement of grievances which may arise between the Association or an employee or group of employees and the Employer. Therefore, the parties agree that they shall use the procedures set forth in this Article for the resolution of all disputes involving the interpretation or application of this Agreement, unless such matters have been specifically excluded from these procedures. Further, each party hereby waives its right if any, and the rights of all those whom it represents, if any, to use any other procedure established by law to initiate binding arbitration of grievances. In the event the Association or an employee elects to pursue any matter covered by this Agreement in any other forum, the Employer shall have no obligation to process or to continue to process any grievance or arbitration proceedings pursuant to this Article or Article 26 herein.

### **SECTION 2. DEFINITIONS**

- A. Conciliation Period – “Conciliation Period” shall mean the period of time for an informal grievance process, the rights of which may be exercised by the Grievant or Association to request a meeting of any Grievance. The period ends 10 days after said meeting, with the possibility of extension upon mutual agreement of the parties. The parties may also re-open the conciliation period at any time of the grievance process upon mutual consent of both parties.
- B. “Grievance” shall mean an allegation by the grievant(s) or the Association that an express provision of this Agreement has been breached in its application to them. A formal grievance shall state all the known facts material to the alleged breach on which the grievance is based, including the date when such breach is alleged to have occurred and the specific contractual provisions alleged to have been breached, and shall set forth the remedy requested.
- C. Grievant – “Grievant” shall mean an employee, a group of employees, or the Association on behalf of the employee(s), as the case may be, who, pursuant to the terms of this Agreement, seeks resolution of a grievance.
- D. Day - Except as otherwise provided in this Article, “day” shall mean a calendar day, inclusive of any Saturday, Sunday, or any of the holidays enumerated in Article 12 of this Agreement. The day of submission is not counted as a day for purposes of this Article.
- E. Immediate Supervisor - the term “Immediate Supervisor” for the purpose of this Article shall mean the first line work supervisor designated by the Vice Chancellor of Human Resources or designee (hereinafter in this Article “OVC”).
- F. Intermediate Supervisor - The term “Intermediate Supervisor” for the purpose of this Article shall mean the intermediate work supervisor designated by the OVC.

### **SECTION 3. INTENT**

It is the declared objective of the Employer and the Union to encourage the prompt resolution of grievances either by informal or formal procedures. In order to facilitate the prompt resolution of grievances, administrative officials identified in the grievance procedure may, upon notice to the Union, name a designee to fulfill their responsibilities as set forth herein. Any person designated by an administrative official identified herein to hear a grievance shall hear the grievance and render a decision. The parties recognize that the purpose of this procedure is the resolution of grievances through voluntary agreements, when possible. All settlement discussions or offers of settlement in the grievance procedure shall not be admissible for purposes of arbitration. Written documents prepared by either party in the grievance process shall be considered part of the record for purposes of arbitration.

### **SECTION 4. TIME LIMITS**

All days referred to in this Article shall mean calendar days. Time limits provided herein may be extended or delimited by written mutual agreement. A time limit that expires on a weekend day or on a holiday shall result in the time limit being automatically extended to the next day following the end of the weekend or the holiday.

Failure of the Employer/University Administration to respond to any grievance within the specified time limits of this Article shall mean that the grievant(s) and or the Union may take said grievance to the next level of the grievance procedure. Failure of the Union and/or grievant(s) to abide by the time limits set forth in this Article shall result in the grievance being deemed settled on the basis of the last written decision made during the grievance procedure by the Employer/University Administration.

### **SECTION 5. ELIGIBILITY**

During the probationary period a bargaining unit member shall not have recourse to this Grievance and Arbitration Procedure to contest discipline or discharge.

### **SECTION 6. PROCEDURES FOR FILING A GRIEVANCE**

To initiate a formal grievance, a grievant shall file, in writing (either electronic or on paper) on the Official Grievance Form attached hereto as Appendix E, a grievance at the appropriate level. A grievance may be filed at the level at which the action or inaction being grieved occurred. If the hearing officer at the level at which the grievance is filed finds that the grievance has been filed at the wrong level, it will be returned to the grievant(s) without prejudice for filing at an appropriate level. No such notice may be filed more than thirty (30) days from the date of the occurrence of the event or the date on which the unit member had reasonable knowledge of the event or conditions upon which the grievance is based. Upon mutual agreement of both parties, the parties may enter a conciliation period at any point in the grievance process, tolling all procedural timelines.

#### **A. Step 1: Informal – Immediate Supervisor and/or Human Resources Representative -**

A grievant may institute the grievance procedure of this Article by notifying their

immediate supervisor and/or the appropriate Human Resources representative in writing that a grievance exists. The parties, which may include a union representative, shall meet as soon thereafter as practicable, whether remotely or in-person, to try to resolve the matter informally during the conciliation period. Any resolution shall be consistent with the contract and without precedent to any future matters between the University and the Association. A grievant may initiate the formal grievance process if resolution cannot be reached.

- B. **Step 2: Intermediate Supervisor** - If the grievant elects to proceed to this Step, then within ten (10) days after the receipt of the Step 1 decision, the grievant shall file a grievance with the intermediate supervisor and provide a copy. The intermediate supervisor shall, within five (5) days of receipt of the grievance, arrange to meet with the grievant to resolve the dispute and shall respond in writing within ten (10) days from the date of the meeting.
- C. **Step 3: Vice Chancellor of Human Resources or designee** - If the grievant elects to proceed to this Step to appeal a Step 2 decision, then within ten (10) days of receipt of the Step 2 decision, they shall send a notice of this intent to the OVC and a copy of the notice to the intermediate supervisor who, upon receipt of said notice, shall forward the grievance record to the OVC. The OVC shall, within five (5) days of receipt of the grievance, arrange to meet with the grievant for a review of the grievance and shall respond in writing within ten (10) days of the date of the meeting.
- D. **Step 4: The President of the University of Massachusetts or designee (Hereinafter in this Article “the President”)** - If the grievant elects to proceed to this Step, then within ten (10) days of receipt of the Step 3 decision, he/she shall file a notice of this intent with the President and a copy of such notice with the OVC. The OVC shall forward, forthwith, a complete copy of the grievance record to the President. Within thirty (30) days of receipt of the notice required to initiate this step or of a brief, if the Association elects to so submit, the President shall review said grievance and issue a written decision. A brief must be submitted within ten (10) days of the notice of appeal.

**Mediation.** The parties may agree, as an alternate to step 4, to refer the matter to Grievance Mediation. A grievance mediator may be requested from the Commonwealth of Massachusetts Division of Labor Relations or the parties may agree on the choice of a neutral mediator. If after sixty (60) days the grievance is not settled, the Association may proceed to step 5 Arbitration. The costs of mediation shall be shared equally by the parties. All statements, documents, communications, and correspondence made during or concerning grievance mediation shall not be admissible at Arbitration. The parties understand the purpose of the prior sentence is to facilitate communications during mediation and not to prevent the introduction of otherwise admissible evidence at arbitration

E. **Step 5: Arbitration**

*Initiation of Arbitration:* Within fifteen (15) days of receipt of the step 4 decision arbitration of a grievance may be initiated subject to and in accordance with the following provisions:

1. The Association shall have the exclusive right to initiate arbitration of a grievance. Whenever the Association shall initiate arbitration of a grievance, the resolution of which has been previously sought by a member or members of the Association, then such

- member or members shall join in or shall be deemed to have joined in, as a party to said proceeding and shall be bound in all respects by the decision of the arbitrator to the same extent as the Employer and the Association.
2. The Association may initiate arbitration of a grievance only if the resolution of the grievance has been sought through all applicable prior steps of the grievance procedure, except as is otherwise provided in Article 22 hereof.
  3. The Association shall initiate arbitration by giving written notice to the President and the OVC within the said fifteen (15) days that it intends to submit a grievance to arbitration.
  4. The Association and the Employer and/or the appointing authority shall select an arbitrator from the following panel of arbitrators: Gary Altman, Timothy Buckalew, Richard Boulanger, Diane Cochran, Joan Dolan, Roberta Golick, Ann Gosline, Michael Ryan, and Harvey Shrage. The arbitrators shall be used on a rotating basis. If the next in line cannot be available in a reasonable period of time, the next shall be selected.
  5. The arbitrator shall convene a hearing on the issue presented by the Association giving due regard to the necessity of the parties for time to prepare and the availability of witnesses, if any. The arbitrator shall provide notice to the parties of the scheduled hearing date.
  6. The parties shall have the right to be represented by counsel at any hearing convened by the arbitrator pursuant to the provisions of this Article. All proceedings before the arbitrator, including his/her jurisdiction to inquire into any issue presented by the grievance and his/her authority to render an award, shall be governed solely by the provisions of this Article.

**F. Decision of the Arbitrator:**

The arbitrator shall render a decision in writing, The arbitrator shall apply the express provisions of this Agreement and shall not alter, amend, extend, or revise any term or condition hereof. The decision of the arbitrator shall be final and binding on all parties to the arbitration proceeding.

*Costs of Arbitration:* In all arbitration proceedings, the arbitrator's fees and expenses shall be paid fifty percent (50%) by the Association and fifty percent (50%) by the University. In all other respect, the parties shall bear their own costs of arbitration.

**SECTION 7. ASSOCIATION REPRESENTATION**

Any member of the unit may initiate and pursue a grievance through the first four (4) steps of the grievance procedure without intervention by any agent of the exclusive representative, provided that the exclusive representative shall be afforded the opportunity to be present at any conference held and that any adjustment made shall not be inconsistent with the terms of this Agreement. Any employee may request that the Association represent him/her at any step of the grievance procedure. No other representation shall be permitted. The Association shall notify the immediate supervisor, the department head, the OVC, and the Chancellor, as the case may require, of the name and address of such Association representative at the time he/she is so authorized to represent the grievant.

## **SECTION 8. WAIVER, ADMISSION AND TERMINATION**

- A. **Waiver** - Failure of a grievant to comply with any of the provisions of this Article shall be deemed to be a waiver of the right to seek resolution of the grievance under the terms of this Agreement. In determining whether there has been any such failure to comply with any of the provisions of this Article, time shall be deemed to be of the essence and any failure of the grievant to comply with any of the time limits prescribed herein shall be deemed to be such failure to comply with the provisions of this Article; however, provided that the time limits prescribed herein may be extended in any specific instance by mutual written agreement of the parties. Failure of the Employer/University Administration to respond to any grievance, within the specified time limits of this Article, shall mean that the grievant(s) or the Association may take the grievance to the next level of the grievance procedure.
- B. **Admission** - The resolution of a grievance by the immediate supervisor, intermediate supervisor, the department head, the OVC, the Chancellor, or any of their designees. as the case may be, shall not be deemed to be an admission by the Employer that the grievance has, for any other purpose or proceeding, standing as a grievance or constitutes an admission of any violation or breach of the terms of this Agreement, or is cognizable or justifiable according to any applicable provisions of the laws of the Commonwealth.
- C. **Termination** - If any party to this Agreement or any employee shall initiate any proceeding relating to a grievance in any administrative or judicial forum, or pursuant to any administrative procedure adopted from time to time by the Board of Trustees, while a proceeding relating to such grievance is pending under any provision of Section 3 of this Article, such Section 3 proceeding shall terminate as of the date of the initiation of such other proceeding and the grievance procedures aforesaid shall be inapplicable to such grievance.

## **SECTION 9. COLLATERAL CONSEQUENCES OF A GRIEVANCE**

The fact that a grievance is alleged by a member of the bargaining unit, regardless of the ultimate disposition thereof, shall not be recorded in the official personnel file of such member; nor shall such fact be used in the making of any recommendation for the job placement of such member; nor shall such member or any other member or members who participate in any way in the grievance procedure be subjected to any action by the appointing authority whether disciplinary or otherwise, for having processed such grievance; however provided that nothing herein contained shall derogate or be deemed to derogate from the right of the appointing authority to take any action that might be authorized or required to be taken to give effect to the resolution of any grievance.

## **SECTION 10. APPLICATION**

The parties hereby agree that the provisions of Section 53 of Chapter 30 of the General Laws are, in their entirety, hereby rendered of no force and effect in their application to members of the bargaining unit.