

AFT Counter Proposal 3

ARTICLE 17: GRIEVANCE PROCEDURE

17.1 DEFINITIONS: The following definitions shall apply to the grievance procedure:

- 17.1.1** A “grievance” is defined as an alleged violation of a specific article or section of this Agreement that personally and adversely affects the grievant.
- 17.1.2** A “working day” is any day of **the 175 faculty** service **days** in the calendar year.
- 17.1.3** A “grievant” may be an employee, group of employees, or the Union. The Union may file grievances over alleged violations of the contract.
- 17.1.4** A “party in interest” is a person or persons making a claim of grievance or any person who might be required to take action or against whom action might be taken in order to resolve the grievance.
- 17.1.5** A “complaint” is an allegation that there has been a misinterpretation, misapplication, inequitable application, or violation of any policy of the District to the extent that the individual believes to have been adversely affected. Complaint issues relating to District Rules and Regulations or District Policy are not subject to grievance and are heard through standard administrative channels.

17.2 PURPOSE: The purpose of this grievance procedure is to provide for the processing of a claim of grievance, and to secure, at the lowest possible level, solutions to problems that arise under this Agreement.

This grievance procedure is intended to supplement but not supplant normal and usual procedures for solving personnel problems. Problems involving matters other than alleged violations of a specific article or section of this Agreement are to be resolved through standard administrative channels.

17.3 LEVEL I: ~~A grievance will~~ ~~may will~~ first be discussed orally with the grievant’s immediate supervisor~~s~~ or **Vice President** with the objective of resolving the matter informally and gathering supporting evidence for their allegations. ~~If the allegations underlying the grievance were was not resolved informally, In the event the grievant is not satisfied with the attempted or suggested resolution by informal means,~~ the grievant may submit a formal grievance in writing to the **College President or designee** appropriate ~~Vice President~~ with a copy to the immediate supervisor. ~~The “sent date” of the email containing the grievance will be The date of receipt by the College President of the written grievance will be~~ considered the “filing date” so long as it is sent before 5:00 pm; if it is sent after 5:00 pm, the following day will be considered the “filing date.”

17.3.1 Level I grievance must be sent to the ~~appropriate Vice President~~ **College President or designee** within 30 days after the grievant knew of, or with reasonable diligence, should have known ~~first became aware~~ of the act or condition that forms the basis of the grievance, ~~No grievance shall be recognized unless it shall have been presented at Level I within thirty (30) working days after the grievant knew or, with reasonable diligence, should have known of the act or condition and its aggrieving nature that forms the~~

~~basis of the grievance~~, and if not so presented, the grievance will be considered as waived.

17.3.2 ~~A written statement at The~~ Level I **grievance** shall include **all the following**:

1. a description of the specific grounds for the grievance, including names, dates and places necessary for a complete understanding of the grievance;
2. a listing of the specific article or section of this Agreement alleged to have been violated;
- ~~3. any and all evidence that supports the allegations in the Level I grievance;~~
- 3. available evidence that supports the allegations in the Level I grievance;** and
4. a listing of specific actions requested of the District that will remedy the grievance.

17.3.3 If a formal grievance has been filed, the grievant may: (a) discuss the grievance ~~with the appropriate Vice President~~ **College President or designee** ~~without a union representative personally~~, or (b) request that a **union** representative accompany ~~them to the meeting with the appropriate Vice President~~ **College President or designee** ~~him/her~~. In all cases, a Level I meeting ~~shall will~~ be ~~held scheduled~~ within seven (7) working days of the **grievance** filing date, unless a later date is mutually agreed ~~upon to~~.

17.3.4 The ~~appropriate Vice President~~ **College President or designee** shall, within ten (10) working days following the meeting to discuss the grievance, render their decision and the reasons therefore, in writing, to the grievant. A copy of the decision at this level shall be sent to the **Chief Vice-Chancellor**, Human Resources **Officer** and the Union.

17.4 **LEVEL II**: If the grievant is not satisfied with the disposition of the grievance at Level I, the grievant may file a Level II appeal within ten (10) **working** days of ~~the~~ receipt of the Level I decision. ~~, or within fifteen (15) working days of the close of the meeting at Level I if no Level I decision has been rendered, whichever is sooner.~~ or within fifteen (15) working days of the close of the meeting at Level I if no Level I decision has been rendered, whichever is sooner. Grievants not complying with the above time constraints for filing at Level II will be deemed to have waived their rights to a Level II appeal, **and the grievance process shall be considered final at Level I**. A grievant filing for a Level II appeal will forward the written grievance to the ~~College President~~ **Office of the Chancellor or designee**. ~~The written statement at The~~ Level II **grievance** shall include **all** the following:

1. all of the information required for the Level I grievance **statement**;
- 2. the Level I decision (if applicable);**
- 3. a list of the reasons, and available any and all supporting evidence,** why the ~~appropriate Vice President~~ **College President's or designee's** proposed resolution of the grievance is unacceptable;
4. a listing of specific actions requested of the District which will remedy the grievance; and
5. a request for a conference with the ~~College President~~ **Chancellor or designee** if desired.

17.4.1 The grievant and/or Union may request a conference with the ~~College President~~ **Chancellor/designee**. If the grievant and/or Union requests a

conference at Level II, the request shall be granted. When a conference has been requested at Level II, it will be scheduled within ten (10) working days of the appeal date, unless a later date is mutually agreed upon. The grievant may request the presence of a Union representative or representatives at any conference.

17.4.2 The ~~College President~~ Chancellor/designee shall render a written decision to the grievant within ten (10) working days after the conference at Level II if one has been requested, or within (10) working days after receipt of the grievance if no conference is held. Information copies of the decision shall be sent by the ~~College President~~ Chancellor/designee to the grievant's immediate supervisor, the ~~appropriate Vice President~~ College President, the Union, and to any representative designated by the grievant.

17.5 LEVEL III: ~~If the grievant is not satisfied with the disposition of the grievance at Level II, the grievant may file a Level III appeal within ten (10) working days of receipt of the Level II decision. Grievants not complying with the above time constraints for filing at Level III will be deemed to have waived their rights to a Level III appeal, and the grievance process shall be considered final at Level II. A grievant filing for a Level III appeal will forward the written grievance to the Office of the Chancellor. The Level III grievance shall include all the following:~~

- ~~1. all of the information required for the Level I and Level II grievances;~~
- ~~2. The Level I and Level II decisions;~~
- ~~3. a list of the reasons, and any and all supporting evidence, why the College President's proposed resolution of the grievance is unacceptable;~~
- ~~4. a listing of specific actions requested of the District which will remedy the grievance; and~~
- ~~5. a request for a conference with the Chancellor or designee if desired.~~

~~17.5.1 The grievant and/or Union may request a conference with the Chancellor/designee. If the grievant and/or Union requests a conference at Level III, the request shall be granted. When a conference has been requested at Level III, it will be scheduled within ten (10) working days of the appeal date, unless a later date is mutually agreed upon. The grievant may request the presence of a Union representative or representatives at any conference.~~

~~17.5.2 The Chancellor/designee shall render a written decision to the grievant within ten (10) working days after the conference at Level III if one has been requested, or within (10) working days after receipt of the grievance if no conference is held. Information copies of the decision shall be sent by the Chancellor/designee to the grievant's immediate supervisor, the College President, the Union, and to any representative designated by the grievant.~~

17.5. Level III: If the grievant is not satisfied with the decision at Level II, the grievant and/or Union, with the consent of the Union, will may request that the grievance be heard by a mutually agreed upon mediator appointed by the California State Mediation and Conciliation Service. The request for mediation shall be made to the Chief Human Resources Officer within ten (10) working days of receipt of the Chancellor/designee's decision or the date the decision should have been received.

17.5.1 The mediation shall be scheduled within thirty (30) days after receipt of the appeal or as soon as the mediator is available.

~~17.5.2 During Level III or Level IV of the grievance process, the grievant must be represented by the Union.~~

17.5.3 If a mutual resolution of the grievance is reached during mediation, a written statement of the resolution will be prepared and signed by the parties.

17.5.4 Any costs of the mediation shall be shared equally by the grievant (if self-represented) or Union (if representing the grievant), and the District. All other costs shall be borne by the party incurring those costs.

17.6 LEVEL IV H: If the grievant **has completed the Level III mediation and** is not satisfied with the disposition of the grievance at Level ~~III H H~~, the grievant may request, through the Union, that the grievance be arbitrated. Such written request shall be filed in the office of the **Chief Human Resources Officer** ~~Assistant Chancellor for Human Relations~~ within ten (10) working days **from the date the District, the Union, or the mediator indicate in writing that mediation has concluded** ~~after receipt of the written decision~~ at Level ~~III H H~~. The Union shall retain the right to determine which grievances may proceed to arbitration.

17.6.1 If requested by either the Union or the District, a ~~A~~-Certified Shorthand Reporter shall be employed to record verbatim the entire arbitration hearing. ~~if requested by either the Union or the District.~~ In any case in which a shorthand reporter is involved, the parties shall share equally the cost of such reporter including per diem, mileage, and other out-of-pocket expenses. If the arbitrator requests a shorthand reporter, the parties shall likewise share equally the cost of such reporter. The cost of transcripts shall be borne by the party ordering such transcripts. All other expenses shall be borne by the party causing them to be incurred.

17.6.2 When arbitration has been requested, the parties shall contact the California State Conciliation Service for a list of arbitrators. The Union and the **Chief Human Resources Officer** ~~Vice Chancellor, Human Resources~~, or their designees, shall alternately strike names from such list until only one (1) name remains, ~~with AFT the District striking the first name;~~ **which party strikes the first name shall be determined via coin flip.**—This person shall be designated as the arbitrator and shall proceed to hear the grievance.

17.6.3 The function of the arbitrator shall be:
a) To hold a hearing concerning the grievance, and
b) To render an ~~advisory~~ **binding** award within thirty (30) days after the close of the hearing.

17.6.4 Once the arbitrator has been selected, hearings shall commence and be held at the convenience of the arbitrator. However, hearings shall be confined to working days.

17.6.5 Unless mutually agreed to by both parties, **neither** the District nor the Union shall be permitted to assert any grounds or evidence before the arbitrator that was not previously disclosed to the other party **during the prior steps of the grievance procedure**. The arbitrator shall consider only those issues that have been properly carried through prior steps as required by the provisions of this grievance procedure.

17.6.6 The arbitrator shall not render any award that conflicts with or alters this Agreement or violates State and/or Federal **law**. It is understood, however, that

the arbitrator shall interpret the Agreement in accordance with acceptable rules of contract construction.

17.6.7 The arbitrator is empowered to include in any award such financial reimbursements or other remedies as judged to be proper and fix the effective date of any such award or finding.

17.6.8 Each party shall bear the full costs for its representation in the arbitration. The arbitrator's fees and charges shall be divided equally between the Union and the District.

~~17.6 **LEVEL IV:** Either the grievant or the responding party may appeal the advisory award of the arbitrator to the Board of Trustees within ten (10) working days after the receipt of such advisory award.~~

~~The Board of Trustees shall render its decision within twenty (20) working days after receipt of the appeal at this level, or twenty (20) working days after receipt of the transcript of the arbitration hearing, whichever comes later. The decision of the Board of Trustees shall be final and binding on all parties, except that no rights of the grievant to further legal action shall be abrogated.~~

~~17.7 **LEVEL V-IV:** Either the grievant or the responding party may appeal the advisory award of the arbitrator to the Board of Trustees within ten (10) working days after the receipt of such advisory award.~~

~~The Board of Trustees shall render its decision within twenty (20) working days after receipt of the appeal at this level, or twenty (20) working days after receipt of the transcript of the arbitration hearing, whichever comes later. The decision of the Board of Trustees shall be final and binding on all parties, except that no rights of the grievant to further legal action shall be abrogated.~~

17.87 GENERAL PROVISIONS: The following general provisions shall apply:

~~17. **87.1** If the District determines that a Level I grievance is not timely filed within the prescribed time limits, the grievance will be considered as waived and the District shall terminate the grievance at Level I. A decision rendered at any level shall be considered final and settled on the basis of that decision unless an appeal is registered filed within the time limits specified.~~

~~17. **87.2** Time allowances set forth at each level may be extended by mutual consent of the grievant and the responding party, and extensions will be made based upon vacation schedules if so requested by either the Union or the District. **Extension shall be granted in the case of exigent circumstances beyond either party's control.**~~

~~17. **87.3** If the District fails to respond or render a decision according to the deadlines — as set forth in this Article, the grievance shall be resolved in favor of the grievant. If a decision is not given to the grievant within the time limits specified, the grievance shall be deemed denied at that level and an appeal may be taken to the next level.~~

~~17. **87.34** Should the hearing of any grievance require that an employee be released~~

from their regular assignment, he/she shall be released without loss of pay or benefits.

- ~~17.87.45~~ No reprisals of any kind shall be taken by or against any participant in the grievance procedure by reason of such participation.
- ~~17.87.56~~ All documents, communications, and records dealing with the processing of a grievance shall be filed separately from the personnel files of the participants.
- ~~17.87.67~~ All parties to the grievance shall make available to other parties involved all pertinent information not privileged under the law in its possession or control that is relevant to the issues raised by the grievance.
- ~~17.87.78~~ Any grievance that arose prior to the effective date of this Agreement shall not be processed according to these procedures.

~~17.8 BINDING ARBITRATION PILOT: The District and the Union Agree to a pilot of three years (3) of binding arbitration to replace advisory arbitration in Article 17, which shall begin the first business day after adoption of the successor Agreement by the Governing Board. Immediately upon expiration of the three-year period, the Binding Arbitration Pilot will automatically sunset and the award of arbitration will again be advisory unless the parties mutually agree through negotiations to continue binding arbitration. "Year" for the purposes of this Article means 365 calendar days.~~

~~Binding Arbitration shall be available only with regard to disputes that are otherwise subject to grievance through Level III (Arbitration) pursuant to Article 17 (Grievances) and Article 25 (Discipline). Access to binding arbitration shall be further limited as follows:~~

~~Tenure track and tenured faculty. For the purposes of the Binding Arbitration Pilot issues relating to permanent (i.e., tenure track and tenured) faculty will be eligible for binding arbitration, except that nothing related to the Tenure Review process shall be subject to binding arbitration.~~

~~Temporary faculty. For the purposes of the Binding Arbitration Pilot.~~

~~All contract disputes pertaining to Article 19.2 shall be subject to advisory arbitration only.~~

~~All other matters pertaining to non-permanent employees under Article 19 will be eligible for binding arbitration for part-time faculty members, only if the temporary faculty member has received two (2) consecutive satisfactory evaluations or has been given an assignment for eight (8) semesters with no negative evaluations.~~

~~The number of grievances eligible for binding arbitration shall be capped at three per year during this pilot period.~~