

## **ARTICLE 28 ARBITRATION**

### **A. GENERAL CONDITIONS**

Only the Association may file an appeal to arbitration after the timely exhaustion of Article 27, Grievance Procedure of this Agreement.

#### **1. Time Limits – Association Appeals**

- a. The original appeal to arbitration must be postmarked with an official United States Postal Service postmark and received by the Office of the President within thirty (30) calendar days of the mailing of the Office of the President written decision to the Association. Proof of service must accompany the appeal to arbitration. In the appeal, the Association must set forth the issues and remedies remaining unresolved.
  - b. The Office of the President official shall forward the grievance to arbitration within twenty (20) calendar days after receiving the appeal, specifying the location responsible for further handling of the arbitration. Deadlines that fall on a day which is not a University business day will automatically be extended to the next business day.
2. The scheduling of the arbitration hearing date must be accomplished no later than sixty (60) calendar days from the date the grievance was originally appealed to arbitration. Should the parties be unable to agree to a hearing date, the authority to schedule the hearing rests with the arbitrator.
  3. The parties may extend the sixty (60) day limit for scheduling the arbitration by mutual written agreement in advance of the expiration of the time limit. In such cases the arbitrator shall be informed of the parties' mutual agreement and shall be provided with a copy of such written agreement.
  4. Failure to schedule the arbitration within sixty (60) calendar days will render the grievance ineligible for arbitration and the last preceding University written answer shall become final.
  5. Time limits may be extended by mutual agreement of the parties in writing in advance of the expiration of the time limit.

### **B. SELECTION OF ARBITRATOR**

1. The Association and the University shall select an arbitrator from the lists below:
  - a. North List - Luella Nelson, Alexander Cohn, Barry Winograd, Charles Askin and Norman Brand.
  - b. South List - Louis Zigman, Edna Francis, Fred Horowitz, Michael Prihar, and Mei Bickner.
2. The parties shall alternately strike one (1) name each from the above list(s), the first strike being determined by a flip of a coin, and the last name remaining shall be the arbitrator.

### **C. ARBITRATION PROCEEDING**

1. The arbitration proceeding shall provide an opportunity for the Association and the University to examine and cross-examine witnesses under oath and to submit relevant

evidence. The parties shall not seek to introduce new issues and allegations at the arbitration hearing which were not introduced during Step 2 of the grievance procedure. Settlement offers made during the grievance procedure shall not be introduced as evidence in arbitration.

2. When practicable, the University shall inform the Association in writing of its intent to assert the issue of arbitrability prior to the selection of the arbitrator. The issue(s) of arbitrability shall be resolved in a hearing prior to and separate from the hearing (if any) about the substantive facts and/or allegations in dispute, except as provided in §C.3., below. In the event an arbitrator, as a result of the arbitrability hearing referenced, above determines a matter to be arbitrable, s/he shall have no authority to decide the issues pursuant to the facts of the case unless the parties agree otherwise.
3. If, following the selection of the arbitrator, the University raises for the first time issue(s) of arbitrability, a single hearing on the issue of arbitrability and the substantive facts will be held, unless the parties agree otherwise. If the arbitrator finds the grievance to be not arbitrable, the substantive facts of the case need not be heard and the grievance shall be denied. If the arbitrator finds in favor of arbitrability, the hearing shall proceed to the substantive issues raised.
4. §C.2. and §C.3. above, shall not prevent the parties from agreeing in writing to combine the arbitrability hearing with the hearing on the merits of the case.
5. If either party requests a postponement of the scheduled arbitration hearing following the University's raising issue(s) of arbitrability, the hearings on arbitrability and facts, if any, shall be separate, and the provisions of §C.2. above, shall apply.
6. Prior to arbitration, the Association and the University shall attempt to stipulate as to the issue(s) to be arbitrated and to as many facts as possible. Relevant material and the names of all witnesses who are to be called shall be identified by the parties prior to the hearing. To the extent possible, witnesses and material should be identified at least seven (7) calendar days prior to the hearing.
7. The arbitration hearing shall be closed unless the parties otherwise agree in writing.
8. The arbitrator shall consider the evidence presented and render a written decision within thirty (30) calendar days of the close of the record of the hearing. The arbitrator's authority shall be limited to determining whether the University has violated the provision(s) of this Agreement. The arbitrator shall not have jurisdiction or authority to add to, amend, modify, nullify, or ignore in any way the provisions of this Agreement.
9. If the grievance is sustained in whole or in part, the remedy shall not exceed restoring to the nurse the pay, benefits, or rights lost as a result of a violation of the Agreement, less any compensation from any source, including, but not limited to, Workers' Compensation and Unemployment Insurance benefits. The decision of the arbitrator, within the limits described herein, shall be final and binding.
10. Except as otherwise specifically provided, the University will not be liable on a grievance claiming back wages or other monetary reimbursement for:
  - a. any period of time during which an extension of time limits has been granted at the request of the Association;
  - b. any period of time between the first date the arbitrator is available for an arbitration hearing and the date of the hearing, when the first date is rejected by the Association; and

- C. any period of time greater than thirty (30) calendar days prior to the date of the Informal Review, Step 1 under Article 27, Grievance Procedure except for mathematical, calculation, recording, or accounting errors.

- 11. The Association shall have full authority to settle, withdraw, or otherwise dispose of any grievance brought on behalf of the Association and/or on the behalf of nurses. An agreement to settle, withdraw, or otherwise dispose of a grievance appealed to arbitration reached by and between the University and the Association shall be binding upon employees represented by the Association.

**D. PAY STATUS**

Upon advance request, the grievant, the grievant's representative, and witnesses called by the University who are University Nurses, shall be granted leave with pay to attend arbitration hearings and meetings convened by the University to consider grievances if such hearings and meetings occur during their regularly scheduled hours of work. Such leave with pay will be considered time worked. Time spent in arbitration hearings and meetings convened by the University outside of a nurse's regularly scheduled hours of work is without pay.

**E. ARBITRATOR'S FEES**

The arbitrator's fees shall be borne equally by the parties. Expenses for stenographic or other services or facilities shall be borne by the party requesting such services or facilities unless the parties otherwise agree in advance.

**F. EXPEDITED ARBITRATION**

The parties may agree to use an expedited form of arbitration. When the parties agree to use an expedited form of arbitration, the case shall be heard by the arbitrator at her/his earliest date. There shall be no transcript of the proceedings unless required by the arbitrator. Post-hearing briefs will be waived and the arbitrator will issue a written decision within ten (10) working days following the close of the hearing record.

**G. ARBITRATION PANEL**

- 1. In the event of a vacancy in the panel of arbitrators, such vacancy shall be filled by the parties within fifteen (15) calendar days if the parties agree that a replacement is necessary. In the event the parties mutually agree that a named arbitrator should be replaced, the parties shall meet to select a new arbitrator.
- 2. No later than one month following negotiations, the parties shall negotiate additions and/or deletions for the arbitration panel.