



OFFICE OF THE VICE PRESIDENT  
HUMAN RESOURCES

OFFICE OF THE PRESIDENT  
300 Lakeside Drive, 12<sup>th</sup> Floor  
Oakland, CA 94612-3550

Re: **Side Letter: Amending Current Provisions of UC/AFSCME SX Agreement for a Pilot Program Adding Electronic Filing of Step 3 and Arbitration Appeals**

The University of California (“UC” or “the University”) and the American Federation of State, County, and Municipal Employees (“AFSCME” or “the Union”) enter into this Side Letter to amend the provisions of the 2009-2013 UC/AFSCME-SX Agreement as indicated below. These amended sections are entered into as a “pilot program”, and either party may discontinue the use of the amendments by providing 60 calendar days’ written notice to the other.

### **Amendment to ARTICLE 9 - GRIEVANCE PROCEDURE**

#### **A. DEFINITION**

1. A grievance is a written complaint filed by an individual employee, a group of employees, or AFSCME that alleges the University has violated a specific provision of this Agreement.
2. Group grievances are defined as, and limited to, those grievances which cover more than one (1) employee, and which involve like circumstances and facts for the grievance involved. Grievances that are group grievances must be so designated on the grievance form at Step 1, and all employees covered by the grievance must be indicated on the grievance form. If an employee wishes to withdraw from a group grievance represented by AFSCME, the employee shall notify AFSCME. AFSCME shall in turn notify the University in writing if the employee is to be withdrawn, within five (5) days of the employee’s notice to the AFSCME.
3. Alleged violations of a specific provision of this Agreement may be grieved by the Union and shall be so identified as a Union grievance on the grievance form. Such Union grievances shall be signed by the AFSCME Higher Education Division (Local 3299) Director or his/her designee and shall contain all information as specified above for any other grievance.
4. Except as otherwise provided in this Agreement, an individual employee, a group of employees, the University, and AFSCME shall have the right to use the Grievance Procedure. AFSCME shall have the right to present grievances on behalf of an individual employee, on behalf of a group of employees or on behalf of itself as a Union grievance. The Union is responsible for informing an employee (including an employee named in a group grievance) that it is bringing a grievance on the employee’s behalf.

5. No employee shall be subject to reprisal for using or participating in the Grievance Procedure.

#### **B. GRIEVANTS WHO HAVE RESIGNED**

1. Grievants who voluntarily resign or retire their employment with the University shall have their pending grievances immediately withdrawn and will not benefit by any subsequent settlement or disposition of any individual, union, or group grievance.
2. However, if the group or union grievance is related to the implementation of a compensation provision negotiated in a UC/AFSCME Agreement, the grievance may be continued if it has moved to Step 2 before the date of the employees' resignation or retirement. The foregoing provision shall not apply to LBNL.

#### **C. CONSOLIDATION OF GRIEVANCES**

Grievances of two (2) or more employees, as well as multiple grievances by or related to the same employee or which relate to the same incident, issue or course of conduct, may be consolidated for purposes of the Grievance Procedure by mutual agreement of the University and the Union.

#### **D. GRIEVANCE FILING AND TIME LIMITS**

1. Only one (1) subject matter shall be covered in any one (1) grievance. A grievance shall contain a clear and concise statement of the grievance by indicating the issue involved, the relief sought, the date the incident or violation took place, and the specific Section or Sections of the Agreement involved. The grievance shall be presented to the designated campus/Laboratory grievance official on a form agreeable to the parties. The grievance form shall be furnished to the employee by the Union and the form must be signed and dated by the grievant(s) and /or the grievant's representative.
2. All grievances (individual, group, Union) must be presented promptly, in writing and in compliance with A.2., above, but no later than thirty (30) calendar days from the date the grievant or the Union first became aware of, or should have become aware of with the exercise of reasonable diligence, the alleged violation of the Agreement. Grievances not presented within this thirty (30) calendar day period shall be considered untimely and ineligible for processing through the Grievance Procedure.
3. Grievances not appealed within the designated time limits in any step of the Grievance Procedure will be considered resolved on the basis of the last preceding University answer. Grievances not answered by the University within the designated time limits of any step of the Grievance Procedure may be appealed to the next step of the Grievance Procedure by giving written notice of the appeal within fifteen (15) calendar days of the expiration of the designated time limits to the campus official responsible for the next step of the Grievance Procedure.
4. The parties may agree in writing to extend the time limits in any step of the Grievance Procedure. Such written extension must be accomplished in advance of the expiration

of the time limits being waived. Deadlines which fall on a day which is not a campus business day will automatically be extended to the next business day.

5. For grievance appeals and responses, the date of issuance shall be the date hand-delivered, or the date of the US Postal Service postmark, if mailed, provided the address used is the non-work address on the grievance form. The date of hand delivery shall be the date of the stamp or handwritten acknowledgement of receipt as noted by the Labor Relations office.
6. **For emailed appeals to the Office of the President, the 'date of filing' shall be the date received as indicated on the University's email server.**

#### **E. INFORMAL REVIEW AND RESOLUTION**

Before commencing the formal grievance procedure, an individual employee, or group of employees, with or without their representative, may first attempt to resolve the alleged grievance informally. When an employee or representative requests such a meeting, an Informal Review meeting shall be held with the immediate supervisor within 15 calendar days of the request. Informal resolution of grievances at the lowest possible level is an objective shared by the University and AFSCME. Informal attempts of settlement to resolve the grievance shall not extend time limits including the initial 30-day filing deadline.

#### **F. EMPLOYEE REPRESENTATION RIGHTS**

1. An employee or group of employees shall have the right to be represented at all steps of the Grievance Procedure by one (1) person of the employee's or group of employees' choice. The chosen representative may be:
  - a. the grievant;
  - b. one (1) member of the group in a group grievance;
  - c. a Union representative;
  - d. or any other person of the grievant's choosing.

In any event, representation is to be provided by one (1) person.

2. A University employee who has been designated as managerial, supervisory or confidential by the University shall not represent any employee or group of employees at any step of the Grievance Procedure or in any activity or role provided for in the Grievance Procedure.
3. Provided it does not interfere with operational needs, and with prior approval from his/her supervisor, one (1) additional Union representative may attend such grievance meetings on non paid release time. Should an additional employee representative attend a grievance meeting, it is expressly understood there shall be only one Union spokesperson.

4. An employee or group of employees may choose a representative other than an AFSCME representative for purposes of grievance representation and adjustment. The adjustment/resolution of grievances presented absent AFSCME representation shall be consistent with the terms of this agreement. Within five (5) calendar days of the University's grievance decision, the University shall provide a copy of the decision to AFSCME.
5. In the event the University is involved in the settlement of a grievance from an employee or group of employees who are represented by themselves or by a representative other than an AFSCME representative:
  - a. The University shall provide AFSCME with a copy of the grievance and the proposed settlement, if any, thereto indicating the employee or employees have chosen a representative other than AFSCME. Proof of Service shall accompany such notification.
  - b. AFSCME shall have ten (10) calendar days from the date of issuance of such copy within which to comment in writing on the proposed settlement.
  - c. The employer shall not implement the proposed settlement of the grievance until timely receipt and review of AFSCME's written comments, if any.

**G. RELEASE TIME AND PAY STATUS FOR GRIEVANTS, EMPLOYEE REPRESENTATIVES AND/OR WITNESSES IN GRIEVANCES**

1. Grievance Representatives

- a. Grievance representatives certified by AFSCME shall have authority to act on behalf of AFSCME in all matters related to grievance representation. Any actions taken by or agreements reached between such grievance representatives and the University shall be binding upon employees represented by AFSCME.
- b. Time in a without-loss-of-straight-time pay status for grievance representatives shall be as specified in Section F. of Article 9 - Grievance Procedure. In no event shall the grievance representative receive payment for time spent in performance of his/her representation duties during any shift other than that representative's regularly scheduled shift. If a certified alternate grievance representative performs the representation duties of the certified grievance representative during the regularly-scheduled shift of the latter, any and all hours spent pursuant to Section F.4. of Article 9 - Grievance Procedure shall be charged to the certified grievance representative.

2. University-Convened Meetings

- a. If the University convenes a meeting involving the parties to a grievance for the purposes of resolving the grievance and/or completing the steps of the Grievance Procedure, the grievant(s), witness(es), if any, and AFSCME-designated employee representative(s) eligible to attend such meeting

pursuant to this and Article 1 - Access/Union Rights § C shall be in without-loss-of-straight-time-pay status during the meeting, provided:

- 1) Such meeting occurs during the regularly scheduled hours of work of the grievant(s), AFSCME-designated employee representative, and/or witness(es); and
  - 2) Advance request is made and approval is received from the supervisor of the grievant(s), the witness(es), and/or the AFSCME-designated employee representative. Approval to attend shall be made on an operational needs basis and shall not be unreasonably denied.
  - 3) A grievant or the representative may request the availability of bargaining unit employee witnesses for University-convened grievance meetings. The availability of bargaining unit employee witnesses shall be determined by their immediate supervisor(s) on the basis of operational needs, and such requests shall not be denied unreasonably. Witnesses shall be in a without-loss-of-straight-time-pay status only for time spent at the campus/hospital/laboratory meetings as a witness and reasonable travel time spent at the witness' respective campus/hospital/laboratory location. In instances where the witness' testimony is valuable and relevant to a grievant's case, paid release time for travel and testimony will not be unreasonably denied. Grievants and AFSCME agree that every effort shall be made to provide witnesses that pertain solely to the subject matter and to avoid the presentation of repetitive witnesses and that the absence of any or all witnesses shall not require the meeting to be recessed or postponed.
- b. The University is not responsible for any travel or lodging expenses or any other expenses incurred by the representative, grievant or union witnesses.
  - c. Paid release time for AFSCME designated employee representatives for purposes other than University convened meetings shall be provided in accordance with Article 1, Access.
3. Paid Release Time
- a. The total cumulative use of paid release time for the AFSCME designated employee representative shall be limited to 10 hours in any one month. University convened meetings pursuant to Article 9, -- Grievance Procedure, shall not be deducted from this block of time.
  - b. The use of the maximum of 10 hours shall be for grievance-related activity such as:
    - 1) The initial hand-delivered filing of a grievance and the retrieval of University documents provided pursuant to a written request for information related to a grievance;

- 2) One-on-one meetings with a grievant concerning a filed grievance, or an alleged violation of this Agreement which is at the Informal Review stage of Article 9, – Grievance Procedure;
  - 3) Meetings with the University representative to whom written grievances are presented or to whom documents related to filed grievances are presented/signed or with whom time limit agreements are achieved;
  - 4) Informal Review meetings held pursuant to Section D of Article 9, -- Grievance Procedure.
- c. A request for release time will be made to the AFSCME designated employee representative's supervisor prior to the activity. Such approval shall be granted solely on the basis of operational need and shall not be denied unreasonably.
  - d. At its sole discretion, the University may authorize use of release time for more than 10 hours in a month per department. The exercise of this discretion and/or the enforcement by the University of the 10-hour maximum shall under no circumstances establish a precedent for the AFSCME designated employee representative or department involved nor shall the allowance of greater than 10 hours in a month for a AFSCME designated employee representative have any effect or bearing on the ability of the University to enforce the 10-hour maximum on any other AFSCME designated employee representative.
  - e. Should a question of possible abuse of these release time provisions arise, the University will so notify AFSCME, and the parties will attempt to resolve the matter. If a question remains, the University may take corrective action when warranted.

#### **H. EXCLUSION OF NON-CAREER EMPLOYEES AND PROBATIONARY EMPLOYEES**

1. The retention or release of non-career employees and probationary employees shall not be subject to Article 9 - Grievance Procedure or Article 3 - Arbitration Procedure of this Agreement except as provided for in Article 29 – Positions, § B. 2., § B.6.a.1) and 2), §B.6.b., and §D.8. The retention or release of non-career employees and probationary employees is at the sole discretion of the University.
2. When an action is taken by the University with respect to a limited employee which effectively terminates the limited employee during the term of his/her limited appointment and there are unique or unusual circumstances involved, the designated campus official, upon the specific request of the AFSCME Higher Education Division (Local 3299) Director, will discuss the action taken. The parties understand that such requests for discussion will occur on a very limited basis and will not be made with respect to actions including but not limited to those resulting from the expiration of appointment, programs or grant funds, or the decision not to continue, rehire or extend the employment of a casual employee. The parties further understand that the opportunity for such discussion in very limited circumstances does not in any way confer upon a limited employee any property or process right and does not in any way obligate or commit a designated campus official to any specific course of action or procedure.

## I. GRIEVANCE STEPS

### 1. Step 1

#### a. Employee or Union Grievances:

- 1) Within the time limits indicated elsewhere in this Article the employee or his/her representative, if any, shall provide the written grievance on the approved form to the designated campus grievance official. The time limits relative to the University's response to the grievance at Step 1 of the Grievance Procedure shall begin on the date the Step 1 grievance official receives the grievance. The University Step 1 grievance official shall acknowledge receipt of the grievance in writing. When a grievance form is hand delivered, acknowledgment can, on request of the Union, take the form of date stamping the form, signing it, making a copy and giving the copy to the grievant or the grievant's representative. Any grievance that is not received within the time limits established by this Article and/or which does not comply with the procedures and requirements of this Article shall be considered waived and withdrawn by the employee and/or the Union.
- 2) The immediate supervisor shall review the grievance and, at the supervisor's discretion, meet with the grievant and/or the grievant's representative, if any, to discuss the grievance. Within fifteen (15) calendar days after receipt of the grievance a written response will be issued to the employee and the employee's representative. If the University's written response is not issued within these time limits or if the grievance is not resolved at Step 1 of the Grievance Procedure, the grievance may be appealed to Step 2. Time limits for appealing a UC written answer, or the absence of a written response, are provided in § C. above.
- 3) Resolution of the grievance at Step 1, although final, shall not be precedent setting.
- 4) As set forth in Section I. below, the parties may agree in writing to waive Step 1 and proceed directly to Step 2.

### 2. Step 2

If the grievance is not satisfactorily resolved at Step 1, the employee or the Union may proceed to Step 2 by filing an appeal as follows:

- a. The employee or the employee's representative shall submit the written appeal to the designated campus official. The campus official to whom Step 2 appeals must be presented shall be a designee of the Chancellor of the campus.

- b. The designated campus official must receive the written appeal within fifteen (15) calendar days of the date on which the written response to Step 1 was given or due.
- c. Within fifteen (15) calendar days following receipt of the Step 2 appeal, the designated campus official shall schedule and convene a meeting with the employee and the employee's representative, if any, to attempt to resolve the grievance. During this Step 2 meeting, both parties shall discuss information and contentions relevant to the grievance.
- d. Within fifteen (15) calendar days following the Step 2 meeting, the designated campus official shall issue a written decision indicating the University's answer to the grievance. A copy of the decision shall be provided to the grievant and his or her representative, if any, and Proof of Service shall accompany the written decision. For grievances described in Section I.2.f., below, a copy of the decision shall also be provided to the AFSCME Higher Education Division (Local 3299) Director. Time limits for appealing a UC written answer, or the absence of a written response, are provided in § C. above.
- e. If requested by the grievant, a Union staff representative (non-University employee) may participate for purposes of representation in the Step 2 meeting.
- f. If a grievance which alleges that a dismissal was not for just cause (even when coupled with other allegations), or which alleges a violation of only Article 8, is not satisfactorily resolved at the Step 2 meeting, AFSCME may appeal directly to arbitration in accordance with Article 3 - Arbitration Procedure. If the University's Step 2 decision is not properly appealed to arbitration as provided in Article 3 - Arbitration Procedure, the grievance shall be considered settled on the basis of the Step 2 decision and shall not be eligible for further appeal. Only AFSCME shall have the right to submit a grievance to arbitration.

### 3. Step 3

- a. All grievances other than those described in H.2.f. above which are not satisfactorily resolved at Step 2 may be appealed to Step 3 by AFSCME or the employee. To consider a grievance at Step 3, written notice of appeal of the Step 2 University answer shall be served, **with a Proof of Service** (pursuant to Section M, ~~Q~~, of this Article), upon the Director of Labor Relations of the University by the AFSCME Higher Education Division (Local 3299) Director or his/her designee. Such notice must be received by the Director of Labor Relations of the University within fifteen (15) calendar days of the date the Step 2 answer was given or due. Such notice shall identify the grievance being appealed and be signed and dated by the AFSCME Higher Education Division (Local 3299) Director or his/her designee.
- b. An employee or group of employees using a representative other than AFSCME pursuant to Sections E.1., and E.2., of this Article may appeal a Step 2 University answer to the Executive Director of Labor Relations of the University. Such appeal must be served upon, **with a Proof of Service** (pursuant to Section M, ~~Q~~

of this Article), and received by the Executive Director of Labor Relations within fifteen (15) calendar days of the date the Step 2 answer was given or due. Such appeal shall be in writing, identify the grievance being appealed and be signed and dated by the employee(s) and representative.

- c. The subject of the grievance as stated in Step 2 shall constitute the sole and entire subject matter of the appeal to Step 3.
- d. The University's written answer to a grievance appealed to Step 3 shall be issued by the Director of Labor Relations of the University or his/her designee within thirty (30) calendar days of the receipt of the appeal to Step 3. Proof of Service shall accompany the written decision. The written answer shall be served upon the employee's designated representative and a copy shall also be provided to the AFSCME Higher Education Division (Local 3299) Director. Time limits for appealing a UC written answer, or the absence of a written response, are provided in § C. above.
- e. The Director of Labor Relations of the University or his/her designee shall have authority to settle grievances appealed to Step 3. In the case of a grievance with AFSCME representation, the AFSCME Higher Education Division (Local 3299) Director or his/her designee shall have authority to settle or withdraw the grievance or appeal the grievance to arbitration.
- f. Settlements of grievances processed beyond Step 2 of the Grievance Procedure must be signed by the Director of Labor Relations of the University and the AFSCME Higher Education Division (Local 3299) Director or their designee(s).
- g. If the University's Step 3 decision is not properly appealed to arbitration as provided in Article 3 - Arbitration Procedure, the grievance shall be considered settled on the basis of the Step 3 decision and shall not be eligible for further appeal. Pursuant to the provisions of Article 3 – Arbitration Procedure, only AFSCME shall have the right to submit a grievance to arbitration.

## J. **MEDIATION**

The parties agree to participate in mediation for the purpose of compromising, settling, or resolving a grievance. Grievances may be subject to mediation in accordance with the following:

1. The party requesting mediation shall request mediation upon the written appeal to Step 3, but prior to arbitration.
2. Grievances shall not proceed to mediation except by the mutual agreement of the location and the union.
3. The grievance shall be held in abeyance, tolling all time lines until the conclusion of the mediation process. At least fourteen (14) calendar days prior to taking the grievance out of abeyance, a written notice shall be provided to the other party by the Union or the Office of the President, Office of Labor Relations.

4. All costs of mediation shall be borne equally by both parties, provided that pursuant to Article 9.F.1 above, the grievant(s), witness(es), if any, and AFSCME-designated employee representative(s) eligible to attend such meeting pursuant to this Article and Article 1 shall be in without-loss-of straight-time-pay status during the mediation.
5. The recommendations of a mediator, if any, shall be advisory only and shall not be binding upon the parties. Neither party shall attempt to enter into evidence at a subsequent arbitration hearing any recommendation(s) of the mediator.
6. Any mediated settlement shall not be precedent setting.

**K. EXTENSION OF TIME LIMITS**

Each of the steps in the Grievance Procedure, as well as the time limits prescribed at each step of the Grievance Procedure, may be waived by mutual agreement of the parties. Such waiver must be in writing and must be signed by the representatives of the respective parties who are responsible for the Grievance Procedure at the step succeeding the step being waived. The parties at any step of the Grievance Procedure may, upon written agreement, remand the grievance to a previous step for resolution.

**L. OFFERS OF SETTLEMENT**

Settlement offers made at any stage of this procedure, including informal resolution, shall not be introduced as evidence in subsequent steps, and shall not be precedent setting.

**M. RETROACTIVITY**

Settlement of grievances may or may not be retroactive as the equities of a particular case may demand. Where it is determined that the settlement shall be applied retroactively, except for the correction of mathematical, calculation, recording or accounting errors relating to the payment of wages, the maximum period of retroactivity allowed shall not commence on a date earlier than thirty (30) calendar days prior to the initiation of the written grievance in Step 1. For grievances involving the correction of an error in the payment of wages or the correction of mathematical calculations, recording or accounting errors relating to the payment of wages (for example vacation leave, holidays, overtime, military leave or the amount of shift differentials, if any) shall not be made retroactive to a date earlier than two years prior to the initiation of the written grievance in Step 1 of the Grievance Procedure.

**N. EXCLUSIVE PROCEDURE**

The Grievance Procedure set out in this Article shall be exclusive and shall replace any other grievance procedure for adjustment of any disputes arising from the application and interpretation of this Agreement. Unless otherwise indicated within this Agreement, any previous grievance procedure or other procedure in existence or adopted by the University shall not apply to employees covered by this Agreement for any purposes whatsoever.

**O. PROOF OF SERVICE**

Wherever Proof of Service is required in this Agreement, it shall be accomplished **through the following vehicles only**; as follows:

1. When delivery is by U.S. Mail, the person mailing shall complete and sign the prescribed and appropriate Proof of Service form which shall indicate that they have personally deposited with or presented to the U.S. Postal Service the document(s) being mailed;
2. When delivery is through personal presentation of a document(s), Proof of Service is accomplished and recorded by:
  - a. the person presenting the document(s) completing and signing the prescribed and appropriate Proof of Service form which shall indicate they have delivered the document(s) by hand and to whom the document(s) were delivered; or
  - b. the person delivering the document(s) and the person accepting delivery of the document(s) shall mutually acknowledge the delivery/receipt by signing and dating the document(s) and a copy of the document(s) and each of them retaining one of the signed and dated document(s); **or**
3. **Email to [AppealAGrievance@ucop.edu](mailto:AppealAGrievance@ucop.edu).**
  - a. **Email submissions must include PDFs of all documents, information and signatures necessary to be in compliance with the Grievance Procedure provisions of this Agreement.**
  - b. **The 'date of filing' for emailed Appeals to Step 3 shall be the date received on the University server, provided that the appeal is received during business hours. If a Step 3 appeal is received outside of normal business hours, the first following business day will be deemed the filing date of the Appeal to Step 3.**
  - c. **The University shall acknowledge the Union's Appeal to Step 3 through a computer-generated, automatic email response.**

#### **P. GRIEVANCE FILE**

Records involving the processing of an employee's grievance, such as the grievance form, step appeals/responses, and settlement documents, will be kept in a file separate from the employee's personnel file. It is not the intent of this section to exclude from the employee's personnel file final disciplinary action documents, including those that result from a settlement agreement. The University will keep grievance files confidential to the extent required by applicable law and will not disseminate their contents unless solicited for a legitimate University business purpose or obligated to provide for a pertinent regulation or law.

#### **Q. REVIEW OF GRIEVANCES DENIED FOR PROCEDURAL DEFECTS**

When the University denies a grievance due to procedural defects, including but not limited to timeliness, AFSCME may make a written appeal, **with a Proof of Service (pursuant to Section O. of this Article)**, to the Office of the President Labor Relations within thirty (30) calendar days of the postmark notification to the grievant(s). This appeal is solely limited to a review of the procedural issue(s). If the Office of the President denies this appeal AFSCME

may appeal the procedural denial of the grievance directly to arbitration per Article 3 – Arbitration Procedure, within thirty (30) calendar days of the issuance of the denial of the appeal.

### **Amendment to ARTICLE 3 - ARBITRATION PROCEDURE**

- A. Grievances which have not been settled under the procedures provided in Article 9 - Grievance Procedure, may be appealed to arbitration. Only the Union shall have the right to submit a grievance to arbitration and only after the timely exhaustion of the procedures of Article 9 - Grievance Procedure. An appeal to arbitration must be received by the Office of the Director -- Labor Relations, Office of the President within 20 calendar days of the mailing of the last preceding University written answer to the Union. The appeal to arbitration must be signed by the AFSCME Local 3299 Director and Proof of Service must accompany the appeal to arbitration. An appeal to arbitration **shall be accomplished through the following vehicles only:**
1. **U.S. Mail - the person mailing shall complete and sign the prescribed and appropriate Proof of Service form which shall indicate that they have personally deposited with or presented to the U.S. Postal Service the document(s) being mailed;**
  2. **Personal presentation - the person presenting the document(s) shall complete and sign the prescribed and appropriate Proof of Service form which shall indicate they have delivered the document(s) by hand and to whom the document(s) were delivered; or the person delivering the document(s) and the person accepting delivery of the document(s) shall mutually acknowledge the delivery/receipt by signing and dating the document(s) and a copy of the document(s) and each of them retaining one of the signed and dated document(s); or**
  3. **Email to [AppealAGrievance@ucop.edu](mailto:AppealAGrievance@ucop.edu).**
    - a. **Email submissions must include PDFs of all documents, information and signatures necessary to be in compliance with the Arbitration Procedure provisions of this Agreement.**
    - b. **The 'date of filing' for emailed Appeals to Arbitration shall be the date received on the University server, provided that the appeal is received during business hours. If an Appeal to Arbitration is received outside of normal business hours, the first following business day will be deemed the filing date of the Appeal to Arbitration.**
    - c. **The University shall acknowledge the Union's Appeal to Arbitration through a computer-generated, automatic email response.**
- B. ~~is considered filed on the date it is postmarked.~~ Grievances which are not processed within the above time limit, and/or which do not contain the appropriate Union signature, will be considered ineligible for appeal to arbitration. If an unresolved grievance is not appealed to arbitration or heard in arbitration, the last preceding University written answer shall become final.
- C. A request for arbitration utilizing the expedited grievance procedure provided in Article 9 - Grievance Procedure, Section I.2.f., may be made only by AFSCME in accordance with Section A.

above. Request for arbitration under this section must include a copy of the completed grievance form.

- D. Within 15 calendar days of service upon the University of AFSCME's appeal to arbitration of a grievance, the University shall acknowledge receipt of the appeal and shall indicate the University's office of representation for the grievance. The acknowledgement shall indicate the location to which all correspondence and contact should be made relative to the Arbitration Procedure and shall include a Proof of Service.
- E. Within 30 calendar days of service upon AFSCME of the University's acknowledgement of a grievance having been appealed to arbitration as indicated in C. above, the parties shall attempt to mutually agree to the selection of one arbitrator from the permanent panel to serve as arbitrator for the appealed grievance.
- F. The scheduling of the arbitration hearing date must be accomplished no later than 180 calendar days from the date the grievance was originally appealed to arbitration. Failure to invoke the process described in Sections G. and H. below, within 180 calendar days will render the grievance ineligible for arbitration and the last preceding University written answer shall become final.
- G. Time limits related to the Arbitration Procedure may be extended by mutual written agreement of the parties in advance of the expiration of the time limit. Deadlines which fall on a day which is not a campus/Laboratory business day will automatically be extended to the next business day.

H. **SELECTION OF THE ARBITRATOR**

1. If the parties mutually agree to the selection of the arbitrator, a letter signed by both parties shall promptly be sent to the arbitrator notifying him or her of his/her selection and requesting a hearing date. In the event the parties anticipate a hearing involving more than one day, they shall at the time of notice to the arbitrator of his or her selection estimate the number of days the hearing will require. Available arbitration date(s) shall not be any earlier than 21 calendar days from the arbitrator's receipt of his or her selection to hear the arbitration.
2. If the parties fail to reach mutual agreement as to the selection of an arbitrator for a grievance appealed to arbitration pursuant to Section D. above, selection shall be made as follows:
  - a. The names of five members from the northern or southern permanent panel group shall be drawn by blind lot.
  - b. The parties shall alternately strike names from the list of five. The flip of a coin shall determine the party to begin the alternate process of the striking of the names.
  - c. The one name remaining after each party has stricken two names shall be the arbitrator designated to conduct the hearing.
  - d. If both parties mutually disagree with the arbitrator name which has been selected using the above process, the process shall be repeated in its entirety in order to determine a selected arbitrator.

- e. If, after two attempts, the parties mutually disagree with the arbitrator selected, then one party, chosen by the flip of a coin, shall draw one name by blind lot from the northern or southern group and that arbitrator shall hear the arbitration case.

#### **I. SCHEDULING THE ARBITRATION HEARING**

1. Should the parties be unable to agree to a hearing date, the authority to schedule the hearing rests with the arbitrator. The parties may, however, mutually agree in writing in advance to extend the 180-day time limitation. In such cases the arbitrator shall be informed of the parties' mutual agreement and shall be provided with a copy of such written agreement.
2. Should the Union make a request that the grievance be placed in abeyance for any reason, the period of abeyance shall not exceed six months. The Union further agrees that grievances placed in abeyance shall have the time limits tolled during this period. Failure by the Union to reactivate the grievance within the six-month time limit following request that it be held in abeyance will render the grievance ineligible for arbitration and the last preceding University written answer shall become final.

#### **J. ARBITRATION PROCEDURE**

1. The Arbitration Procedure of this Agreement may be invoked only by AFSCME.
2. Unless there is mutual agreement by both parties to modify the scope of the hearing, the issue to be heard by the arbitrator shall solely and in its entirety be restricted to the matter which was the subject of the grievance as stated at Step 3 or in the case of an expedited grievance, as stated at the Step 2 hearing. The decision of the arbitrator will be restricted to whether there is a violation of the Agreement as set forth in the last preceding written answer of the University. If such a violation is found, the arbitrator shall specify the remedy in accordance with the terms of this Agreement.
3. The arbitration hearing shall provide an opportunity for AFSCME and the University to examine and cross examine witnesses under oath or affirmation and to submit relevant evidence. AFSCME shall not seek to introduce new issues or allegations at the arbitration hearing. Evidence or facts which were known to AFSCME but not introduced during the last preceding formal grievance step of the Grievance Procedure shall not be introduced by AFSCME at the arbitration hearing.
4. Settlement offers made during the Grievance Procedure shall not be introduced as evidence in the arbitration hearing.
5. When the University has the information upon which to base a challenge to the arbitrability of a grievance and has such information prior to the selection of an arbitrator, the University shall inform the Union in writing of the intent to raise the issue of arbitrability prior to the selection of the arbitrator.
6. Should arbitrability of the subject matter be an issue, a separate arbitrator shall be appointed to determine the question of arbitrability unless the parties agree otherwise. Should procedural arbitrability be an issue in addition to subject matter arbitrability, two arbitration hearings will be held using two different arbitrators with the hearing on the arbitrability of procedure being held first, unless the parties agree otherwise.

7. Where two or more grievances are appealed to arbitration an effort will be made to consolidate the grievances and agree upon a single arbitrator.
8. Arbitration hearings conducted pursuant to this Article shall be closed unless the parties mutually agree otherwise in advance and in writing.
9. The arbitrator shall have the obligation of assuring that all necessary facts and considerations are brought before him or her by the representatives of the parties at the hearing. In all respects he or she shall assure that the hearing is a fair one. The arbitrator shall be the sole judge of the relevancy and materiality of the evidence and testimony offered. The arbitrator may receive and consider evidence but shall give appropriate weight to any objections made. All documents to be considered by the arbitrator shall be filed at the hearing.
10. The decision of the arbitrator on any issue properly before him or her shall be final and binding upon the University, the Union and all employees. 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 and shall not make any award which would, in effect, grant the Union or the employee(s) any matters which were not obtained in the negotiation process.
11. The arbitrator shall have the authority to subpoena and require the attendance of witnesses upon the reasonable request of either party. The expense of service and appearance fees, if any, shall be borne entirely by the party requesting the subpoena of witnesses and the arbitrator shall, in advance of the hearing date, inform each party of the identity of witnesses subpoenaed by the other party.
12. Either or both parties may, at their discretion, file briefs with the arbitrator. The order and time limits of briefing shall, on a case by case basis, be as mutually agreed upon by the parties or as specified by the arbitrator. Briefing time limits may be extended if mutually agreed upon by the parties.
13. The arbitrator shall consider the evidence presented and render a written decision within 30 calendar days of the close of the record of the hearing.
14. With regard to a grievance appealed to arbitration for which in whole or in part the remedy sought involves back wages or other monetary reimbursement, the University shall not, in providing such remedy as a result of an arbitrator's award or a settlement, be required to make any payment of wages or any other monetary reimbursement for:
  - a. any period of time during which an extension of time limits has been granted at the request of AFSCME;
  - b. any period of time between the date a hearing was originally scheduled to be held and, due to a request from AFSCME to postpone or change the scheduled hearing, the rescheduled date of the hearing; and
  - c. Any period of time earlier than 30 days prior to the date of filing of the Step 1 written grievance.

15. If the grievance is sustained in whole or in part, the remedy shall not exceed restoring to the employee 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.
  16. Except for the correction of mathematical, calculation, recording or accounting errors relating to the payment of wages, an award of an arbitrator with respect to any grievance which shall be submitted to him or her shall not in any case be made retroactive to a date earlier than 30 calendar days prior to the initiation of the written grievance in Step 1 of the Grievance Procedure. For grievances involving the correction of an error in the payment of wages or the correction of mathematical calculations, recording or accounting errors relating to the payment of wages (for example vacation leave, holidays, overtime, military leave or the amount of shift differentials, if any) shall not be made retroactive to a date earlier than two years prior to the initiation of the written grievance in Step 1 of the Grievance Procedure.
  17. In any settlement of a grievance appealed to arbitration involving retroactive payments, the appropriate University and Union representatives shall expeditiously determine the identity of the payees and the specific amount owed each payee. Such amount of payment shall be final and no individual employee or group of employees may subsequently grieve the amounts received.
  18. Awards involving monetary payment and/or credit shall be limited in their calculation to the utilization of the employee's actual and appropriate wage or benefit amount and shall not include the awarding of interest or any other payment/credit unrelated to a benefit amount or an hourly wage. Upon the motion of either party, or at his or her own discretion, an arbitrator may retain jurisdiction in cases involving an award of retroactive monetary payment and/or credit.
- K. The cost of the arbitrator and expenses of the hearing will be shared equally by the University and AFSCME. If either party or both parties request that a stenographic record of the hearing be made and transcripts provided, the parties shall equally share the entire cost of such service and the cost of the provision of a transcript to each party and the arbitrator.
- L. Witnesses who appear at the arbitration hearing at the request of the Union shall be in a without-loss-of-straight-time pay status for time spent actually giving testimony. Every effort shall be made by the Union to avoid the presentation of repetitive witnesses. The grievant (one grievant in a group grievance) shall be in a without loss-of-straight-time pay status at the arbitration hearing. The University shall not be responsible for any lodging, travel or other expenses incurred by grievants, witnesses or Union representatives with regard to the arbitration hearing. The University shall not be required to grant without-loss-of-straight-time pay status to more than one employee Union representative for attendance at any one arbitration hearing.
- M. An appeal to arbitration shall not constitute a bar to efforts by the University and AFSCME to achieve resolution of the grievance appealed to arbitration during the time the appeal is pending and until such time that an arbitrator has rendered his or her decision.
- N. AFSCME shall have full authority to settle, withdraw, or otherwise dispose of any grievance brought on behalf of the Union and/or on the behalf of employees. An agreement to settle,

withdraw, or otherwise dispose of a grievance appealed to arbitration reached by and between the University and AFSCME shall be binding upon employees represented by AFSCME.

**O. PANEL OF ARBITRATORS**

1. The University and AFSCME agree that there will be a permanent panel of 32 arbitrators selected to hear arbitration cases which are scheduled for hearing pursuant to the provisions of this Article. Sixteen shall be selected to hear cases involving the northern campus/Laboratory locations and 16 shall be selected to hear cases involving the southern campus locations.
2. Annually each party shall have the right to eliminate up to two arbitrators from the panels. A party exercising this right shall notify the other party in writing of the name(s) of the arbitrators to be stricken from the panel(s).
3. In replacing arbitrators who were eliminated or removed themselves from the panels the parties will attempt to mutually agree upon replacements. If mutual agreement cannot be reached, replacement arbitrators will be selected alternately by the parties. The party selecting first shall be determined by the flip of a coin. Any arbitrator eliminated may not be placed back on a panel for two years.

F. In all cases appealed to arbitration pursuant to the terms of this Article and this Agreement, with the exception of those cases in which the issue is that of actions taken by the University pursuant to Article 7 - Discipline and Dismissal, AFSCME shall have the burden of proceeding and the burden of proof. The burden of proceeding and proof in cases in which the issue is that of actions taken by the University pursuant to Article 7 - Discipline and Dismissal, shall be the University's cases in which the issue is that of actions taken by the University pursuant to Article 7 - Discipline and Dismissal, shall be the University's.

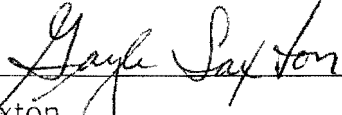
Q. Under no circumstances shall any grievance involving employees engaged in the violation of Article 22 - No Strikes be discussed or processed by the University to the arbitration stage or heard by an arbitrator while such violation continues. This provision shall not, however, waive compliance with the time limits for filing grievances or appeals from decisions rendered with regard to grievances or appeals to the Arbitration Procedure. Any grievance settlements and arbitration awards regarding back pay and/or reinstatement of benefits for employees who engage in violations of Article 22 - No Strikes shall not be made for any period of the time during which violations of Article 22 - No Strikes are occurring or have occurred.

R. At all steps in the Grievance Procedure and in the Arbitration Procedure the grievant and the Union representatives shall materially expedite the resolution of the grievance by disclosing to the appropriate University representatives a full and detailed statement of the facts relied upon, the remedies sought, and the provision(s) of the Agreement relied upon.

---

FOR THE UNIVERSITY OF CALIFORNIA

FOR THE AMERICAN FEDERATION OF STATE,  
COUNTY, AND MUNICIPAL EMPLOYEES



Gayle Saxton

Date *October 18, 2011*

Director, Labor Relations



Sanjay Garla

Date

Chief of Staff

U OF CALIFORNIA LABOR RELATIONS  
RECEIVED

'11 OCT -7 P2:27 LMA

A F S C M E

American Federation of State, County and Municipal Employees, AFL-CIO

# LOCAL 3299

Main Office

2201 Broadway Avenue, Suite 315

Oakland, CA 94612

UNION RELATIONS  
RECEIVED

'11 OCT -7 P2 26

UM



UNITED STATES POSTAGE

PITNEY BOWES

02 1M  
0004266681

\$ 02.08<sup>0</sup>  
OCT 05 2011

MAILED FROM ZIP CODE 94612

Gayle Saxton  
University of California  
Office of the President  
300 Lakeside Dr, 12<sup>th</sup> Floor  
Oakland, CA 94612-3550

