

Article 6

Grievance, Arbitration, and AWOL Procedures

6.1 Purpose

- A. This grievance procedure shall be used to process and resolve grievances arising under this Contract and employment-related complaints.
- B. The purposes of this procedure are:
 - 1. To resolve grievances informally at the lowest possible level.
 - 2. To provide an orderly procedure for reviewing and resolving grievances promptly.

6.2 Definitions

- A. A grievance is a dispute of one or more employees, or a dispute between the State and the Union, involving the interpretation, application, or enforcement of the express terms of this Contract.
- B. A complaint is a dispute of one or more employees involving the application or interpretation of a written rule or policy not covered by this Contract and not under the jurisdiction of the SPB. Complaints shall only be processed as far as the department head or designee.
- C. As used in this procedure, the term “immediate supervisor” means the individual identified by the department head.
- D. As used in this procedure, the term “party” means the Union, an employee, or the State.
- E. A “Union representative” refers to a Union steward or staff representative or a bargaining unit council representative.

6.3 Time Limits

Each party involved in a grievance shall act quickly so that the grievance may be resolved promptly. Every effort should be made to complete action within the time limits contained in the grievance procedure. However, with the mutual consent of the parties, the time limitation for any step may be extended.

6.4 Waiver of Steps

The parties may mutually agree to waive any step of the grievance procedure.

6.5 Presentation (Excludes Unit 21)

At any step of the grievance procedure, the State representative may determine it desirable to hold a grievance conference. If a grievance conference is scheduled, the grievant or a Union steward, or both, may attend without loss of compensation. A Union representative or job steward may request a meeting at the first or second step.

6.5.21 Presentation (Unit 21)

At any step of the grievance procedure, the State representative may determine it desirable to hold a grievance conference. If a grievance conference is scheduled, the grievant or a Union steward, or both may attend without loss of compensation. A Union representative or job steward may request a meeting at the first or second step providing it causes no additional cost to the State.

6.6 Informal Discussion (Excludes Unit 17)

An employee's grievance initially shall be discussed with the employee's immediate supervisor. Within seven (7) calendar days, the immediate supervisor shall give his/her decision or response.

6.6.17 Informal Discussion (Supervisor) (Unit 17)

An employee grievance initially shall be discussed with the employee's immediate supervisor within fourteen (14) calendar days of the occurrence of the event or circumstances occasioning the grievance, or within fourteen (14) calendar days of the date the employee could reasonably be expected to have knowledge of the event. Within seven (7) calendar days, the immediate supervisor shall give his/her decision or response.

6.7 Formal Grievance - Step 1 (Excludes Unit 17 and 21)

- A. If an informal grievance is not resolved to the satisfaction of the grievant, a formal grievance may be filed no later than twenty-one (21) calendar days after the employee can reasonably be expected to have known of the event occasioning the grievance.
- B. A formal grievance shall be initiated in writing on a form provided by the State and shall be filed with the person designated by the department head as the first formal level of appeal. Said grievance shall include a statement as to the alleged violation, the specific act(s) causing the alleged violation and the specific remedy or remedies being sought.
- C. Within twenty-one (21) calendar days after receipt of the formal grievance, the person designated by the department head as the first formal level of appeal shall respond in writing to the grievance.
- D. No contract interpretation or grievance settlement made at this stage of the grievance procedure shall be considered precedential. All interpretations and settlements shall be consistent with the provisions of this Contract.

6.7.17 Formal Grievance - Step 1 (Facility Head/Department Program Manager) (Unit 17)

- A. If an informal grievance is not resolved to the satisfaction of the grievant, a formal grievance may be filed no later than fourteen (14) calendar days after the supervisor's response.
- B. A formal grievance may be initiated and shall be in writing on a form provided by the State and shall be filed with the person designated by management as the first formal level of review. (In twenty-four [24] hour facilities this will typically be the facility Labor Relations Coordinator or designee.) The grievance shall be signed, specific, contain a synopsis of the facts giving rise to the alleged violation, cite the specific article(s) and section(s) of this Contract alleged to have been violated, contain the date of the alleged violation if applicable or known, and state the relief or remedy requested.
- C. Within fourteen (14) calendar days after receipt of the formal grievance, the person designated as the first formal level of review shall respond in writing to the grievance. No Contract interpretation or grievance settlement made at this stage of the grievance procedure shall be considered precedential. All interpretations and settlements shall be consistent with the provisions of this Contract.
- D. Upon request by either party, an additional seven (7) calendar days shall be granted under paragraph A or C above.

6.7.21 Formal Grievance – Step 1 (Supervisor) (Unit 21)

- A. If an informal grievance is not resolved to the satisfaction of the grievant, a formal grievance may be filed no later than:
 - 1. Thirty (30) calendar days after the event or circumstances occasioning the grievance, or
 - 2. within seven (7) calendar days after receipt of the decision rendered in the informal grievance procedure.
- B. However, under no circumstances may the period in which to bring the grievance be extended beyond thirty (30) calendar days in (1) above.
- C. A formal grievance shall be initiated on a form provided by the State and shall be filed with a designated supervisor or manager identified by each department head as the first level of appeal
- D. Within fourteen (14) calendar days after receipt of the formal grievance, the person designated by the department head as the first level of appeal shall respond in writing to the grievant.
- E. No Contract interpretation or grievance settlement made at this stage of the grievance procedure shall be considered precedential. All interpretations and settlements shall be consistent with the provisions of this Contract.

6.8 Formal Grievance – Step 2 (Excludes Unit 17 and 21)

- A. If the grievant is not satisfied with the decision rendered pursuant to Step 1, the grievant may appeal the decision within twenty-one (21) calendar days after receipt to the department head or designee.
- B. Within twenty-one (21) calendar days after receipt of the appealed grievance, the department head or designee shall respond in writing to the grievance. A copy of the written response shall be sent concurrently to SEIU Local 1000 Headquarters.

6.8.17 Formal Grievance – Step 2 (Department Head) (Unit 17)

- A. If the grievant is not satisfied with the decision rendered pursuant to Step 1, the grievant may appeal the decision within twenty-one (21) calendar days to the department head or designee.
- B. Within twenty-one (21) calendar days after receipt of the appealed grievance, the department head or designee shall respond to the grievance.
- C. At SEIU Local 1000's request, and with mutual agreement, a meeting at the work location or other mutually agreed upon location shall be held for the purpose of discussing the grievance. Time limits applying to the grievances shall be extended so that the parties can discuss more than one grievance, if necessary.
- D. The grievant or SEIU Local 1000 representative, or both, may attend such meetings without loss of compensation.
- E. Within twenty-one (21) calendar days after the meeting, the department shall respond in writing to the grievance. A copy of the written response shall be sent concurrently to the SEIU Local 1000 Headquarters.

6.8.21 Formal Grievance – Step 2 (Department Head or Designee) (Unit 21)

- A. If the grievant is not satisfied with the decision rendered pursuant to Step 1, the grievant may appeal the decision within fourteen (14) calendar days after receipt to the department head or designee as the second level of appeal. If the department head or designee is the first level of appeal, the grievant may bypass Step 2(D).
- B. Within twenty-one (21) calendar days after receipt of the appealed grievance, the department head or designee shall respond in writing to the grievant.
- C. No Contract interpretation or grievance settlement made at this stage of the grievance procedure shall be considered precedential. All interpretations and settlements shall be consistent with the provisions of this Contract.

6.9 Formal Grievance – Step 3 (Excludes Unit 17 and 21)

If the grievant is not satisfied with the decision rendered at Step 2, the grievant may appeal the decision within thirty (30) calendar days after receipt to the Director of the DPA or designee. The Union shall concurrently send a copy of the grievance appeal cover letter to the affected department(s).

- A. Within thirty (30) calendar days after receipt of the appealed grievance, the Director of the DPA or designee shall respond in writing to the grievance.

6.9.17 Formal Grievance – Step 3 (DPA) (Unit 17)

- A. If the grievant is not satisfied with the decision rendered at Step 2, the grievant may appeal the decision within thirty (30) calendar days after receipt to the Director of the DPA or designee.
- B. Within thirty (30) calendar days after receipt of the appealed grievance, the Director of the DPA or designee shall respond in writing to the grievance.

6.9.21 Formal Grievance – Step 3 (DPA) (Unit 21)

- A. If the grievant is not satisfied with the decision rendered at Step 2, the grievant may appeal the decision within thirty (30) calendar days after receipt to the Director of the DPA or designee.
- B. Within thirty (30) calendar days after receipt of the appealed grievance, the Director of the DPA or designee shall respond in writing to the grievance.

6.10 Response

If the State fails to respond to a grievance within the time limits specified for any step, the grievant shall have the right to appeal to the next step.

6.11 Formal Grievance – Step 4

- A. If the grievance is not resolved at Step 3, within thirty (30) calendar days after receipt of the third level response, the Union shall have the right to submit the grievance to arbitration. If the grievance is not submitted to arbitration within thirty (30) calendar days after receipt of the third level response, it shall be considered withdrawn.
- B. Within fifteen (15) calendar days after the notice requesting arbitration has been served on the State, the Union shall contact the State to mutually select an arbitrator. If the parties cannot mutually agree upon an arbitrator within thirty (30) calendar days after the request to select an arbitrator has been served, the Union may request the State Conciliation and

Mediation Service or the Federal Mediation and Conciliation Service to submit to both parties a panel of nine (9) arbitrators. Within fifteen (15) calendar days after receipt of the panel of arbitrators from the State Conciliation and Mediation Service or the Federal Mediation and Conciliation Service, the Union shall contact the State in writing and request to strike names from the panel. The parties shall have ten (10) business days to meet and alternately strike names until only one name remains and this person shall be the arbitrator.

- C. The arbitration hearing shall be conducted in accordance with the Voluntary Labor Arbitration Rules of the American Arbitration Association. The cost of arbitration shall be borne equally between the parties, unless the parties mutually agree to a different arrangement.
- D. An arbitrator may, upon request of the Union and the State, issue his/her decision, opinion, or award orally upon submission of the arbitration. Either party may request that the arbitrator put his/her decision, opinion, or award in writing and that a copy be provided.
- E. The arbitrator shall not have the power to add to, subtract from, or modify this Contract. Only grievances as defined in section 6.2(A) of this article shall be subject to arbitration. In all arbitration cases, the award of the arbitrator shall be final and binding upon the parties.

6.12 Grievance Review (Excludes Unit 21)

Upon request, the State shall meet monthly with the Union in an attempt to settle and resolve grievances. The parties shall agree at least two (2) weeks prior to each meeting on the agenda and who shall attend.

6.13 AWOL Hearing Back Pay

In any hearing of an automatic resignation (AWOL) pursuant to Government Code section 19996.2, the hearing officer shall have the discretion to award back pay. Once adopted by the DPA, the hearing officer's decision with respect to back pay shall be final and is neither grievable nor arbitrable under any provision of this Contract, nor may it otherwise be appealed to a court of competent jurisdiction. This provision does not alter or affect the right to bring a legal challenge or appeal of the other aspects of the hearing officer's decision as provided in law. This does not otherwise limit or expand any other authority of the hearing officer under Government Code 19996.2.

6.14 Mini-Arbitration Procedure

The parties agree to participate in a pilot program of an expedited (mini) arbitration process. The pilot program shall begin ninety (90) days after reaching a tentative agreement and continue for one year, after which it shall terminate unless extended by mutual agreement. The parties shall meet after reaching a tentative agreement to determine the procedures necessary to implement this pilot program.

- A. The grievances to be referred to this process shall be determined by mutual agreement only. The parties agree that this process shall be reserved for those cases of limited scope and limited impact. The parties agree that this process shall be used at least four (4) times during the pilot period.
- B. The arbitrator shall be mutually selected by the parties; if the parties cannot agree upon an arbitrator, the parties shall request the State Mediation and Conciliation Service to furnish a list of nine (9) arbitrators. The parties shall alternately strike names until one arbitrator remains.

C. The arbitration shall be conducted according to the following rules and the arbitrator shall be required to abide by them:

1. The arbitrator shall hear and decide as many grievances as can reasonably be presented in a normal work day.
2. Prior to the arbitration, the parties must mutually agree to the questions to be placed before the arbitrator or the case will not proceed through this section.
3. Only the grievant, his/her union representative, appropriate steward, and one witness and no more than four (4) management representatives may appear at the hearing. Each party will designate no more than two (2) spokespeople per case to make an oral presentation.
4. The arbitrator shall make his/her decision solely on the written record in the grievance, the grievance response(s), and any oral or documentary presentation made at the arbitration proceeding. The presentations shall be time limited, consistent with the intent of this provision to hold multiple grievance reviews in a single day. Only the arbitrator may ask the other side questions and each side waives the right to cross-examine the other. There shall be no stenographic record or transcripts.
5. At the conclusion of the hearing, each party shall present an oral summation of its position. Post hearing briefs shall not be submitted.
6. The arbitrator will issue a bench decision on each grievance. The decision of the arbitrator is final and binding, but shall have no precedential value whatsoever.
7. The arbitrator shall have no authority to add to, delete, or alter any provisions of this Contract, or any agreements supplementary thereto, but shall limit the decision to the application of the Contract to the facts and circumstances at hand.
8. The parties are limited at the expedited arbitration to presenting only the facts, documents, and arguments presented during the lower levels of the grievance process and either party may also introduce new documents or facts provided that such materials are submitted to the other party at least ten (10) days prior to the hearing.

D. The arbitrator shall be paid a flat fee for each day of the hearing, without regard to the number of cases presented during that day's hearing. Each party shall pay one-half of the arbitrator's charges.