

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.
- F. A grievance conference is a meeting that can be held at any step of the grievance process in an attempt to settle the grievance.

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

At any step of the grievance procedure, the State representative, grievant(s), Union representative or the Union steward may request a grievance conference. The grievant(s) and steward(s) shall attend without loss of compensation.

6.6 Informal Discussion

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

6.7 Formal Grievance – Step 1

- A. If an informal grievance is not resolved to the satisfaction of the grievant, a formal grievance may be filed no later than thirty (30) 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 and may request a grievance conference. Upon request, the parties shall meet within ten (10) days of receiving such a request to discuss settlement of the grievance. Unless otherwise agreed, the timelines set forth in Article 6 shall not be changed as a result of the scheduling of such meeting. The grievant(s) and steward(s) shall attend without loss of compensation.
- C. Within thirty (30) 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 grievant. A copy of the written response shall be sent concurrently to SEIU Local 1000 headquarters by the department head or designee.
- 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.

6.8 Formal Grievance – Step 2

- A. If the grievant is not satisfied with the decision rendered pursuant to Step 1, the grievant may appeal the decision within thirty (30) calendar days after receipt to the department head or designee.
- B. Within thirty (30) 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.

6.9 Formal Grievance – Step 3

- 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 CalHR or designee. The Union shall concurrently send a copy of the grievance appeal cover letter to the affected department(s).
- B. Within thirty (30) calendar days after receipt of the appealed grievance, the Director of the CalHR 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 forty-five (45) 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 the arbitrator's decision, opinion, or award orally upon submission of the arbitration. Either party may request that the arbitrator put the arbitrator's 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

Upon request of either party, the State and Union shall meet monthly 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 CalHR, 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 section 19996.2.

6.14 Mini-Arbitration Procedure

The parties agree to continue to participate in a pilot program of an expedited (mini) arbitration process. The pilot program shall continue for the duration of the agreement.

- 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 a mini arbitration hearing date shall be scheduled at least four (4) times in a

fiscal year. The parties agree to meet within forty-five (45) days from the date the legislature ratifies this MOU to select four (4) dates for this mini-arbitration process. The parties may cancel or add additional dates by mutual agreement.

- B. Within forty-five (45) days of this Agreement's ratification by the Legislature, the parties shall appoint a standing panel of four (4) arbitrators for the mini-arbitration process. Each party shall assign two (2) arbitrators to the mini-arbitration panel. The arbitrators shall be listed in alphabetical order by last name and be assigned to hear grievances on a continuous rotation.
- 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. The parties shall schedule the earliest available date provided by the arbitrator that is feasible for both parties.
 - 2. The parties shall attempt to prepare a written stipulation of undisputed facts prior to arbitration. The arbitrator shall only take testimonial and/or documentary evidence relevant to those facts which remain in dispute.
 - 3. The presentation of each grievance shall include an opening statement, the submission of documentary and testimonial evidence, and a closing argument. Each party will designate no more than one (1) spokesperson to present their case to the arbitrator. In addition, each party shall be limited to two (2) witnesses per case unless by mutual stipulation, in which case, the parties may call additional witnesses.
 - 4. The arbitrator shall make their 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. There shall be a stenographic record or transcripts of the hearings.
 - 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.