

# Article 13

# Dispute Resolution

## *Preamble*

The Federation and the District mutually agree that an interest-based approach to conflict resolution should be encouraged. Nothing in this article shall be construed to preclude the use of this style of problem solving.

## 13.1 Definition

13.1.1 A grievance shall be a complaint by:

- a. A unit member that he/she has been adversely affected by a misinterpretation, misapplication or violation of the provisions of this Agreement, or
- b. That the LRCFT has been adversely affected by a misinterpretation, misapplication or violation of rights directly affecting it or as a co-filer with an individual grievant. In the event LRCFT has a grievance directly affecting it, the grievance shall be filed at Step 2 or Step 3, whichever is appropriate.

## 13.2 Miscellaneous Provisions

### 13.2.1 Right to Representation

13.2.1.1 At Step 1, Step 2 and Step 3 meetings, the grievant may choose either:

- a. Request exclusive LRCFT representation. If the LRCFT agrees to represent at Steps 1, 2, or 3, no commitment to pursue the grievance to arbitration is implied.
- b. Represent him/himself or her/herself alone (i.e., does not have the right to non-LRCFT representation at the meetings). This option applies to situations in which the grievant does not request LRCFT representation or to situations where the LRCFT denies a representation request.

13.2.1.1.1 Where the grievant chooses 13.2.1.1(b), LRCFT shall have the right to be represented by an observer at meetings between the grievant and the District. At Step 2 or Step 3, the District shall notify LRCFT of such meetings.

13.2.1.1.2 Whenever a unit member chooses to pursue a grievance without LRCFT representation, the grievant shall assure that LRCFT has been notified by securing the LRCFT

number on the grievance form from the LRCFT College President.

13.2.1.1.3 Further, whenever an employee chooses to pursue a grievance without LRCFT representation:

- a. The District shall notify LRCFT of any settlement mutually proposed by the grievant and the District, at any step, and
- b. LRCFT shall have the right of comment prior to finalization of such proposed settlement.
- c. Any such settlements shall be consistent with this contract.

13.2.1.2 At the arbitration and Board, the grievant must be represented by LRCFT. Should LRCFT choose not to appeal to these levels, the administrative remedy of the grievant shall be deemed exhausted.

13.2.2 Forms

Forms for processing grievances shall be designed jointly by LRCFT and the District.

13.2.3 Consolidation

Where LRCFT is the representative, if the same grievance, or substantially the identical grievance, is made by more than one (1) grievant, the Federation, with the approval of the grievants, shall be allowed to consolidate such grievances.

13.2.4 Waiver of Step

Any level of the grievance procedure may be waived by mutual consent of the grievant and the District.

13.2.5 Failure to Meet Time Limits

13.2.5.1 Failure at any step of this procedure to communicate the decision on a grievance within the specified time limit shall automatically move the grievance to the next step.

13.2.5.2 Failure at any step of this procedure to appeal within the specified time limit shall be considered a waiver of the right to appeal.

13.2.6 Notices

Written notices to be given under this grievance procedure may be given by hand to the appropriate person or left with a person in charge of his/her office, or mailed by U.S. Mail. If given by hand, the date of delivery shall be counted as the date of notice. If mailed, the date of mailing shall be counted as the date of notice.

13.2.7 Costs

Except as otherwise provided in this article, costs for the services of an arbitrator will be shared equally by the District and the Federation.

13.2.8 Definition of Days

All reference to days shall mean instructional days. However, the parties will attempt to conclude grievances within the normal time lines even during non-instructional periods.

13.2.9 Waiver of Time Limits

Any reference to number of days in this article may be altered for any specific case by mutual agreement between either:

- a. The LRCFT and District representatives, or
- b. The grievant and representatives of the District in those cases where LRCFT is not representing the grievant.

13.3 **Informal Dispute Resolution Process**

Participants and stakeholders in the Informal Dispute Resolution Process should make every effort to involve only those individuals involved in the dispute. The parties recognize that in unique situations or atypical disputes, upper management may need to be involved in lower-level dispute resolution.

13.3.1 Parties should exhaust an alternative dispute resolution process prior to submitting a grievance at Step 2. This process may include the use of a third party to assist in the dispute resolution. A list of individuals trained in mediation or interest-based resolution processes will be maintained by the LRCFT and the District so that a mutually agreed upon party from this list can become a resource to the process. Timelines are held in abeyance during any informal dispute resolution process but can be restated by either party at any time.

13.3.2 Any grievance that alleges a failure to grant tenure was unreasonable or violated, misinterpreted, or misapplied any District policies and procedures or the terms and conditions of this Agreement concerning the evaluation of tenure track employees shall be immediately moved to arbitration, as per 13.5.5.

13.4 **Grievance Process**

Step 1

Within thirty (30) days after the grievant knew, or by reasonable diligence could have known, of the condition upon which the grievance is based, the grievant shall present his/her grievance, either orally or in writing, to the immediate supervisor of the grievant. If the manager notified of the grievance does not have the authority to adjust the grievance, he/she shall initiate actions immediately that will bring the complaint to the appropriate authority. If the appropriate authority is determined to be the College President, the grievance is no longer considered to be at Step 1. The grievant shall be informed of the appropriate authority. Within three (3) days from the date the manager is notified of the grievance, the manager will contact the grievant for a meeting which shall

be held within five (5) days of the contact. Within five (5) days of the meeting, the manager will communicate his/her decision to the grievant. This meeting will be held without regard to whether the matter is grievable or for any other reason.

Step 2

If the grievance is not resolved at Step 1, the grievant may submit the grievance to the College President. If a faculty member has more than 50 percent of his/her assignment at the District Office, the Vice Chancellor of the faculty member's assignment area shall assume the role of the College President for purposes of this article. The submission must be made within ten (10) days of the receipt of the decision at Step 1 and must certify that the Step 1 meeting was held indicating the date and issues discussed. Within twelve (12) days of receipt of the grievance, the President will schedule and hold a meeting with the grievant. The President will give his/her decision in writing within ten (10) days of the meeting.

Step 3

If the grievance is not resolved at Step 2, the grievant may submit the grievance to the Human Resources administrator. The submission must be made within ten (10) days of the receipt of the decision of the College President and must certify that the Step 2 meeting was held indicating the date and issues discussed. Within twelve (12) days of receipt of the grievance, the Chancellor (or designee) will schedule and hold a meeting with the grievant. The Chancellor (or designee) will give his/her decision in writing within ten (10) days of the meeting. For grievances waived to Step 3, both parties to the grievance will be afforded an opportunity to use a facilitated interest-based dispute resolution process.

Step 4

If either side appeals the decision of the Chancellor (or designee) within twenty-five (25) days after receipt of that written decision to arbitration, both sides agree that the grievance will be heard by a mutually agreed upon mediator appointed by the State Mediation and Conciliation Service prior to the arbitration.

- 13.4.1 The mediation shall be scheduled within thirty (30) days after receipt of the appeal or as soon as the mediator is available.
- 13.4.2 Until the mediation process is exhausted, timelines for scheduling the arbitration will be held in abeyance.
- 13.4.3 At the mediation level and the arbitration, the grievant must be represented by the LRCFT.
- 13.4.4 All costs of the mediation and arbitration shall be shared equally by LRCFT and the District. All other costs shall be borne by the party incurring those costs.

Step 5

LRCFT may appeal the decision of the Chancellor (or designee) within twenty-five (25) days after receipt of the written decision of the Chancellor (or designee) to arbitration. The appeal shall be filed in the office of the Chancellor and shall include all pertinent written materials.

- 13.4.5 The arbitrator shall be chosen from a rotational list of neutral third parties provided by the California State Mediation and Conciliation Service.
- 13.4.6 The representatives of the parties will meet in advance of the hearing to attempt to agree on the issues to be presented to the arbitrator and the remedy sought.
- 13.4.7 The arbitrator shall conduct a hearing with the parties to the grievance within thirty (30) days or as soon as he/she is able to schedule the hearing. The parties to the grievance will be allowed to attend all hearings at which information is given to the arbitrator. Sessions of the arbitration shall be private, with attendance limited to parties to the grievance, their representatives, and witnesses called by the arbitrator. While the proceeding is pending before the arbitrator, no disclosure of the proceedings shall be made public without concurrence of the arbitrator and the parties to the grievance. The arbitrator shall issue his/her decision not later than twenty (20) days from the date of the close of the hearings. The arbitrator's decision shall be in writing, shall include findings of fact, reasoning and conclusions on issues submitted, and shall be transmitted promptly to all parties in interest and the Board.
- 13.4.8 The arbitrator shall have no right to amend, modify, nullify, ignore, add to, or subtract from the provisions of this Agreement. He/She shall consider and decide only the specific issue or issues submitted to him/her in writing by the parties and shall have no authority to make recommendations on any other issue not so submitted. The arbitrator shall be without power to make any decision contrary to, or inconsistent with, or modifying or varying in any way to applicable laws and rules and regulations having the force and effect of law. The arbitrator shall not establish, alter, modify or change any salary schedule or salary structure; nor rule on any of the following:
- a. Any matter involving performance review other than compliance with procedures.
  - b. Any matter brought under Article 18, Non-Discrimination, or Article 21, Work Environment/Safety.
  - c. Termination of services or failure to reemploy any adjunct faculty member without preference.
  - d. Failure to reemploy any tenure-track employee may be pursued in accordance with the California Education Code, except where noted in this article.
  - e. Accommodation requests brought under the Americans with Disabilities Act.
  - f. Where any grievance is appealed to an arbitrator on which he/she has no power to rule, it shall be referred back to the parties without decision or recommendation on its merits.
  - g. Repayment of money owed to District pursuant to Article 2.11.

The decision of the arbitrator shall supersede all previous decisions and shall become binding on all parties except in cases where the amount in controversy exceeds \$5,000 in which cases the parties may appeal to the Board. Cases where the amount in controversy is \$5,000 or less that are settled by the arbitrator shall not be considered precedent setting.

- 13.4.9 The cost of the services of the arbitrator, including per diem expenses, if any, travel and subsistence expenses, the cost of recording the hearings, and any costs ordered by the arbitrator will be shared by the parties. All other costs will be borne by the party incurring them.

Step 6

Except as provided in Article 13.5.4.4 regarding matters in controversy of \$5,000 or less, the LRCFT or the Chancellor may appeal the decision of the arbitrator to the Board. Any appeal by either LRCFT or the Chancellor must be filed with the Secretary of the Board within fifteen (15) days after receiving the arbitrator's decision. The Board shall review the documentation in closed session. Each party may argue its position relative to the reasoning and conclusions of the arbitrator to the Board; however, each are controlled by the specific findings of fact of the arbitrator. The Board shall have the right to issue a final decision resulting from its deliberations. If the Board does not transmit its decision within sixty (60) days from its receipt of the appeal to the arbitrator's decision, then the parties shall automatically accept the decision rendered by the arbitrator as being final.

**13.5 Time Limits**

The District and LRCFT are mutually committed to adhering to the time limits outlined in the dispute resolution process and a good faith effort will be made towards meeting all time limits.