

## Article 5

### GRIEVANCE PROCEDURE AND ARBITRATION

#### A. Intent

It is the declared objective of the STATE SYSTEM/UNIVERSITIES and APSCUF to encourage the just resolution of grievances. In order to effect a prompt resolution of grievances, the STATE SYSTEM/UNIVERSITIES, APSCUF and the FACULTY shall make available to the other all known relevant facts so as to enable the parties to resolve grievances. The parties further agree that the orderly processes hereinafter set forth below shall be the sole method used for the resolution of grievances.

A grievance may be filed by a FACULTY MEMBER, a group of FACULTY MEMBERS, or APSCUF. APSCUF may present a policy grievance (one which affects more than one (1) person) at any step of the grievance procedure prior to arbitration. Decisions involving the non-renewal of probationary non-tenured FACULTY MEMBERS shall be governed exclusively by the provisions pertaining thereto as contained in Article 14, RENEWALS AND NON-RENEWALS.

#### B. Definition

A "grievance" is an allegation by APSCUF or a FACULTY MEMBER or group of FACULTY MEMBERS that there has been a specific violation, misinterpretation or improper application of an Article(s) and Section(s) of this Agreement by the STATE SYSTEM/UNIVERSITIES, and a statement of the remedy being requested. It is understood and agreed between the parties that APSCUF or a FACULTY MEMBER will be allowed to make amendments to the grievance up to the submission at Step Three. It is also understood that if such amendments are made to the grievance in the submission to Step Three, either party may resubmit the grievance to Step Two for reconsideration.

#### C. Procedure

Step One APSCUF, a FACULTY MEMBER or a group of FACULTY MEMBERS shall present a grievance orally or in writing at the lowest management level having authority to dispose of the grievance. The management representative shall investigate the grievance as he/she shall deem appropriate and respond to APSCUF and/or the grievant orally or in writing.

Step Two If the grievance has not been resolved at Step One, the grievant, group of grievants or APSCUF shall reduce the grievance to writing, stating the facts, and listing the Articles and Sections of this Agreement or the specific regulation(s) or procedure(s) upon which the grievance is based. Such written grievance(s) shall be submitted to the President or his/her designee within forty (40) calendar days of the occurrence giving rise to the grievance or within forty (40) calendar days of the date on which the grievant or grievants learned of such

occurrence, with the exception that if the forty (40) days expire between May 1 and September 1 of any year, the grievance shall be submitted to the President or his/her designee by September 30 of such year or within forty (40) calendar days, whichever comes later. The President or his/her designee shall have twenty (20) calendar days following the receipt of such written grievance to investigate the matter as he/she shall deem appropriate, discuss the matter with the grievant, group of grievants and/or the local APSCUF grievance chairperson or his/her designee where appropriate, and to submit a written response to the grievant, group of grievants and APSCUF.

If a grievance is amended before submission at Step Two or if either party resubmits an amended grievance to Step Two, the President or his/her designee shall have twenty (20) calendar days following the receipt of such amended grievance to investigate the matter as he/she shall deem appropriate, discuss the matter with the grievant, group of grievants and/or the local APSCUF Grievance Chairperson or his/her designee where appropriate, and to submit a written response to the amended grievance to the grievant, group of grievants and APSCUF.

Step Three If the grievance has not been resolved at Step Two, the grievant, group of grievants or APSCUF may, within fifteen (15) calendar days after the decision from the President at Step Two is due, submit a written appeal to the Chancellor of the STATE SYSTEM or his/her designee. The Chancellor of the STATE SYSTEM or his/her designee shall have thirty (30) calendar days following the receipt of such written appeal to submit a written response to the grievant, group of grievants and APSCUF.

Step Four - Binding Arbitration If the grievance has not been resolved at Step Three, APSCUF, but not an individual FACULTY MEMBER or group of FACULTY MEMBERS, has the sole right to refer a grievance to arbitration and to conduct the proceeding as a party, and shall within forty (40) calendar days of the receipt of the written response from Step Three submit a written notice to the Chancellor of the STATE SYSTEM or his/her designee of its intent to submit the grievance to binding arbitration. It is understood that only APSCUF, or counsel for APSCUF, may present the case in support of any grievance at arbitration.

D. The parties shall have the right mutually to agree upon the arbitrator, but in the event they cannot so agree within fifteen (15) calendar days of receipt of the above notice, the matter shall forthwith be submitted to the American Arbitration Association for the appointment of an arbitrator. In all cases, selection of the arbitrator and the arbitration proceedings shall be conducted in accordance with the Voluntary Labor Arbitration rules of the American Arbitration Association at the time obtaining. The arbitration proceeding shall be held at such time and place as is convenient to the parties, consistent with the circumstances of the case.

The decision of the arbitrator shall be final and binding upon the parties, except

where the decision would require an enactment of legislation in which case the decision shall be binding only if and when such legislation is enacted. The arbitrator shall have no authority to add to, subtract from, or modify this Agreement. Each case shall be considered on its merits and this collective bargaining agreement shall constitute the sole basis upon which the decision shall be rendered. If there is a question as to whether the arbitrator has jurisdiction to hear a case, this question must be heard and an immediate bench ruling issued by the arbitrator prior to his/her hearing and deciding the merits of the case. The arbitrator shall confine himself/herself to the precise issue the parties have agreed to submit for arbitration and shall have no authority to determine any other issues not so submitted to him/her. The arbitrator shall be requested to issue his/her decision within thirty (30) calendar days after the hearing or receipt of the transcript of the hearing.

The arbitrator's fees and expenses shall be shared equally by APSCUF and the STATE SYSTEM/UNIVERSITIES, but each party shall bear its own cost of preparing and presenting its case to the arbitrator. Where one of the parties to this Agreement requests a postponement of a previously scheduled arbitration which results in a postponement charge, the postponing party shall pay such charge unless the postponement results in a settlement of the grievance, in which event the postponement charge shall be divided equally between the parties. A postponement charge resulting from a joint postponement request shall be shared equally by the parties. Either party to an arbitration may request that a transcript of the hearing be made. The requesting party shall pay the cost for the transcript and shall provide a copy free of charge to the arbitrator. In the event that the party who did not order a copy of the transcript at the hearing subsequently decides to order a copy of the transcript, that party shall share equally in the cost of the copy of the transcript provided to the arbitrator.

E. The failure of either party to demand compliance with or to comply with the time limits of Steps One to Three of Section C. of this Article shall not bar either party from requiring that the stated time limits at Step Four be met.

F. A FACULTY MEMBER may, in accordance with the provisions of Article 15, TENURE, appeal any discipline or discharge for just cause at the Third Step of this grievance procedure. Any such appeal must be presented in writing within fifteen (15) calendar days after the FACULTY MEMBER has received written notice of the disciplinary action. A copy of the said written notice shall be mailed to the local APSCUF grievance chairperson and State APSCUF on the day the written notice is mailed or delivered to the FACULTY MEMBER, whichever day is earlier.

G. Time of the Essence

1. The filing of a grievance or appeal from any step of this grievance procedure or the notice of any intent to arbitrate shall be accomplished within the time limits specified and, in the event such is not done, the Administration's decision at the prior step shall be final and binding upon the parties and shall not

be subject to further appeal of any kind; provided, however, that the said time limits may be extended by written or oral mutual agreement for any reason, and reasonable requests for extensions shall not be arbitrarily denied; and, provided further, that a grievant shall not be penalized as to time if he/she has been misled by a representative of the STATE SYSTEM/UNIVERSITIES.

2. Failure to communicate a decision at any step of this grievance procedure within the specified time limits shall permit it to be advanced to the next step of the procedure, unless a longer period is established by mutual consent.

#### H. Rights of APSCUF

1. APSCUF's representative(s) shall be advised of the existence of a grievance as soon as the University Administration becomes aware of its existence. As early as possible and practical, copies of all transcripts, documents and correspondence filed with respect to a grievance shall be made available to APSCUF, and at APSCUF's request be provided to APSCUF. Costs of reproduction shall be borne by APSCUF should the STATE SYSTEM/UNIVERSITIES request such payment.

2. Any individual FACULTY MEMBER or group of FACULTY MEMBERS shall have the right at any time to present grievances to the STATE SYSTEM/UNIVERSITIES and have them adjusted without the intervention of APSCUF, as long as the adjustment is not inconsistent with the terms of this Agreement; and provided further that APSCUF has been given the opportunity to be present at such adjustment.

3. APSCUF's representative(s) shall be permitted to represent the grievant when requested to do so by the grievant and, in any event, to represent and speak on behalf of APSCUF's particular point of interest in connection with that grievance. In this regard, it is understood that the grievant has the right to represent himself/herself and APSCUF shall not interfere with that right.

#### I. Disposition of Grievances

Any settlement, withdrawal or disposition of a grievance at any step below Step Three in Section C., above, shall not constitute a binding precedent for the settlement of similar grievances in the future. The parties shall endeavor to implement fully any settlement agreement(s) or arbitration award(s) within sixty (60) days of the receipt of said agreement or award.