

## **ARTICLE 12: GRIEVANCE**

*(Entire Article Applicable to Children's Center Unit Members)*

**12.1** The prompt resolution of grievances is encouraged, and therefore the following procedure to accomplish this purpose is established. Unless otherwise stated in this agreement, all articles in the CBA are subject to grievance and binding arbitration

### **12.2 Definitions**

**12.2.1 Grievance.** A "grievance" is an allegation by a grievant that he/she has been directly or adversely affected by a misapplication, a misrepresentation, or a violation of a specific provision of this Agreement. Grievances may also be filed by a unit member for allegations of discrimination, or violation of gender equity or Section 504 (Handicapped Access) Regulations.

**12.2.2 Grievant.** A "grievant" is a member of the bargaining unit (as defined by this contract) with an alleged grievance. UPM/AFT may grieve Articles 3 and 13, or as provided for in 12.5. UPM/AFT may also file an individual or group grievance on behalf of a unit member(s) provided UPM/AFT does not file such grievance without the unit member's (unit members') written authorization.

**12.2.3 Day.** A "day" is defined as any day during which District offices are open for business.

**12.2.4 Immediate Supervisor.** The "immediate supervisor" is the lowest level manager having immediate supervisory authority over the grievant or who has been assigned to adjust grievances.

### **12.3 Grievance Filing**

**12.3.1 Who May File.** A grievance may be filed by a member of the bargaining unit or, with written authorization of the grievant, by a UPM/AFT representative on behalf of the grievant.

**12.3.2 Same Grievance/Multiple Grievants.** If the same grievance, or substantially the same grievance, is made by more than one (1) unit member, one (1) unit member may, on behalf of himself and all other grievants, file a grievance. The final decisions shall apply to all grievants and respondents.

**12.3.3 Grievance Form.** Forms for processing grievances shall be prepared by the District and UPM/AFT. The forms shall be printed by the District and given distribution by the parties (Form F 12.3.3).

### **12.4 Representation**

**12.4.1 UPM/AFT Representation.** The grievant has the right to be represented at any step in this procedure by UPM/AFT; however, any grievant may at any time present the grievances and have such grievances adjusted, without the intervention of UPM/AFT, as long as the adjustment is not inconsistent with the terms of this Agreement; provided that the District shall not agree to a resolution of the grievance until UPM/AFT has received a copy of the grievance and the proposed resolution and has been given the opportunity to file a response within fifteen (15) working days and provided that no grievance proceeds to binding arbitration without the written approval of UPM.

**12.4.2 Meeting with Administrator(s).** No grievant at any stage of the grievance procedure shall be required to meet with any administrators concerning any aspect of a filed grievance without UPM/AFT representation.

## **12.5 Automatic Step 2 Level Grievance**

**12.5.1 Action of Central District Authority.** If a grievance arises from the action of a central District authority, UPM or any other grievant may initiate such a grievance at Step 2, Paragraph 12.12.2, of the grievance procedure.

**12.5.2 Action of Authorized Committee.** If a grievance arises from the actions taken by a committee authorized by this contract, UPM or any other grievant shall initiate such a grievance at Step 2 of the grievance procedure.

**12.5.3 Student Academic Grievance.** If a grievance arises from the Student Academic Grievance Procedure or Article 24 of UPM/MCCD CBA, UPM or any other grievant shall initiate such a grievance at Step 2 of the Grievance Procedure.

## **12.6 Appropriate Grievance Step by Mutual Agreement**

By mutual agreement of the grievant and the District, a grievance may be moved to an appropriate higher level.

## **12.7 Time Limits/Access to Documents**

**12.7.1 Grievant: Time Limits.** Failure to appeal a decision within the specified time limits shall be deemed an acceptance of the decision. Time limits specified in this procedure may be extended in any specific instance only by mutual agreement of the parties in writing. Any step in the grievance procedure may be omitted with the mutual agreement of the parties to the grievance and the administrator at the level of such step.

**12.7.2 UPM/Grievant: Access to Documents.** The grievant or his/her representative shall have access to non-confidential records and documents which will reasonably be needed in preparation and/or resolution of the grievance.

**12.7.3 Management: Time Limits.** Time limits shall be strictly construed--if a manager fails to meet his/her contractual time limits, below the level of Step Two in the grievance procedure, the grievance will move automatically to Step Two; if the Superintendent/President fails to meet his/her contractual time limits at Step Two, and the grievant pursues the grievance to arbitration, the District shall pay all of UPM's costs of arbitration.

## **12.8 Written Notice by Certified Mail**

Written notice required by this grievance procedure must be made by certified mail, return receipt requested. This requirement shall apply to the grievant and or the Union, and to the District.

## **12.9 Non-Retaliation**

No reprisals of any kind shall be taken against any participant in the grievance procedure by reason of such participation. The fact that a unit member has filed a grievance(s) shall not be considered in personnel decisions nor in any recommendations for job placement, nor in decisions of awarding continuous contracts to probationary or contract members of the bargaining unit.

## **12.10 Filing A Grievance**

**12.10.1 Informal Resolution.** UPM/AFT and the District recommend that the parties to a potential grievance, if possible, resolve their differences informally before entering the formal steps of this procedure.

## **12.11 Step One: Formal Communication and Resolution of Grievance.**

**12.11.1 Grievant Time Frame/Procedure.** Within thirty (30) working days after the grievant knew, or by reasonable diligence could have known, of the condition upon which the grievance is based, the Union and the

grievant shall inform the immediate supervisor in writing in a clear and concise statement of the grievance, the specific section(s) of the CBA allegedly misinterpreted, misapplied, or violated, the circumstances involved, and the specific remedy sought.

**12.11.2 Supervisor Time Frame/Procedure.** Within ten (10) working days, the immediate supervisor shall communicate his/her decision, to the grievant and the Union.

## **12.12 Step Two: Appeal of Step One Decision**

**12.12.1 Grievant Time Frame/Procedure.** Within thirty (30) days after the grievant has been notified of his/her immediate supervisor's decision on the grievance, the grievant or his/her representative, if he/she intends to appeal, shall present the grievance on the prescribed form to the Superintendent/President or his/her designee.

**12.12.1.1 Automatic Step 2 Level Grievance.** If a grievance is as described in Article 12.5 of the CBA, the grievant shall, within the thirty (30) working days as described in section 12.11.1, present the grievance on the prescribed form to the Superintendent/President or his/her designee.

**12.12.1.2 Grievance Document.** The grievance shall contain a written clear concise statement of the specific section(s) of the CBA allegedly misinterpreted, misapplied, or violated, the circumstances involved, and the specific remedy sought.

**12.12.2 Management Time Frame/Procedure.** The Superintendent/President, or his/her designee, shall communicate in writing their decision within twenty (20) working days from the date on which they received the grievance. A copy of the formal written grievance shall be sent the grievant's supervisor at the time of its reception by the Superintendent/President.

## **12.13 Step Three: Binding Arbitration**

**12.13.1 UPM Agreement to Arbitration/Request Procedure.** In the event that the grievance has not been resolved to the satisfaction of the grievant in Step Two, the grievant may request arbitration if the grievant obtains UPM's written agreement. The grievant shall submit in writing to UPM a request for arbitration, said request must be sent to UPM no more than fifteen (15) days after the grievant has received notification of the Superintendent/President's decision. Submission of the required forms for binding arbitration shall be made to the Superintendent/President within thirty (30) working days after UPM has received notice by the District of the Superintendent/President's decision.

**12.13.2 Selection of Arbitrator.** The selection of an Arbitrator shall take place by selecting an odd number of potential Arbitrators from lists provided by the American Arbitration Association. The usual method of "striking" names from the list until one name remains will be used to select the arbitrator. A coin flip will be used to determine which party "strikes" first. The parties shall each bear the burden of one half of the Arbitrator's costs, and shall each bear their own separate legal and research costs.

**12.13.3 Arbitrator: Jurisdiction & Authority.** The District and UPM agree that the jurisdiction and authority of the Arbitrator will be confined exclusively to the interpretation of the express provisions(s) of the CBA between UPM and the District. The Arbitrator shall have no authority to add to, subtract from, alter, amend, delete or modify the provisions of the CBA between UPM and the District. However, the Arbitrator shall expressly have the authority to make monetary or other arbitration awards as he/she deems proper. The decision of the Arbitrator shall be communicated to both parties simultaneously and shall be final and binding.

**12.13.4 Waiver: Statutory Remedies/Right to Any Legal Process.** Processing a grievance beyond Step Two shall mean the grievant and/or UPM, and the District, expressly waive any right to statutory remedies and any right to the exercise of any legal process other than as provided for by this grievance/arbitration

procedure. The parties do not intend by the provisions of this paragraph to preclude the enforcement of any arbitration award in any court of competent jurisdiction.

#### **12.14 Miscellaneous**

**12.14.1 Commencement of Time Limits.** Time limits at each step shall begin the day following receipt of written notice/decision by the parties in interest. Such time limits can only be extended by mutual agreement by UPM/AFT and the District.

**12.14.2 Grievant: Conformance to Original Decision of Supervisor.** Until final disposition of a grievance takes place, the grievant is required to conform to the original decision of his/her immediate supervisor.

**12.14.3 Confidentiality of Process/Grievance Materials.** All documents, communications and records pertaining to a grievance shall be filed in a separate grievance file at the District office. During the pendency of any proceeding, and until a final determination has been reached, all proceedings shall be private, subject to the provision of the Brown Act. The grievant, or UPM/AFT, shall be permitted to examine and/or obtain copies of materials in such grievance files.

**12.14.4 UPM/Grievant: Access to Non-Confidential Records & Documents.** The grievant or his/her representative shall have access to non-confidential records and documents which will reasonably be needed in preparation and/or resolution of the grievance.

**12.14.5 Release Time.** The grievant, his/her representative, and necessary witnesses shall be provided time off from duties, without loss of pay, for attendance at conferences and/or hearing held pursuant to this Article 12.