

The University of the Virgin Islands
UVI-AAUP
Article 12: Grievance Procedure

Approved by the UVI Board of Trustees
March 4, 2017

The University of the Virgin Islands
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February 12, 2016

ARTICLE 12: GRIEVANCE PROCEDURE

12.1

The parties agree that all problems should be resolved whenever possible before a filing of a grievance, and they encourage open communication between Management and members of the Bargaining Unit so that resort to a formal grievance will not normally be necessary. The parties further encourage the informal resolution of grievances at the lowest possible level; i.e. first with the person with whom the grievance is against, and if no resolution is reached, with the person's immediate supervisor.

The purpose of this Article is to promote an efficient procedure for the investigation and resolution of complaints and grievances.

12.1.1 Grievance

For the purpose of this Agreement, a "grievance" is defined as a complaint, dispute, or controversy between the parties, as to the interpretation, application, or compliance with the provisions of this Agreement. The following procedure, including mediation and arbitration, may be initiated by either party and shall be the exclusive means of settlement of all grievances arising under this Agreement.

Grievances involving sexual misconduct are referred to the process as defined in Article 3.

12.2 Grievant

The term "grievant" shall mean a member, and/or a group of members of the Bargaining Unit, and/or UVI-AAUP, or Management, who has filed a grievance as defined in this Article.

12.3 Time Limits

The time limits indicated herein shall be considered maxima unless extended by mutual agreement in writing. When time limits fall within intersession, any initial request for time extension by either party shall be granted for up to ten work days from the next faculty return date.

In computing calendar days pursuant to this Article, the first calendar day shall be the first full day following the action.

12.4 Representation

By this Agreement, UVI-AAUP shall have the right to represent any member in grievances filed hereunder, provided members may elect to represent themselves or be represented by legal counsel. If a member covered by this Agreement elects not to be represented by UVI-AAUP, the member shall so indicate in writing to UVI-AAUP and Management. If a member elects self-representation or representation by legal counsel, a UVI-AAUP representative shall nevertheless be present at all stages of the formal grievance for purposes of fulfilling UVI-AAUP's obligations, and Management shall copy UVI-AAUP in all communications regarding the grievance, and notify UVI-AAUP in advance of all meetings or hearings. Resolution of any individually processed grievance shall be consistent with the terms of this Agreement. UVI-AAUP shall provide the President with an up-to-date list of authorized grievance representatives at the beginning of each academic year and shall promptly notify the President of changes that occur during the year.

12.5 Formal Grievance Procedure

12.5.1 Filing

Both parties encourage the informal resolution of grievances, However, all grievances shall be filed as soon as possible after the failure of the informal efforts at resolution, but no later than the end of the semester following the semester in which the action being grieved occurred, or after the grievant becomes aware of the event. Any grievance which is not presented within the aforementioned time limits shall be considered waived. An exception to this provision is that for a grievance involving a continuing issue, the grievant may file the grievance at any time that he/she determines that the grievance will not otherwise be resolved and has become intolerable.

12.5.2 Grievance Statement

A formal grievance is a concise written statement, signed by the grievant, and should include the following:

- 1.) a statement of the action being grieved,
- 2.) the specific terms of this Agreement or other approved policy alleged to have been violated,
- 3.) a statement of the relief sought.

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The grievant should include copies of relevant documents and other supporting materials with the filing of the grievance. All formal grievances by members of the Bargaining Unit, or by UVI-AAUP, shall be submitted to the Provost, or designee, with copies to the Executive Committee of UVI-AAUP, and to the person against whom the grievance is being filed. Grievances against the Provost must be submitted to the President, or designee, with a copy to the Provost and the Executive Committee of UVI-AAUP. Grievances by Management against UVI-AAUP shall commence at Step Two in the grievance process.

12.5.2.1

UVI-AAUP or Management may request in writing the postponement of any action in processing the grievance for a period of up to 20 calendar days for the purpose of informally resolving the grievance. The extension shall be granted. Additional extensions may be granted by mutual agreement of the parties. Any settlement, withdrawal, or disposition satisfactory to the grievant at this informal stage shall not constitute a binding precedent in the disposition of other similar complaints or grievances, but shall not be the final resolution of the particular grievance.

Upon the expiration of the initial postponement period and any extensions, the grievance will automatically proceed to Step One (below), if not settled.

12.5.2.2 Grievance involving promotion or tenure decisions

Promotion or tenure decisions are academic judgments, which Management is charged by law with making, and this grievance procedure cannot be used to substitute the judgment of any individual, group, or entity for that of Management. The substance or merit of Management's decisions on tenure or promotion cannot be grieved; tenure or promotion decisions can be grieved only on procedural grounds, if the grievant alleges that the decision was given inadequate consideration, or that the procedure followed was not in accord with the provisions of this Agreement, or involved illegal discrimination, or involved a violation of the grievant's academic freedom.

The sole remedy available in grievances involving tenure or promotion procedures shall be reconsideration of the decision by Management.

The recommendation for the denial of tenure may be appealed directly to the Board of Trustees.

12.5.3 Step One

The Provost, or the Provost's designee, shall conduct a conference with the grievant, the UVI-AAUP representative, and the individual against whom the grievance is filed, or who is designated as most centrally involved in the grievance. If the grievance is against the Provost, the President, or the President's designee, shall conduct a conference with the grievant, the UVI-AAUP representative, and the Provost. This conference shall occur no later than ten (10) workdays following: (1.) receipt of the grievance, if no postponement is requested; or (2.) expiration of any postponement or extension. The Provost, or designee, or in the case of a grievance against the

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Provost, the President, or designee, shall receive witness- testimony, evidence, and arguments in support of, and in defense against, the grievance. A written decision shall be issued within ten workdays following the conclusion of the conference.

As an exception to the above process, in any grievance involving the non-reappointment of a faculty member for performance, the denial of sabbatical leave or a claimed violation of academic freedom, the Provost will, prior to conducting the Step One conference, first refer the case to a hearing panel for its recommendation on the grievance.

If the grievance is against the Provost, the President, or designee will, prior to conducting the Step One conference, first refer the case to a hearing panel for its recommendation on the grievance.

The hearing panel shall consist of the following: one (1) Bargaining Unit member appointed by the UVI-AAUP Executive Committee; one (1) Bargaining Unit member appointed by the Faculty Chair; and two (2) members of the UVI administrative staff, appointed by the Provost (or by the President when the grievance is against the Provost), who are not involved with, nor report directly to the party or parties involved in the grievance. The hearing panel member appointed by the Faculty Chair shall be responsible for calling the first meeting at which a Chair of the panel shall be decided upon by the members of the panel.

The Provost, or designee, or in the case of a grievance against the Provost, the President, or designee, shall forward a copy of the grievance to the Faculty Chair within five (5) workdays of receipt of the grievance. Within ten (10) workdays thereafter, the Faculty Chair, the Provost and UVI-AAUP shall select the panel members and notify one another of their selections.

The panel shall be convened within ten (10) workdays of the appointment of the panel members. At this initial meeting, the panel will begin its review of the grievance. The panel shall meet with the grievant and a representative of UVI-AAUP to hear the grievance allegations. The panel shall meet separately with the Academic Supervisor or Unit Manager involved in the decision giving rise to the grievance. Follow up meetings with the grievant and the Academic Supervisor and/or Unit Manager will be held by the panel if the panel determines that more information is needed. Follow up meetings may be separate, or may include the grievant, a representative of UVI-AAUP and the person against whom the grievance is filed, provided both parties agree. The panel may also request additional documentation from either party. The panel shall state its opinion as to whether or not the Collective Bargaining Agreement has been violated in any way in view of the bases for grievances set forth in this Agreement.

The panel shall also make a written recommendation, incorporating its reasoning, to the Provost, or designee, as to the disposition of the grievance within 20 calendar days of the convening of the panel. The recommendation should outline whether or not terms of the Agreement have been violated, outlining what those terms are. A copy of the panel's recommendation shall be supplied to the grievant, UVI-AAUP, and the Provost, or designee, or to the President in instances in which a grievance is filed against the Provost. Within 20 calendar days of receipt of the panel's recommendation, the Provost, or designee, shall hold a meeting with the grievant and the UVI-AAUP representative. The Provost may, at his or her discretion, have another administrator or

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staff member present at such meeting. Members of the hearing panel may also attend and participate in such meeting. If the recommendation of the grievance hearing panel is rejected, the Provost, or designee, or President, or designee, shall issue a written statement to that effect, including a rationale for rejecting the hearing panel's recommendations.

12.5.4 Step Two-Mediation

If the grievant is not satisfied with the Step One decision, UVI-AAUP may within five (5) workdays after receiving the decision submit a written request to the Public Employees Relations Board (PERB) to refer the matter to mediation, and provide a copy to the University. In the case of a grievance by Management against UVI-AAUP, the University will submit a written request to the PERB to refer the matter to mediation, with a copy to the UVI-AAUP Executive Committee. The parties agree to abide by the rules and procedures for mediation, as approved by the PERB.

In the event a grievance remains unsettled after going through the mediation process, UVI- AAUP, or, in the case of a grievance by Management against UVI-AAUP, the University, may proceed to arbitration, which shall be final and binding on the parties. UVI-AAUP shall have the exclusive right on behalf of the Bargaining Unit member to invoke arbitration through the PERB. The party initiating arbitration shall notify the other party in writing of its intent to take the grievance to arbitration.

12.5.5 Step Three - Arbitration

In the event that a grievance goes to arbitration, the parties shall, within five (5) workdays after the date of the written designation of the grievance for arbitration, request from the PERB a list of names and addresses of impartial arbitrators. The parties shall then make every effort to agree to one of these persons as the arbitrator.

12.5.5.1

In the event the parties are unable to agree on one of those persons as an arbitrator within ten working days of receipt of the list, the parties acting jointly shall request the American Arbitration Association to provide a panel of five (5) or seven (7) arbitrators, as agreed to by the parties, in accordance with the rules and procedures of the Association. Each party within five (5) workdays of receipt of the list shall have the right to reject one entire list and request the submission of another panel. Thereafter, each party, commencing with the one seeking arbitration, shall alternately strike one (1) name from the list and the name of the person last appearing on the list shall be designated as the Arbitrator and his appointment shall be binding on both parties.

12.5.5.2

The Arbitrator's compensation and expenses shall be shared equally by the parties.

12.5.5.3

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The Arbitrator shall have no jurisdiction or authority to add to, detract from, or alter in any way the provisions of this Agreement.

12.5.5.4

The decision of the Arbitrator shall be final and binding on both parties to this Agreement and the grievant. It shall be rendered in writing within thirty (30) calendar days of the last hearing or submission of facts.

12.6 Remedy

If the grievance is upheld, the grievance shall be remanded with a directive as to procedures to be followed.

Unless otherwise provided in the Agreement, the preceding procedure shall constitute the sole and exclusive method used for the resolution of grievances under this Agreement.

12.6.1

Any records pertaining to a formal grievance shall be kept in the Office of the Provost, in a file separate from the grievant's official personnel file, and the University is forbidden to consider an individual's having filed a grievance in any consideration of retention, promotion, and tenure for that individual.

12.6.2

Retaliation or punitive action against any member of the Bargaining Unit for filing a grievance is prohibited.

12.7 Reservation of Individual Rights

Nothing contained in this Agreement shall be construed to limit the rights of the individual grievant or UVI-AAUP to assert claims against the Board or Management in any court or administrative agency of competent jurisdiction where such claims derive from any federal or territorial constitutional or statutory provision or regulation or from any other source, including individual agreements, unless such claims derive solely and exclusively from this Agreement.