

# CFA Grievance Filing Guide

August, 2007

**T**hank you for consulting with the California Faculty Association concerning your workplace problem and the possibility of seeking resolution of that problem by means of a grievance pursuant to the collective bargaining agreement between CFA and CSU. It is our goal to provide you with the most comprehensive information and best advice possible to achieve your desired outcome.

To get started, please make sure you have a copy of the current collective bargaining agreement (available from CFA, the Administration, and their respective Web sites) and have read Article 10, in particular. Additionally, there are a few basics which are critical to your success:

## The Basics

- ***It is your responsibility to properly file your grievance with the Administration*** and to choose between two distinct filing tracks available. CFA will help, but it is necessary that you choose the track, sign the grievance, file it on time and with the appropriate administrator, and provide the information necessary to understand and pursue a resolution of your problem.
- ***Timely filing of your grievance is critical: within 42 days*** of the occurrence giving rise to your grievance or the time when it can reasonably be assumed you could have known of the problem.
- There are situations in which CFA may choose to assist you by filing a ***contract track*** grievance in its own name rather than recommending you act as an individual. Generally speaking, CFA grievances will be used when it appears that the problem in question is shared by a number of faculty, not just you. In such situations, however, you must be prepared to identify yourself as part of the grievance if you want to be assured of benefiting from any successful outcome that may be achieved.

## Choose a Grievance Track

The collective bargaining agreement provides two basic tracks for the filing and processing of a grievance. Both tracks—referred to as the ***contract grievance*** track and the ***statutory grievance*** track—can lead to binding arbitration by a neutral third party under certain circumstances. (Bargaining Unit employees who have worked in the CSU for less than one semester or quarter are limited to the contract grievance track.)

## Choose a Grievance Track

(continued)

If your grievance does not involve a specific violation of the CFA contract, but you were wronged in other ways in the workplace, it is strongly recommended that you choose the **statutory track**. It is highly unlikely that CFA would elect to arbitrate such a case if filed using the contractual track, or that an arbitrator would sustain your grievance absent a clear contract violation.

If your grievance does involve a specific violation of the contract, you should choose the track you believe will be most likely to produce the best outcome for your case.

***You must choose the track for your grievance upon initial filing*** or the matter will automatically be processed as a contract grievance.

### In some ways the two tracks are similar; in others they are different:

#### Similarities

*Both grievance tracks...*

- ✓ use the same definition of grievance: "*an allegation that the employee was directly wronged in connection with the rights accruing to his or her job classification, benefits, working conditions, appointment, reappointment, tenure, promotion, reassignment, or the like.*"
- ✓ use the same form (included here) for filing purposes
- ✓ provide for an initial meeting with Administration to seek resolution of the grievance
- ✓ follow similar timelines
- ✓ provide access under certain circumstance to final and binding arbitration by a third-party neutral
- ✓ allow the grievant to select a representative (or none) of their own choosing in the initial stages of the grievance processing
- ✓ provide for CFA cost-sharing of arbitration expenses in those cases in which it voluntarily agrees to participate. In **statutory track** cases only (where the Union does not participate), **CSU pays the cost of arbitration.**

#### Differences

*Differences between the tracks...*

- ✓ Only the **statutory track** provides for a **Faculty Hearing Committee** to review the grievance.
- ✓ Arbitration is allowed under the **statutory track** only in those instances where a **positive Faculty Hearing Committee decision** is reached, but is subsequently rejected by the campus President.
- ✓ Arbitration is allowed under the **contractual track** only when CFA agrees to arbitrate the grievance.
- ✓ Only **contractual track** grievances are considered precedential in future cases.

## Temporary Faculty

### An Additional Option at the Arbitration Stage for Temporary Faculty

If (1) you hold a term or "temporary" contract and (2) your grievance qualifies for arbitration under either the *statutory track* or the *contractual track* and (3) your grievance involves an alleged violation of *Article 12* (primarily involving Lecturer cases), then following the last administrative step of the track you have chosen you will be able to elect the mode of arbitration to be used.

One option is the traditional arbitration process, which typically takes longer to complete but which allows for the fullest exploration and adjudication of the problem at hand. The other option is to use the contract's *Umpire* system, which will allow for more timely scheduling of a hearing, but which will also limit the amount of time available for both the presentation of your case and the consideration of the arbitrator (Umpire).

## Factors to Consider in Choosing Your Grievance Track

### *Statutory Grievance*

- Utilizes a Faculty Hearing Committee composed of full-time faculty to make non-binding recommendations to the campus President.
- Does *not* automatically guarantee a final and binding decision by a neutral arbitrator; only grievances sustained by the Hearing Committee and denied by the President are eligible for arbitration.
- Is likely to take longer start to finish than the contractual process due to the Hearing Committee step.
- May be utilized from start to finish (arbitration) without CFA involvement.
- May *not* be used by employees who have worked less than 6 months.
- May *not* be used for group grievances, "class action" grievances, or grievances wherein CFA is the named grievant.
- Will not be precedential as to contract interpretations, etc.
- May, as a practical matter, involve claims that range far beyond direct contract violations.

### *Contract Grievance*

- Allows for arbitration only if CFA agrees to arbitrate (CFA "owns" the arbitration step)
- Must be used for group grievances, "class action" grievances and grievances in which CFA is the grievant.
- May be slightly faster from start to finish than the statutory process.
- Available to all unit members.

- ❑ Despite broader grievance definition than previously, will probably continue to focus on contract violations rather than more broadly stated claims.

### ***Umpire System***

- ❑ Restricted to Art. 12 appointment, reappointment, range elevation or work assignment grievances filed by temporary faculty.
- ❑ Must be elected following completion of the Faculty Panel/Presidential decision or CO step.
- ❑ Must be scheduled within 30 days.
- ❑ Requires mutual agreement for a hearing to exceed one day (time divided equally between grievant and CSU).
- ❑ No brief, decision within 3 days.
- ❑ Non precedential.

### ***Imponderables***

- ❑ Faculty hearing committees provided under the statutory grievance process will represent an "unknown" in the process as it is re-initiated in the new contract after a hiatus of some 25 years. The grievant must decide whether s/he will be better served by this peer review process, which ***may be followed by arbitration under certain circumstances***, or by the contractual grievance process where administrative decisions will be reviewed by a neutral arbitrator upon approval of CFA.
- ❑ The Faculty Hearing Committee may recommend—and the President may accept—a negative decision on the grievance, thus barring arbitration.
- ❑ The Faculty Hearing Committee may recommend—and the President may accept—a remedy other than that sought by the grievant, thus barring arbitration.
- ❑ The Umpire will represent another "unknown" in the process, which has not previously been used by CFA and CSU but which has worked well in other large employment jurisdictions. This process may be a trade-off between speed and thoroughness.
- ❑ Promotion, tenure, and reappointment grievances tend to be the most complicated of cases, frequently requiring the production of many documents by the Administration (to make comparative claims, for instance). If such a case is filed under the ***statutory track***, there is relatively little time between initial filing, campus review, and a hearing before a faculty panel. These short timelines ***may*** preclude complete production of evidence before the Faculty Hearing takes place. Extensions and continuances can be granted, but solely at the discretion of the Hearing Committee.

## *CFA Representation Principles*

- ▶ CFA will strive to provide the best and most accurate advice possible to CSU faculty considering the filing of a grievance, regardless of job classification, membership status, or personal attributes.
- ▶ CFA will carefully consider active participation in all statutory or contract grievances on a case by case basis. CFA will normally participate in **contract grievance** processing upon request.
- ▶ As a matter of practice, CFA may **not** become part of **statutory track** grievances at the time of filing, but will, upon request, assist in the initial discussion of such grievances with the Administration at the first step of the process.
- ▶ Following the issuance of the first Administrative answer to the grievance, CFA will consider formal participation in the **statutory track** grievance upon **timely, written request** of the faculty grievant. If the Union agrees to participate, it will provide assistance and/or representation before the **Faculty Hearing Committee** as requested by the grievant. Following issuance of the Faculty hearing Committee decision and that of the campus President, CFA will again consider (upon the grievant's request) participation in a statutory arbitration hearing. CFA will evaluate such requests on a case by case basis but may not elect to participate in all cases.
- ▶ Except in extraordinary cases, CFA will not participate in **statutory track** grievances involving intra-faculty disputes unless the dispute involves the exercise of authority granted by contract or Administrative delegation.
- ▶ In cases where a **Faculty Hearing Committee** rules favorably on a grievance in which 1) CFA has not participated and 2) the campus President has rejected the ruling of the Faculty Hearing Committee, CFA will, upon written request of the grievant, consider or reconsider participation in the arbitration of that dispute. Because of contractual time limit mandates, such a request must be made within **3 days** of the Faculty Hearing Committee decision. ***If the Union agrees to participate in the arbitration process, it will provide assistance and/or representation in arbitration.***
- ▶ CFA will not bear the cost of providing representation (or associated costs such as expert witnesses, witness travel, transcript, etc.) in cases in which it has not voluntarily agreed to participate.
- ▶ In all grievances or arbitrations in which CFA participates, the Union will provide representation of its own choosing. Although in **statutory track** grievances the grievant is free to select a representative of his or her own choice, CFA will not be responsible for any portion of the costs associated with that choice.
- ▶ Should CFA be asked to arbitrate either a **statutory track or contract track** grievance and declines such representation, the faculty grievant may appeal that decision to CFA's Statewide Representation Committee composed of CSU faculty. Decisions of the Committee shall be final.

## Receipt Form

*This is to acknowledge that CFA or a CFA representative has provided me with grievance filing and processing advice as provided in this Grievance Filing Guide, as well as information pertaining to its organizational policies concerning assistance to grievants.*

Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Campus/Department: \_\_\_\_\_ / \_\_\_\_\_

Date: \_\_\_\_\_

**(A copy of this form must be retained by the CFA representative and maintained as part of the local Chapter's grievance files.)**

**THE CALIFORNIA STATE UNIVERSITY  
INDIVIDUAL GRIEVANCE FORM  
UNIT 3**

Name: \_\_\_\_\_

Date of Submission to Campus \_\_\_\_\_

Classification: \_\_\_\_\_

Name of Representative: \_\_\_\_\_

Department or  
Equivalent Unit: \_\_\_\_\_

Address of Rep: \_\_\_\_\_

Campus: \_\_\_\_\_

Campus Telephone: \_\_\_\_\_

The named representative is an agent of CFA:

Yes  No

Date of Informal Meeting: \_\_\_\_\_

**LEVEL OF FILING**

Level I – (Statutory and Contractual Grievances)

Date: \_\_\_\_\_

Level II – (C.O. – Contractual Grievances only)

Date: \_\_\_\_\_

**Election: Pursuant to Article 10.6 of the CFA/CSU Agreement the grievant(s) elect(s) that the procedure under which this grievance shall be determined will be:**

A: The Contractual Procedure

B: Faculty Hearing Committee (The Statutory Procedure)

**Failure by the grievant to make an appropriate election above shall result in the automatic processing of his/her grievance under the contractual procedure.**

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**When Claiming a Violation of the Collective Bargaining Agreement:**

Term or terms of agreement alleged violated, misapplied or misinterpreted (provision number or numbers):

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**When Claiming a Violation Based Upon A Statutory Right:**

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The rights alleged violated in connection with his/her job classification, benefits, working conditions, appointment, reappointment, tenure, promotion, reassignment, or the like, including but not limited to rights arising under this agreement.

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Brief description of the grounds of the grievance (including names, dates, places, times, etc., necessary for complete understanding):

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Proposed remedy:

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Response:

Level I        Level II   

Grievant Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**IMPORTANT NOTE:** The collective bargaining agreement requires that all grievances be filed by:

1. Personal Delivery, or
2. Certified Mail, with Return Receipt

Please provide one copy of each grievance filing and response to: (a) employee; (b) employer (level of filing); (c) CSU Campus Relations and Dispute Resolution, Office of the Chancellor, 401 Golden Shore, 4<sup>th</sup> Floor, Long Beach, California 90802-4210; (d) CFA, 300 Capitol Mall Suite # 1590 Sacramento, CA 95814.