

## ARTICLE 9

### GRIEVANCE PROCEDURE

#### Definitions

- 9.1 Grievance - The term "grievance" as used in this Article refers to a written allegation that there has been a violation, misapplication, or misinterpretation of a specific term(s) of this Agreement. In no event may a grievance be based on an event or circumstances arising from an event that took place prior to the effective date of this agreement.
- 9.2 Grievant - The term "grievant" as used in this Article shall mean a bargaining unit employee(s), excluding temporary employees employed for less than thirty consecutive days, who alleges in a grievance that they have been directly wronged by the alleged violation, misapplication, or misinterpretation of the specific term of this Agreement. The term grievant may also refer to the Union when alleging a violation of union rights as provided for in this Agreement.
- 9.3 Immediate Supervisor - The term "immediate supervisor" as used in this Article refers to the appropriate non-bargaining unit supervisory or management person to whom the employee is accountable.
- 9.4 Representative - The term "representative" as used in this Article shall be an employee or representative of the Union who at the grievant's request may be present at Levels I through III. Representation of the employee at Level IV shall be by a Union Representative only.
- 9.5 Respond and File - The terms "respond" and "file" as used in this Agreement refer to personal delivery or deposit in the U. S. mail, postage prepaid. If mail delivery is used, it shall be by certified, return receipt requested mail and the date mailed shall establish the date of response or filing. If personal delivery is used, the calendar date of delivery shall establish the date of response or filing.

#### Level I - Informal Review

- 9.6 a. The informal review procedure is provided to encourage the informal resolution of grievances at the lowest possible level. Before filing a formal written grievance, the employee shall attempt to resolve the problem by an informal conference with the Plant Operations Director or appropriate administrator no later than fourteen (14) days after the event giving rise to the problem or no later than fourteen (14) days after the employee knew or should have known of the event giving rise to the complaint.
- b. The Plant Operations Director or appropriate administrator shall provide an

answer to the employee no later than ten (10) days after the Level I meeting.

- c. A resolution of the problem at the informal level shall not be precedent setting.

### **Level II - Formal**

- 9.7 a. If the problem is not resolved through Level I informal discussions, the employee may file a Level II grievance with the President or the President's designee no later than fourteen (14) days after receipt of the response at Level I. The grievant shall state clearly and concisely on a grievance form provided by the CSU:
  - i. the specific terms(s) of the Agreement alleged to have been violated;
  - ii. a description of the grounds of the grievance including names, dates, places, and times necessary for an understanding of the facts of the grievance;
  - iii. the remedy sought;
  - iv. the name, classification, signature, and address of the grievant;
  - v. the name and mailing address and telephone number of the grievant's representative, if any; and
  - vi. the date of submission.
- b. The President or the President's designee shall hold a meeting with the grievant and the grievant's representative, if any, at a mutually acceptable time and location within seven (7) days of receipt of the grievance. The President or the President's designee shall respond in writing to the grievant within twenty-one (21) days of the Level II meeting.
- c. The parties shall present at Level II all issues and evidence known or which could have been reasonably known that are related to the grievance. Allegations may not be modified after completion of Level II procedures.

### **Level III**

- 9.8 a. In the event the grievance is not settled at Level II, the grievant may file a written request for review with the Office of the Chancellor no later than fourteen (14) days after receipt of the Level II response. The grievant shall attach a copy of the Level I response, if any, and the Level II response together with any documents presented at these levels.

- b. A designated individual in the Office of the Chancellor and the representative of the grievant shall schedule a conference at the Office of the Chancellor for the purpose of reviewing the matter within fourteen (14) days of the receipt of the Level III appeal. The designated individual in the Office of the Chancellor shall respond no later than twenty-one (21) days after the conference.
- c. If the grievance has not been settled at Level III, the Union alone may, no later than thirty (30) days after receipt of the Level III response, file a request for arbitration by giving notice to that effect by certified mail, return receipt requested, directed to Labor Relations, Office of the Chancellor.

#### **Level IV**

- 9.9 The arbitration procedure shall be conducted in accordance with the rules of the American Arbitration Association, subject to the provisions below.

The Union and the Office of the Chancellor shall either agree mutually on an acceptable arbitrator or shall jointly request the American Arbitration Association to supply a list of names pursuant to its rules. Upon receipt of the names of proposed arbitrators, the parties shall alternately strike names from the list until one (1) name is ultimately designated as the arbitrator. The decision as to which party strikes first shall be determined by lot.

- 9.10 If an arbitrability question exists, the arbitrator shall determine the arbitrability question prior to hearing the merits of the grievance. The arbitrator may proceed to hear the merits of the grievance prior to meeting the requirements of provision 9.12 below.

- a. When the grievance is found not arbitrable, the grievance shall be deemed null and void.
- b. When the grievance is found to be arbitrable, the arbitrator shall hear the merits of the grievance.
- c. Provision 9.10 above shall not prohibit the parties from mutually agreeing to a second arbitration hearing on the merits of the grievance or from mutually agreeing to select a second arbitrator to hear the merits of the grievance.

- 9.11 The arbitrator's award shall be in writing and shall set forth their findings, reasoning, and conclusions on the issue(s) submitted.

- 9.12 It shall be the function of the arbitrator to rule on the specific grievance. The arbitrator shall be subject to the following limitations:

- a. The arbitrator's award shall be based solely upon the evidence and arguments appropriately presented in the hearing and upon any post-hearing briefs.

- b. The arbitrator shall have no power to alter, add to, detract from, or amend the provisions of this Agreement.
  - c. The arbitrator shall not consider any issue not raised by the parties at Level III of this Article. The arbitrator shall not consider any evidence which was known or reasonably should have been known and not raised by the parties at Level III of this Article.
  - d. Under no circumstances may an arbitrator make an award that substitutes the arbitrator's judgment for the President's judgment or business decisions in areas of professional discretion.
  - e. The award of the arbitrator may or may not include back pay. Any back pay award shall not exceed one (1) year's salary less any compensation that the employee received, including unemployment compensation. Under no circumstances may interest be included in the award.
  - f. The standard of review for the arbitrator is whether the CSU violated, misapplied, or misinterpreted a specific term(s) of this Agreement.
- 9.13 The arbitrator's award shall be final and binding on both parties.
- 9.14 A witness who is an employee shall be excused from work time to appear at an arbitration hearing with no loss of pay. Other expenses of any witness called before the arbitrator shall be borne by the party calling the witness.
- 9.15 Each party shall bear the expense of preparing and presenting its own case. The cost of arbitration, excluding advocate, unilateral withdrawal, postponement, or cancellation fee, shall be borne equally by the parties.
- 9.16 The process to schedule a grievance for an arbitration hearing shall be initiated by a written request from the representative of the Union to the designated individual in the Office of the Chancellor. The request shall be for the parties to select an arbitrator pursuant to provision 9.9 above.
- 9.17 Grievances with continuing financial back pay liability shall be scheduled in chronological order for arbitration prior to the scheduling of grievances with no continuing financial back pay liability. The parties recognize that from time to time it may be in the interest of both parties to schedule by mutual agreement cases for arbitration in other than chronological order. Absent such mutual agreement, arbitration hearings shall be scheduled in the same chronological order in which each case was appealed to arbitration.
- 9.18 Any grievance filed into arbitration shall be considered withdrawn by the Union if it has not been scheduled within nine (9) months of the filing to arbitration from Level

III. Within the nine (9) months the parties shall confirm with an arbitrator that a hearing date has been set.

### **General Provisions**

- 9.19 Wherever a time limit is provided by this Article, the parties may extend the period only by mutual consent.
- 9.20 When hearings or meetings are held under this Article on CSU time, unit members who are entitled to attend hearings, or who are called as witnesses by a party, shall be excused for that purpose from other duties without loss or penalty.
- 9.21 No reprisals shall be taken against any unit member for the filing and processing of any grievance.
- 9.22 In cases where it is necessary for the grievant or the grievant's representative to have access to information for the purpose of investigating a grievance, the grievant or the grievant's representative shall make a written request for such information to the appropriate administrator a reasonable amount of time before such information is needed. The appropriate administrator shall provide such information to the requesting party within a reasonable amount of time after the request for the information is made.
- 9.23 A grievance settled prior to arbitration shall be binding only as to that particular grievance and shall not be precedent setting.
- 9.24 By mutual agreement, the parties may consolidate grievances on similar issues at any level of the grievance procedure.
- 9.25 By mutual agreement, a grievance may be filed at the step at which the authority to resolve the grievance resides.
- 9.26 Prior to filing a grievance, the potential grievant and representative, if any, shall each be provided with one (1) hour release time for grievance preparation and reasonable time for grievance presentation at the Informal Review.
- 9.27 After the grievance has been filed, a representative and the grievant shall be provided reasonable release time for the purpose of preparation and presentation of the grievance.
- 9.28 The procedures for securing release time for grievance processing shall be:
- a. Representatives and potential grievant's shall contact the Director of Plant Operations or designee or appropriate administrator if release time is required.
  - b. The Director of Plant Operations or designee or appropriate administrator shall grant the contractually specified release time after considering the needs of the

operation of Cal Maritime.

- c. Requests for release time shall include whom the representative or potential grievant desires to see; the time and location; and the estimated duration of the meeting.

9.29 A grievant may withdraw a grievance at any time. The grievant shall not file any subsequent grievance on the same incident.

9.30 If the Employer fails to respond within the designated time limits, the grievance may be appealed to the next step of this grievance procedure. If the grievance is not appealed within the applicable time limits, the grievance shall be considered settled on the basis of the Employer's last answer and shall not be subject to further review.

9.31 Grievances filed and unresolved prior to the effective date of this Agreement shall be deemed void.

9.32 Grievance records shall be filed separately from an employee's personnel file and shall be considered confidential.

9.33 An employee may present grievances and have such grievances adjusted without union representation as long as adjustment is not inconsistent with the terms of a written agreement then in effect; and provided that the employer will not agree to resolution of the grievance until the Union has received a copy of the grievance and the proposed resolution.

9.34 During release time granted for grievance preparation, the Union representative and the grievant shall be permitted to use campus telephones provided that the use of such telephones does not interfere with campus business nor result in any expense to the campus. The CSU has the right to refuse the use of campus telephones if abuses occur.