

# Retaliation Protection, Grievance Procedures, and Governance

Note: Additional grievance procedures are included in the "Advising" and "Diversity, Equity, and Inclusion" documents.

Note: The segment of the Brown contract at the end of this document demonstrates the level of detail that could be included in a contract regarding grievance procedures.

Quotes (""): verbatim from union contracts

*Italics*: paraphrased summary of union contract wins

## Brandeis

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"A Graduate Assistant will not be disciplined, suspended, or discharged without just cause."

"Reassignment shall not be used as a disciplinary measure."

"There will be a Labor-Management Committee with up to five (5) members on each side that will meet one (1) time each semester and once during the first two (2) weeks in June to discuss matters necessary to the implementation of this Agreement and of general interest to the Graduate Assistants or the University; additional meetings may be added by mutual consent."

## University of California

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"The parties will endeavor to schedule grievance meetings that do not conflict with bargaining unit assignments of the grievant or the grievant's representative which cannot be rescheduled."

"During the hearing the parties shall have the opportunity to examine and cross-examine witnesses under oath and to submit relevant evidence."

## University of Connecticut

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*Interim measures to protect GAs from harassment during investigation of a complaint.*

*Clear remedies for grievances that aim to preserve academic professional development for survivors.*

***Elimination of any obligation of a grievant to attempt informal resolution with a supervisor who has harassed them.***

*If you believe your supervisor or the university is contemplating discipline or termination of your GA appointment, you should contact the Union immediately as you have the **right to representation and due process.***

## University of IL Springfield

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*Can get back pay but not reinstatement if filing for grievance over termination, based on the arbitrator's decision.*

## University of Michigan

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*Students on termination review committees. Co-selection of arbitrators. Encouraged to have employee rep on curriculum committees. Representation on department committees. Several special conference procedures.*

"Three (3) representatives from the Union and three (3) representatives from the University... shall convene as the Joint Committee on Workplace Free from Discrimination, Sexual Harassment, and Sexual Misconduct. The Parties will mutually agree upon dates and locations for each meeting."

"A Union Representative may represent an aggrieved Employee."

### **Michigan State**

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"An Employee(s) may choose to have a Union representative represent him/her at any step of the Grievance Procedure. Filed within 40 days of issue occurring. 15 days to meet with first employing unit rep. Step 2: provost. Step 3: arbitration (equal cost split)"

"Whenever it is appropriate, the Employer shall give the Employee advance notice of its intent to hold an investigatory interview. An Employee shall be entitled to the presence of a Union Representative at an investigatory interview if he/she has reasonable grounds to believe that the interview may be used to support disciplinary action against him/her, and he/she requests representation."

### **University of Rhode Island**

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*Discipline shall be progressive, and dismissal shall result from serious and/or repeated incidents of misconduct.*

### **Temple**

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"Failure on the part of Temple to answer a grievance at any step within the specified time limits shall not be deemed acquiescence thereto and the grievant or TUGSA may proceed to the next step. If the failure to respond occurs at Step 2, the arbitration provisions of this Agreement may be utilized. Failure by the grievant to appeal to the next step within the specified time limit shall be deemed acceptance of the decision rendered at that step."

"A grievance which has not been resolved may within twenty (20) working days after completion of the final step of the grievance procedure be referred to the American Arbitration Association for resolution under the Voluntary Labor Arbitration Rules then in force of the American Arbitration Association."

### **Tufts**

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"Discipline related to employment shall not include consequences to a Graduate Assistant's student status; any incidents that could affect both student status and employment must be handled separately"

"There will be a Labor-Management Committee with up to five (5) members on each side that will meet once during the Fall semester and twice during the Spring semester to discuss matters of general interest to the Graduate Assistants or the University; additional meetings may be added by mutual consent"

### **Yale**

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*Right to union rep to be present at any stage of complaints. Separate process for identity-based discrimination complaints.*

*Academic retaliation is prohibited, but individual complaints may not be grieved. Instead, each*

*school must set up its own internal policies for complaints of academic retaliation.*

## **Harvard**

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"There will be a Labor-Management Committee with up to five (5) members on each side that will meet once during the Fall semester and twice during the Spring semester to discuss matters of general interest to the Graduate Assistants or the University; additional meetings may be added by mutual consent. These meetings shall not be used for negotiations or to discuss pending grievances."

*A grievance procedure that will provide an accessible, fair, and effective mechanism for enforcing the rights we have secured under our tentative agreement—such as workload protections, health and safety guarantees, pay rates, and discrimination on the basis of union activity. Under the grievance procedure, **if a student worker (or group of student workers) believes that their rights have been violated, they will have access to a union advocate who will assist them at every step of the grievance process and enforceable timelines for a response from administrators.***

*If the student worker and university do not resolve the grievance, then the union can bring the claim to **a neutral, third-party arbitrator, who is selected and paid for jointly by the union and the university.** The arbitrator would then issue a final and binding award.*

*As is true for the vast majority of union contracts, since the grievance and arbitration procedure will provide an effective mechanism to resolve disputes, we have agreed not to strike for the duration of the contract. However, once the contract expires on June 30, 2021, student workers could go on strike if we feel that we must do so in order to secure a stronger second contract.*

## **American University**

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*Quote from a student: "**We now have a formal process for challenging a termination the University says is for academic reasons, but we believe is attributed to work performance reasons. A panel of 3 faculty members will be chosen by the Dean to decide if the termination was for academic reasons. If the Panel finds that the reason was not academic, we may file a grievance with the union.** We can raise a concern if we perceive there to be a conflict of interest with a faculty member appointed to the panel. Official written grievances with procedures and timeline. Union representation. Arbitrators agreed on by both parties. Fees shared equally."*

## **Brown**

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*Non-retaliation: People in the Bargaining Unit can't be retaliated against for reporting any discrimination and cannot retaliate against others (e.g. students they are teaching). Anyone who retaliates will face disciplinary action.*

*A person in the Bargaining Unit can have support from a Union representative at a disciplinary meeting, and if the person in the Bargaining Unit disagrees with the result, they can use the Grievance Procedure (Article XI).*

### General Provisions for Resolving Grievances

**"1. The grievance procedure shall be the sole and exclusive procedure for the prompt, efficient and constructive resolution of grievances** under this Agreement. Notwithstanding this process, the University and the Union recognize and encourage informal resolution of any dispute, generally by direct discussion between the grievant and his/her/their supervisor and/or the Union and the University.

**2. A grievance shall be any dispute concerning the interpretation, application or claimed violation of a specific term or provision of this Agreement.** The grievance process does not apply to the University's academic and managerial rights recognized in the Management Rights Article of this Agreement.

3. The calculation of time limits set forth in this Article are as follows: the first day of the time period will be the first date after the date of the grievance and shall be the following consecutive calendar days, include Saturday, Sunday and holidays.

4. Except for the initial filing of a formal grievance, all time limits may be extended by prior mutual written agreement of the parties. During periods when regular classes are not scheduled, such as between semesters, after graduation and before the resumption of classes in the Fall, during long periods when the University is closed for holidays or breaks, the parties in particular can anticipate extending the required time periods for each Step.

5. Unless the parties agree in advance in writing of the extension of a time limit for the grievance process, any demand for a grievance which is not filed at each step within the time period set in this Agreement will be deemed waived and there shall be no further processing of the grievance or any other process provided for in this Article. A failure by the Union/grievant to comply with the time limits of Step 1 shall preclude any subsequent filing of the grievance.

**6. Failure by the University at any Step to communicate its response within a specified time limit shall permit the grievant to move to the next Step but shall not be deemed to be agreement by the University with the grievant's position.**

7. The filing or pendency of a grievance under this Article shall not prevent the University from taking action complained of, subject to the procedures of this Article.

8. The Union may initiate a Grievance at Step 2 if the grievance involves multiple students with the same issue."

**"9. Any grievance may be withdrawn without prejudice.**

**10. Any resolution reached through the grievance process may not be used to establish a precedent for the future interpretation or application of this Agreement."**

#### Representation

"1. A Union Representative may represent a Graduate Student Employee alleging a grievance.

2. By July 1 each year the Union shall provide the University with the names, email addresses, and telephone numbers of its officials and Grievance Committee members, and any changes therein.

3. By July 1 each year the University shall provide the Union with the names, email addresses, and telephone numbers of its representatives or designees at Step Two and Step Three and shall report any changes to these representatives to the Union."

#### Protection against Retaliation for Grievances

"1. No individual who files a grievance in good faith shall be subject to retaliation.

2. Retaliation means any adverse action or threat taken or made against an individual, including through third parties and/or legal counsel, for filing a grievance or participating in any investigation or proceeding related to this Article. Retaliation includes threatening, intimidating, harassing, or any other conduct that would discourage a reasonable person from engaging in activity protected under

this Agreement, such as seeking services, receiving protective measures and accommodations, and/or filing a grievance. Retaliation includes maliciously and purposefully interfering with, threatening, or damaging the academic and/or professional career of another individual before, during or after the investigation and resolution of a grievance under this Agreement.

**3. University resource persons and Union designees shall advise a Graduate Student Employee of their right to be free of retaliation and the University shall investigate any complaint of alleged retaliation.”**

#### Grievance Procedure

“The following procedure shall be the sole and exclusive means for resolving grievances.

1. Initial Filing of a Formal Grievance. If a grievance cannot be resolved informally, a Graduate Student Employee or the Union shall initiate a grievance within thirty (30) days after the Graduate Student Employee first becomes aware, or reasonably could have known of, the act or circumstance that constitutes a grievance as defined in this Article. The grievance must be presented in writing. It must identify the Grievant, the provision of the Agreement that is the subject of the grievance, and sufficient details of the grievance to understand the violation claimed. It should include key relevant documentation and must state the relief requested. The initial filing should be made to the individual responsible for Step 1 in the process with a copy to the Office of the Dean of the Graduate School. A grievance filing, issuance of a determination and all notices or communications during the grievance procedure shall be deemed submitted when sent by email or fax or delivered by hand to the appropriate individual at each Step. The date of the receipt shall be noted so that the parties can calculate the time limits. A hand delivery must occur during regular business hours. At either Step One or Step Two in the absence of a designated Director of Graduate Studies and/or Department Chair, or where the individual holding that position has a potential conflict, notice can be sent to the Dean of the Graduate School or his/her designee.

#### 2. Step One

a. The Union or a Graduate Student Employee, having a grievance in connection with their employment, shall file the grievance with the applicable Director of Graduate Study.

b. **Within twenty one (21) days** of receipt of the grievance a meeting shall be held to discuss the details of the grievance. The Director of Graduate Study may designate who shall conduct the meeting and may request the presence of other appropriate parties. A union representative may be present.

c. If the grievance is not resolved during the course of the Step One meeting or not settled before the determination must be issued, **within fourteen (14) days of the meeting a written determination of the grievance at Step One shall be provided by the Director of Graduate Study to the Graduate Student Employee and the Union.**

#### 3. Step Two

a. If the matter is not resolved at Step One, the grievance may be appealed in writing to the Department Chair at the Union's option. The written grievance appeal must be submitted to the Department Chair within fourteen (14) days from the date of the determination in Step One.

b. A Step Two meeting with the appropriate University administrators, Graduate Student Employee and the Union and the Department Chair or their designees shall be held within fourteen (14) calendar days of submission of the appeal of the Step One determination. **A union representative may be present.**

c. If the grievance is not resolved during the course of the Step Two meeting or not settled before the determination must be issued, a written determination of the Step Two grievance shall be provided to the Graduate Student Employee and the Union within fourteen (14) calendar days

following the meeting.

#### 4. Step Three

a. If the matter is not resolved at Step Two, the **grievance may be appealed by the Union to the Dean of the Graduate School or their designee**, provided that the written appeal is submitted to the Dean of the Graduate School within fourteen (14) calendar days following submission by the University of the Step Two determination.

b. Within fourteen (14) calendar days of submission of the Step Three grievance to the Dean of the Graduate School, the Dean shall set a meeting at a mutually convenient time and place for discussion of the grievance with the appropriate University administrators and the Union and the Graduate Student Employee.

c. The Dean of the Graduate School **shall arrange for a representative(s) of the appropriate dean or administrative head of an equivalent unit to be present** at this discussion. **A union representative may be present.**

d. If the grievance is not resolved during the course of the Step Three meeting or not settled before the determination must be issued, a written determination of the Step Three grievance shall be provided to the Graduate Student Employee and the Union within fourteen (14) calendar days following the meeting.

#### E. Impartial Arbitration

A grievance which is not resolved at Step Three may be appealed to arbitration by the Union, provided that written notice of intent to arbitrate is submitted to the Dean of the Graduate School within twenty-one (21) calendar days following submission of the Step Three determination by the University. Such notice shall identify the grievance and the issue, set forth the provisions of the Agreement involved, and the remedy desired. If no such notice is given within the prescribed time limit set forth in this section, the grievance shall not be arbitrable.

Instead of resolving a grievance by proceeding to arbitration, the parties can mutually agree to undertake alternative dispute resolution procedures, such as mediation. **The parties will select a mutually acceptable mediator.** A request to proceed with mediation in place of arbitration shall be submitted to the University by the Union or to the Union by the University within twenty-one days of the Step Three determination and the parties have thirty days to make a final determination whether to pursue mediation in place of arbitration. Even if mediation is not successful in resolving all or a portion of the grievance, the use of mediation shall preclude arbitration of the grievance. If notice to mediate is not given within the time limit, the option to pursue mediation shall no longer be available. The parties shall share equally in the cost of mediation.

1. Arbitrator. The parties shall select an arbitrator. If the parties cannot reach mutual agreement on an arbitrator within twenty-one (21) days of receipt of the notice of arbitration, the parties can request a list from the American Arbitration Association and the arbitration shall proceed under the Voluntary Labor Arbitration Rules of the AAA.

2. Every grievance submitted to an arbitrator for decision shall be subject to the following terms and conditions:

a. The arbitration shall be conducted in accordance with the **Rules of the American Arbitration Association** and the University or the Union or both shall forward to the arbitrator a copy of the grievance, the University's determination at Step Three, the Union notice of intent to arbitrate, and a copy of the Agreement.

b. Each party shall be responsible for their own costs of preparing and presenting the arbitration and the parties shall share equally the administrative fees of the AAA, the costs of the arbitrator and the cost for the **transcript of the proceeding** to be provided to the arbitrator. If the parties

want their own copy of the transcript they shall be responsible for the cost of their individual copy.

c. At the close of the hearing, the arbitrator shall afford the University and the Union a reasonable opportunity to furnish briefs if either party requests the opportunity.

d. The authority of the arbitrator is strictly limited to, the determination of the specific grievance consistent with the terms of this Agreement.

e. The arbitrator shall not have any authority to add to, subtract from, or otherwise modify or disregard any of the terms, clauses, or provisions of this Agreement. The Arbitrator shall have no authority or jurisdiction to issue any award changing, modifying or restricting any action taken by the University on matters reserved to the University's discretion as provided in the Management Rights clause unless those actions are restricted by other specific terms of this Agreement.

f. The arbitrator shall render the decision in writing within **thirty (30) calendar days** following the hearing and submission of the briefs, if any.

g. The arbitrator's decision, when made in accordance with the arbitrator's jurisdiction and authority established by this Agreement, **shall be final and binding upon the University, the Union, and the Employee(s) involved, although each party shall retain whatever rights it has under applicable state or federal law to challenge the decision and/or the award.**

h. The provisions of this Section do not prohibit the University and the Union from mutually agreeing to expedited arbitration of a given grievance or grievances."