

10.06 Step Three - Arbitration

- A. Within forty (40) calendar days after mediation has been concluded in accordance with 10.05G2, arbitration of a grievance may be initiated in accordance with the following provisions:
1. The Association shall have the exclusive right to initiate arbitration of a grievance. The decision or award of the arbitrator shall be final and binding for the Association, the employee and the Employer in accordance with applicable provisions of state law.
 2. The Association may initiate arbitration of a grievance only if the resolution of the grievance has been duly authorized by the Association and so certified by the President of the Association or the President's designee.
 3. The Association shall initiate arbitration by filing a demand for arbitration with the American Arbitration Association and with the Chancellor or Chancellor's designee within forty (40) calendar days of receipt of the notice pursuant to 10.05G2.
 4. Such arbitration shall be conducted in accordance with the rules and regulations of the American Arbitration Association in effect on the date of said submission, unless otherwise provided herein; provided, however, that the jurisdiction of the arbitrator to inquire into any issue or to render any award is governed solely by the provisions of this Agreement.

B. Limit of the Arbitrator's Jurisdiction

Subject to the provisions of this Agreement, the arbitrator shall have no authority or jurisdiction to:

1. Arbitrate such portion of any grievance which is removed from the jurisdiction of the Arbitrator by the express terms of this Agreement.
2. Add to, alter or amend any terms or conditions of this Agreement.
3. Inquire into or arbitrate any issue not presented by the original complaint as amended at Step Two.

C. Authority of the Arbitrator

Unless otherwise provided in this Agreement, the arbitrator shall have the authority to make a final and binding award on any dispute concerning the interpretation or application of this Agreement. The arbitrator's authority in matters which are arbitrable is limited to a determination as to whether the provisions set forth in this Agreement were violated; provided that in matters of professional judgment, the arbitrator shall determine whether the application of such to the grievant has been arbitrary, capricious or unreasonable. Beyond such determination, the arbitrator shall be without power, right or authority to make a decision or to substitute the arbitrator's judgment for that of the Employer or its representatives, except as otherwise provided in this Agreement.

The arbitrator shall have no authority to arbitrate:

1. Any incident which occurred or failed to occur prior to the ratification date of this Agreement.
2. The failure or refusal by the Employer to renew the contract of or to reappoint a unit member in the first (1st) four (4) years of regular appointments.
3. Affirmative Action/Discrimination.
4. Basis for retrenchment.

D. Award of Arbitrator

If the arbitrator determines no express provision of this Agreement has been breached in its application to the grievant as claimed, the arbitrator shall dismiss the grievance. If the arbitrator determines that this Agreement has been so breached, the arbitrator may, subject to the provisions of this Article and except as hereinafter provided, provide an appropriate remedy for the breach; provided, however, that in making any monetary award, the arbitrator shall only provide compensation for actual damages directly attributable to such breach, and shall in no event make any award by way of penal damages.

E. Dismissal and Retrenchment