ARTICLE 3
ARBITRATION PROCEDURE

A. GENERAL CONDITIONS

1. An appeal to arbitration may be made only by the union and only after the timely exhaustion of Article 8, Grievance Procedure. The appeal to arbitration must be signed by the President of UPTE-CWA Local 9119 or his/her designee, and filed with the Office of Labor Relations, Office of the President. An appeal to arbitration may be made in the following ways:

   a. **Hand Delivery**- When hand delivered, proof of service must accompany the appeal to arbitration. The date of receipt will be used to determine the date of the appeal for hand-delivered appeals.

   b. **United States Mail**- When mailed, the appeal must arrive in an envelope with a U.S. Postal Service Postmark. The U.S. Postal Service Postmark will be used to determine the date of the appeal for mailed appeals.

   c. **Email to AppealAGrievance@ucop.edu**.

      1. Email submissions must include PDFs of all documents, information and signatures necessary to be in compliance with the Arbitration provisions of this Agreement.

      2. The ‘date of filing’ for emailed Appeals to Arbitration shall be the date received on the University server, provided that the appeal is received during business hours. If an appeal to Arbitration is received outside of normal business hours, the following business day will be deemed the filing date of the Appeal to Step 3.

      3. The University shall acknowledge receipt of the Union’s Appeal to Arbitration through a computer-generated, automatic email response.

2. For the purposes of this Article, time limits are calculated in calendar days, and deadlines which fall on a day which is not a University/campus business day will automatically be extended to the next business day. All time limits may be extended by written agreement of the parties in advance of the expiration of the time limit. The union’s failure to meet any time limit, or extension to a time limit will render the Appeal to Arbitration ineligible for further processing and the University’s Step 3 answer will be considered final.

3. If the appeal to arbitration is withdrawn or an arbitration hearing otherwise does not take place, the University's Step 3 answer will be considered final.

4. The decision of the arbitrator on any issue properly before her/him shall be final.
grievance, Section F.2.e., of Article 8, Grievance Procedure must include a copy of the completed grievance form.

B. DEFINITIONS

For the purposes of this Article, the terms:

1. "GRIEVANT" means any employee covered by this contract who has a grievance or complaint (as defined by this Article);

2. "WITNESS", for the purposes of release time, means any employee covered by this contract who is serving as a witness in a grievance proceeding;

3. "EMPLOYEE REPRESENTATIVE" means any employee covered by this contract who is a designated union representative of UPTE, in accordance with the provisions of Article 2, Access; and

4. "UPTE REPRESENTATIVE" means any person who is a non-university employee acting in the interest of or on behalf of UPTE.

5. "THE PARTIES" means the University and

   a. the grievant; and/or

   b. the "UPTE representative" or the "employee representative" serving as the grievant's representative.

C. EMPLOYEE REPRESENTATION

Union representation at the arbitration hearing may consist of up to two (2) representatives, with only one (1) of the two (2) representatives being eligible for without-loss-of-straight-time-pay status. Only one (1) of these individuals may be designated as the employee advocate for the course of the hearing.

D. SELECTION OF ARBITRATOR

Within forty-five (45) calendar days of the date of the appeal to arbitration, the arbitrator shall be selected using the following permanent panel procedures:

1. On a case by case basis, the parties may agree to the selection of any qualified and available person to serve as an arbitrator. Absent such agreement, the parties may agree to the selection of an arbitrator from their respective panel.

2. In the event the parties cannot agree to an arbitrator, the parties shall select the names of seven (7) arbitrators from the appropriate panel, as provided in Section L.6., below, by blind lot. The parties shall then alternately strike one (1) name each from the seven names. The first strike will be determined by a flip of a coin, and the last name remaining shall be the arbitrator.

3. If both parties disagree with the arbitrator who has been selected, the process shall be repeated once in its entirety.
process described in Section D. above to select two arbitrators. The first arbitrator will be selected to hear the issues of arbitrability and the second arbitrator will be selected to decide the merits of the case if the issues are determined to be arbitrable. Unless either party requests a full and complete arbitration proceeding on the arbitrability issue, the first arbitrator shall issue either a bench decision, or upon either party’s request, a written decision within seven (7) calendar days of the completion of the arbitrability hearing. In the event that the first arbitrator, as a result of the hearing referenced above determines a matter to be arbitrable, the first arbitrator shall have no authority to decide the issues pursuant to the merits of the case. A hearing on the merits of the case will be scheduled with the second arbitrator, unless the parties agree otherwise.

3. If, following the University’s acknowledgement of UPTE’s appeal to arbitration in A.8.b, the University raises for the first time issue(s) of arbitrability a single hearing on the issue of arbitrability and the substantive facts will be held, unless the parties agree otherwise. If the arbitrator finds the grievance to be not arbitrable, the substantive facts of the case need not be heard and the grievance shall be denied. If the arbitrator finds in favor of arbitrability, the hearing shall proceed to the substantive issues raised.

4. Section E.1. and Section E.2. above, shall not prevent the parties from agreeing in writing to combine the arbitrability hearing with the hearing on the merits of the case.

5. If the union requests a postponement of the scheduled arbitration hearing following the University’s raising issue(s) of arbitrability, the hearings on arbitrability and facts, if any, shall be separate, and the provisions of Section E.3. above, shall apply.

F. ARBITRATION PROCEEDING

1. The parties will attempt to agree on a location for the arbitration hearing.

2. The arbitration hearing shall be closed to anyone other than the participants in the arbitration hearing, unless the parties otherwise agree in writing. Participants include designated representatives, the grievant(s), and other witnesses, who shall each be sequestered if providing testimony, unless otherwise agreed to by the parties.

3. The arbitration hearing shall provide an opportunity for UPTE and the University to examine and cross-examine witnesses under oath or affirmation, and to submit relevant evidence.

4. Settlement discussions, including but not limited to, settlement offers made any time during the Grievance and/or Arbitration Procedure shall not be introduced as evidence in the arbitration hearing.

5. Either or both parties may, at their discretion, file briefs with the arbitrator. The order and time limits of briefing shall, on a case by case basis, be as agreed upon by the parties or as specified by the arbitrator. Briefing time limits shall be extended by the Arbitrator upon the agreement of both parties.
award of an arbitrator shall not in any case be made retroactive to a date earlier than three (3) years prior to the initiation of the written grievance in Step 1 of the Grievance Procedure. Additionally, no remedy shall be provided for any period of time during the grievance and/or arbitration procedure for which an extension of time limits has been granted at the request of UPTE; any period of time between the date a hearing was originally scheduled to be held, and due to a request from UPTE to postpone or change the scheduled hearing, the rescheduled date of the hearing; or any time an employee was on strike.

2. In any decision of a grievance appealed to arbitration involving retroactive payments, the appropriate University and UPTE representatives shall expeditiously determine the identity of the payees and the specific amount owed each payee. Such amount of payment shall be final and no employee or group of employees may subsequently grieve the amounts owed.

3. Remedies involving monetary payment and/or credit shall be limited in their calculation to the utilization of the employee's actual and appropriate wage or benefit amount at the time of the violation and shall not include the awarding of interest or any other payment/credit unrelated to a University benefit amount or the employee's hourly wage.

4. Upon the motion of either party, or at his or her own discretion, an arbitrator may retain jurisdiction in cases involving an award of retroactive monetary payment and/or credit.

5. If the grievance is sustained in whole, or in part, the remedy shall not exceed restoring to the employee the pay, benefits or rights lost less any compensation from any source, including, but not limited to, Workers' Compensation, Unemployment Compensation or other employment.

I. COST OF ARBITRATION

1. The cost of the arbitrator and expenses of the hearing will be shared equally by the University and UPTE. If either party requests that a stenographic record of the hearing be made and/or transcripts of the stenographic record or a taped record be provided, the parties shall equally share the entire cost of such service and the cost of the provision of a transcript to each party and the arbitrator.

2. In the event either party requests the cancellation or postponement of a scheduled arbitration proceeding which causes an arbitrator to impose a cancellation or postponement fee, the party requesting such cancellation or postponement shall bear the full cost of the cancellation/postponement fee. In the event the parties agree to settle or postpone the arbitration during the period of time in which the arbitrator will charge a cancellation/postponement fee, the parties will equally bear the cost of the fee, unless the parties agree otherwise.

J. PAY STATUS

1. The grievant, as defined in Article 8, Grievance Procedure, Section A.5.a., (one [1] grievant in a group grievance) shall be in a without-loss-of-straight-time-pay
procedures in Section L.1. and 2. above, if the parties agree that a replacement is necessary. In the event more than one vacancy in the panel of arbitrators occurs, such vacancy shall be filled by the parties within thirty (30) calendar days by using the procedures in Section L.1. and 2. above, unless both parties agree that no replacement is necessary prior to the annual panel review.

5. The northern list of arbitrators shall be used for arbitrations arising at the Davis, the Office of the President, Lawrence Berkeley Laboratory, Berkeley, San Francisco, Santa Cruz, and Merced locations, unless the parties agree to use an arbitrator from the southern panel. The southern list of arbitrators shall be used for arbitrations arising at the Santa Barbara, Los Angeles, Irvine, Riverside, and San Diego locations, unless the parties agree to use an arbitrator from the northern panel.

6. The Lists of Arbitrators are: listed in Appendix C.

<table>
<thead>
<tr>
<th>NORTH</th>
<th>SOUTH</th>
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<tbody>
<tr>
<td>Daniel F. Altemus 735 Rosemount Road</td>
<td>Terri Tucker 10573 W. Pico Blvd. No. 235</td>
</tr>
<tr>
<td>Oakland, CA 95610 Ph (510) 893-4676</td>
<td>Los Angeles, CA 90064 Ph (310) 446-0635</td>
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<tr>
<td>Email: <a href="mailto:dan.altemus@gmail.com">dan.altemus@gmail.com</a></td>
<td>Fax (866) 446-8779 Email: <a href="mailto:tatucker.adr@gmail.com">tatucker.adr@gmail.com</a></td>
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<tr>
<td>John B. LaRocco 2001 H Street, Sacramento</td>
<td>Joseph Gentile P.O. Box 7418 Thousand</td>
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<tr>
<td>CA 95811-3109 Phone: 916/446.9048 Fax:416/</td>
<td>Oaks, CA 91359-7418 Ph (805) 499-4282</td>
</tr>
<tr>
<td>446.6963 <a href="mailto:laroccoj@laroccoarb.net">laroccoj@laroccoarb.net</a></td>
<td>Fax (805) 499-0018</td>
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<tr>
<td>Luella Nelson 4096 Piedmont Avenue #159</td>
<td>R. Douglas Colins P.O. Box 4399</td>
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<tr>
<td>Piedmont, CA 94611 Ph (510) 658-4959 Fax</td>
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<tr>
<td>510) 658-9423</td>
<td>(818) 716-8969 - Telephone and Fax</td>
</tr>
<tr>
<td>Paul Staudohar 1140 Brown Avenue</td>
<td>Louis Zigman 473 South Holt Avenue</td>
</tr>
<tr>
<td>Lafayette, CA 94549 Ph (510) 885-3080 Fax</td>
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<tr>
<td>(510) 885-4796</td>
<td>(310) 556-3748 Fax (310) 550-8439 Email:</td>
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<td><a href="mailto:ziggyjudge@aol.com">ziggyjudge@aol.com</a></td>
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<td>Robin Matt</td>
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<td>12</td>
<td>1575 Spinnaker Drive, Suite #105B-152&lt;br&gt;Ventura, CA 93001&lt;br&gt;Ph (805) 650-1729&lt;br&gt;<a href="mailto:rmatt.arbitration@yahoo.com">rmatt.arbitration@yahoo.com</a></td>
</tr>
<tr>
<td>13</td>
<td>Fred Horowitz&lt;br&gt;P.O. Box 3613&lt;br&gt;Santa Monica, CA 90408-3613&lt;br&gt;Ph (310) 829-6064 Fax (310) 449-1049</td>
</tr>
<tr>
<td>14</td>
<td>Norman Brand&lt;br&gt;150 Lombard Street #3&lt;br&gt;San Francisco, CA 94111&lt;br&gt;Ph (415) 982-7172 Fax (415) 982-8021</td>
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<td>15</td>
<td>Ronald Hoh</td>
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