

ARTICLE 30: ARBITRATION

A. General Conditions

1. An appeal to arbitration may be made by the Union after exhaustion of Article 29: Grievance Procedure. The appeal to arbitration must be signed by the President of the Union or his/her designee, and filed with Staff Relations.
2. The decision of the arbitrator on any issue properly before her/him shall be final and binding.
3. An appeal to arbitration shall not prohibit efforts by the Employer and the Union to resolve the grievance during the time the appeal is pending and until such time that an arbitrator has rendered her/his decision.
4. The Union shall have full authority to settle, withdraw or otherwise dispose of any grievance brought on behalf of the Union and/or on the behalf of employees. An agreement by the parties to settle, withdraw, or otherwise dispose of a grievance appealed to arbitration shall be binding upon the grievant(s).
5. Where two (2) or more grievances are appealed to arbitration, all grievances by or related to the same employee(s), or grievances which relate to the same incident, issue or course of action, may be consolidated by agreement of the parties.

6. Time Limits

a. Initial Filing

An appeal to arbitration must be filed within thirty (30) calendar days of the issuance of the Employer's Step 3 decision to the Union. Appeals which do not contain the appropriate Union signature will be considered ineligible for appeal to arbitration.

b. Employer Acknowledgment of Receipt

Within fifteen (15) calendar days of the postmark or, in the case of hand delivery the date of receipt, of the Union's appeal to arbitration, the Employer shall mail or email to the Union an acknowledgment of the receipt of the appeal and the identity of the location to which all relevant correspondence should be directed.

c. Union Request that a Grievance Be Placed in Abeyance

Should the Union make a request that the grievance be placed in abeyance for any reason, the period of abeyance shall not exceed forty-five (45) calendar days.

B. 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.

C. Selection Of Arbitrator

1. Within ninety (90) calendar days of the date of the appeal to arbitration, the arbitrator shall be selected.
2. The parties shall select an arbitrator from among the names listed in Table 1. The parties shall arrange to strike the names and the remaining person shall become the Hearing

Officer. A coin toss shall determine whether the Union representative or Staff Relations has first choice in striking names.

Table 1.

Name	Contact Information
Alexander Cohn	T: 707-226-7096 F: 707-253-4067 E: acohnarb@comcast.net PO Box 4006 Napa, CA 94558
Fred Horowitz	T: 310-829-6064 F: 310-449-1049 E: FRHorowitz@naarb.org PO Box 3613 Santa Monica, CA 90408-3613
John B. LaRocco	T: 916-446-9048 F: 916-446-6963 E: laroccoj@laroccoarb.net 2001 H Street Sacramento, CA 95811-3109
Katherine Thomson	T: 510-528-3005 F: 510-528-3005 E: kthomsonarb@outlook.com 3060 El Cerrito Plz., #333 El Cerrito, CA 94530-4011
Luella Nelson	T: 510-658-4959 F: 510-658-9423 E: Luella.Nelson@SBCGlobal.Net 4096 Piedmont Ave., #159 Oakland, CA 94611-5221
Wilma Rader	T: 510-527-6676 or 510-527-3048 E: wrkrader@gmail.com 570 Santa Clara Avenue Berkeley, CA 94707
Joel Schaffer	T: 925-708-3738 E: joel@joelbschaffer.com 104 Fiesta Circle Orinda, CA 94563
Greg Lim	T: 510-273-6239
John Kagel	T: 650-325-0389 F: 650-325-4394 E: jk@johnkagel.net PO Box 50787 Palo Alto, CA 94303

3. If both parties disagree with the arbitrator who has been selected, the process shall be repeated once in its entirety.

4. A separate arbitrator shall be selected for each grievance appealed to arbitration, unless the parties agree otherwise in writing.
5. The parties may agree in writing to extend the ninety (90) calendar day limit for selecting the arbitrator. Requests to extend the limit by one party shall not be unreasonably denied by the other party. Absent an extension, failure to select the arbitrator within ninety (90) calendar days will render the appeal to arbitration ineligible for further processing and the Employer's Step 3 answer will be considered final.
6. All arbitrability disputes, substantive or procedural, shall be subject to arbitration under this Article, including disputes arising from Employer claims that the Union has lost the right to pursue arbitration of a pending grievance because of untimely processing.

D. Scope Of Arbitration

Unless there is an agreement by both parties to modify the scope of the hearing, the issue(s) to be heard by the arbitrator shall solely and in its entirety be restricted to the issue(s) stated by Step 3. Issues or allegations which were known or should have been known to either party but not introduced by the Step 3 process shall not be introduced by either party at the arbitration hearing, except as provided in Section E, below.

Disputes arising out of or based upon the Davis-Bacon Act shall not be subject to arbitration. Such disputes shall be resolved in accordance with the procedures of the Department of Labor.

E. 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.
3. The arbitration hearing shall provide an opportunity for the Union and the Employer to examine and cross-examine witnesses under oath or affirmation, and to submit relevant evidence.
4. 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.
6. In all cases appealed to arbitration pursuant to the terms of this Article and this Agreement, the Union has the burden of initiating the steps in the procedure. With the exception of those cases in which the issue is that of actions taken by the Employer pursuant to Article 19: Corrective Action / Discipline and Dismissal, the Union shall have the burden of proof. The burden of proof in cases in which the issue is that of actions taken by the Employer pursuant to Article 19: Corrective Action / Discipline and Dismissal, shall be the Employer's.
7. Prior to the hearing, the parties shall exchange the names of known witnesses and relevant materials to be introduced at the hearing no less than seven (7) calendar days prior to the hearing date.

F. Authority Of The Arbitrator

1. The arbitrator's authority shall be limited to determining whether the Employer has violated the provision(s) of this Agreement. The arbitrator shall not have jurisdiction or authority to add to, amend, modify, nullify or ignore in any way the provisions of this Agreement and shall not make any award which would, in effect, grant the Union or the employee(s) any terms which were not obtained in the negotiation process.
2. The arbitrator shall have the authority to subpoena documents, subject to rules for protecting classified information, and to require the attendance of witnesses upon the reasonable request of either party but not upon his/her own motion.
3. The expense of service and appearance fees, if any, shall be borne entirely by the party requesting the subpoena of witnesses and each party shall, in advance of the hearing date, inform the other party of the identity of witnesses it subpoenaed.
4. The arbitrator shall have the obligation of assuring that all necessary facts and considerations are brought before him/her by the representatives of the parties at the hearing. In all respects he/she shall assure that the hearing is a fair one. The arbitrator shall be the sole judge of the relevancy and materiality of the evidence and testimony offered. The arbitrator may receive and consider evidence but shall give appropriate weight to any objections made. All documents to be considered by the arbitrator shall be filed at the hearing, or within the post-hearing time lines agreed to by the parties during the hearing.

G. Arbitration Remedies

1. In any decision of a grievance appealed to arbitration involving retroactive payments, the appropriate Employer and the Union 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.
2. 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.
3. Upon the motion of either party, or at his/her own discretion, an arbitrator may retain jurisdiction in all cases.

H. Cost Of Arbitration

1. The cost of the arbitrator and expenses of the hearing will be shared equally by the Employer and the Union. 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.

I. Pay Status

1. The grievant(s), as defined in Article 29: Grievance Procedure, shall be in a without-loss-of-straight-time-pay status at the arbitration hearing.
2. The Employer and the Union shall establish a reasonable schedule for witness(es)' testimony at the arbitration proceeding. Employee witnesses who appear at the arbitration hearing at the request of the Union shall be in a without-loss-of-straight-time-pay status for the time spent actually giving testimony or waiting to testify in accordance with the established schedule.
3. Total release time for the grievant, employee representative and witness(es) for travel to/from the hearing and for participation in the hearing shall not exceed either their normally scheduled hours of work for the day(s) of the hearing or their actual participation in the hearing.
4. Not more than one (1) employee representative will be released in without-loss-of-straight-time-pay status for attendance at any one (1) arbitration hearing.
5. The Employer shall not be responsible for any lodging, travel expenses or other expenses incurred by grievants, witnesses, employee or Union representatives with regard to the Union's presentation in the arbitration hearing.

J. Expedited Arbitration

The parties may agree to use an expedited form of arbitration, to be agreed to by the parties and the arbitrator.