

# 11.3 Grievance Procedure

## 11.3.1 Purpose and Scope

- A. This procedure is intended to provide a means for faculty to seek redress regarding employment-related concerns. This process can only be used for matters directly affecting the faculty member's working conditions or work assignments. Subject to the limitations set forth in 11.3.1 B, faculty members may file a grievance under this procedure for any action, inaction, or decision by a Mines employee that has a tangible adverse professional impact on the faculty member and that the faculty member has reasonable grounds to believe was unfair or arbitrary.
- B. This grievance process cannot be used to review:
1. Matters involving performance evaluations, allegations of discrimination, sexual harassment, promotion and tenure, or other matters covered by Board of Trustees policies and procedures, including other Faculty Handbook or Academic Affairs procedures that contain specific avenues of appeal.
  2. A decision or action by the Board of Trustees.
  3. Any matter pertaining to broad areas of the fiscal management, staffing or structure of the university, Mines policies, procedures, and practices of a general nature. Examples of such items include the annual budget, operating procedures and protocols, organizational structure, etc.
  4. Any matter for which the resolution is not under the control of the university. Examples of these might include federal regulations governing recruitment, grant operations and reporting, state statutory or rule requirements, generally accepted accounting practices, approved fringe rates, etc.
- C. Grievances that are frivolous, vexatious, retaliatory, initiated in bad faith, are filed to harass or annoy the Respondent, or grievances that are on their face clearly unreasonable, are not to be filed and may result in sanctions or disciplinary actions against the individual(s) who filed the grievance. If the Respondent believes that the grievance meets the conditions described in this Paragraph C, he or she may ask the Grievance Hearing Panel to consider this in its findings and recommend sanctions against the Grievant. If such a request is made, the panel will include in its report to the Decision Maker a section regarding the Respondent's request (see 11.3.4. K below).

## 11.3.2 Terms

- A. "Respondent" refers to the individual whose decisions, actions, or inactions have given rise to the Grievant's concerns.
- B. "Decision Maker" refers to the Provost or Vice President who is charged with making the decision.
- C. "Panel" refers to the Grievance Hearing Panel selected using the process defined in Sections 11.3.4 F and G of this grievance procedure.

## 11.3.3 Informal Resolution

If a dispute or conflict arises, the Grievant is expected to make reasonable, good faith efforts to resolve the dispute or conflict directly and promptly with the Respondent prior to beginning the Grievance Procedure (11.3.4). A Grievant should first discuss his or her concerns with the Respondent. If those efforts fail, the Grievant may utilize the

Grievance Procedure below, except as noted in 11.3.7A when the President is the respondent of the grievance.

## 11.3.4 Grievance Procedure

- A. A grievance must be provided in writing to the Human Resources Leadership (HRL)<sup>1</sup>. It must be filed no later than fifteen (15) days after the grieved action, inaction, or decision became known to the Grievant. If the Grievant fails to file the grievance by this deadline, the grievance is ended.
- B. The written grievance must contain, at a minimum, a statement that identifies the issue(s) in dispute and the Respondent, describes the factual basis for the grievance and the efforts to resolve the matter, and describes with specificity the desired outcome.
- C. The HRL will promptly provide a copy of the grievance to the Chair of the Faculty Grievance Committee. The Chair will determine whether it is a grievable matter (Handbook Section 11.3.1) that falls within the jurisdiction of the Grievance Committee and will determine whether the grievance is compliant with the submission requirements of Handbook Section 11.3.4 B.
- D. If the grievance is deficient, the Chair will advise the Grievant in writing and may allow the Grievant to revise and resubmit the grievance. The Chair must receive the revised grievance no later than seven (7) days after the Grievant's receipt of the Chair's notice of deficiency. Failure to resubmit within this deadline ends the grievance.
- E. The decision of the Chair as to whether it is appropriate for the Committee to hear the grievance is final and may not be grieved or otherwise appealed.
- F. For grievances that qualify to be heard, a Grievance Hearing Panel will be selected from Committee membership. The Chair and the CHRO will jointly and promptly conduct a random selection of the initial Panel.
- G. The panel will initially consist of five (5) members. From this number, the Grievant and the Respondent will each be required to disqualify one member. The disqualification must be made by the Grievant and the Respondent each no later than two (2) days after being notified of the initial Panel. The order of the disqualification selection will be determined by the flip of a coin. The remaining three (3) members will be the Panel that will hear the grievance.
- H. The Panel will select a Presiding Panel Member (PPM) within three (3) days of the Panel selection. Subject to Section 11.3.7 F., the PPM will schedule a pre-hearing conference of the panel including the Grievant and the Respondent. The purpose of the pre-hearing conference is to clarify issues, provide exchange of documents, set a date for the hearing, identify witnesses, and decide other preliminary matters. With consideration to participants' schedules, the pre-hearing conference will occur promptly, typically no later than ten (10) days after the selection of the PPM. If the pre-hearing conference becomes difficult to schedule, the PPM may conduct it on weekends and evenings.
- I. Following the pre-hearing conference, the PPM will schedule the grievance hearing. The schedule will be set with reasonable consideration given to the schedules of the Grievant, the Respondent, panel members, and possible witnesses. The hearing should normally occur no later than twenty-one (21) days after the pre-hearing conference.
- J. Only members of the Panel, the Grievant(s), the Respondent(s), and their respective counsels or representatives may attend the pre-hearing conference and the grievance hearing. Witnesses may be present only while giving testimony.

- K. At the hearing, both the Grievant and the Respondent will have the opportunity to present their cases. The Grievant bears the burden of proof.
- L. The Panel will issue its report and recommendations, including its findings, to the Grievant, the Respondent, and to the Decision Maker. The Panel will issue its report within a reasonable period of time after the hearing, generally within seven (7) days. Except in unusual circumstances, the panel's report and recommendations should be issued no later than twenty-one (21) days after the hearing.

<sup>1</sup> If the grievance is against the HRL, it must be provided in writing to the Executive Vice President for Finance and Administration. In this event, all references that follow within this procedure to the HRL will be replaced with the Executive Vice President for Finance and Administration.

### 11.3.5 Decision

- A. Within a reasonable period of time after receipt of the panel's report and recommendations, the Decision Maker will issue his or her decision. The Decision Maker will use the standard of preponderance of evidence in making his or her decision. The decision is normally expected to occur within ten (10) days after receipt of the panel's recommendation. If the Decision Maker needs to extend the time frame, he/she will notify the parties in writing of the extension.
- B. The decision of the Decision Maker is final and there is no further appeal. The decision will be provided to the Grievant and the Respondent in writing. Copies of the decision will be provided to the Faculty Grievance Committee Chair, the PPM, and to Human Resources for inclusion in the Grievant's and/or Respondent's personnel file as determined by the Decision Maker.

### 11.3.6 Representation

- A. The grievance process is an internal procedure for resolving workplace disputes; it is not intended to be a formal legal proceeding. Counsel or a representative may advise either party and is permitted to attend the pre-hearing conference and the grievance hearing. While counsel or a representative may advise the Grievant and the Respondent, no counsel or representative may participate directly in the proceedings, testify, or question witnesses.
- B. Mines' General Counsel may advise the panel on procedural matters related to the grievance. If the General Counsel is already actively involved in advising a party with regard to the grievance, another attorney from Mines' Legal Services Office, an attorney from the State's Attorney General's Office, or external counsel may be assigned to advise the Panel. An ethical wall will be utilized to address and resolve any conflict of interest that arises from this representation.

### 11.3.7 General

- A. If the President is the Respondent to the grievance, the Grievant is encouraged, but not required, to first discuss his or her concerns with the President. If the Grievant does not wish to engage the President in a discussion of his or her concerns, the Grievant may submit his or her grievance to the Chair of the Board of Trustees. If the Grievant elects to discuss his or her concerns with the President, the President will issue his or her decision in writing to the faculty member. A decision issued by the President may not be submitted to the Faculty Grievance Committee but may be appealed to the Chair

- of the Board of Trustees. Any decision by the Board of Trustees is the final decision of Mines with regard to grievances brought against the President.
- B. If a grievance is lodged against the Provost or a Vice President, the Panel report and recommendation will be provided to the President (or his or her designee) who will make the final decision.
- C. References in the singular include the plural where the intent of the sentence is obvious that the plural should be included and where the meaning of the sentence is not materially changed. For example, the terms "Grievant" and "Respondent" shall include "Grievants" and "Respondents" as appropriate.
- D. All references to days are made to calendar days.
- E. If any deadlines fall on a weekend or holiday, they will be extended to the next business day.
- F. If the pre-hearing conference or the grievance hearing fall within the period between the end of the spring semester and the beginning of the subsequent fall semester, at the discretion of the PPM, these may be postponed until the fall semester. If a postponement is necessary, the deadline for setting the pre-hearing conference shall be thirty (30) days after the start of the fall semester.