

POST DEPRIVATION HEARING PROCEDURE

Clerical Bargaining Unit
University of California, Santa Cruz

The following are procedures for a “post-deprivation” hearing as the final step in the process to resolve an employee complaint arising out of a disciplinary demotion, suspension of more than five (5) working days, dismissal, or a medical separation *only*.

An appeal to hearing may be made after the timely exhaustion of Step 3 of the grievance procedure as outlined in Article 6, Grievance Procedure, of the former UC/Teamsters 2010 Agreement for the Clerical Bargaining Unit.

If the decision at Step 3 of the grievance procedure does not resolve the complaint, for those issues listed above, a Clerical Bargaining Unit member may request a hearing before a University Hearing Officer. Such request shall be in writing, in letter or memo format, signed by the employee and/or his/her representative and filed with the campus Employee & Labor Relations Manager within fifteen (15) calendar days of the date the Step 3 response was issued or, if not issued, was due. Filings will be accepted by mail or by email to elrinfo@ucsc.edu. The mailing of the request for hearing shall constitute a timely appeal if it is postmarked within the appeal period. For emailed requests, the date of filing shall be the date received as indicated on the University’s email server. Should the fifteenth calendar day fall on a day, which is not a campus business day, the deadline will automatically be extended to the next business day. This timeline may be extended at the sole discretion of the Employee & Labor Relations Manager or her/his designee.

The request shall detail those issues of the original complaint not resolved at the previous level(s) of review.

Selection of Hearing Officer and Authority

The University (generally Labor Relations) shall appoint a University hearing officer. The hearing officer shall conduct a hearing to determine the issues and facts of the case and determine whether the demotion, suspension medical separation, and/or dismissal were consistent with the CX Agreement and University policies. The hearing officer shall not issue subpoenas or order stenographic records.

Hearing Process

The following are the procedures set for each hearing.

1. The employee and the University have a right to be represented during the hearing by an advocate of their choosing. However, pursuant to the Higher Education Employer-Employee Relations Act (HEERA 3580.5), an employee who has been designated managerial, supervisory, or confidential by the University shall not represent a non-managerial, non-supervisory employee.

2. Unless both parties otherwise agree, hearings shall be closed to everyone other than the employee, the employee's representative/advocate, the department representative, the University advocate, a Human Resources Department Representative and the person designated to record the hearing. Witnesses are present only when they are testifying except by mutual agreement of both parties.
3. Hearings will be scheduled at a time and date, which is agreeable to both parties. The employee must be able to attend, and will have reasonable time to prepare. The appropriate Labor Relations Analyst will schedule the hearing.
4. A joint summary of the outstanding issue(s) shall be submitted by both parties to the Hearing Officer at least seven (7) calendar days prior to the hearing.
5. The University and the complainant and/or their representatives shall have the opportunity to call and examine witnesses and submit relevant documentary evidence at the hearing. Each party shall provide the other with relevant material, including a written list of all witnesses, which either intends to introduce at the hearing. This material shall be provided to the opposing party at least seven (7) calendar days prior to the hearing. At the request of either party, all witnesses other than the principal parties, their representatives (if any), and a representative of the Labor Relations Office shall be excluded from the hearing except when testifying.
6. The Hearing Officer appointed will be fair and impartial. The Hearing Officer will have a working knowledge of standards of due process, burdens of proof and the principals of just cause. The Hearing Officer is empowered to exclude proffered evidence from either party, which is irrelevant to the determination of the issues of the case. The Hearing Officer has the sole discretion to require either oral or written closing statements by the parties.
7. A court reporter will be present and will prepare a transcript of the hearing. The court reporter transcription costs and fees, including the preparation of two transcripts, will be shared equally by both parties.

Rules of Evidence

Formal rules of evidence are not applicable. Hearing Officers, however, will be guided by the California Administrative Procedures Act (APA) which sets forth evidentiary rules for administrative proceedings. Generally, pursuant to the APA, weight is given in accordance with the reliability of the evidence proffered. Hearsay evidence alone is generally not a sufficient basis to support a finding of fact.

While there is no requirement for formal discovery prior to the hearing, both parties agree to exchange evidence to be presented at the hearing no later than seven (7) calendar days prior to the hearing. Additionally, the University is obligated to provide the employee with all the materials or evidence upon which the intended decision was based. The employee may also have access to certain records in accordance with various statutory provisions.

There is no mechanism to subpoena witnesses or otherwise compel testimony.

The Decision

The Hearing Officer is responsible for issuing a written decision within thirty (30) calendar days of the close of the hearing or within thirty (30) calendar days of receipt of closing briefs. The decision should be served on the employee, the University and the representatives for both parties.

The Hearing Officer is not empowered to order a remedy that exceeds a “make whole” order. Thus, any remedy ordered if the grievance is sustained, in whole or in part, may not exceed restoring the wages, benefits and other terms and conditions of employment lost as a result of the action taken. Any interim earnings of the employee must offset any monetary award during the relevant period.

Pay Status

The complainant shall be granted time off with pay during scheduled working hours for time spent in hearing. Time spent by the complainant and/or by the representative outside of scheduled working hours is without pay.