



UPM's Tuesday Debriefing

April 22, 2008

Grievances

A grievance is the process by which matters of contractual disagreement are brought forward in an attempt to reach resolution. They are not adversarial; they are a way of clarifying language or correcting behaviors, something parties to a contract usually understand. However, they are not the first recourse; mutual discussion is the desired process for working things out. Over the past decades **UPM** has filed dozens of grievances and most get resolved, if not always to the satisfaction of all parties. When resolution through discussion is not possible, binding arbitration is the last resort. Over the span of all the previous grievances that have been filed, it is only a handful that ever goes to arbitration. Parties are usually very selective about what to arbitrate because of the time, cost and consequences; the outcome is subject to the interpretation of yet another individual, the arbitrator.

Under the current administration grievances and arbitration have taken on a new meaning. A look at the recent closed session agenda of the **Board of Trustees** will show at any one time 5 to 8 grievances, arbitrations and litigations pending against the District. These are not all from UPM, but are shared by **CSEA** and individual employees. UPM has filed more grievances in the short tenure of the current administration than under the governance of the three previous Superintendent/Presidents. And more grievances are in arbitration or scheduled to go to arbitration under **President White** than under all other presidents combined! One would think that with all of the experience in grievances that is being generated, the process should move quite smoothly. But as so many things in this District these days, it is not quite that simple.

When Is a Grievance Not a Grievance, Part 1?

When it is too late. There is a contractual time line that must be followed when pursuing a grievance. If the deadlines are missed, the grievance could become invalid. Even with these conditions the parties still attempt to settle grievances to avoid going to the next step, whatever it may be at the time.

UPM and the District recently attempted to do this with 4 filed or pending grievances. The discussions continued back and forth for many weeks and there was actually success in settling one of the issues. However, the remaining ones were just not going to happen, at which point UPM moved them to the next step. Not so fast, the District said, you missed a deadline. But settlement discussions were taking place, we responded, and you never claimed it was too late to settle! Guess if you get what you want it is never too late; otherwise, forget it.

When Is a Grievance Not a Grievance, Part 2?

When the District refuses to receive it: As reported in a previous *De-Briefing*, **Vice-president Anita Martinez** unilaterally modified the sabbatical leave proposals that had been approved by the Sabbatical Leave Committee. UPM viewed this as a gross violation of the contract and filed a grievance on behalf of all of the faculty affected by this action. The grievance was *returned*—that was a first in the history of our Collective Bargaining Agreement—by **Director of Human Resources Linda Beam**, saying that no individuals were listed as the grievant. That is correct, UPM responded, under Article 12.5.1 “if a grievance arises from the action of a central District authority [e.g., Anita Martinez], UPM or any other grievant may initiate such grievance....” Not so, says Beam, look at Article 12.2.2 which says a “‘grievant’ is a member of the bargaining unit.... UPM/AFT may grieve Articles 3 and 13, *or as provided for in 12.5.*” [Emphasis added] Yes, so what’s your point? See 12.5.1 as referenced above. At press time, the District was still refusing to accept this grievance.

UPM certainly hopes that this issue will not have to be grieved—grieving a grievance?—and that all the other pending items can be successfully resolved, but that requires discussion and a willingness to talk with UPM, and these seem to be sadly lacking with the current administrators.

One might normally be cautioned to adhere to the contract to avoid what has become the chaos of grievances, but when the administration is modifying the contract as we go, this advice might be hard to follow.

Have a great week!