

## CAPS AGREEMENT

### ARTICLE 9 – GRIEVANCE AND ARBITRATION PROCEDURE

#### 9.1 Purpose

A. This grievance procedure shall be used to process and resolve grievances arising under this Agreement and employment-related complaints.

B. The purposes of this procedure are:

1. To resolve grievances informally at the lowest possible level.
2. To provide an orderly procedure for reviewing and resolving grievances promptly.

#### 9.2 Definitions

A. A grievance is a dispute of one or more employees, or a dispute between the State and CAPS, involving the interpretation, application, or enforcement of the express terms of this Agreement.

B. A complaint is a dispute of one or more employees involving the application or interpretation of a written rule or policy not covered by this Agreement and not under the jurisdiction of SPB. Complaints may be appealed to the fourth level if the department head or designee does not timely answer at Step 3.

C. As used in this procedure, the term “immediate supervisor” means the individual identified by the department head.

D. As used in this procedure, the term “party” means CAPS, an employee, or the State.

E. A “CAPS representative” refers to an employee designated as a CAPS representative or a paid staff consultant.

#### 9.3 Time Limits

Each party involved in a grievance shall act quickly so that the grievance may be resolved promptly. Every effort should be made to complete action within the time limits contained in the grievance procedure. However, with the mutual consent of the parties, the time limitation for any step may be extended.

## **9.4 Waiver of Steps**

The parties may mutually agree to waive any step of the grievance procedure.

## **9.5 Presentation**

At any step of the grievance procedure, the State representative may determine it desirable to hold a grievance conference. If a grievance conference is scheduled, the grievant or a CAPS representative, or both, may attend without loss of compensation. A CAPS representative may request a meeting at the first or second step providing it causes no additional cost to the State.

## **9.6 Informal Discussion**

An employee's grievance initially shall be discussed with the employee's immediate supervisor. Within seven (7) calendar days, the immediate supervisor shall give his/her decision or response.

## **9.7 Formal Grievance - Step 1**

A. If an informal grievance is not resolved to the satisfaction of the grievant, a formal grievance may be filed no later than:

1. Twenty-one (21) calendar days after the event or circumstances occasioning the grievance, or
2. Within fourteen (14) calendar days after receipt of the decision rendered in the informal grievance procedure.

B. However, if the informal grievance procedure is not initiated within the period specified in Subsection A.1 above, the period in which to bring the grievance shall not be extended by Subsection A.2 above.

C. A formal grievance shall be initiated in writing on a form provided by the State and shall be filed with a designated supervisor or manager identified by each department head as the first level of appeal.

D. Within twenty-one (21) calendar days after receipt of the formal grievance, the person designated by the department head as the first level of appeal shall respond in writing to the grievance.

E. No contract interpretation or grievance settlement made at this stage of the grievance procedure shall be considered precedential. All interpretations and settlements shall be consistent with the provisions of this Agreement.

## *CAPS AGREEMENT*

### **9.8 Formal Grievance - Step 2**

A. If the grievant is not satisfied with the decision rendered pursuant to Step 1, the grievant may appeal the decision within twenty-one (21) calendar days after receipt to a designated supervisor or manager identified by each department head as the second level of appeal. If the department head or designee is the first level of appeal, the grievant may bypass Step 2.

B. Within twenty-one (21) calendar days after receipt of the appealed grievance, the person designated by the department head as the second level of appeal shall respond in writing to the grievance.

C. No contract interpretation or grievance settlement made at this stage of the grievance procedure shall be considered precedential. All interpretations and settlements shall be consistent with the provisions of this Agreement.

### **9.9 Formal Grievance - Step 3**

A. If the grievant is not satisfied with the decision rendered pursuant to Step 2, the grievant may appeal the decision within twenty-one (21) calendar days after receipt to a designated supervisor or manager identified by each department head as the third level of appeal. If the department head or designee is the second level of appeal, the grievant may bypass Step 3.

B. Within twenty-one (21) calendar days after receipt of the appealed grievance, the person designated by the department head as the third level of appeal shall respond in writing to the grievance.

### **9.10 Formal Grievance - Step 4**

A. If the grievant is not satisfied with the decision rendered at Step 3, the grievant may appeal the decision within twenty-one (21) calendar days after receipt to the Director of the California Department of Human Resources (CalHR) or designee.

B. Within thirty (30) calendar days after receipt of the appealed grievance, the Director of the CalHR or designee shall respond in writing to the grievance.

### **9.11 Response**

If the State fails to respond to a grievance within the time limits specified for that step, the grievant shall have the right to appeal to the next step.

### **9.12 Formal Grievance - Step 5**

A. If the grievance is not resolved at Step 4, within thirty (30) calendar days after receipt of the fourth level response, CAPS shall have the right to submit the grievance to arbitration.

B. Within seven (7) calendar days after the notice requesting arbitration has been served on the State or at a date mutually agreed to by the parties, the parties shall meet to select an impartial arbitrator. If no agreement is reached at this meeting, the parties shall, immediately and jointly, request the American Arbitration Association, State Conciliation and Mediation Service, or the Federal Mediation and Conciliation Service to submit to them a panel of seven (7) arbitrators from which the State and CAPS shall alternately strike names until one name remains and this person shall be the arbitrator. The State shall have forty (40) calendar days after a request to the American Arbitration Association, the State Conciliation and Mediation Service or the Federal Mediation and Conciliation Service prior to selecting an arbitrator.

C. The arbitration hearing shall be conducted in accordance with the Voluntary Labor Arbitration Rules of the American Arbitration Association. The cost of arbitration shall be borne equally between the parties.

D. An arbitrator may, upon request of CAPS and the State, issue his/her decision, opinion or award orally upon submission of the arbitration. Either party may request that the arbitrator put his/her decision, opinion, or award in writing and that a copy be provided.

E. The arbitrator shall not have the power to add to, subtract from, or modify this Agreement. Only grievances as defined in Section 9.2.A. shall be subject to arbitration. In all arbitration cases, the award of the arbitrator shall be final and binding upon the parties.

### **9.13 Health and Safety Grievances**

All Health and Safety grievances deemed necessary for expedited processing shall first be appealed directly to the second level of the

## *CAPS AGREEMENT*

grievance procedure pursuant to the modified time limits set forth below:

A. Health and Safety Grievance - Step 2

1. If the grievant is not satisfied with the decision rendered by his/her supervisor pursuant to Section 9.6, the grievant may appeal the decision within fourteen (14) calendar days after receipt of the decision to a designated supervisor or manager identified by each department head as the second level of appeal.

2. Within five (5) calendar days after receipt of the appealed grievance, the person designated by the department head as the second level of appeal shall respond in writing to the grievance.

B. Health and Safety Grievance - Step 3

1. If the grievant is not satisfied with the decision rendered pursuant to Step 2, the grievant may appeal the decision within twenty-one (21) calendar days of receipt to a designated supervisor or manager identified by each department head as the third level of appeal. If the department head or designee is the second level of appeal, the grievant may bypass Step 3.

2. Within twenty-one (21) calendar days after receipt of the appealed grievance, the person designated by the department head as the third level of appeal shall respond in writing to the grievance.

3. If the grievance is not resolved at Step 3, within thirty (30) calendar days after receipt of the third step response, CAPS shall have the right to submit the grievance to arbitration.

C. The selection of the arbitrator shall be in accordance with Section 9.12.B., and the case must be before an arbitrator within twenty (20) calendar days.

## **ARTICLE 10 – CAPS REPRESENTATIONAL RIGHTS**

### **10.1 Representational Designation**

A. The State recognizes and agrees to deal with designated representatives, or CAPS staff on the following:

1. The administration of this contract;
2. Employee discipline cases;
3. Informal settlement conferences or formal hearings conducted by the Public Employment Relations Board;
4. Matters scheduled for hearing by the Board of Control;