

**KALEIDA HEALTH
1199/SEIU UNITED HEALTHCARE WORKERS EAST
COMMUNICATIONS WORKERS OF AMERICA**

2022 CONTRACT NEGOTIATIONS

**Union Counterproposal
Date Presented: May 5, 2022**

**Article 7
Grievance Procedure**

Section 1. A grievance, under this Agreement, or applicable bargaining unit Agreements, shall be defined as a claim of an employee, a class of employees, or the Local Union, covered by the Agreement which involves the interpretation, administration of, or compliance with a specific provision of this Agreement. A class action grievance is one that impacts more than one bargaining unit within this Master Agreement. It will be initially presented at Step 2 of the grievance procedure. A grievance for a group of employees within a department and/or bargaining unit will be initially presented at Step 1 of the grievance procedure.

Section 2. The selection and the assignment of supervisory employees is the sole responsibility of the Employer and shall not be subject to the grievance mechanism.

Section 3. All grievances shall be reduced to writing on forms provided by the Union. The Steward shall clearly and concisely state all facts which constitute the basis for the grievance and shall specify any Article or Section of the Agreement which may be involved. The grievance form shall be dated and signed by the Steward and at least one employee who claims a violation of this Agreement. All grievances shall be recorded on a mutually agreed upon form which is attached hereto as Appendix I.

Section 4. For a grievance to be treated as a valid one, it must be presented to an Employer representative in writing (**scanned or faxed copies meet this requirement**), as described in Section 3, within twenty (20) calendar days after the event or events giving rise to the grievance occurred, or within twenty (20) calendar days after those events should have reasonably been known.

Section 5. Any time limit imposed upon the handling of grievances shall commence on the date of receipt. Any time limit so imposed shall be interpreted as calendar days.

Section 6. It is understood by the parties that the Union representative(s) and/or an aggrieved employee shall undertake every reasonable effort, including but not limited to face to face meetings, to resolve a grievance by first addressing it with the immediate supervisor. Whether or not a discussion is held, and the grievance is not resolved, it may be presented in writing to the Employer as provided for in Section 3. and Section 4. above, and it shall be processed in the following manner:

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Step 1: The grievance shall be presented in writing to the Head of the Department, or his/her designee for discussion with the Union Representative(s) and the grievant if the aggrieved employee is willing and able to attend. The discussion with the Head of the Department or designee and the appropriate personnel to hear the grievance including but not limited to the employee's immediate supervisor and the Human Resources site representative shall be held promptly after receipt of the written grievance and within seven (7) calendar days. The Head of the Department or designee's written answer shall be made available to the Union Representative within five (5) calendar days after the Step 1 discussion.

Step 2: If no mutually acceptable conclusion is reached in Step 1, the grievance shall then be presented, in writing, to the Director of Labor Relations, or designee, which individual shall handle second step grievances for all sites within ten (10) calendar days after the receipt by the Union Representative of the written answer derived from the Step 1 discussion. The matter shall be investigated and discussed at a meeting including the parties' representatives and normally, the aggrieved employee. This meeting shall take place within seven (7) calendar days of the request unless mutually waived. The Director of Labor Relations, or designee, and the appropriate personnel to answer the grievance, shall render a decision in writing to the appropriate Union Representative within fourteen (14) calendar days of the Step 2 discussion.

Step 3: If no mutually satisfactory conclusion is reached at the end of Step 2, either party to this Agreement may give notice of its desire to arbitrate the grievance. The arbitration process shall be initiated by sending a letter to the Federal Mediation and Conciliation Service (FMCS), with a copy of this request letter to the Director of Labor Relations, or designee, within forty-five (45) calendar days after receipt of the Step 2 answer, identifying the grievance, including whatever forms are required by the Mediation Service and a request that the Mediation Service send to each party a list of seven (7) names of arbitrators.

Section 7. If a grievance cannot be resolved at Step 2, the parties may mutually agree to submit the grievance to non-binding mediation before mutually agreed upon mediator from FMCS. Such submission will be made to FMCS in a letter signed by the parties. The parties agree that a grievance mediation session shall be held every month for the purpose of mediating up to eight (8) unresolved grievances which have arisen.

- a.) Grievance mediation sessions shall be scheduled at least twelve (12) months in advance and every effort will be made to use a regular day each month. Grievance mediation sessions may only be canceled by the mutual agreement of the parties in writing.

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- b.) Management will bring the appropriate personnel with decision making authority to the mediation sessions who have been part of the grievance process with the goal of coming to a decision that day.
- c.) Any grievance settlement, whether it represents a compromise between the parties or a full granting of the grievance, shall be reduced to writing and signed at the grievance mediation session. Any grievance which is withdrawn shall be done so in writing and signed at the grievance mediation session. Any discussions held in the course of the grievance mediation process shall be considered "off the record" and shall be inadmissible in any subsequent arbitration hearing, NLRB proceeding or judicial proceeding. Any settlement reached in grievance mediation shall not be considered as precedent.

Should the parties reach agreement at this step, it shall be binding upon the parties. If either party violates the agreement achieved at this step then the other party may move the matter immediately to arbitration.

Section 8. ~~Following receipt of the copy of the list of arbitrators, a representative of each party shall alternately strike a name until one name is left. The determination of who strikes first may be made by the coin toss with the loser making the first strike. The remaining name shall be the arbitrator for that grievance. Either party may reject a panel of arbitrators and request one additional panel.~~

Within fourteen (14) calendar days of the date the parties receive the FMCS arbitrator list, a representative from each involved party shall confer to select an arbitrator. If the parties cannot agree within the fourteen (14) calendar day period, then no later than the thirtieth (30th) calendar day after the parties' receipt of the FMCS list, the parties' representatives will use the alternate strike process to select an arbitrator, if they are otherwise unable to mutually agree to an arbitrator. With contemporaneous written notice to all involved parties, any party may reject a panel and request one additional panel.

If either party has failed to participate in the arbitrator selection process in a non-class action matter by 11:59pm on the 14th calendar day, the other party arbitration may give written notice that:

- a.) **the first party has failed to participate in the arbitrator selection process;**
- b.) **identifying the pursuing party's representative who will participate in the arbitrator selection process; and**
- c.) **establishing a date and time upon which alternate selection from the then-active arbitrator list will occur telephonically so long as that date is within five (5) business days of when such notice is given.**

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The notice will be transmitted by email and facsimile, directed to the Employer's Chief Labor Relations Officer or designee (if instigated by a union) or the President of the Local Union for CWA, the Administrative Organizers for 1199SEIU and National Union Representative (CWA), if any (if instigated by the Employer). If the recalcitrant party does not participate in this selection process, then the party giving notice shall have the right to unilaterally select an arbitrator from the then-active FMCS list.

Section 9. The cost and the expense of the arbitrator and the hearing room shall be shared equally by the parties. All other expenses shall be borne by the party incurring them, and neither party shall be responsible for the costs of the other.

Section 10. Not more than a single grievance arising under this Agreement may be arbitrated in a single proceeding before an arbitrator unless by mutual agreement in writing signed by the parties.

Section 11. The award of an arbitrator shall be final and binding on the Union, its members, the employee or employees involved and the Employer.

Section 12. The decision of the arbitrator may or may not include "make whole" decisions with respect to back pay, provided, however, if an arbitrator shall award back wages covering the period of an employee's separation from the Employer's payroll, the amount as awarded shall be less any unemployment compensation received or other compensation from any source, which the employee would not have received or earned had they not been suspended or discharged, and provided further that any wages from another job with another employer held by the employee at the time of the suspension or termination will not be the basis for any reduction in back pay awarded.

Section 13. The arbitrator shall have no authority to alter, amend or change in any way the terms and conditions of this Agreement, the Employer's written work rules and policies and shall confine their decision to a determination of the facts and interpretation, administration of, and compliance with the terms of the Agreement. The arbitrator shall include in his/her decision including in his/her decision findings of fact, conclusions of law (if applicable), and what provisions if any, of the Agreement were violated.

Section 14. Any grievance not answered within the specified time periods may be appealed to the next Step of the Grievance procedure immediately. Grievance may be entertained at any Step or the time limits may be changed at any Step by mutual consent of the parties in writing. Failure to timely appeal any grievance will close the grievance.

Section 15. Any grievance which the Employer may have against the Union shall be reduced to writing and submitted to the chief steward who will promptly arrange a meeting at the Step 2 level of this procedure.

Section 16. A grievance alleging discharge without just cause or grievances concerning layoffs due to a reduction in the workforce shall be reduced to writing within seventy-two (72)

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hours of the Local Union's receipt of written notice of the discharge or notice of layoff or within seventy-two (72) hours after the events should reasonably have become known to the Local Union, and shall be submitted at Step 2 of this procedure.

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