

**Rockefeller University's Non-Discrimination Proposal:
Helping Unit Members, the Union & the University
Amicably and Efficiently Resolve Difficult Disputes**

Proskauer»

3 Open Issues re: Grievance and Arbitration Article: Separate from Non-Discrimination Article Dispute Resolution Procedures

- Grievance & Arbitration Three Open Issues:
 1. Timing/Days: *Step One* – 3 (Union) v. 5, absent good cause (University); *Step Two* – 8 (Union) v. 10 (University)
 - *E.g.* UAW/WCM has Step One – 5 Days; Step Two – 10 Days; RU wants to get these disputes investigated and resolved properly;
RUSHING DOESN'T HELP
 2. University Right to Grieve – **MUST HAVE**
 3. “Exclusive” and “related to” proposals
- Seems to be a misunderstanding over the terms “exclusive” and “related to”?
- Grievance & Arbitration Article is the “sole, **exclusive** and final process” for resolving grievances :
 - This procedure is where all contract disputes are resolved;
 - Standard CBA language: Postdocs (Caltech/UAW; Columbia/UAW and Brown Postdoc CBA);
 - Many graduate student agreements as well (e.g., Columbia, Duke, many CBAs in industry)
 - NOT giving up any legal or other right Unit Members might otherwise have
- Grievance is “a complaint arising from **or related to** an alleged violation of this Agreement”
 - Broader definition promotes stable labor relations –read CBA *broadly* and use this process to resolve our disputes;
 - Gives Union power to style a claim to get it covered by the CBA;
 - *E.g.*, disputes regarding direct travel funding – may be “related to” the CBA;
 - **Does not** sweep in other non-CBA, external legal claims that do not require interpretation of the CBA – e.g., a negligence claim for a slip and fall, or a **statutory discrimination claim** (addressed in our non-discrimination proposal) ...

Non-Discrimination Protections

- Non-discrimination laws (namely, statutes prohibiting discrimination, harassment, retaliation) **are treated differently** than grievance and arbitration – CBA related disputes.
- Under Supreme Court precedent, without an “explicit” agreement in the CBA that non-discrimination claims specifically are subject to arbitration – **they will not be subject to the arbitration procedure.**
 - *14 Penn Plaza LLC v. Pyett*, 556 U.S. 247 (2009)
- Our proposal brings statutory claims into a separate mediation and arbitration process, as an **alternative** forum to state and federal court.
- Again, this is **separate and unrelated** to the Grievance and Arbitration Article.

Without our Proposal: Summary

- With respect to legal claims of discrimination, harassment and retaliation, unit members, like all plaintiffs, have a minimal likelihood of success in court and face a **daunting, expensive** and **protracted** legal process – see data on next slides.
- Under the Union’s proposal – if you wanted to bring a statutory claim – you would need to **find your own attorney** (if you can) and **file in court**.
- Overwhelming data shows that discrimination plaintiffs **do not fare well** in court.
- Plaintiffs in federal court win their cases only a tiny percentage of the time
 - Historically: plaintiffs only won **10.9%** of the time
 - 2023 – 2025: courts find for plaintiffs **only ~7%** of the time.
- Often **difficult** for employees without **six figure incomes** to find a good lawyer in NYC (lawyers charge 33% or more of any settled or judgment as a contingency). In 2025, 16% of employment lawsuits were filed pro se. *Pro se* employment plaintiffs lost 40:1.

Without our Proposal: Historic Data

2009] Employment Discrimination Plaintiffs in Federal Court

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<i>Type</i>	<i>Number</i>	<i>Win Rate</i>
Title VII	64,122	10.88
ADA	8240	9.12
§ 1983	8342	11.24
ADEA	7105	11.67
§ 1981	4457	10.96
FMLA	1503	19.55
Total	93,769	10.90

Display 6: Numbers and Win Rates, Employment Discrimination Cases by Type, Fiscal 1998–2006, U.S. District Courts. This table of AO data shows the predominance of Title VII cases in code #442 cases, as well as the similarity of outcomes in the different types of discrimination cases. We discuss win rates *infra* Part II.C. Only since fiscal year 1998 did the Administrative Office enter the title and section of the U.S. Code under which each case is brought, so our breakdown by type of discrimination can only begin then. Moreover, because the data go only through fiscal year 2006, the data from the last three months of calendar year 2006 are not included. Finally, the entries for title and section are poor, so we have discarded an almost equal number of missing or nonsensical entries.

Source: Clermont, Kevin M. and Schwab, Stewart J., "Employment Discrimination Plaintiffs in Federal Court: From Bad to Worse?" (2009). *Cornell Law Faculty Publications*. Paper 109

Without our Proposal: Data from the Last 3 Years

- Title VII Race Claims: **72 / 1,709** finding for Plaintiffs (**4.2%**)
- Title VII Gender Claims: **81 / 1,204** finding for Plaintiffs (**6.7%**)
- Hostile Work Environment Claims: **128 / 1,985** findings for Plaintiffs (**9.2%**)
- Retaliation Claims: **371 / 4,233** findings for Plaintiffs (**8.8%**)

Figure 25: Employment Findings in Terminated Cases (2023–2025)

Findings	
Title VII Discrimination: Race / Color	72
No Title VII Discrimination: Race / Color	1,637
Title VII Discrimination: Sex / Gender	81
No Title VII Discrimination: Sex / Gender	1,124
Hostile Work Environment / Harassment	128
No Hostile Work Environment / Harassment	1,856
Retaliation	371
No Retaliation	3,862

Source: Lex Machina 2026 Employment Litigation Report

Overview of the University's Non-Discrimination Proposal in Light of the Indisputable Data

- Step 1 – University Policies:
 - Unit Member brings a claim under the University's Title IX or Non-Discrimination Policy
 - Recent unit member claims were investigated in **less than 4 months**;
 - If resolution under policies is not satisfactory...
- Step 2 – Mandatory Mediation:
 - **Non-binding** – must mutually agree to any resolution;
 - AAA employment law mediator with relevant experience – often former judges;
 - Unit Member is provided with an attorney and/or Union rep;
 - Mediation fees and expenses are shared by Union and University – no cost to Unit Member;
 - If Unit Member or Union are not satisfied, within 30 days can appeal to...
- Step 3 – Arbitration:
 - No substantive rights are waived – only the *forum* is different
 - Just like court – same legal standards and laws apply
 - (e.g., Unit Members can seek applicable compensatory & punitive damages – Union can seek attorney fees)
 - Unit Member is provided with an attorney;
 - AAA employment law arbitrator – expert, often a former judge;
 - Arbitration fees and expenses are shared by Union and University – no cost to Unit Member;

Salutary Step To Resolution: Mediation the “Big Coffee Filter”

- **Mediation:** non-binding process where a trained, qualified neutral attempts to help parties reach a fair resolution
 - Non-binding process
- **78% of cases are resolved through mediation** (Source: [Effectiveness of Mediation: An Independent Analysis of Cases Handled by Four Major Service Providers](#))
- **61% of plaintiffs** (in the tiny fraction of cases that go to trial) **mis-assess their prospects of winning at trial** (Source: [Study Finds Settling Is Better Than Going to Trial](#))
- With only a **~7% to 11%** success rate in court discrimination cases, **mediation is a major benefit to all employment litigants.**
- Why wouldn't Unit Members and the Union want mediation? **No rights are waived.**

Postdocs Spend up to 5 Years at Rockefeller – Employment Lawsuits in Court Take Many Years – Arbitration is Faster

Litigation in Court

- **3 Years and 8 Months (44.6 Months)**
 - The average time from filing a case in the Southern District of New York to a final disposition of the case
 - ([Administrative Office of Courts](#) data)
- **Some cases can take far longer**
 - One discrimination action involving a researcher at Ohio State University took **seven years** and **two trials** for the plaintiff to **lose**.

versus

Arbitration

- **7 Months**
 - Average time to a final decision in arbitration
 - (Based on research by the American Bar Association, available [here](#))

Mediation and Arbitration are Common Processes for Resolving Discrimination Claims in CBAs

- FOR EXAMPLE:
- In Higher Education:
 - UAW / Caltech Agreement for Postdocs and Grad Students
 - SEIU / Syracuse Agreement for Grad Students
- In New York:
 - SEIU 32BJ
 - Operating Engineers, Local 94
 - 1199SEIU United Healthcare Workers East
 - Local 1660 Home Healthcare Workers of America
- And Nationwide:
 - NABET-CWA
 - Teamsters Local 853
 - Among many others.

A Comparison Between the Two Proposals

	Union Proposal	University Proposal
Cost	<p>UNIT MEMBER PAYS COSTS</p> <p>If Unit Member wants to bring a statutory claim; Unit Member will usually hire their own an attorney.</p> <p>Union has no role and does not represent you in Court.</p>	<p>FREE</p> <p>Arbitration costs are covered by Union and University; free for Unit Members. Union can provide an attorney and/or union representative.</p>
Mediation	<p>NONE</p>	<p>YES</p> <p>Mediation resolves approximately 78% of claims quickly, at no cost to the Unit Member and is non-binding.</p>
Time to Final Decision	<p>NONE</p> <p>If you want to bring a statutory claim, it will take years in NY federal or state courts</p>	<p>YES</p> <p>Arbitrations are resolved within 7 months, on average, with costs covered by the University and Union, with Union providing representation.</p>

Union’s February 17, 2026 Letter to President Lifton: Very Unfair

Union Claim	What the Facts Are
University proposal “went far below protections won by other unionized postdocs in the city”	FALSE University proposal is <i>far better</i> than the other CBAs E.g., UAW/Caltech Postdoc CBA and Syracuse/SEIU Grad CBA include similar procedures
“Workers could go without a clear resolution indefinitely”	FALSE University proposal leads to a <i>faster</i> resolution before a neutral adjudicator (mediator and/or arbitrator)
“Workers could go... without an enforceable timeline”	FALSE University investigations are handled <i>quickly</i> ; unit member can seek arbitration within 30 days of mediation not succeeding

Non-Discrimination – a Mandatory Subject of Bargaining

- Anti-discrimination, harassment and retaliation protections are a **mandatory subject of bargaining**;
- You are required to bargain our proposal with us in good faith;
- This is an important proposal for the University – one Unit Members should seriously consider.