

## ARTICLE 20

### GRIEVANCE PROCEDURE AND ARBITRATION

**20.1 Policy/Informal Resolution.** The parties agree that all problems should be resolved, whenever possible, before the filing of a grievance but within the time limits for filing grievances stated elsewhere in this Article, and encourage open communications between administrators and employees so that resort to the formal grievance procedure will not normally be necessary. The parties further encourage the informal resolution of grievances whenever possible. At each step in the grievance process, participants are encouraged to pursue appropriate modes of conflict resolution. The purpose of this Article is to promote a prompt and efficient procedure for the investigation and resolution of grievances. The procedures hereinafter set forth shall be the sole and exclusive method for resolving the grievances of employees as defined herein.

**20.2 Resort to Other Procedures.** It is the intent of the parties to first provide a reasonable opportunity for resolution of a dispute through the grievance procedure and arbitration process. Except as noted below, if prior to seeking resolution of a dispute by filing a grievance hereunder, or while the grievance proceeding is in progress, an employee requests, in writing, resolution of the matter in any other forum, whether administrative or judicial, the University shall have no obligation to entertain or proceed further with the matter pursuant to this grievance procedure. ~~As an exception to this provision, a grievant may file an EEOC charge while the grievance is in progress when such filing becomes necessary to meet federal filing deadlines pursuant to 42 U.S.C. § 2000e et seq.~~ Any claim of illegal discrimination by an employee may not be pursued through the University grievance process, but must follow the procedures provided in 42 U.S.C. §2000e et seq. or Florida Statutes, Chapter 760. Further, since the parties do not intend that this grievance procedure be a device for appellate review, the president's response to a recommendation of a hearing officer or other individual or group having appropriate jurisdiction in any other procedure shall not be an act or omission giving rise to a grievance under this procedure.

**20.3 Definitions and Forms.** As used herein:

(a) the term "grievance" shall mean a dispute filed on a form referenced in Section 20.3(c) concerning the interpretation or application of a specific term or provision of this Agreement, subject to those exclusions appearing in other Articles of this Agreement. A Step 1 Grievance is a grievance alleging that one or more violations of this Agreement have occurred at, or within, a college level unit. A Step 2 Grievance is a grievance that has either

- (1) continued from the Step 1 college or unit level to the University level or
- (2) filed alleging that one or more violations of the Agreement have occurred at the University level.

(b) the term "grievant" shall mean an employee or group of employees who has/have filed a grievance in a dispute over a provision of this Agreement which confers rights upon the employee(s) or the UFF. The UFF may file a grievance:

(1) in a dispute over a provision of this Agreement which confers rights upon the UFF. A grievance filed by the UFF on behalf of the UFF shall be initiated at Step 2; or

(2) on behalf of the bargaining unit, a group of employees, or an individual employee, provided any group is identified with sufficient specificity to enable the University to identify its members.

(c) Consolidation. The parties may agree to consolidate grievances of a similar nature to expedite the review process. In a consolidated grievance, one Appendix "C," "D," or "E" may be attached, bearing the signatures of the grievants.

(d) Grievance Forms. Each grievance, request for review, and notice of arbitration must be submitted in writing on the appropriate form attached to this Agreement as Appendix "C", "D," or "E," respectively, and shall be signed by the grievant. All grievance forms shall be dated when the grievance is received. If there is difficulty in meeting any time limit, the grievance representative may sign such documents for the grievant; however, grievant's signature shall be provided prior to the Step 1 meeting or Step 2 review if filed directly at Step 2. The aforementioned grievance forms, as well as Appendix "H," may be filed by means of fax, United States mail, or any other recognized means of delivery.

(e) Remedy. A grievance shall specify the remedy sought by the grievant.

**20.4 Burden of Proof.** In all grievances except disciplinary grievances in accordance with Article 16, Disciplinary Action and Job Abandonment, the burden of proof shall be on the employee. In disciplinary grievances, the burden of proof shall be on the University.

**20.5 Representation.** The UFF shall have the exclusive right to represent any employee in a grievance filed hereunder, unless an employee elects self-representation or to be represented by legal counsel. If an employee elects not to be represented by the UFF, the University shall promptly inform the UFF in writing of the grievance. No resolution of any individually processed grievance shall be inconsistent with the terms of this Agreement and for this purpose the UFF shall have the right to have an observer present at all meetings called with the grievant or grievance representative for the purpose of discussing such grievance and shall be sent copies of all decisions at the same time as they are sent to the other parties.

**20.6 Grievance Representatives.** The UFF shall, on or before September 1 of each year, furnish to the University a list of all persons authorized to act as grievance representatives and shall update the list as needed. The UFF grievance representative shall have the responsibility to meet all classes, office hours, and other duties and responsibilities incidental to the assigned workload. Some of these activities are scheduled to be performed at particular times. Such representative shall have the right during times outside of those hours scheduled for these activities to investigate, consult, and prepare grievance presentations and attend grievance hearings and meetings. Should any hearings or meetings with the president or president's representatives necessitate rescheduling of assigned duties, the representative may, with the approval of the appropriate administrator, arrange for the rescheduling of such duties or their coverage by colleagues. Such approval shall not be unreasonably withheld.

**20.7 Appearances.**

(a) When an employee participates during working hours in an arbitration proceeding or in a grievance meeting between the grievant or representative and the University, that employee's compensation shall neither be reduced nor increased for time spent in those activities.

(b) Prior to participation in any such proceedings, conferences, or meetings, the employee shall make arrangements acceptable to the appropriate supervisor for the performance of the employee's duties. Approval of such arrangements shall not be unreasonably withheld. Time spent in such activities outside regular working hours shall not be counted as time worked.

**20.8 Formal Grievance Procedure.**

(a) Filing.

(1) Step 1 and Step 2 grievances shall be filed in the Office of Faculty Relations in Academic Affairs within thirty (30) days following the act or omission giving rise thereto, or the date on which the employee knew or reasonably should have known of such act or omission if that date is later. Thirty days shall be determined by the date stamped on the completed grievance form filed in the Office of Faculty Relations, or by the date of mailing as determined by the postmark. The grievant may amend the Appendix "C" form one time, either prior to the Step 1 meeting for all grievances filed at Step 1, or prior to the Step 2 review for all grievances filed directly at Step 2.

(2) An employee may seek redress of alleged salary discrimination by filing a grievance under the provisions of Article 20. An act or omission giving rise to such a grievance may be the employee's receipt of the employee's salary warrant for the first full-pay period in which the annual salary increases referenced in Article 23 are reflected.

(3) The filing of a grievance constitutes a waiver of any rights to judicial review of agency action pursuant to Chapter 120, Florida Statutes, or to the review of such actions under University procedures which may otherwise be available to address such matters. This grievance procedure shall be the sole review mechanism for resolving disputes regarding rights or benefits which are provided exclusively by this Agreement. Only those acts or omissions and sections of the Agreement identified at the initial filing may be considered at subsequent steps.

(b) Time Limits. All time limits contained in this Article may be extended by mutual agreement of the parties, except that the time limits for the initial filing of a grievance may be extended only by agreement between the University and the UFF. Upon failure of the University to provide a decision within the time limits provided in this Article, the grievant or the UFF, where appropriate, may appeal to the next step. Upon the failure of the grievant or the UFF, where appropriate, to file an appeal within the time limits provided in this Article, the grievance shall be deemed to have been resolved by the decision at the prior step.

(c) Postponement.

(1) The grievant may, in the written grievance at Step 1, request the postponement of any action in processing the grievance formally for a period of up to thirty (30) days, during which period efforts to resolve the grievance informally shall be made. The initial such request shall be granted. Upon the grievant's written request, additional extensions should be granted unless to do so would impede resolution of the grievance. Upon request, the president or president's representative shall, during the postponement period(s), arrange an informal meeting between the appropriate administrator and the grievant. The grievant shall have the right to representation by the UFF during attempts at informal resolution of the grievance. The grievant may, at any time, terminate the postponement period by giving written notice to the president or president's representative that the grievant wishes to proceed with the Step 1 meeting. If the postponement period, or any extension thereof, expires without such written notice, the grievance shall be deemed informally resolved to the grievant's satisfaction and need not be processed further.

(2) In the case of a grievance filed pursuant to the Expedited Grievance Procedure referenced in Section 20.15, the postponement period shall be no more than seven (7) days unless the employee and the university agree otherwise.

(d) Step 1.

(1) Meeting. The president or president's representative and the grievant and the grievance representative shall meet no sooner than seven (7) and no later than fifteen (15) days following

a. receipt of the grievance if no postponement is requested, or

b. receipt of written notice that the grievant wishes to proceed with the Step 1 meeting.

At the Step 1 meeting, the grievant shall have the right to present any evidence in support of the grievance, and the grievant and/or the UFF representative or the grievant's legal counsel (if selected pursuant to Section 20.5), and the president or president's representative, shall discuss the grievance.

(2) Decision. The president or president's representative shall issue a written decision, stating the reasons therefore, to grievant's Step 1 representative within thirty (30) days following the conclusion of the meeting. In the absence of an agreement to extend the period for issuing the Step 1 decision, the grievant may proceed to Step 2 if the grievant's Step 1 representative has not received the written decision by the end of the 30th day following the conclusion of the Step 1 meeting. A copy of the decision shall be sent to the grievant and to the local UFF Chapter if grievant elected self-representation or representation by legal counsel.

(3) Documents. Where practicable, the Step 1 reviewer shall make available to the grievant, or grievance representative, documentation referenced in the Step 1 decision prior to its issuance. All documents referred to in the decision and any additional documents presented by the grievant shall be attached to the decision, together with a list of these documents. In advance of the Step 1 meeting, the grievant shall have the right, upon written request, to a copy of any reasonably identifiable documents relevant to the grievance.

(e) Step 2

(1) Filing.

a. Continuation of Step 1 Grievance. If the grievance is not satisfactorily resolved at Step 1, the grievant may file a written request with the Office of Faculty Relations in Academic Affairs for review of the Step 1 decision by the president or president's representative. The grievant must make this request within thirty (30) days following receipt of the Step 1 decision by grievant's Step 1 representative. Thirty days shall be determined by the date stamped on the notice by the Office of Faculty Relations when the request is received in that office or by the date of mailing as determined by the postmark.

b. Step 2 Grievance Alleging Violation(s) of the Agreement at the University Level. A grievance may be filed at Step 2 if it alleges that one or more violations have occurred at the University level.

(2) Meeting. The president or president's University representative and the grievant and the grievant's representative shall meet no sooner than seven (7) and no later than fifteen (15) days following

a. receipt of the grievance if no postponement is requested or

b. receipt of written notice that the grievant wishes to proceed with the Step 2 meeting.

At the Step 2 meeting the grievant shall have the right to present evidence in support of the grievance, and the grievant and/or the UFF representative or the grievant's legal counsel (if selected pursuant to Section 20.5) and the president or president's representative, shall discuss the grievance.

(3) Decision. The president or president's representative shall issue a written decision, stating the reasons therefore, to the grievant and grievant's Step 2 representative within thirty (30) days following the conclusion of the review meeting. Thirty days shall be determined by a receipt executed by the Office of Faculty Relations, or by the date of mailing as determined by the postmark. In the absence of an agreement to extend the period for issuing the Step 2 decision, the UFF may proceed to Step 3 if the grievant's Step 2 representative has not received the written decision by the end of the 30th day following the conclusion of the Step 2 meeting. A copy of the decision shall be sent to the grievant and to the UFF grievance chair if the grievant elected self-representation or representation by legal counsel.

(f) Step 3 Arbitration.

(1) Filing. If the grievance has not been satisfactorily resolved at Step 2, the UFF may, upon the request of the grievant, proceed to arbitration by filing a written notice of the intent to do so. Notice of intent to proceed to arbitration must be filed with the Office of Faculty Relations within thirty (30) days after receipt of the Step 2 decision by grievant and grievant's Step 2 representative (if the grievant is represented by the UFF, the decision will be sent to the UFF grievance representative) and shall be signed by the grievant and the UFF President or UFF Director of Arbitrations. Thirty days shall be determined by a receipt executed by the office receiving the grievance, or by the date of mailing as determined by the postmark. The grievance may be withdrawn at any time by the grievant or by the UFF President or Director of Arbitrations at any point during Step 3. The parties shall stipulate to the issue(s) prior to the arbitration. In the event a stipulation is not reached, the parties shall proceed to a hearing on arbitrability pursuant to Section 20.8(f)(4).

(2) Selection of Arbitrator. Representatives of the University and the UFF shall meet within ninety (90) days after the execution of this Agreement for the purpose of selecting an Arbitration Panel of ten (10) or more members. Within fourteen (14) days after receipt of a notice of intent to arbitrate, representatives of the University and the UFF shall meet for the purpose of selecting an arbitrator from the Panel. Selection shall be by mutual agreement or by alternately striking names from the Arbitration Panel list until one name remains. The right of the first choice to strike from the list shall be determined by the flip of a coin. If the parties are unable to agree to a panel of arbitrators, they shall follow the normal American Arbitration Association procedure for the selection of an arbitrator. The parties may mutually select as the arbitrator an individual who is not a member of the Arbitration Panel. The arbitration shall be held within sixty (60) days following the selection of the arbitrator, if practicable.

(3) Authority of the Arbitrator.

a. The arbitrator shall not add to, subtract from, modify, or alter the terms or provisions of this Agreement. Arbitration shall be confined solely to the application and/or interpretation of this Agreement and the precise issue(s) submitted for arbitration. The arbitrator shall refrain from issuing any statements of opinion or conclusions not essential to the determination of the issues submitted.

b. Where an administrator has made a judgment involving the exercise of discretion, such as decisions regarding tenure or promotion, the arbitrator shall not substitute the arbitrator's judgment for that of the administrator. Nor shall the arbitrator review such decision except for the purpose of determining whether the decision has violated this Agreement. If the arbitrator determines that the Agreement has been violated, the arbitrator shall direct the University to take appropriate action. An arbitrator may award back salary where the arbitrator determines that the employee is not receiving the appropriate salary from the University, but the arbitrator may not award other monetary damages or penalties. If notice that further employment will not be offered is not given on time, the arbitrator may direct the University to renew the appointment only upon a finding that no other remedy is adequate, and that the notice was given so late that (a) the employee was deprived of reasonable opportunity to seek other employment, or (b) the employee actually rejected an offer of comparable employment which the employee otherwise would have accepted.

c. An arbitrator's decision awarding employment beyond the sixth year shall not entitle the employee to tenure. In such cases the employee shall serve during the seventh year without further right to notice that the employee will not be offered employment thereafter. If an employee is reappointed at the direction of an arbitrator, the president or president's representative may reassign the employee during such reappointment.

(4) Arbitrability. Issues of arbitrability shall be bifurcated from the substantive issue(s) and, whenever possible, determined by means of a hearing conducted by conference call. The arbitrator shall have ten (10) days from the hearing to render a decision on arbitrability. If the issue is judged to be arbitrable, an arbitrator shall then be selected to hear the substantive issue(s) in accordance with the provisions of Section 20.8(f)(2).

(5) Conduct of Hearing. The arbitrator shall hold the hearing in the city where the grievant is employed, unless otherwise agreed by the parties. The hearing shall commence within twenty-five (25) days of the arbitrator's acceptance of selection, or as soon thereafter as is practicable, and the arbitrator shall issue the decision within forty-five (45) days of the close of the hearing or the submission of briefs, whichever is later, unless additional time is agreed to by the parties. The decision shall be in writing and shall set forth findings of fact, reasoning, and conclusions on the issues submitted. Except as expressly specified in this Article, the provisions of the Florida Arbitration Code, Chapter 682, Florida Statutes, shall not apply. Except as modified by the provisions of this Agreement, arbitration proceedings shall be conducted in accordance with the rules and procedures of the American Arbitration Association.

(6) Effect of Decision. The decision or award of the arbitrator shall be final and binding upon the University, the UFF, and the grievant, provided that either party may appeal to an appropriate court of law a decision that was rendered by the arbitrator acting outside of or beyond the arbitrator's jurisdiction, pursuant to Section 682.13, Florida Statutes.

(7) Venue. For purposes of venue in any judicial review of an arbitrator's decision issued under this agreement, the parties agree that such an appeal shall be filed in the courts in Orange County, Florida, unless both parties specifically agree otherwise in a particular instance. In an action commenced in Orange County, neither the University nor the UFF will move for a change of venue based upon the defendant's residence in fact if other than Orange County.

(8) Fees and Expenses. All fees and expenses of the arbitrator shall be divided equally between the parties. Each party shall bear the cost of preparing and presenting its own case. The party desiring a transcript of the arbitration proceedings shall provide written notice to the other party of its intention to have a transcript of the arbitration made at least one week prior to the date of the arbitration. The party desiring such transcript shall be responsible for scheduling a stenotype reporter to record the proceedings. The parties shall share equally the appearance fee of the stenotype reporter and the cost of obtaining an original transcript and one copy for the party originally requesting a transcript of the proceedings.

(9) Retroactivity. An arbitrator's award may or may not be retroactive as the equities of each case may demand, but in no case shall an award be retroactive to a date earlier than thirty (30) days prior to the date the grievance was initially filed in accordance with this Article.

**20.9 Filings and Notification.** With the exception of Step 1 and Step 2 decisions, all documents required or permitted to be issued or filed pursuant to this Article may be transmitted by fax, United States mail, or any other recognized delivery service (note: e-mail is not an acceptable form of delivery). Step 1 and Step 2 decisions shall be transmitted to the grievance representative (s) by personal delivery with written documentation of receipt or by certified mail, return receipt requested. In the event that any action falls due on a Saturday, Sunday, or holiday (as referred to in Section 17.5), the action will be considered timely if it is accomplished by 5:00 p.m. on the following business day.

**20.10 Precedent.** No complaint informally resolved, or grievance resolved at either Step 1 or 2, shall constitute a precedent for any purpose unless agreed to in writing by the president or representative and the UFF acting through its President or representative.

**20.11 Processing.**

(a) The filing or pendency of any grievance or arbitration proceedings under this Article shall not operate to impede, preclude, or delay the University from taking the action complained of. Reasonable efforts, including the shortening of time limits when practical, shall be made to conclude the processing of a grievance prior to the expiration of the grievant's employment, whether by termination or failure to reappoint. An employee with a pending grievance will not continue to be compensated beyond the last date of employment.

(b) The president, or president's representative, may refuse consideration of a grievance not filed or processed in accordance with this Article.

**20.12 Reprisal.** No reprisal of any kind will be made by the University or the UFF against any grievant, any witness, any UFF representative, or any other participant in the grievance procedure by reason of such participation.

**20.13 Records.** All written materials pertinent to a grievance shall be filed separately from the evaluation file of the grievant or witnesses, except decisions resulting from arbitration or settlement.

**20.14 Inactive Grievances.** A grievance which has been filed at Step 2 or Step 3 and on which no action has been taken by the grievant or the UFF for ninety (90) days shall be deemed withdrawn and resolved in accordance with the decision issued at the prior Step.

**20.15 Expedited Grievance Procedure for Conflict of Interest (Section 19.5).**

(a) A grievance alleging a violation of Article 19 shall be heard at Step 1 by the president or president's representative no more than seven (7) days after it has been filed. The president or representative shall issue a Step 1 decision no more than 7 days after the Step 1 meeting.

(b) A request for review of the Step 1 decision shall be filed using Appendix "D," no more than seven (7) days following the receipt of the Step 1 decision. The Step 2 meeting shall be held no more than 7 days after the receipt of Appendix "D", and the Step 2 decision shall be issued no more than 7 days after the meeting.

(c) A request for arbitration using Appendix "E" shall be filed within fourteen (14) days after receipt of the Step 2 decision. An arbitrator shall be selected by the parties no more than fourteen (14) days following the receipt of the Appendix "E". The arbitrator shall issue a memorandum of decision within 7 days following the conclusion of the arbitration, to be followed by a written opinion and award in accordance with Section 20.8(f)(5).

(d) The parties shall establish a panel of three (3) experienced arbitrators to hear a grievance filed in accordance with this Section.

(e) All other provisions of Article 20 shall apply to these grievances, except as noted above.