

ARTICLE 20
GRIEVANCE PROCEDURE AND ARBITRATION

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4 **20.1 Policy/Informal Resolution.** The parties agree that all problems should be resolved, whenever
5 possible, before ~~the filing of~~ a grievance but within the time limits for filing grievances stated elsewhere
6 in this Article, and encourage open communications between administrators and employees so that resort
7 to the formal grievance procedure will not normally be necessary. The parties further encourage the
8 informal resolution of grievances whenever possible. At each step in the grievance process, participants
9 are encouraged to pursue appropriate modes of conflict resolution. The purpose of this Article is to
10 promote a prompt and efficient procedure for the investigation and resolution of grievances. The
11 procedures hereinafter set forth shall be the sole and exclusive method for resolving ~~the~~ grievances of
12 employees as defined herein.
13

14 **20.2 Resort to Other Procedures.** It is the intent of the parties to first provide a reasonable
15 opportunity for resolution of a dispute through the grievance procedure and arbitration process. Except as
16 noted below, if prior to seeking resolution of a dispute by filing a grievance hereunder, or while the
17 grievance proceeding is in progress, an employee requests, in writing, resolution of the matter in any
18 other forum, whether administrative or judicial, the University shall have no obligation to entertain or
19 proceed further with the matter pursuant to this grievance procedure. As an exception to this provision, a
20 grievant may file an EEOC charge while the grievance is in progress when such filing becomes necessary
21 to meet federal filing deadlines pursuant to 42 U.S.C. § 2000e et seq. Further, since the parties do not
22 intend that this grievance procedure be a device for appellate review, the ~~president's~~ University's response
23 to a recommendation of a hearing officer or other individual or group having appropriate jurisdiction in
24 any other procedure shall not be an act or omission giving rise to a grievance under this procedure.
25

26 **20.3 Definitions and Forms.** As used herein:

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

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

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

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

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

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

46 (d) Grievance Forms. Each grievance, request for review, and notice of arbitration must be
47 submitted in writing on the appropriate form attached to this Agreement as Appendix "C", "D," or "E,"
48 respectively, and shall be signed by the grievant. All grievance forms shall be dated when the grievance is
49 received. If there is difficulty in meeting any time limit, the grievance representative may sign such
50 documents for the grievant; however, grievant's signature shall be provided prior to the Step 1 meeting or

51 Step 2 review if filed directly at Step 2. The aforementioned grievance forms, as well as Appendix "H,"
52 may be filed by means of fax, United States mail, or any other recognized means of delivery.

53 (e) Remedy. A grievance shall specify the remedy sought by the grievant.
54

55 **20.4 Burden of Proof.** ~~For each violation alleged in~~In all grievances a grievance filing except an
56 alleged disciplinary grievance violation in accordance with of Article 16 with respect to, regarding
57 Disciplinary Action and Job Abandonment, the ~~burden~~ duty of proving or disproving the fact or facts in
58 dispute between the parties at the grievance proceeding(s) of proof shall be on the employee. ~~For~~
59 disciplinary ~~violations~~grievances, the burden of ~~proof~~ proving the fact or facts at the grievance
60 proceeding(s) shall be on the University.
61

62 **20.5 Representation.** The UFF shall have the exclusive right to represent any employee in a
63 grievance filed hereunder, unless an employee elects self-representation or to be represented by legal
64 counsel. If an employee elects not to be represented by the UFF, the University shall promptly inform the
65 UFF in writing of the grievance. No resolution of any individually processed grievance shall be
66 inconsistent with the terms of this Agreement and for this purpose the UFF shall have the right to have an
67 observer present at all meetings called with the grievant or grievance representative for the purpose of
68 discussing such grievance and shall be sent copies of all decisions at the same time as they are sent to the
69 other parties.
70

71 **20.6 Grievance Representatives.** The UFF shall, on or before September 1 of each year, furnish to
72 the University a list of all persons authorized to act as grievance representatives and shall update the list
73 as needed. The UFF grievance representative shall have the responsibility to meet all classes, office hours,
74 and other duties and responsibilities incidental to their assigned workload. Some of these activities are
75 scheduled to be performed at particular times. Such representative shall have the right during times
76 outside of those hours scheduled for these activities to investigate, consult, and prepare grievance
77 presentations and attend grievance hearings and meetings. Should any hearings or meetings with the
78 ~~president or president's~~University's representatives necessitate rescheduling of assigned duties, the
79 representative may, with the approval of the appropriate administrator, arrange for the rescheduling of
80 such duties or their coverage by colleagues. Such approval shall not be unreasonably withheld.
81

82 **20.7 Appearances.**

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

86 (b) Prior to participation in any such proceedings, conferences, or meetings, the employee
87 shall make arrangements acceptable to the appropriate supervisor for the performance of the employee's
88 duties. Approval of such arrangements shall not be unreasonably withheld. Time spent in such activities
89 outside regular working hours shall not be counted as time worked.
90

91 **20.8 Formal Grievance Procedure.**

92 (a) Filing.

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

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

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

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

118 (c) Postponement.

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

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

134 (d) Step 1.

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

138 a. receipt of the grievance if no postponement is requested, or
139 b. receipt of written notice that the grievant wishes to proceed with the Step 1
140 meeting.

141
142 At the Step 1 meeting, the grievant shall have the right to present any evidence in support of the
143 grievance, and the grievant and/or the UFF representative or the grievant's legal counsel (if selected
144 pursuant to Section 20.5), and the ~~president or president'sUniversity's~~ representative, shall discuss the
145 grievance.

146 (2) Decision. The ~~president or president'sUniversity's~~ representative shall issue a written
147 decision, stating the reasons therefore, to grievant's Step 1 representative within thirty ~~(30)~~ days following
148 the conclusion of the meeting. In the absence of an agreement to extend the period for issuing the Step 1
149 decision, the grievant may proceed to Step 2 if the grievant's Step 1 representative has not received the
150 written decision by the end of the 30th day following the conclusion of the Step 1 meeting. A copy of the

151 decision shall be sent to the grievant and to the local UFF Chapter if grievant elected self-representation
152 or representation by legal counsel.

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

159 (e) Step 2

160 (1) Filing.

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

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

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

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

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

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178 At the Step 2 meeting the grievant shall have the right to present evidence in support of the grievance, and
179 the grievant and/or the UFF representative or the grievant's legal counsel (if selected pursuant to Section
180 20.5) and the ~~president or president's University's~~ representative, shall discuss the grievance.

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

190 (f) Step 3 Arbitration.

191 (1) Filing. If the grievance has not been satisfactorily resolved at Step 2, the UFF
192 may, upon the request of the grievant, proceed to arbitration by filing a written notice of the intent to do
193 so. Notice of intent to proceed to arbitration must be filed with ~~the Office of Faculty Relations~~ Academic
194 Affairs within thirty ~~(30)~~ days after receipt of the Step 2 decision by grievant and grievant's Step 2
195 representative (if the grievant is represented by the UFF, the decision will be sent to the UFF grievance
196 representative) and shall be signed by the grievant and the statewide UFF President ~~of~~, UFF Director of
197 Arbitrations or designee. Thirty days shall be determined by a receipt executed by the office receiving the
198 grievance, or by the date of mailing as determined by the postmark. The grievance may be withdrawn at
199 any time by the grievant or by the statewide UFF President, ~~or~~ Director of Arbitrations or designee at any
200 point during Step 3. The parties shall stipulate to the issue(s) prior to the arbitration. In the event a

201 stipulation is not reached, the parties shall proceed to a hearing on arbitrability pursuant to Section
202 20.8(f)(4).

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

213 (3) Authority of the Arbitrator.

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

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

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

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

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

250 (6) Effect of Decision. The decision or award of the arbitrator shall be final and
251 binding upon the University, the UFF, and the grievant, provided that either party may appeal to an

252 appropriate court of law a decision that was rendered by the arbitrator acting outside of or beyond the
253 arbitrator's jurisdiction, pursuant to Section 682.13, Florida Statutes.

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

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

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

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271 **20.9 Filings and Notification.** With the exception of Step 1 and Step 2 decisions, all documents
272 required or permitted to be issued or filed pursuant to this Article may be transmitted by fax, United
273 States mail, or any other recognized delivery service (note: e-mail is not an acceptable form of delivery).
274 Refusal to accept delivery to the address indicated in the university's records will be deemed as delivered.
275 Receipt by UFF Representative shall constitute receipt only when the UFF represents the employee. Step
276 1 and Step 2 decisions shall be transmitted to the grievance representative-(s) by personal delivery with
277 written documentation of receipt or by certified mail, return receipt requested. In the event that any action
278 falls due on a Saturday, Sunday, or holiday (as referred to in Section 17.5), the action will be considered
279 timely if it is accomplished by 5:00 p.m. on the following business day.

280
281 **20.10 Precedent.** No complaint informally resolved, or grievance resolved at either Step 1 or 2, shall
282 constitute a precedent for any purpose unless agreed to in writing by the ~~president or~~ University's
283 representative and the UFF acting through its local President or representative.

284 **20.11 Processing.**

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

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

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295 **20.12 Reprisal.** No reprisal of any kind will be made by the University or the UFF against any
296 grievant, any witness, any UFF representative, or any other participant in the grievance procedure by
297 reason of such participation.

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299 **20.13 Records.** All written materials pertinent to a grievance shall be filed separately from the
300 evaluation file of the grievant or witnesses, except decisions resulting from arbitration or settlement.

302 **20.14 Inactive Grievances.** A grievance which has been filed at Step 2 or Step 3 and on which no
303 action has been taken by the grievant or the UFF for ninety ~~(90)~~ days shall be deemed withdrawn and
304 resolved in accordance with the decision issued at the prior Step.

306 ~~**20.15 Expedited Grievance Procedure for Conflict of Interest** (Section 19.5).~~

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

310 ~~(b) — A request for review of the Step 1 decision shall be filed using Appendix "D," no more than~~
311 ~~seven (7) days following the receipt of the Step 1 decision. The Step 2 meeting shall be held no more than~~
312 ~~7 days after the receipt of Appendix "D", and the Step 2 decision shall be issued no more than 7 days after~~
313 ~~the meeting.~~

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

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

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

322 Moving this to Article 19, just as the ADR Grievance process is contained in Article 9.