

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 This Article's purpose of this Article~~ is to promote a prompt and efficient procedure for ~~the investigating on and resolving 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. Further, since the parties do not intend that this grievance procedure be a device for appellate review, the president's University'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.~~

20.32 Definitions and Forms. As used herein:

(a) the term "grievance" shall mean a dispute filed on ~~a the~~ form referenced in Section 20.32(c) concerning the interpretation or application of a specific term or ~~provision Article(s) and section(s)~~ 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) ~~been~~ 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 that~~ 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 that~~ 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 ~~-or their UFF representative.~~

(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 ~~or their UFF representative.~~ ~~The All~~ grievance forms shall be dated when ~~the grievance~~ it 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

52 forms, as well as Appendix "H," may be filed by means of fax, United States mail, or any other
53 recognized means of delivery.

54 (e) Remedy. A grievance shall specify the remedy sought by the grievant.
55

56 **20.43 Burden of Proof.** For each violation alleged in all grievances a grievance filing except an
57 alleged disciplinary grievances violation in accordance with of Article 16 with respect to, regarding
58 Disciplinary Action and Job Abandonment, the burden duty of proving or disproving the fact or facts in
59 dispute between the parties at the grievance proceeding(s) of proof shall be on the employee. For
60 disciplinary violations grievances, the burden of proof proving the fact or facts at the grievance
61 proceeding(s) shall be on the University.
62

63 **20.54 Representation.** The UFF shall have has the exclusive right to represent any employee in a
64 grievance filed hereunder, unless an employee elects self-representation or to be represented by legal
65 counsel. If an employee elects not to be represented by the UFF, the University shall promptly inform the
66 UFF in writing of the grievance. No resolution of any individually processed grievance shall be
67 inconsistent with the terms of this Agreement and for this purpose, the UFF shall have has the right to
68 have an observer present at all meetings called with the grievant or grievance representative for the
69 purpose of discussing such grievance, and shall be sent copies of all decisions at the same time as they are
70 sent to the other parties.
71

72 **20.65 Grievance Representatives.** The UFF shall, on or before September 1 of each year, furnish to
73 the University a list of all persons authorized to act as grievance representatives and shall update the list
74 as needed. The UFF Grievance representatives shall have the responsibility to meet all classes, office
75 hours, and other duties and responsibilities incidental to of their assigned workload. Some of these
76 activities which are scheduled to be performed at particular times. Such Grievance representatives shall
77 have the right during times outside of those hours scheduled for these activities to investigate, consult,
78 and prepare grievance presentations and attend grievance hearings and meetings. Should any hearings or
79 meetings with the president or president's University's representatives necessitate rescheduling of
80 assigned duties, the representative may arrange for rescheduling such duties or their coverage by
81 colleagues with the prior notice to approval of their chair or unit head, appropriate administrator, arrange
82 for the rescheduling of such duties or their coverage by colleagues. Such approval shall not be
83 unreasonably withheld.
84

85 20.7 Appearances.

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

89 (b) Prior to participation in any such proceedings, conferences, or meetings, the employee
90 shall make arrangements acceptable to their appropriate supervisor chair or unit head, for the
91 performingance of their employee's assigned duties. Approval of such arrangements shall not be
92 unreasonably withheld. Time spent in such activities outside regular working hours shall not be counted
93 as time worked.
94

95 20.8 Formal Grievance Procedure.

96 (a) Filing.

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

103 for all grievances filed at Step 1, or prior to the Step 2 review for all grievances filed directly at Step 2;
 104 Additional amendments to the grievance may be permitted by mutual agreement of the parties.

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

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

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

122 (c) Postponement.

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

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

138 (d) Step 1.

139 (1) Meeting. The president of president's University's representative and the grievant
 140 and the grievance representative shall meet no sooner than seven ~~(7)~~ and no later than fifteen ~~(15)~~ days
 141 following

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

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

145
 146 At the Step 1 meeting, the grievant shall have the right to present any evidence in support of the
 147 grievance, and the grievant and/or the UFF representative or the grievant's legal counsel (if selected
 148 pursuant to Section 20.5), and the president of president's University's representative, shall discuss the
 149 grievance.

150 (2) Decision. The president of president's University's representative shall issue a written
 151 decision, stating the reasons therefore, to grievant's Step 1 representative within thirty ~~(30)~~ days following
 152 the conclusion of the meeting. In the absence of an agreement to extend the period for issuing the Step 1
 153 decision, the grievant may proceed to Step 2 if the grievant's Step 1 representative has not received the

154 written decision by the end of the 30th day following ~~the~~ conclusion of the Step 1 meeting. A copy of the
155 decision shall be sent to the grievant and to the local UFF Chapter if grievant elected self-representation
156 or representation by legal counsel.

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

163 (e) Step 2

164 (1) Filing.

165 a. Continuation of Step 1 Grievance. If the grievance is not satisfactorily resolved
166 at Step 1, the grievant may file a written request with ~~the Office of Faculty Relations in~~ Academic Affairs
167 for review of the Step 1 decision by ~~the president or president's University's~~ representative. The grievant
168 must make this request within thirty ~~(30)~~ days following receipt of the Step 1 decision by grievant's Step
169 1 representative. Thirty days shall be determined by the date stamped on the notice by ~~the Office of~~
170 ~~Faculty Relations~~ Academic Affairs when the request is received in that office or by the ~~mailing date of~~
171 ~~mailing mailing date~~ as determined by the postmark.

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

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

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

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

181
182 At the Step 2 meeting the grievant shall have the right to present evidence in support of the grievance, and
183 the grievant and/or the UFF representative or the grievant's legal counsel (if selected pursuant to Section
184 20.5) and the ~~president or president's University's~~ representative, shall discuss the grievance.

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

194 (f) Step 3 Arbitration.

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

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

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

217 (3) Authority of the Arbitrator.

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

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

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

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

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

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

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

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

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

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

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

285
286 **20.10 Precedent.** No complaint informally resolved, or grievance resolved at either Step 1 or 2, shall
287 constitute a precedent for any purpose unless agreed to in writing by the ~~president of~~ **University's**
288 representative and the UFF acting through its **local** President or representative.

289
290 **20.11 Processing.**

291 (a) ~~The filing or pendency of any grievance or arbitration proceedings under this Article~~
292 ~~shall not operate to impede, preclude, or delay the University from taking the action complained of.~~
293 ~~Reasonable efforts, including the Time limits may be shortening shortened of time limits when practical,~~
294 ~~shall be made by mutual agreement to conclude the grievance processing of a grievance prior to before the~~
295 ~~expiration of the~~ grievant's employment **expires**, whether by termination or failure to reappoint. An
296 employee with a pending grievance will not continue to be compensated beyond the last date of
297 employment.

298 (b) The president, or ~~president's~~ **University's** representative, may refuse consideration of a
299 grievance not filed or processed **by the UFF** in accordance with this Article.

300
301 **20.12 Reprisal.** No reprisal of any kind will be made by the University or the UFF against any
302 grievant, any witness, any UFF representative, or any other participant in the grievance procedure by
303 reason of such participation.

304
305 **20.13 Records.** All written materials pertinent to a grievance shall be filed separately from the
306 evaluation file of the grievant or witnesses, except decisions resulting from arbitration or settlement.

307
308 **20.14 Inactive Grievances.** A grievance **which has been** filed at Step 2 or Step 3 and on which no
309 action has been taken by the grievant or the UFF for ninety **(90)** days shall be deemed withdrawn and
310 resolved in accordance with the decision issued at the prior Step.

311
312 ~~**20.15 Expedited Grievance Procedure for Conflict of Interest** (Section 19.5).~~
313 ~~(a) — A grievance alleging a violation of Article 19 shall be heard at Step 1 by the president or~~
314 ~~president's/University's representative no more than seven (7) days after it has been filed. The president or~~
315 ~~representative shall issue a Step 1 decision should be issued no more than 7 days after the Step 1 meeting.~~
316 ~~(b) — A request for review of the Step 1 decision shall be filed using Appendix "D," no more than~~
317 ~~seven (7) days following the receipt of the Step 1 decision. The Step 2 meeting shall be held no more than~~
318 ~~7 days after the receipt of Appendix "D", and the Step 2 decision shall be issued no more than 7 days after~~
319 ~~the meeting.~~
320 ~~(c) — A request for arbitration using Appendix "E" shall be filed within fourteen (14) days after receipt~~
321 ~~of the Step 2 decision. An arbitrator shall be selected by the parties no more than fourteen (14) days~~
322 ~~following the receipt of the Appendix "E". The arbitrator shall issue a memorandum of decision within 7~~
323 ~~days following the conclusion of the arbitration/mediation, to be followed by a written opinion and award~~
324 ~~in accordance with Section 20.8(f)(5).~~
325 ~~(d) — The parties shall establish a panel of three (3) experienced arbitrators to hear a grievance filed in~~
326 ~~accordance with this Section.~~
327 ~~(e) — All other provisions of Article 20 shall apply to these grievances, except as noted above.~~
328 **Moving this to Article 19, just as the ADR Grievance process is contained in Article 9. The BOT and**
329 **UFF agree to move section 20.15 to Article 19.**