

## ARTICLE 20

### **GRIEVANCE PROCEDURE AND ARBITRATION**

**20.1 Policy/Informal Resolution.** The parties agree that all problems should be resolved, whenever possible, before filing a grievance 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 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 University representative'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 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 dean's or 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 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 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.

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

50 (d) Grievance Forms. Each grievance, request for review, and notice of arbitration must  
51 be submitted in writing on the appropriate form attached to this Agreement as Appendix "C,"  
52 "D," or "E," respectively, and shall be signed by the grievant. All grievance forms shall be  
53 dated when the grievance is received. If there is difficulty in meeting any time limit, the  
54 grievance representative may sign such documents for the grievant; however, grievant's  
55 signature shall be provided prior to the Step 1 meeting or Step 2 review if filed directly at  
56 Step 2. The aforementioned grievance forms, as well as Appendix "H," may be filed by  
57 means of fax, United States mail, email, or any other recognized means of delivery. Emails  
58 received after 5pm Eastern time will be deemed to have arrived the next business day.

59 (e) Remedy. A grievance shall specify the remedy sought by the grievant.  
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61 **20.4 Burden of Proof.** For each violation alleged in a grievance filing except an alleged  
62 violation of Article 16, the duty of proving or disproving the fact or facts in dispute between  
63 the parties at the grievance proceeding(s) shall be on the employee. For disciplinary  
64 violations, the burden of proving the fact or facts at the grievance proceeding(s) shall be on  
65 the University.  
66

67 **20.5 Representation.** The UFF shall have the exclusive right to represent any employee  
68 in a grievance filed hereunder, unless an employee elects self-representation or to be  
69 represented by legal counsel. If an employee elects not to be represented by the UFF, the  
70 University shall promptly inform the UFF in writing of the grievance. No resolution of any  
71 individually processed grievance shall be inconsistent with the terms of this Agreement and  
72 for this purpose the UFF shall have the right to have an observer present at all meetings  
73 called with the grievant or grievance representative for the purpose of discussing such  
74 grievance and shall be sent copies of all decisions at the same time as they are sent to the  
75 other parties.  
76

77 **20.6 Grievance Representatives.** The UFF shall, on or before September 1 of each  
78 year, furnish to the University a list of all persons authorized to act as grievance  
79 representatives and shall update the list as needed. The UFF grievance representative shall  
80 have the responsibility to meet all classes, office hours, and other duties and responsibilities  
81 incidental to their assigned workload. Some of these activities are scheduled to be  
82 performed at particular times. Such representative shall have the right during times outside  
83 of those hours scheduled for these activities to investigate, consult, and prepare grievance  
84 presentations and attend grievance hearings and meetings. Should any hearings or  
85 meetings with the University's representatives necessitate rescheduling of assigned duties,  
86 the representative may, with the approval of the appropriate administrator, arrange for the  
87 rescheduling of such duties or their coverage by colleagues. Such approval shall not be  
88 unreasonably withheld.  
89

90 **20.7 Appearances.**

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

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

## 101 **20.8 Formal Grievance Procedure.**

### 102 (a) Filing.

103 (1) Step 1 and Step 2 grievances shall be filed in Academic Affairs on the appropriate  
104 form in the appendices within thirty days following the act or omission giving rise thereto, or  
105 the date on which the employee knew or reasonably should have known of such act or  
106 omission if that date is later. Thirty days shall be determined by the date stamped on the  
107 completed grievance form filed in Academic Affairs, or by the date of mailing as determined  
108 by the postmark or timestamp. The grievant may amend the Appendix "C" form one time,  
109 either prior to the Step 1 meeting for all grievances filed at Step 1, or prior to the Step 2  
110 review for all grievances filed directly at Step 2. Additional amendments to the grievance  
111 may be permitted by mutual agreement of the parties.

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

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

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

### 131 (c) Postponement.

132 (1) The grievant may, in the written grievance at Step 1, request the postponement  
133 of any action in processing the grievance formally for a period of up to thirty days, during  
134 which efforts to resolve the grievance informally shall be made. The initial such request  
135 shall be granted. Upon the grievant's written request, additional extensions should be  
136 granted unless to do so would impede resolution of the grievance. Upon request, the  
137 university's representative shall, during the postponement period(s), arrange an informal  
138 meeting between the appropriate administrator and the grievant. The grievant shall have the  
139 right to representation by the UFF during attempts at informal resolution of the grievance.  
140 The grievant may, at any time, terminate the postponement period by giving written notice  
141 to the university's representative that the grievant wishes to proceed with the Step 1  
142 meeting. If the postponement period, or any extension thereof, expires without such written

143 notice, the grievance shall be deemed informally resolved to the grievant's satisfaction and  
144 need not be processed further.

145 (2) In the case of a grievance filed pursuant to the Expedited Grievance Procedure  
146 referenced in the Article regarding Conflict of Interest/Commitment, the postponement  
147 period shall be no more than seven days unless the employee and the university agree  
148 otherwise.

149 (d) Step 1.

150 (1) Meeting. The University's representative and the grievant and the grievance  
151 representative shall meet no sooner than seven and no later than fifteen days following  
152 receipt of:

- 153 a. the grievance if no postponement is requested, or
- 154 b. written notice to proceed with the Step 1 meeting.

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

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

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

172 (e) Step 2

173 (1) Filing.

174 a. Continuation of Step 1 Grievance. If the grievance is not satisfactorily  
175 resolved at Step 1, the grievant may file a written request with Academic Affairs for review  
176 of the Step 1 decision by the University's representative. The grievant must make this  
177 request within thirty days following receipt of the Step 1 decision by the grievant's Step 1  
178 representative. Thirty days shall be determined by the date stamped on the notice by  
179 Academic Affairs when the request is received in that office, by 5pm Eastern time, the date  
180 of receipt via email, or by the date of mailing as determined by the postmark or timestamp.

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

184 (2) Meeting. The University's representative and the grievant and the grievant's  
185 representative shall meet no sooner than seven and no later than fifteen days following  
186 receipt of:

- 187 a. the grievance if no postponement is requested or
- 188 b. written notice that the grievant wishes to proceed with the Step 2 meeting.

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

192 (3) Decision. The University's representative shall issue a written decision, stating  
 193 the reasons therefore, to the grievant and grievant's Step 2 representative within thirty days  
 194 following the conclusion of the review meeting. Thirty days shall be determined by a receipt  
 195 executed by Academic Affairs, or by the date of mailing as determined by the postmark or  
 196 timestamp. In the absence of an agreement to extend the period for issuing the Step 2  
 197 decision, the UFF may proceed to Step 3 if the grievant's Step 2 representative has not  
 198 received the written decision by the end of the 30th day following the conclusion of the Step  
 199 2 meeting. A copy of the decision shall be sent to the grievant and to the UFF grievance  
 200 chair if the grievant elected self-representation or representation by legal counsel.

201 (f) Step 3 Arbitration.

202 (1) Filing. If the grievance has not been satisfactorily resolved at Step 2, the UFF  
 203 may, upon the request of the grievant<sup>[CP3]</sup>, proceed to arbitration by filing a written notice of  
 204 the intent to do so. Notice of intent to proceed to arbitration by submitting Appendix E with  
 205 Academic Affairs within thirty days after receipt of the Step 2 decision by grievant and  
 206 grievant's Step 2 representative (if the grievant is represented by the UFF, the decision will  
 207 be sent to the UFF grievance representative) and shall be signed by the grievant and the  
 208 statewide UFF President, Director of Arbitrations or designee<sup>[CP4]</sup>e. Thirty days shall be  
 209 determined by a receipt executed by the office receiving the grievance, or by the date of  
 210 mailing as determined by the postmark or timestamp. The grievance may be withdrawn at  
 211 any time by the grievant or by the statewide UFF President, Director of Arbitrations<sup>[CP5]</sup> or  
 212 designee at any point during Step 3. The parties shall stipulate to the issue(s) prior to the  
 213 arbitration. In the event a stipulation is not reached, the parties shall proceed to a hearing  
 214 on arbitrability pursuant to Section 20.8(f)(4).

215 (2) Selection of Arbitrator. Within ninety days after the execution of this Agreement,  
 216 the parties shall review the existing Arbitration Panel list. If either party wishes to make  
 217 changes to the panel, or if an arbitrator needs to be added because of a vacancy,  
 218 representatives of the University and the UFF shall meet to make changes or additions to  
 219 that list within ninety days after the execution of this Agreement for the purpose of in order to  
 220 selecting/maintain an Arbitration Panel of ten or more/no fewer than nine members<sup>[CP6]</sup>.  
 221 Within fourteen days after receipt of a notice of intent to arbitrate, representatives of the  
 222 University and the UFF shall meet for the purpose of selecting an arbitrator from the Panel.  
 223 Selection shall be by mutual agreement or by alternately striking names from the Arbitration  
 224 Panel list until one name remains. The right of the first choice to strike from the list shall be  
 225 determined by the flip of a coin. ~~If the parties are unable to agree to a panel of arbitrators,~~  
 226 ~~they shall follow the normal American Arbitration Association procedure for the selection of~~  
 227 ~~an arbitrator. The parties may mutually select as the arbitrator an individual who is not a~~  
 228 ~~member of the Arbitration Panel.<sup>[CP7]</sup>~~ The arbitration shall be held within sixty days following  
 229 the selection of the arbitrator, if practicable.

230 (3) Authority of the Arbitrator.

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

236 b. Where an administrator has made a judgment involving the exercise of  
 237 discretion, such as decisions regarding tenure or promotion, the arbitrator shall not  
 238 substitute the arbitrator's judgment for that of the administrator. Nor shall the arbitrator  
 239 review such decision except for the purpose of determining whether the decision has  
 240 violated this Agreement. If the arbitrator determines that the Agreement has been violated,

241 the arbitrator shall direct the University to take appropriate action. An arbitrator may award  
242 back salary where the arbitrator determines that the employee is not receiving the  
243 appropriate salary from the University, but the arbitrator may not award other monetary  
244 damages or penalties. If notice that further employment will not be offered is not given on  
245 time, the arbitrator may direct the University to renew the appointment only upon a finding  
246 that no other remedy is adequate, and that the notice was given so late that (a) the  
247 employee was deprived of reasonable opportunity to seek other employment, or (b) the  
248 employee actually rejected an offer of comparable employment which the employee  
249 otherwise would have accepted.

250 c. An arbitrator's decision awarding employment beyond the sixth year shall not  
251 entitle the employee to tenure. In such cases the employee shall serve in a non-tenure-  
252 earning capacity<sup>CP81</sup> during the seventh year without further right to notice that the  
253 employee will not be offered employment thereafter. If an employee is reappointed at the  
254 direction of an arbitrator, the University's representative may reassign the employee during  
255 such reappointment.

256 (4) Arbitrability. Issues of arbitrability shall be bifurcated from the substantive  
257 issue(s) and, whenever possible, determined by means of a hearing conducted by  
258 conference call. The arbitrator shall have ten days from the hearing to render a decision on  
259 arbitrability. If the issue is judged to be arbitrable, an arbitrator shall then be selected to  
260 hear the substantive issue(s).

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

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

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

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

290 original transcript and one copy for the party originally requesting a transcript of the  
291 proceedings.

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

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297 **20.9 Filings and Notification.** All documents required or permitted to be issued or filed  
298 pursuant to this Article may be transmitted by fax, United States mail, email, or any other  
299 recognized delivery service. Refusal to accept delivery to the address indicated in the  
300 university's records will be deemed as delivered. Receipt by UFF Representative shall  
301 constitute receipt only when the UFF represents the employee. Step 1 and Step 2 decisions  
302 shall be transmitted to the grievance representative(s) by personal delivery with written  
303 documentation of receipt or by certified mail, return receipt requested, or via email. In the  
304 event that any action falls due on a Saturday, Sunday, or holiday (as referred to in in the  
305 Leaves Article), the action will be considered timely if it is accomplished by 5:00 p.m. on the  
306 following business day.

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308 **20.10 Precedent.** No complaint informally resolved, or grievance resolved at either Step 1  
309 or 2, shall constitute a precedent for any purpose unless agreed to in writing by the  
310 University's representative and the UFF acting through its local President or representative.

311  
312 **20.11 Processing.**

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

320 (b) The University's representative may refuse consideration of a grievance not filed or  
321 processed in accordance with this Article. [CP9]

322  
323 **20.12 Reprisal.** No reprisal of any kind will be made by the University or the UFF against  
324 any grievant, any witness, any UFF representative, or any other participant in the grievance  
325 procedure by reason of such participation.

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327 **20.13 Records.** All written materials pertinent to a grievance shall be filed separately from  
328 the evaluation file of the grievant or witnesses, except decisions resulting from arbitration or  
329 settlement.

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331 **20.14 Inactive Grievances.** A grievance which has been filed at Step 2 or Step 3 and on  
332 which no action has been taken by the grievant or the UFF for ninety days shall be deemed  
333 withdrawn and resolved in accordance with the decision issued at the prior Step.