

1 ARTICLE 20

2 **GRIEVANCE PROCEDURE AND ARBITRATION**

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

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

29
30 **20.3 Definitions and Forms.** As used herein:

31 (a) the term "grievance" shall mean a dispute filed on a form referenced in Section
32 20.3(c) concerning the interpretation or application of a specific term or Article(s) and
33 section(s) of this Agreement, subject to those exclusions appearing in other Articles of
34 this Agreement. A Step 1 Grievance is a grievance alleging that one or more violations of
35 this Agreement have occurred at, or within, a college level unit. A Step 2 Grievance is a
36 grievance that has either

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

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

- 43 (1) in a dispute over a provision of this Agreement that confers rights upon the
- 44 UFF. A grievance filed by the UFF on behalf of the UFF shall be initiated at Step 2; or
- 45 (2) on behalf of the bargaining unit, a group of employees, or an individual
- 46 employee, provided any group is identified with sufficient specificity to enable the
- 47 University to identify its members.

48 (c) Consolidation. The parties may agree to consolidate grievances of a similar

49 nature to expedite the review process. In a consolidated grievance, one Appendix
50 "C," "D," or "E" may be attached, bearing the signatures of the grievants.

51 (d) Grievance Forms. Each grievance, request for review, and notice of arbitration
52 must be submitted in writing on the appropriate form attached to this Agreement as
53 Appendix "C," "D," or "E," respectively, and shall be signed by the grievant. All grievance
54 forms shall be dated when the grievance is received. If there is difficulty in meeting any
55 time limit, the grievance representative may sign such documents for the grievant;
56 however, grievant's signature shall be provided prior to the Step 1 meeting or Step 2
57 review if filed directly at Step 2. The aforementioned grievance forms, as well as
58 Appendix "H," may be filed by means of fax, United States mail, email or [j1] any other
59 recognized means of delivery.

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

61
62 **20.4 Burden of Proof.** For each violation alleged in a grievance filing except an
63 alleged violation of the Discipline Article 16 regarding Disciplinary Action and Job
64 Abandonment, the duty of proving or disproving the fact or facts in dispute between the
65 parties at the grievance proceeding(s) shall be on the employee. For disciplinary
66 violations, the burden of proving the fact or facts at the grievance proceeding(s) shall be
67 on the University.
68

69 **20.5 Representation.** The UFF shall have the exclusive right to represent any
70 employee in a grievance filed hereunder, unless an employee elects self-representation
71 or to be represented by legal counsel. If an employee elects not to be represented by the
72 UFF, the University shall promptly inform the UFF in writing of the grievance. No
73 resolution of any individually processed grievance shall be inconsistent with the terms of
74 this Agreement and for this purpose the UFF shall have the right to have an observer
75 present at all meetings called with the grievant or grievance representative for the
76 purpose of discussing such grievance and shall be sent copies of all decisions at the
77 same time as they are sent to the other parties.
78

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

91 **20.7 Appearances.**

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

96 (b) Prior to participation in any such proceedings, conferences, or meetings, the

97 employee shall make arrangements acceptable to the appropriate supervisor for the
98 performance of the employee's duties. Approval of such arrangements shall not be
99 unreasonably withheld. Time spent in such activities outside regular working hours shall
100 not be counted as time worked.

101 **20.8 Formal Grievance Procedure.**

102 (a) Filing.

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

112 2. Additional amendments to the grievance may be permitted by mutual agreement
113 of the parties.

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

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

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

134 (c) Postponement.

135 (1) The grievant may, in the written grievance at Step 1, request the
136 postponement of any action in processing the grievance formally for a period of up to
137 thirty days, during which efforts to resolve the grievance informally shall be made. The
138 initial such request shall be granted. Upon the grievant's written request, additional
139 extensions should be granted unless to do so would impede resolution of the grievance.
140 Upon request, the university's representative shall, during the postponement period(s),
141 arrange an informal meeting between the appropriate administrator and the grievant. The
142 grievant shall have the right to representation by the UFF during attempts at informal
143 resolution of the grievance. The grievant may, at any time, terminate the postponement
144 period by giving written notice to the university's representative that the grievant wishes

145 to proceed with the Step 1 meeting. If the postponement period, or any extension thereof,
146 expires without such written notice, the grievance shall be deemed informally resolved to
147 the grievant's satisfaction and need not be processed further.

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

152 (d) Step 1.

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

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

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

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

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

177 (e) Step 2

178 (1) Filing.

179 a. Continuation of Step 1 Grievance. If the grievance is not satisfactorily
180 resolved at Step 1, the grievant may file a written request with Academic Affairs for review
181 of the Step 1 decision by the University's representative. The grievant must make this
182 request within thirty days following receipt of the Step 1 decision by the grievant's Step 1
183 representative. Thirty days shall be determined by the date stamped on the notice by
184 Academic Affairs when the request is received in that office or by the date of mailing as
185 determined by the postmark.

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

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

- 192 a. the grievance if no postponement is requested or

193 b. written notice that the grievant wishes to proceed with the Step 2
194 meeting.

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

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

208 (f) Step 3 Arbitration.

209 (1) Filing. If the grievance has not been satisfactorily resolved at Step 2, the UFF
210 may, upon the request of the grievant, proceed to arbitration by filing a written notice of
211 the intent to do so. Notice of intent to proceed to arbitration must be filed with Academic
212 Affairs within thirty days after receipt of the Step 2 decision by grievant and grievant's
213 Step 2 representative (if the grievant is represented by the UFF, the decision will be sent
214 to the UFF grievance representative) and shall be signed by the grievant and the
215 statewide UFF President, Director of Arbitrations or designee. Thirty days shall be
216 determined by a receipt executed by the office receiving the grievance, or by the date of
217 mailing as determined by the postmark. The grievance may be withdrawn at any time by
218 the grievant or by the statewide UFF President, Director of Arbitrations or designee at any
219 point during Step

220 3. The parties shall stipulate to the issue(s) prior to the arbitration. In the event a
221 stipulation is not reached, the parties shall proceed to a hearing on arbitrability
222 pursuant to Section 20.8(f)(4).

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

235 (3) Authority of the Arbitrator.

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

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

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

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

265 (5) Conduct of Hearing. The arbitrator shall hold the hearing in the city where the
266 grievant is employed, unless otherwise agreed by the parties. The hearing shall
267 commence within twenty-five days of the arbitrator's acceptance of selection, or as soon
268 thereafter as is practicable, and the arbitrator shall issue the decision within forty-five
269 days of the close of the hearing or the submission of briefs, whichever is later, unless
270 additional time is agreed to by the parties. The decision shall be in writing and shall set
271 forth findings of fact, reasoning, and conclusions on the issues submitted. Except as
272 expressly specified in this Article, the provisions of the Florida Arbitration Code, Chapter
273 682, Florida Statutes, shall not apply. Except as modified by the provisions of this
274 Agreement, arbitration proceedings shall be conducted in accordance with the rules and
275 procedures of the American Arbitration Association.

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

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

287 (8) Fees and Expenses. All fees and expenses of the arbitrator shall be divided
288 equally between the parties. Each party shall bear the cost of preparing and presenting

289 its own case. The party desiring a transcript of the arbitration proceedings shall provide
290 written notice to the other party of its intention to have a transcript of the arbitration made
291 at least one week prior to the date of the arbitration. The party desiring such transcript
292 shall be responsible for scheduling a stenotype reporter to record the proceedings. The
293 parties shall share equally the appearance fee of the stenotype reporter and the cost of
294 obtaining an original transcript and one copy for the party originally requesting a
295 transcript of the proceedings.

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

300 **20.9 Filings and Notification.** With the exception of Step 1 and Step 2 decisions, all
301 documents required or permitted to be issued or filed pursuant to this Article may be
302 transmitted by fax, United States mail, or any other recognized delivery service ~~(note: e-~~
303 ~~mail^[j2] is not an acceptable form of delivery).~~ Refusal to accept delivery to the address
304 indicated in the university's records will be deemed as delivered. Receipt by UFF
305 Representative shall constitute receipt only when the UFF represents the employee. Step
306 1 and Step 2 decisions shall be transmitted to the grievance representative(s) by
307 personal delivery with written documentation of receipt or by certified mail, return receipt
308 requested. In the event that any action falls due on a Saturday, Sunday, or holiday (as
309 referred to in the Leaves Article), the action will be considered timely if it is accomplished
310 by 5:00 p.m. on the following business day.

311
312 **20.10 Precedent.** No complaint informally resolved, or grievance resolved at either
313 Step 1 or 2, shall constitute a precedent for any purpose unless agreed to in writing by
314 the University's representative and the UFF acting through its local President or
315 representative.

316
317 **20.11 Processing.**
318 (a) The filing or pendency of any grievance or arbitration proceedings under this
319 Article shall not operate to impede, preclude, or delay the University from taking the
320 action complained of. Reasonable efforts, including the shortening of time limits when
321 practical, shall be made to conclude the processing of a grievance prior to the expiration
322 of the grievant's employment, whether by termination or failure to reappoint. An
323 employee with a pending grievance will not continue to be compensated beyond the last
324 date of employment.

325 (b) ~~The University's representative, may refuse consideration of a grievance not filed~~
326 ~~or processed in accordance with this Article. Nothing shall authorize the University or its~~
327 ~~representative to refuse consideration of a grievance on the assertion that it was not timely~~
328 ~~filed in accordance with this Article.~~

329
330 **20.12 Reprisal.** No reprisal of any kind will be made by the University or the UFF
331 against any grievant, any witness, any UFF representative, or any other participant in the
332 grievance procedure by reason of such participation
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334 **20.13 Implementation.** Upon resolution ^{j3} of the grievance, the parties shall implement
335 the remedy within seven (7) days, unless otherwise provided by the award of the
336 arbitrator or by mutual agreement of the parties.

