

1 **ARTICLE 20**

2 ***GRIEVANCE PROCEDURE AND ARBITRATION***

3  
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 between  
7 administrators and employees so that resort to the formal grievance procedure will not  
8 normally be necessary. The parties further encourage the informal resolution of grievances  
9 whenever possible. At each step in the grievance process, participants are encouraged to  
10 pursue appropriate modes of conflict resolution. The purpose of this Article is to promote a  
11 prompt and efficient procedure for the investigation and resolution of grievances. The  
12 procedures hereinafter set forth shall be the sole and exclusive method for resolving  
13 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 employee  
19 requests, in writing, resolution of the matter in any other forum, whether administrative or  
20 judicial, the University shall have no obligation to entertain or proceed further with the  
21 matter pursuant to this grievance procedure. As an exception to this provision, a grievant  
22 may file an EEOC charge while the grievance is in progress when such filing becomes  
23 necessary to meet federal filing deadlines pursuant to 42 U.S.C. § 2000e et seq. Further,  
24 since the parties do not intend that this grievance procedure be a device for appellate  
25 review, the University representative's response to a recommendation of a hearing officer or  
26 other individual or group having appropriate jurisdiction in any other procedure shall not be  
27 an act or omission giving rise to a grievance under this procedure.

28  
29 **20.3 Definitions and Forms.** As used herein:

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

36 (1) continued from the Step 1 college or unit level to the University level or

37 (2) been filed alleging that one or more violations of the Agreement have occurred at  
38 the dean's or [j1] the University level.

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

42 (1) in a dispute over a provision of this Agreement that confers rights upon the UFF.

43 A grievance filed by the UFF on behalf of the UFF shall be initiated at Step 2; or

44 (2) on behalf of the bargaining unit, a group of employees, or an individual  
45 employee, provided any group is identified with sufficient specificity to enable the University  
46 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<sup>[CP2]</sup>, or any other recognized means of delivery.  
58 Emails received after 5pm local time Eastern<sup>[3]</sup> -will be deemed to have arrived the next  
59 business day.

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 alleged  
63 violation of ~~the Discipline~~-Article 16 ~~regarding Disciplinary Action and Job~~  
64 ~~Abandonment~~<sup>[CP4][J5]</sup>, the duty of proving or disproving the fact or facts in dispute between  
65 the 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 on  
67 the University.

68  
69 **20.5 Representation.** The UFF shall have the exclusive right to represent any employee  
70 in a grievance filed hereunder, unless an employee elects self-representation or to be  
71 represented by legal counsel. If an employee elects not to be represented by the UFF, the  
72 University shall promptly inform the UFF in writing of the grievance. No resolution of any  
73 individually processed grievance shall be inconsistent with the terms of this Agreement and  
74 for this purpose the UFF shall have the right to have an observer present at all meetings  
75 called with the grievant or grievance representative for the purpose of discussing such  
76 grievance and shall be sent copies of all decisions at the same time as they are sent to the  
77 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 shall  
82 have the responsibility to meet all classes, office hours, and other duties and responsibilities  
83 incidental to their assigned workload. Some of these activities are scheduled to be  
84 performed at particular times. Such representative shall have the right during times outside  
85 of those hours scheduled for these activities to investigate, consult, and prepare grievance  
86 presentations and attend grievance hearings and meetings. Should any hearings or  
87 meetings with the University's representatives necessitate rescheduling of assigned duties,  
88 the representative may, with the approval of the appropriate administrator, arrange for the  
89 rescheduling of such duties or their coverage by colleagues. Such approval shall not be  
90 unreasonably withheld.

91  
92 **20.7 Appearances.**

93 (a) When an employee participates during working hours in an arbitration proceeding or  
94 in a grievance meeting between the grievant or representative and the University, that

95 employee's compensation shall neither be reduced nor increased for time spent in those  
96 activities.

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

## 102 **20.8 Formal Grievance Procedure.**

### 103 (a) Filing.

104 (1) Step 1 and Step 2 grievances shall be filed in Academic Affairs **on the appropriate**  
105 **form in the appendices** <sup>[CP6][j7]</sup> within thirty days following the act or omission giving rise  
106 thereto, or the date on which the employee knew or reasonably should have known of such  
107 act or omission if that date is later. Thirty days shall be determined by the date stamped on  
108 the completed grievance form filed in Academic Affairs, or by the date of mailing as  
109 determined by the **postmark or timestamp** <sup>[CP8][j9]</sup>. The grievant may amend the Appendix "C"  
110 form one time, either prior to the Step 1 meeting for all grievances filed at Step 1, or prior to  
111 the Step 2 review for all grievances filed directly at Step 2. Additional amendments to the  
112 grievance may be permitted by mutual agreement of the parties.

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

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

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

### 132 (c) Postponement.

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

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

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

151 (d) Step 1.

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

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

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

160 (2) Decision. The University's representative shall issue a written  
161 decision<sup>[CP10][j11]</sup> summary<sup>[TR12]</sup> of the meeting and their conclusion(s), stating the reasons  
162 therefore, to grievant's Step 1 representative within thirty days following the conclusion of  
163 the meeting. In the absence of an agreement to extend the period for issuing the Step 1  
164 decision, the grievant may proceed to Step 2 if the grievant's Step 1 representative has not  
165 received the written decision by the end of the 30th day following the conclusion of the Step  
166 1 meeting. A copy of the decision<sup>[CP13][j14]</sup> document shall be sent to the grievant and to the  
167 local UFF Chapter if grievant elected self-representation or representation by legal counsel.

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

174 (e) Step 2

175 (1) Filing.

176 a. Continuation of Step 1 Grievance. If the grievance is not satisfactorily  
177 resolved at Step 1, the grievant may file a written request with Academic Affairs for review  
178 of the Step 1 decision by the University's representative. The grievant must make this  
179 request within thirty days following receipt of the Step 1 decision by the grievant's Step 1  
180 representative. Thirty days shall be determined by the date stamped on the notice by  
181 Academic Affairs when the request is received in that office, by 5pm Eastern the date of  
182 receipt via email, or by the date of mailing as determined by the postmark or timestamp.  
183 <sup>[CP15][j16]</sup>

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

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

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

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

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

204 (f) Step 3 Arbitration.

205 (1) Filing. If the grievance has not been satisfactorily resolved at Step 2, the UFF  
206 may, ~~upon the request of the grievant,~~<sup>[j17]</sup> proceed to arbitration by filing a written notice of  
207 the intent to do so. Notice of intent to proceed to arbitration ~~must be filed by submitting~~  
208 ~~Appendix E~~<sup>[CP18]</sup><sup>[j19]</sup> with Academic Affairs within thirty days after receipt of the Step 2  
209 decision by grievant and grievant's Step 2 representative (if the grievant is represented by  
210 the UFF, the decision will be sent to the UFF grievance representative) and shall be signed  
211 ~~by the grievant and the statewide UFF President, Director of Arbitrations~~<sup>[j20]</sup> or designee.  
212 Thirty days shall be determined by a receipt executed by the office receiving the grievance,  
213 or by the date of mailing as determined by the postmark or timestamp. The grievance may  
214 be withdrawn at any time ~~by the grievant or~~ by the ~~statewide UFF President, Director of~~  
215 ~~Arbitrations~~ or designee at any point during Step 3. The parties shall stipulate to the issue(s)  
216 prior to the arbitration. In the event a stipulation is not reached, the parties shall provide  
217 their recommended issues to the arbitrator, who shall decide the issue(s) to be arbitrated  
218 based upon the submitted evidence<sup>[j21]</sup>. ~~proceed to a hearing on arbitrability pursuant to~~  
219 ~~Section 20.8(f)(4).~~

220 (2) Selection of Arbitrator. ~~Representatives of the University and the UFF shall meet~~  
221 ~~within ninety days after the execution of this Agreement for the purpose of selecting an~~  
222 ~~Arbitration Panel of ten or more members. Once a grievance is escalated to Arbitration, the~~  
223 ~~parties may confer to mutually agree on an arbitrator. Otherwise, the moving party shall file~~  
224 ~~a request with the American Arbitration Association (AAA) for a Panel of arbitrators.~~<sup>[j22]</sup>  
225 Within fourteen days after receipt ~~of a notice of intent to arbitrate the Panel~~, representatives  
226 of the University and the UFF shall meet for the purpose of selecting an arbitrator from the  
227 Panel. Selection shall be by mutual agreement or by alternately striking names from the  
228 Arbitration Panel list until one name remains. The right of the first choice to strike from the  
229 list shall be determined by the flip of a coin. ~~If the parties are unable to agree to a panel of~~  
230 ~~arbitrators, they shall follow the normal American Arbitration Association procedure for the~~  
231 ~~selection of an arbitrator. The parties may mutually select as the arbitrator an individual who~~  
232 ~~is not a member of the Arbitration Panel~~<sup>[j23]</sup>. The arbitration shall be held within sixty days  
233 following the selection of the arbitrator, if practicable.

234 (3) Authority of the Arbitrator.

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

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

254 c. An arbitrator's decision awarding employment beyond the sixth year shall not  
255 entitle the employee to tenure. ~~In such cases the employee shall serve in a non-tenure-~~  
256 ~~earning capacity [CP24][j25] during the seventh year without further right to notice [TR26]e that the~~  
257 ~~employee will not be offered employment thereafter. If an employee is reappointed at the~~  
258 ~~direction of an arbitrator, the University's representative may reassign the employee during~~  
259 ~~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 on~~  
263 ~~arbitrability. If the issue is judged to be arbitrable, an arbitrator shall then be selected to~~  
264 ~~hear the substantive issue(s). [j27]~~

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 commence  
267 within twenty-five days of the arbitrator's acceptance of selection, or as soon thereafter as is  
268 practicable, and the arbitrator shall issue the decision within forty-five days of the close of  
269 the hearing or the submission of briefs, whichever is later, unless additional time is agreed  
270 to by the parties. The decision shall be in writing and shall set forth findings of fact,  
271 reasoning, and conclusions on the issues submitted. Except as expressly specified in this  
272 Article, the provisions of the Florida Arbitration Code, Chapter 682, Florida Statutes, shall  
273 not apply. Except as modified by the provisions of this Agreement, arbitration proceedings  
274 shall be conducted in accordance with the rules and procedures of the American Arbitration  
275 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 acting  
279 outside of or beyond the arbitrator's jurisdiction, pursuant to Section 682.13, Florida  
280 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 nor  
285 the UFF will move for a change of venue based upon the defendant's residence in fact if  
286 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 its

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

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

300  
301 **20.9 Filings and Notification.** ~~With the exception of Step 1 and Step 2 decisions, a~~All  
302 documents required or permitted to be issued or filed pursuant to this Article may be  
303 transmitted by fax, United States mail, email, or any other recognized delivery service ~~(note:~~  
304 ~~[CP28][j]29) e-mail is not an acceptable form of delivery).~~ Refusal to accept delivery to the  
305 address indicated in the university's records will be deemed as delivered. Receipt by UFF  
306 Representative shall constitute receipt only when the UFF represents the employee. Step 1  
307 and Step 2 decisions shall be transmitted to the grievance representative(s) by personal  
308 delivery with written documentation of receipt or by certified mail, return receipt requested,  
309 or via email. In the event that any action falls due on a Saturday, Sunday, or holiday (as  
310 referred to in in the Leaves Article), the action will be considered timely if it is accomplished  
311 by 5:00 p.m. on the following business day.

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

316  
317 **20.11 Processing.**

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

325 (b) Nothing shall authorize the University or its representative to refuse consideration of a grievance  
326 on the assertion that it was not timely filed in accordance with this Article. The University's representative,  
327 may refuse consideration of a grievance not filed or processed in accordance with this Article. If there is<sup>[j]30</sup>  
328 question of timeliness, the grievance may proceed, but the question of timeliness must be resolved before the matter  
329 is considered further.<sup>[CP31][j]32]</sup>

330  
331 **20.12 Reprisal.** No reprisal of any kind will be made by the University or the UFF against  
332 any grievant, any witness, any UFF representative, or any other participant in the grievance  
333 procedure by reason of such participation.

334  
335 **20.13 Records.** All written materials pertinent to a grievance shall be filed separately from  
336 the evaluation file of the grievant or witnesses, except decisions resulting from arbitration or  
337 settlement.

338  
339  
340  
341

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