

## **ARTICLE 31**

### **GRIEVANCE**

#### **WHAT CHANGES ARE PROPOSED**

- Deletes section that denies faculty the ability to “resort to other procedures” and to seek review “under other University procedures.”
- Deletes section that shifts burden of proof back to faculty in grievances involving administrative “reprisal.”
- Adds language that grants UFF access to “informal resolution process.”
- Adjusts time related penalties, deadlines and limits.
- Adds that informal resolutions be reduced to writing “jointly” by the administration and faculty member.
- Adds language providing for access to testimony and evidence.
- Expands language for contents of grievance decision.
- Deletes language that restricts the scope of arbitration.
- Adds language entitling faculty member to back pay with interest.

#### **WHY THE CHANGES ARE IMPORTANT**

- Improves process for faculty member.
- Allows faculty members to pursue multiple forums and avenues of relief.
- Encourages resolution of faculty concerns on the merits (versus technicalities).
- Balances potential harms to grievant versus harms to administration.
- Insures decisions are sufficiently and comprehensively articulated.
- Promotes fairness in process and outcomes.

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**ARTICLE 31**

**GRIEVANCE PROCEDURE AND ARBITRATION**

31.1 Policy.

- (a) It is the intent of the University Administration and the UFF to provide a prompt, reasonable, and efficient opportunity for resolution of a dispute through the grievance procedure and arbitration process.
- (b) ~~Resort to Other Procedures. Except as noted below, if prior to filing a grievance, or while the grievance proceeding is in progress, a faculty member requests, in writing, resolution of the matter in any other forum, whether administrative or judicial, the University Administration 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.~~
- (c) No Reprisal. No reprisal of any kind shall be made by the University Administration or the UFF against any grievant, any witness, any UFF designee, or any other participant in the grievance procedure by reason of such participation.
- (d) Reclassifications. A faculty member who is reclassified to an out-of-unit classification shall retain the right to file a grievance consistent with the provisions of this Article for any act or omission that gave rise to a grievance while the faculty member was in-unit.
- (e) No resolution of any individually processed grievance shall be inconsistent with the terms of this Agreement.

31.2 Definitions and Forms.

- (a) Definitions.
- (1) The term “grievance” shall mean a dispute filed with the Office of Employee and Labor Relations concerning the interpretation or application of a specific term or provision of this Agreement, University rules or policies that govern faculty terms or conditions of employment, or Guidelines referenced in this Agreement, subject to specific exclusions appearing in other articles of this Agreement.
- (2) The term “grievant” means

- 44 a. a faculty member or group of faculty members who has/have filed a  
45 grievance.  
46  
47 b. the UFF where it is entitled by law to file a grievance and has filed  
48 a grievance in a dispute over a provision of this Agreement.  
49  
50 c. the UFF where it has filed a grievance in a dispute over a provision  
51 of this Agreement based upon policy decisions by the University  
52 Administration which have general applicability to bargaining unit  
53 members, where such policy decisions give rise to disputes about  
54 the interpretation or application of the specific terms of this  
55 Agreement.  
56

- 57 (3) The parties may agree to consolidate grievances of a similar nature to  
58 expedite the review process.  
59

60 (b) Forms.  
61

- 62 (1) Grievance Form. Each grievance must be submitted in writing on the form  
63 shown in Appendix "C" (Grievance Form), with all pertinent information  
64 explaining the disagreement or controversy, identifying the provision(s) at  
65 issue, and identifying any designee. The grievant's signature, confirming  
66 his/her intent to proceed with the grievance, shall be provided prior to the  
67 grievance hearing.  
68  
69 (2) Arbitration Form. Each notice of arbitration shall be submitted in writing  
70 on the form shown in Appendix "D" (Notice of Arbitration). All pertinent  
71 information submitted with the Appendix "C" (Grievance Form) form, as  
72 well as the Grievance Hearing decision, shall be included as an attachment  
73 to the Appendix "D" (Notice of Arbitration) form.  
74  
75 (3) The grievance forms, including the Appendix "G" (Exclusive Dispute  
76 Resolution Procedure for Course Assignments) form, may be filed by  
77 means of e-mail, fax, United States mail, or personal delivery. All  
78 grievance forms shall be dated when the grievance is received. The date  
79 of receipt shall be determined by the date on a receipt executed by the  
80 Office of Employee and Labor Relations if the grievance is hand  
81 delivered; by the date recorded on the fax if the grievance is filed by fax;  
82 by the date of the e-mail return receipt if e-mailed; or by the date of  
83 mailing as confirmed by the postmark if the grievance is sent by United  
84 States mail.  
85

86 31.3 Burden of Proof.  
87

- 88 (a) In all grievances except disciplinary grievances (see Article 30 on Disciplinary  
89 Action and Job Abandonment), the burden of proof shall be on the faculty  
90 member.  
91
- 92 (b) In disciplinary grievances, the burden of proof shall be on the University  
93 Administration.  
94
- 95 (c) ~~In grievances filed against the Administration which allege reprisal, the grievant  
96 has the initial burden of establishing a prima facie case of reprisal. Once the  
97 grievant has established a prima facie case of reprisal, the burden shifts to the  
98 Administration to rebut the inference of reprisal by articulating some legitimate,  
99 non-reprisal reason for the Administration's action. The Administration need only  
100 offer admissible evidence to raise a genuine issue of fact as to whether it had a  
101 legitimate reason for taking its action. Once the Administration meets its burden  
102 of articulating a legitimate non-reprisal reason for its action, the burden shifts back  
103 to the grievant to show that the proffered reason is merely a pretext for reprisal.~~  
104
- 105 31.4 Representation. The UFF shall have the exclusive right to represent any faculty member  
106 in a grievance filed under this Agreement, unless a faculty member elects self-representation or to  
107 be represented by legal counsel.
- 108 (a) UFF Grievance Representatives. At the beginning of each academic year, the UFF  
109 shall furnish to the University Administration a list of all faculty members  
110 authorized to act as grievance representatives, including the faculty member(s)  
111 designated as the UFF Grievance Officer(s). The UFF shall promptly notify the  
112 University Administration of additions or deletions to this list during the academic  
113 year. Such representatives shall have the right during times outside of their  
114 formally scheduled activities to investigate, consult, prepare grievance  
115 presentations, and attend grievance and arbitration hearings. Grievance  
116 representatives (or an observer appointed by the faculty member) shall also have  
117 the right to assist faculty members in the informal resolution process including but  
118 not limited to attendance at any meetings related to the informal resolution process  
119 also attended by the University Administration.  
120
- 121 (b) If a faculty member elects not to be represented by the UFF, the University  
122 Administration shall promptly notify the UFF in writing or through email that the  
123 grievance has been filed and shall advise UFF that a copy of the Appendix "C"  
124 Grievance Form and any accompanying materials are available at the Office of  
125 Employee and Labor Relations. The UFF shall also be notified in writing of the  
126 date, time, and place of any meeting or hearing called for the purpose of discussing  
127 the grievance, shall have the right to have an observer present at all meetings and/or  
128 hearings called for the purpose of discussing such grievance including those related  
129 to the informal resolution process, and shall be sent copies of all decisions at the  
130 same time as they are sent to the other parties.  
131

132 31.5 Appearances.

133

134 (a) When a faculty member participates during working hours in a grievance hearing  
135 or in an arbitration proceeding, that faculty member's compensation shall neither  
136 be reduced nor increased for time spent in those activities.

137

138 (b) Should participation in any grievance meeting or hearing or arbitration proceeding  
139 necessitate rescheduling of assigned duties, the faculty member may, with the  
140 approval of his/her chair/supervisor, arrange for the rescheduling of such duties or  
141 their coverage by other faculty members. Approval of such arrangements shall not  
142 be unreasonably withheld.

143

144 31.6 Informal Resolution. The University Administration and the UFF agree that problems  
145 shall be resolved informally, whenever possible, before the filing of a  
146 grievance. Therefore, no grievance shall be filed until the UFF or a faculty member  
147 ~~grievant~~ has ~~timely~~ requested (within 30 days of the date the UFF or the faculty member  
148 ~~grievant~~ knew or reasonably should have known of the alleged violation)—an informal  
149 resolution process with the University Administration in an effort to resolve the conflict  
150 before the filing of a grievance. ~~If the informal resolution process has been timely~~  
151 ~~requested, as provided below, the later filed grievance shall be considered to be timely~~  
152 ~~filed, as long as the other deadlines specified in Article 31.7 are observed. However, if the~~  
153 ~~informal resolution process has not been timely requested, as provided below, the~~  
154 ~~grievance shall be considered time-barred. A faculty member shall have the right to~~  
155 ~~representation by the UFF at all times during the informal resolution process. Upon request~~  
156 ~~of the faculty member or the faculty member's representative, the University~~  
157 ~~Administration shall, during the informal resolution period(s), arrange an informal meeting~~  
158 ~~between the appropriate administrator and the faculty member.~~

159

160 (a) All requests for informal resolution shall be in writing or by e-mail and submitted  
161 to the Office of Employee and Labor Relations within thirty (30) days of the act or  
162 omission giving rise to the dispute, or the date on which the faculty member knew  
163 or reasonably should have known of such act or omission if that date is later. The  
164 request shall contain a brief, general description of the dispute, identify the relevant  
165 provisions of this Agreement which are at issue, and include dates, times, and  
166 locations of the action(s) giving rise to the dispute.

167

168 (b) Upon receipt of a ~~timely filed~~ request for informal resolution, the parties shall have  
169 thirty (30) days to attempt to informally resolve the dispute.

170

171 (1) The faculty member may terminate the period for informal resolution at any  
172 time by filing a grievance.

173

174 (2) If the parties are unable to reach informal resolution of the grievance within  
175 the time provided, or if the faculty member grievant has filed a formal

176 grievance, the Office of Employee and Labor Relations shall notify the UFF  
177 that informal resolution of the dispute is not possible.  
178

- 179 (c) Any informal resolution of the dispute shall be reduced to writing jointly by the  
180 University Administration and the faculty member, with copies provided to the  
181 faculty member grievant, the UFF, and the Office of Employee and Labor  
182 Relations.  
183

184 31.7 Filing of a Grievance.  
185

- 186 (a) A grievance must be filed with the Office of Employee and Labor Relations on the  
187 form shown in Appendix C “Grievance Form” no later than thirty (30) days ~~fifteen~~  
188 ~~(15) days~~ following the date of the Office of Employee and Labor Relations or  
189 UFF/grievant notifies the other party that informal resolution is not  
190 possible. ~~Compliance with the fifteen (15) day period shall be evidenced by the~~  
191 ~~recorded date on which the grievance was received by the Office of Employee and~~  
192 ~~Labor Relations.~~  
193

- 194 (b) The grievant may amend the Appendix C “Grievance Form” form ~~one time~~ up to  
195 ~~and including the~~ Grievance Hearing ~~so long as the factual basis of the complaint~~  
196 ~~is not materially altered. However, only the alleged violation(s) identified in the~~  
197 ~~initial or amended Appendix C “Grievance Form” may be considered at arbitration.~~  
198

- 199 (c) The filing of a grievance constitutes a waiver of any rights to judicial review of  
200 agency action pursuant to Chapter 120, Florida Statutes (i.e., one must choose  
201 between the collective bargaining grievance process or a hearing before the  
202 Division of Administrative Hearings), ~~and to the review of such actions under other~~  
203 ~~University procedures that may otherwise be available to address such matters.~~  
204

- 205 (d) Time Limits.  
206

- 207 (1) ~~Time is of the essence under this Article and the~~ Time limits contained in  
208 this Article may be waived or extended ~~only~~ by mutual agreement of the  
209 parties. However, any party may request a postponement of fifteen (15)  
210 days of any time limit. ~~The first such request shall be granted. Any Further~~  
211 ~~requests will~~ require mutual agreement of the parties, and shall be granted  
212 for good cause shown. All requests and agreements for extension shall be  
213 documented in writing.  
214

- 215 (2) Upon failure of the University Administration to provide a decision within  
216 the time limits provided in this Article, the grievant/UFF may advance the  
217 grievance to the next step. ~~Upon the failure of the grievant/UFF to advance~~  
218 ~~a grievance within the time limits provided in this Article, the grievance~~

219 ~~shall be deemed to have been withdrawn by the grievant/UFF with~~  
220 ~~prejudice.~~

221  
222 (3) In the event that any action falls due on a Saturday, Sunday, or holiday, the  
223 action shall be considered timely if it is accomplished by 5:00 p.m. on the  
224 following business day.

225  
226 (4) If the required action on any grievance falls during a time when classes are  
227 not in session, or when the faculty member is not on active employment  
228 (such as during a summer term, sabbatical, professional development, or  
229 any other approved leave), the deadline for such action shall be extended  
230 until fifteen (15) days after the faculty member returns to active  
231 employment. The Office of Employee and Labor Relations shall notify the  
232 parties when the fifteen (15) day period begins.

233  
234 (5) If there is difficulty in meeting any time limit, the UFF representative may  
235 sign documents for the grievant. However, the grievant's signature shall be  
236 provided prior to the grievance hearing.

237

238 31.8 Grievance Hearing and University Administration's Decision.

239  
240 (a) The Grievance Hearing.

241  
242 (1) Selection of UNF-BOT Hearing Officer for the Grievance  
243 Hearing. Following the ratification of this Agreement, the President of  
244 UNF shall select a pool of three (3) hearing officers. The Hearing Officer  
245 chosen to conduct the formal grievance hearing shall thereafter be selected  
246 at random by the Office of Employee and Labor Relations in the presence  
247 of the grievant's representative by drawing the name of a Hearing Officer  
248 from an opaque container, provided that the Hearing Officer is not a person  
249 who has been involved in the attempt at informal resolution. Where the  
250 parties disagree as to the result of the random selection process, the parties  
251 may mutually select an individual who is not a member of the pool of  
252 Hearing Officers. The selection of a Hearing Officer shall occur not later  
253 than fifteen (15) days following the filing of a grievance with the Office of  
254 Employee and Labor Relations.

255  
256 (2) The grievance hearing shall be held not later than fifteen (15) days  
257 following the selection of the Hearing Officer. At the hearing, the grievant  
258 (and the grievant's representative) and the University Administration shall  
259 have the right to present any evidence, including documents, that are  
260 relevant to the grievance. ~~Upon request, the grievant and the grievant's~~  
261 ~~representative shall be provided access to all testimony and evidence,~~  
262 including all documents that are relevant to the grievance all relevant

263 ~~documents.~~ These documents and evidence shall be provided not later than  
264 ~~three (3)~~five (5) days prior to the hearing.

265  
266 (b) The Decision.

267  
268 (1) The Hearing Officer shall issue a written decision, with a detailed rationale,  
269 to the grievant, the UFF, and the University Administration within thirty  
270 (30) days of the hearing. The decision shall set forth findings of fact,  
271 reasoning, and conclusions on the issues submitted. The Hearing Officer  
272 shall also prepare a list of all documents referred to in the decision and  
273 presented by either party, and attach the list to the written decision.

274  
275 (2) Only testimony and evidence shown to the grievant and presented at the  
276 hearing shall be considered by the Hearing Officer. ~~If the University~~  
277 ~~Administration references evidence in the written decision that was not~~  
278 ~~introduced at the hearing, the hearing shall be reconvened in order to give~~  
279 ~~the grievant an opportunity to discuss the evidence. The evidence shall be~~  
280 ~~provided to the grievant and the grievant's representative not later than days~~  
281 ~~prior to the reconvening of the hearing.~~

282  
283 (c) In the absence of an agreement to extend the period for issuing the decision, the  
284 UFF may file for arbitration if the written decision has not been received by the  
285 parties by the end of the thirtieth (30th) day following the conclusion of the  
286 grievance hearing.

287  
288 31.9 Arbitration.

289  
290 (a) Filing. If the grievance has not been satisfactorily resolved after the grievance  
291 hearing or through the written decision, UFF may proceed to arbitration by filing a  
292 written notice of the intent to do so on the form shown in Appendix "D" (Notice of  
293 Arbitration). The notice of intent to proceed to arbitration must be filed with the  
294 Office of Employee and Labor Relations, with a copy to the University President,  
295 within thirty (30) days after receipt of the grievance decision. The grievance may  
296 be withdrawn at any time by the grievant or by the UFF President or designee or  
297 the UFF arbitration representative.

298  
299 (b) Stipulation to Issues and Arbitrability

300  
301 (1) Prior to the arbitration, the University Administration and the UFF shall  
302 stipulate to the issue(s) to be arbitrated. In the event a stipulation is not  
303 reached, the arbitrator shall identify the issue(s) based upon the evidence  
304 presented.

305



306 (2) Arbitrability. Issues of arbitrability shall be bifurcated from the substantive  
307 issue(s) and, whenever possible, determined by means of a hearing  
308 conducted by conference call. The arbitrator shall have ten (10) days from  
309 the hearing to render a decision on arbitrability. If the issue is judged to be  
310 arbitrable, another arbitrator shall then be selected to hear the substantive  
311 issue(s).

312  
313 (c) Selection of an Arbitrator.

314  
315 (1) Within ten (10) days after receipt of the notice of intent to arbitrate,  
316 designees of the University Administration and the UFF shall jointly  
317 request a list of seven (7) qualified neutrals from the Federal Mediation  
318 and Conciliation Service (FMCS). The joint request to FMCS shall  
319 specify that the list of seven (7) qualified neutrals to be provided to  
320 the parties must be limited to arbitrators residing in the State of Florida  
321 with professional experience in higher education. Within seven (7) days  
322 after receipt of the list from FMCS, the parties shall meet and alternately  
323 strike names on the list. The party requesting arbitration shall strike the  
324 first name. After each party has struck three (3) names, the last remaining  
325 name shall be the arbitrator. Failure of the parties to select an arbitrator  
326 within twenty (20) days of receipt of the list from FMCS will be  
327 considered a withdrawal of the grievance with prejudice.

328  
329 (2) In lieu of the selection process set forth in Article 31.9 (c) (1), above,  
330 designees of the University Administration and the UFF may meet within  
331 seven (7) days after receipt of a notice of intent to arbitrate for the purpose  
332 of selecting an independent arbitrator. Provided, however, this alternative  
333 selection process shall not be available once a list from FMCS has been  
334 requested as specified in Article 31.9 (c) (1), above.

335  
336 (d) Authority of the Arbitrator.

337 (1) The arbitrator shall neither add to, subtract from, modify, nor alter the terms  
338 or provisions of this Agreement. ~~Arbitration shall be confined solely to the~~  
339 ~~precise issue(s) submitted for arbitration. The arbitrator shall refrain from~~  
340 ~~issuing any statements of opinion or conclusion not essential to the~~  
341 ~~determination of the issues submitted.~~

342  
343 (2) Where an administrator has made a judgment involving the exercise of  
344 discretion, such as decisions regarding evaluation, tenure, or promotion, the  
345 arbitrator shall not substitute the arbitrator's judgment for that of the  
346 administrator. Nor shall the arbitrator review such decision except for the  
347 purpose of determining whether the decision has violated the Agreement. If  
348 the arbitrator determines that the Agreement has been violated, the  
349 arbitrator shall direct the University Administration to take appropriate

- 350 remedial action, consistent with this Agreement, which the arbitrator may  
351 specify.
- 352 a. An arbitrator may award back salary when the arbitrator determines  
353 that the faculty member is not receiving the appropriate salary from  
354 the University Administration. In addition to an award of back  
355 salary, the arbitrator may also require the University Administration  
356 to make retroactive payment of lost contractual economic benefits  
357 that are proven to be directly affected by the award of back salary.  
358 The faculty member is also entitled to interest on any award  
359 involving payment of back salary and lost contractual economic  
360 benefits. However, the arbitrator may not award any other monetary  
361 damages or penalties.
- 362
- 363 b. If the arbitrator finds that “notice that no further employment will  
364 be offered” was not given consistent with the notice provisions of  
365 the Nonreappointment Article, and that the notice was given so late  
366 that (a) the faculty member was deprived of reasonable opportunity  
367 to seek other employment, or (b) the faculty member actually  
368 rejected a written offer of comparable employment which the  
369 faculty member otherwise would have accepted had notice been  
370 timely given, and the arbitrator finds that no other remedy is  
371 adequate, the arbitrator may in that instance direct the University  
372 Administration to renew the appointment for an additional year.
- 373
- 374 c. An arbitrator’s decision awarding employment beyond the sixth  
375 (6th) year shall not entitle the faculty member to tenure. In cases in  
376 which the arbitrator finds procedural error, finds that the decision  
377 was not based on the specified criteria, or finds that the decision was  
378 based on an unreasonable application of those criteria, the grievant’s  
379 appointment shall be renewed and the grievant shall be allowed to  
380 reapply for tenure under the same conditions and with the same  
381 protections under this Agreement that would apply to any other  
382 faculty member. The arbitrator shall retain jurisdiction to ensure  
383 that the grievant’s rights are not violated during the reapplication  
384 process. In no instance may an arbitrator award tenure or  
385 promotion.
- 386
- 387 (e) Hearing and Decision.
- 388
- 389 (1) The hearing shall commence within thirty (30) days of the arbitrator’s  
390 acceptance of selection, or as soon thereafter as is practicable.  
391

392 (2) Except as modified by the provisions of this Agreement, the arbitration  
393 proceeding shall be conducted in accordance with the rules and procedures  
394 of the American Arbitration Association.  
395

396 (3) The arbitrator shall issue the decision within thirty (30) days of the close of  
397 the hearing or the submission of briefs, whichever is later, unless additional  
398 time is agreed to by the University Administration and the UFF or grievant  
399 (if the grievant is representing himself or herself). The decision shall be in  
400 writing and shall set forth findings of fact, reasoning, and conclusions on  
401 the issues submitted.  
402

403 (f) Effect of Decision. The decision or award of the arbitrator shall be final and  
404 binding upon the Board, the University Administration, the UFF, and the grievant,  
405 provided that either party may appeal to an appropriate court of law, pursuant to  
406 Chapter 682, Florida Statutes, any decision that was rendered by the arbitrator  
407 acting outside or beyond the arbitrator's jurisdiction.  
408

409 (g) ~~Retroactivity. An arbitrator's award may or may not be retroactive as the equities~~  
410 ~~of each case may demand, but in no case shall an award be retroactive to a date~~  
411 ~~earlier than sixty (60) days prior to the date the grievance was initially~~  
412 ~~filed. However, if it is determined that the grievant did not receive the proper salary~~  
413 ~~due to a clerical error on the part of the Administration, the grievant shall receive~~  
414 ~~the amount to which he/she would have been entitled were it not for the~~  
415 ~~Administration's clerical error.~~  
416

417 (h) Fees and Expenses. All fees and expenses of the arbitrator shall be divided equally  
418 between the parties. Each party shall bear the cost of preparing its own case and  
419 paying its own designee, attorney, and witnesses as applicable.  
420

421 31.10 Precedent. No complaint informally resolved, or grievance resolved, shall constitute a  
422 precedent for any purpose unless agreed to in writing by the President or designee and the UFF  
423 acting through its President or designee. However nothing in this section shall prohibit a grievant  
424 from introducing evidence from prior complaints informally resolved or prior grievances resolved.  
425

426 31.11 Records. All written materials created as a result of a grievance, except decisions resulting  
427 from arbitration or settlement, shall be filed in a secure location, separate from the evaluation file  
428 of the grievant or witnesses.  
429

430 31.12 Expedited Grievance Procedure for Conflict of Interest.

431 (a) A grievance alleging a violation of the conflict of interest provisions of this  
432 Agreement shall be filed with the President or designee who shall meet with the  
433 grievant and his/her representative no later than seven (7) days after the grievance  
434

- 435 has been filed, if practicable, to review the grievance. The President or designee  
436 shall issue a decision no later than seven (7) days following the grievance hearing.  
437
- 438 (b) The UFF, if it chooses to proceed to arbitration, shall file a request for arbitration  
439 within fifteen (15) days after receipt of the President or designee's written decision,  
440 using Appendix "D" (Notice of Arbitration).  
441
- 442 (c) An arbitrator shall be selected by the parties not later than fifteen (15) days  
443 following receipt of the Appendix "D" (Notice of Arbitration) form.  
444
- 445 (d) The arbitrator shall issue a memorandum of decision within seven (7) days  
446 following the conclusion of the arbitration, to be followed by a written opinion and  
447 award in accordance with Articles 31.9(d) and (e).  
448
- 449 (e) All other provisions of this article shall apply to a grievance filed under this  
450 subsection, except as noted above.