

ARTICLE 33
GRIEVANCE PROCEDURE AND ARBITRATION

33.1 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.

33.2 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
 - a. A faculty member or group of faculty members who has/have

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filed a grievance.

- b. The UFF where it is entitled by law to file a grievance and has filed a grievance in a dispute over a provision of this Agreement.
 - c. The UFF where it has filed a grievance in a dispute over a provision of this Agreement based upon policy decisions by the University Administration which have general applicability to bargaining unit members, where such policy decisions give rise to disputes about the interpretation or application of the specific terms of this Agreement.
- (3) The parties may agree to consolidate grievances of a similar nature to expedite the review process.

(b) **Forms.**

- (1) **Grievance Form.** Each grievance must be submitted in writing on the form shown in Appendix “C” (Grievance Form), with all pertinent information explaining the disagreement or controversy, identifying the provision(s) at issue, and identifying any designee. The grievant’s signature, confirming his/her intent to proceed with the grievance, shall be provided prior to the grievance hearing.
- (2) **Arbitration Form.** Each notice of arbitration shall be submitted in writing on the form shown in Appendix “D” (Notice of Arbitration). All pertinent information submitted with the Appendix “C” (Grievance Form) form, as well as the Grievance Hearing decision, shall be included as an attachment to the Appendix “D” (Notice of Arbitration) form.
- (3) The grievance forms, including the Appendix “G” (Exclusive Dispute Resolution Procedure for Course Assignments) form, may be filed by means of e-mail, fax, United States mail, or personal delivery. All grievance forms shall be dated when the grievance is received. The date of receipt shall be determined by the date on a receipt executed by the Office of Employee and Labor Relations if the grievance is hand delivered; by the date recorded on the fax if the grievance is filed by fax; by the date of the e-mail return receipt if e-mailed; or by the date of mailing as confirmed by the postmark if the grievance is sent by United States mail.

33.3 Burden of Proof.

- (a) In all grievances except disciplinary grievances (see Article 30 on Disciplinary Action and Job Abandonment), the burden of proof shall be on the faculty member.
- (b) In disciplinary grievances, the burden of proof shall be on the University Administration.
- (c) In grievances filed against the Administration which allege reprisal, the grievant has the initial burden of establishing a prima facie case of reprisal. Once the grievant has established a prima facie case of reprisal, the burden shifts to the Administration to rebut the inference of reprisal by articulating some legitimate, non-reprisal reason for the Administration's action. The Administration need only offer admissible evidence to raise a genuine issue of fact as to whether it had a legitimate reason for taking its action. Once the Administration meets its burden of articulating a legitimate non-reprisal reason for its action, the burden shifts back to the grievant to show that the proffered reason is merely a pretext for reprisal.

33.4 Representation. The UFF shall have the exclusive right to represent any faculty member in a grievance filed under this Agreement, unless a faculty member elects self-representation or to be represented by legal counsel.

- (a) **UFF Grievance Representatives.** At the beginning of each academic year, the UFF shall furnish to the University Administration a list of all faculty members authorized to act as grievance representatives, including the faculty member(s) designated as the UFF Grievance Officer(s). The UFF shall promptly notify the University Administration of additions or deletions to this list during the academic year. Such representatives shall have the right during times outside of their scheduled activities to investigate, consult, prepare grievance presentations, and attend grievance and arbitration hearings.
- (b) If a faculty member elects not to be represented by the UFF, the University Administration shall promptly notify the UFF in writing or through email that the grievance has been filed and shall advise UFF that a copy of the Appendix "C" Grievance Form and any accompanying materials are available at the Office of Employee and Labor Relations. The UFF shall also be notified in writing of the date, time, and place of any meeting or hearing called for the purpose of discussing the grievance, shall have the right to have an observer present at all meetings and/or hearings called for the purpose of discussing such grievance, and shall be sent copies of all decisions at the same time as they are sent to the other parties.

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33.5 Appearances.

- (a) When a faculty member participates during working hours in a grievance hearing or in an arbitration proceeding, that faculty member's compensation shall neither be reduced nor increased for time spent in those activities.
- (b) Should participation in any grievance meeting or hearing or arbitration proceeding necessitate rescheduling of assigned duties, the faculty member may, with the approval of his/her chair/supervisor, arrange for the rescheduling of such duties or their coverage by other faculty members. Approval of such arrangements shall not be unreasonably withheld.

33.6 Informal Resolution. The University Administration and the UFF agree that problems shall be resolved, whenever possible, before the filing of a grievance. Therefore, no grievance shall be filed until the UFF or grievant has timely requested (within 30 days of the date the UFF or grievant knew or reasonably should have known of the alleged violation) an informal resolution process with the University Administration in an effort to resolve the conflict before the filing of a grievance. If the informal resolution process has been timely requested, as provided below, the later filed grievance shall be considered to be timely filed, as long as the other deadlines specified in Article 33.7 are observed. However, if the informal resolution process has not been timely requested, as provided below, the grievance shall be considered time-barred.

- (a) All requests for informal resolution shall be in writing or by e-mail and submitted to the Office of Employee and Labor Relations within thirty (30) days of the act or omission giving rise to the dispute, or the date on which the faculty member knew or reasonably should have known of such act or omission if that date is later. The request shall contain a brief, general description of the dispute, identify the relevant provisions of this Agreement which are at issue, and include dates, times, and locations of the action(s) giving rise to the dispute.
- (b) Upon receipt of a timely filed request for informal resolution, the parties shall have thirty (30) days to attempt to informally resolve the dispute.
 - (1) The faculty member may terminate the period for informal resolution at any time by filing a grievance.
 - (2) If the parties are unable to reach informal resolution of the grievance within the time provided, or if the grievant has filed a formal grievance, the Office of Employee and Labor Relations shall notify the UFF that informal resolution of the dispute is not possible.
- (c) Any resolution of the dispute shall be reduced to writing by the University Administration, with copies provided to the grievant, the UFF, and the Office of Employee and Labor Relations.

33.7 Filing of a Grievance.

- (a) A grievance must be filed with the Office of Employee and Labor Relations on the form shown in Appendix C “Grievance Form” no later than fifteen (15) days following the date the Office of Employee and Labor Relations or UFF/grievant notifies the other party that informal resolution is not possible. Compliance with the fifteen (15) day period shall be evidenced by the recorded date on which the grievance was received by the Office of Employee and Labor Relations.
- (b) The grievant may amend the Appendix C “Grievance Form” form one time up to and including the Grievance Hearing so long as the factual basis of the complaint is not materially altered. However, only the alleged violation(s) identified in the initial or amended Appendix C “Grievance Form” may be considered at arbitration.
- (c) The filing of a grievance constitutes a waiver of any rights to judicial review of agency action pursuant to Chapter 120, Florida Statutes (i.e., one must choose between the collective bargaining grievance process or a hearing before the Division of Administrative Hearings), and to the review of such actions under other University procedures that may otherwise be available to address such matters.
- (d) **Time Limits.**
 - (1) Time is of the essence under this Article and the time limits contained in this Article may be waived or extended only by mutual agreement of the parties. However, any party may request a postponement of fifteen (15) days of any time limit. The first such request shall be granted. Any further requests will require mutual agreement of the parties, and shall be granted for good cause shown. All requests and agreements for extension shall be documented in writing.
 - (2) Upon failure of the University Administration to provide a decision within the time limits provided in this Article, the grievant/UFF may advance the grievance to the next step. Upon the failure of the grievant/UFF to advance a grievance within the time limits provided in this Article, the grievance shall be deemed to have been withdrawn by the grievant/UFF with prejudice.
 - (3) In the event that any action falls due on a Saturday, Sunday, or holiday, the action shall be considered timely if it is accomplished by 5:00 p.m. on the following business day.

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- (4) If the required action on any grievance falls during a time when classes are not in session, or when the faculty member is not on active employment (such as during a summer term, sabbatical, professional development, or any other approved leave), the deadline for such action shall be extended until fifteen (15) days after the faculty member returns to active employment. The Office of Employee and Labor Relations shall notify the parties when the fifteen (15) day period begins.
- (5) If there is difficulty in meeting any time limit, the UFF representative may sign documents for the grievant. However, the grievant's signature shall be provided prior to the grievance hearing.

33.8 Grievance Hearing and University Administration's Decision.

(a) The Grievance Hearing.

- (1) Selection of UNF-BOT Hearing Officer for the Grievance Hearing. Following the ratification of this Agreement, the President of UNF shall select a pool of three (3) hearing officers. The Hearing Officer chosen to conduct the formal grievance hearing shall thereafter be selected at random by the Office of Employee and Labor Relations in the presence of the grievant's representative by drawing the name of a Hearing Officer from an opaque container, provided that the Hearing Officer is not a person who has been involved in the attempt at informal resolution. The parties may mutually select an individual who is not a member of the pool of Hearing Officers.
- (2) The grievance hearing shall be held not later than fifteen (15) days following the selection of the Hearing Officer. At the hearing, the grievant (and the grievant's representative) and the University Administration shall have the right to present any evidence, including documents, that are relevant to the grievance. Upon request, the grievant and the grievant's representative shall be provided access to all relevant documents. These documents shall be provided not later than three (3) days prior to the hearing.

(b) The Decision.

- (1) The Hearing Officer shall issue a written decision, with rationale, to the grievant, the UFF, and the University Administration within thirty (30) days of the hearing. The Hearing Officer shall also prepare a list of all documents referred to in the decision and presented by either party, and attach the list to the written decision.
- (2) If the University Administration references evidence in the written

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decision that was not introduced at the hearing, the hearing shall be reconvened in order to give the grievant an opportunity to discuss the evidence. The evidence shall be provided to the grievant and the grievant's representative not later than three (3) days prior to the reconvening of the hearing.

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

33.9 Arbitration.

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

- (b) **Stipulation to Issues and Arbitrability**

- (1) Prior to the arbitration, the University Administration and the UFF shall stipulate to the issue(s) to be arbitrated. In the event a stipulation is not reached, the arbitrator shall identify the issue(s) based upon the evidence presented.
- (2) **Arbitrability.** Issues of arbitrability shall be bifurcated from the substantive issue(s) and, whenever possible, determined by means of a hearing conducted by conference call. The arbitrator shall have ten (10) days from the hearing to render a decision on arbitrability. If the issue is judged to be arbitrable, another arbitrator shall then be selected to hear the substantive issue(s).

- (c) **Selection of an Arbitrator.**

- (1) Within ten (10) days after receipt of the notice of intent to arbitrate, designees of the University Administration and the UFF shall jointly request a list of seven (7) qualified neutrals from the Federal Mediation and Conciliation Service (FMCS). The joint request to FMCS shall specify that the list of seven (7) qualified neutrals to be provided to the parties must be limited to arbitrators residing in the State of Florida with professional experience in higher education. Within seven (7) days after receipt of the list from FMCS, the parties shall meet and alternately

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strike names on the list. The party requesting arbitration shall strike the first name. After each party has struck three (3) names, the last remaining name shall be the arbitrator. Failure of the parties to select an arbitrator within twenty (20) days of receipt of the list from FMCS will be considered a withdrawal of the grievance with prejudice.

- (2) In lieu of the selection process set forth in Article 33.9 (c) (1), above, designees of the University Administration and the UFF may meet within seven (7) days after receipt of a notice of intent to arbitrate for the purpose of selecting an independent arbitrator. Provided, however, this alternative selection process shall not be available once a list from FMCS has been requested as specified in Article 33.9 (c) (1), above.

(d) **Authority of the Arbitrator.**

- (1) The arbitrator shall neither add to, subtract from, modify, nor alter the terms or provisions of this Agreement. Arbitration shall be confined solely to the precise issue(s) submitted for arbitration. The arbitrator shall refrain from issuing any statements of opinion or conclusion not essential to the determination of the issues submitted.
- (2) Where an administrator has made a judgment involving the exercise of discretion, such as decisions regarding evaluation, tenure, or promotion, the arbitrator shall not substitute the arbitrator's judgment for that of the administrator. Nor shall the arbitrator review such decision except for the purpose of determining whether the decision has violated the Agreement. If the arbitrator determines that the Agreement has been violated, the arbitrator shall direct the University Administration to take appropriate remedial action, consistent with this Agreement, which the arbitrator may specify.
 - a. An arbitrator may award back salary when the arbitrator determines that the faculty member is not receiving the appropriate salary from the University Administration. In addition to an award of back salary, the arbitrator may also require the University Administration to make retroactive payment of lost contractual economic benefits that are proven to be directly affected by the award of back salary. However, the arbitrator may not award any other monetary damages or penalties.
 - b. If the arbitrator finds that "notice that no further employment will be offered" was not given consistent with the notice provisions of the Nonreappointment Article, and that the notice was given so late that (a) the faculty member was deprived of reasonable opportunity to seek other employment, or (b) the faculty member actually rejected a written offer of comparable employment which the

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faculty member otherwise would have accepted had notice been timely given, and the arbitrator finds that no other remedy is adequate, the arbitrator may in that instance direct the University Administration to renew the appointment for an additional year.

- c. An arbitrator's decision awarding employment beyond the sixth (6th) year shall not entitle the faculty member to tenure. In cases in which the arbitrator finds procedural error, finds that the decision was not based on the specified criteria, or finds that the decision was based on an unreasonable application of those criteria, the grievant's appointment shall be renewed and the grievant shall be allowed to reapply for tenure under the same conditions and with the same protections under this Agreement that would apply to any other faculty member. The arbitrator shall retain jurisdiction to ensure that the grievant's rights are not violated during the reapplication process. In no instance may an arbitrator award tenure or promotion.

(e) **Hearing and Decision.**

- (1) The hearing shall commence within thirty (30) days of the arbitrator's acceptance of selection, or as soon thereafter as is practicable.
 - (2) Except as modified by the provisions of this Agreement, the arbitration proceeding shall be conducted in accordance with the rules and procedures of the American Arbitration Association.
 - (3) The arbitrator shall issue the decision within thirty (30) days of the close of the hearing or the submission of briefs, whichever is later, unless additional time is agreed to by the University Administration and the UFF or grievant (if the grievant is representing himself or herself). The decision shall be in writing and shall set forth findings of fact, reasoning, and conclusions on the issues submitted.
- (f) **Effect of Decision.** The decision or award of the arbitrator shall be final and binding upon the Board, the University Administration, the UFF, and the grievant, provided that either party may appeal to an appropriate court of law, pursuant to Chapter 682, Florida Statutes, any decision that was rendered by the arbitrator acting outside or beyond the arbitrator's jurisdiction.
- (g) **Retroactivity.** An arbitrator's award may or may not be retroactive as the equities of each case may demand, but in no case shall an award be retroactive to a date earlier than sixty (60) days prior to the date the grievance was initially filed. However, if it is determined that the grievant did not receive the proper salary due to a clerical error on the part of the Administration, the grievant shall receive the amount to which he/she would have been entitled were it not for the

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Administration's clerical error.

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

33.10 Precedent. No complaint informally resolved, or grievance resolved, shall constitute a precedent for any purpose unless agreed to in writing by the President or designee and the UFF acting through its President or designee.

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

33.12 Expedited Grievance Procedure for Conflict of Interest.

- (a) A grievance alleging a violation of the conflict of interest provisions of this Agreement shall be filed with the President or designee who shall meet with the grievant and his/her representative no later than seven (7) days after the grievance has been filed, if practicable, to review the grievance. The President or designee shall issue a decision no later than seven (7) days following the grievance hearing.
- (b) The UFF, if it chooses to proceed to arbitration, shall file a request for arbitration within fifteen (15) days after receipt of the President or designee's written decision, using Appendix "D" (Notice of Arbitration).
- (c) An arbitrator shall be selected by the parties not later than fifteen (15) days following receipt of the Appendix "D" (Notice of Arbitration) form.
- (d) The arbitrator shall issue a memorandum of decision within seven (7) days following the conclusion of the arbitration, to be followed by a written opinion and award in accordance with Articles 33.9(d) and (e).
- (e) All other provisions of this article shall apply to a grievance filed under this subsection, except as noted above.