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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

- 47 filed a grievance.
48
49 b. The UFF where it is entitled by law to file a grievance and has
50 filed a grievance in a dispute over a provision of this Agreement.
51
52 c. The UFF where it has filed a grievance in a dispute over a
53 provision of this Agreement based upon policy decisions by the
54 University Administration which have general applicability to
55 bargaining unit members, where such policy decisions give rise
56 to disputes about the interpretation or application of the specific
57 terms of this Agreement.
58
59 (3) The parties may agree to consolidate grievances of a similar nature to
60 expedite the review process.
61
62 (b) **Forms.**
63
64 (1) **Grievance Form.** Each grievance must be submitted in writing on the
65 form shown in Appendix “C” (Grievance Form), with all pertinent
66 information explaining the disagreement or controversy, identifying the
67 provision(s) at issue, and identifying any designee. The grievant’s
68 signature, confirming his/her intent to proceed with the grievance, shall
69 be provided prior to the grievance hearing.
70
71 (2) **Arbitration Form.** Each notice of arbitration shall be submitted in
72 writing on the form shown in Appendix “D” (Notice of Arbitration).
73 All pertinent information submitted with the Appendix “C” (Grievance
74 Form) form, as well as the Grievance Hearing decision, shall be
75 included as an attachment to the Appendix “D” (Notice of Arbitration)
76 form.
77
78 (3) The grievance forms, including the Appendix “G” (Exclusive Dispute
79 Resolution Procedure for Course Assignments) form, may be filed by
80 means of e-mail, fax, United States mail, or personal delivery. All
81 grievance forms shall be dated when the grievance is received. The
82 date of receipt shall be determined by the date on a receipt executed by
83 the Office of Employee and Labor Relations if the grievance is hand
84 delivered; by the date recorded on the fax if the grievance is filed by
85 fax; by the date of the e-mail return receipt if e-mailed; or by the date
86 of mailing as confirmed by the postmark if the grievance is sent by
87 United States mail.

88 33.3 **Burden of Proof.**

89
90 (a) In all grievances except disciplinary grievances (see Article 30 on Disciplinary
91 Action and Job Abandonment), the burden of proof shall be on the faculty
92 member.

93
94 (b) In disciplinary grievances, the burden of proof shall be on the University
95 Administration.

96
97 ~~(c) In grievances filed against the Administration which allege reprisal, the~~
98 ~~grievant has the initial burden of establishing a prima facie case of reprisal.~~
99 ~~Once the grievant has established a prima facie case of reprisal, the burden~~
100 ~~shifts to the Administration to rebut the inference of reprisal by articulating~~
101 ~~some legitimate, non-reprisal reason for the Administration's action. The~~
102 ~~Administration need only offer admissible evidence to raise a genuine issue of~~
103 ~~fact as to whether it had a legitimate reason for taking its action. Once the~~
104 ~~Administration meets its burden of articulating a legitimate non-reprisal~~
105 ~~reason for its action, the burden shifts back to the grievant to show that the~~
106 ~~proffered reason is merely a pretext for reprisal.~~

107
108 33.4 **Representation.** The UFF shall have the exclusive right to represent any faculty
109 member in a grievance filed under this Agreement, unless a faculty member elects self-
110 representation or to be represented by legal counsel.

111
112 (a) **UFF Grievance Representatives.** At the beginning of each academic year,
113 the UFF shall furnish to the University Administration a list of all faculty
114 members authorized to act as grievance representatives, including the faculty
115 member(s) designated as the UFF Grievance Officer(s). The UFF shall
116 promptly notify the University Administration of additions or deletions to this
117 list during the academic year. Such representatives shall have the right during
118 times outside of their scheduled activities to investigate, consult, prepare
119 grievance presentations, and attend grievance and arbitration hearings.

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
123 the grievance has been filed and shall advise UFF that a copy of the Appendix
124 "C" Grievance Form and any accompanying materials are available at the
125 Office of Employee and Labor Relations. The UFF shall also be notified in
126 writing of the date, time, and place of any meeting or hearing called for the
127 purpose of discussing the grievance, shall have the right to have an observer
128 present at all meetings and/or hearings called for the purpose of discussing
129 such grievance, and shall be sent copies of all decisions at the same time as
130 they are sent to the other parties.

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134 33.5 **Appearances.**
135

- 136 (a) When a faculty member participates during working hours in a grievance
137 hearing or in an arbitration proceeding, that faculty member's compensation
138 shall neither be reduced nor increased for time spent in those activities.
139
- 140 (b) Should participation in any grievance meeting or hearing or arbitration
141 proceeding necessitate rescheduling of assigned duties, the faculty member
142 may, with the approval of his/her chair/supervisor, arrange for the
143 rescheduling of such duties or their coverage by other faculty members.
144 Approval of such arrangements shall not be unreasonably withheld.
145

146 33.6 **Informal Resolution.** The University Administration and the UFF agree that
147 problems shall be resolved, whenever possible, before the filing of a grievance. Therefore,
148 no grievance shall be filed until the UFF or grievant has timely requested (within 30 days of
149 the date the UFF or grievant knew or reasonably should have known of the alleged violation)
150 an informal resolution process with the University Administration in an effort to resolve the
151 conflict before the filing of a grievance. If the informal resolution process has been timely
152 requested, as provided below, the later filed grievance shall be considered to be timely filed,
153 as long as the other deadlines specified in Article 33.7 are observed. However, if the informal
154 resolution process has not been timely requested, as provided below, the grievance shall be
155 considered time-barred.
156

- 157 (a) All requests for informal resolution shall be in writing or by e-mail and
158 submitted to the Office of Employee and Labor Relations within thirty (30)
159 days of the act or omission giving rise to the dispute, or the date on which the
160 faculty member knew or reasonably should have known of such act or omission
161 if that date is later. The request shall contain a brief, general description of
162 the dispute, identify the relevant provisions of this Agreement which are at
163 issue, and include dates, times, and locations of the action(s) giving rise to the
164 dispute.
165
- 166 (b) Upon receipt of a timely filed request for informal resolution, the parties shall
167 have thirty (30) days to attempt to informally resolve the dispute.
168
- 169 (1) The faculty member may terminate the period for informal resolution
170 at any time by filing a grievance.
171
- 172 (2) If the parties are unable to reach informal resolution of the grievance
173 within the time provided, or if the grievant has filed a formal grievance,
174 the Office of Employee and Labor Relations shall notify the UFF that
175 informal resolution of the dispute is not possible.
176
- 177 (c) Any resolution of the dispute shall be reduced to writing by the University
178 Administration, with copies provided to the grievant, the UFF, and the Office
179 of Employee and Labor Relations.

180 33.7 **Filing of a Grievance.**
181

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

189
190 (b) The grievant may amend the Appendix C “Grievance Form” form one time up
191 to and including the Grievance Hearing so long as the factual basis of the
192 complaint is not materially altered. However, only the alleged violation(s)
193 identified in the initial or amended Appendix C “Grievance Form” may be
194 considered at arbitration.

195
196 (c) ~~The filing of a grievance constitutes a waiver of any rights to judicial review~~
197 ~~of agency action pursuant to Chapter 120, Florida Statutes (i.e., one must~~
198 ~~choose between the collective bargaining grievance process or a hearing before~~
199 ~~the Division of Administrative Hearings), and to the review of such actions~~
200 ~~under other University procedures that may otherwise be available to address~~
201 ~~such matters.~~

202
203 (d) **Time Limits.**
204

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

213 (2) Upon failure of the University Administration to provide a decision
214 within the time limits provided in this Article, the grievant/UFF may
215 advance the grievance to the next step. Upon the failure of the
216 grievant/UFF to advance a grievance within the time limits provided in
217 this Article, the grievance shall be deemed to have been withdrawn by
218 the grievant/UFF with prejudice.
219

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

223
224 (4) If the required action on any grievance falls during a time when classes
225 are not in session, or when the faculty member is not on active

226 employment (such as during a summer term, sabbatical, professional
227 development, or any other approved leave), the deadline for such action
228 shall be extended until fifteen (15) days after the faculty member
229 returns to active employment. The Office of Employee and Labor
230 Relations shall notify the parties when the fifteen (15) day period
231 begins.

232
233 (5) If there is difficulty in meeting any time limit, the UFF representative
234 may sign documents for the grievant. However, the grievant's
235 signature shall be provided prior to the grievance hearing.
236

237 **33.8 Grievance Hearing and University Administration's Decision.**

238
239 (a) **The Grievance Hearing.**

240
241 (1) Selection of UNF-BOT Hearing Officer for the Grievance Hearing.
242 Following the ratification of this Agreement, the President of UNF shall
243 select a pool of three (3) hearing officers. The Hearing Officer chosen
244 to conduct the formal grievance hearing shall thereafter be selected at
245 random by the Office of Employee and Labor Relations in the presence
246 of the grievant's representative by drawing the name of a Hearing Officer
247 from an opaque container, provided that the Hearing Officer is not a person
248 who has been involved in the attempt at informal resolution. The parties
249 may mutually select an individual who is not a member of the pool of
250 Hearing Officers.
251

252 (2) The grievance hearing shall be held not later than fifteen (15) days
253 following the selection of the Hearing Officer. At the hearing, the grievant
254 (and the grievant's representative) and the University Administration shall
255 have the right to present any evidence, including documents, that are
256 relevant to the grievance. Upon request, the grievant and the grievant's
257 representative shall be provided access to all relevant documents. These
258 documents shall be provided not later than three (3) days prior to the
259 hearing.
260

261 (b) **The Decision.**

262
263 (1) The Hearing Officer shall issue a written decision, with rationale, to the
264 grievant, the UFF, and the University Administration within thirty (30) days
265 of the hearing. The Hearing Officer shall also prepare a list of all documents
266 referred to in the decision and presented by either party, and attach the list
267 to the written decision.
268

269 (2) If the University Administration references evidence in the written

270 decision that was not introduced at the hearing, the hearing shall be
271 reconvened in order to give the grievant an opportunity to discuss the
272 evidence. The evidence shall be provided to the grievant and the grievant's
273 representative not later than three (3) days prior to the reconvening of the
274 hearing.
275

276 (c) In the absence of an agreement to extend the period for issuing the decision, the
277 UFF may file for arbitration if the written decision has not been received by the
278 parties by the end of the thirtieth (30th) day following the conclusion of the
279 grievance hearing.
280

281 **33.9 Arbitration.**
282

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

292 (b) **Stipulation to Issues and Arbitrability**
293

294 (1) Prior to the arbitration, the University Administration and the UFF shall
295 stipulate to the issue(s) to be arbitrated. In the event a stipulation is not
296 reached, the arbitrator shall identify the issue(s) based upon the evidence
297 presented.
298

299 (2) **Arbitrability.** Issues of arbitrability shall be bifurcated from the
300 substantive issue(s) and, whenever possible, determined by means of a
301 hearing conducted by conference call. The arbitrator shall have ten (10)
302 days from the hearing to render a decision on arbitrability. If the issue is
303 judged to be arbitrable, another arbitrator shall then be selected to hear the
304 substantive issue(s).
305

306 (c) **Selection of an Arbitrator.**
307

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

316 strike names on the list. The party requesting arbitration shall strike the
317 first name. After each party has struck three (3) names, the last remaining
318 name shall be the arbitrator. Failure of the parties to select an arbitrator
319 within twenty (20) days of receipt of the list from FMCS will be
320 considered a withdrawal of the grievance with prejudice.
321

- 322 (2) In lieu of the selection process set forth in Article 33.9 (c) (1), above,
323 designees of the University Administration and the UFF may meet within
324 seven (7) days after receipt of a notice of intent to arbitrate for the purpose
325 of selecting an independent arbitrator. Provided, however, this alternative
326 selection process shall not be available once a list from FMCS has been
327 requested as specified in Article 33.9 (c) (1), above.
328

329 (d) **Authority of the Arbitrator.**
330

- 331 (1) The arbitrator shall neither add to, subtract from, modify, nor alter the terms
332 or provisions of this Agreement. Arbitration shall be confined solely to the
333 precise issue(s) submitted for arbitration. The arbitrator shall refrain from
334 issuing any statements of opinion or conclusion not essential to the
335 determination of the issues submitted.
336

- 337 (2) ~~Where an administrator has made a judgment involving the exercise of~~
338 ~~discretion, such as decisions regarding evaluation, tenure, or promotion, the~~
339 ~~arbitrator shall not substitute the arbitrator's judgment for that of the~~
340 ~~administrator. Nor shall the arbitrator review such decision except for the~~
341 ~~purpose of determining whether the decision has violated the Agreement.~~
342 If the arbitrator determines that the Agreement has been violated, the
343 arbitrator shall direct the University Administration to take appropriate
344 remedial action, consistent with this Agreement, which the arbitrator may
345 specify.
346

- 347 a. An arbitrator may award back salary when the arbitrator determines
348 that the faculty member is not receiving the appropriate salary from
349 the University Administration. In addition to an award of back
350 salary, the arbitrator may also require the University Administration
351 to make retroactive payment of lost contractual economic benefits
352 that are proven to be directly affected by the award of back salary.
353 ~~However, the arbitrator may not award any other monetary damages~~
354 ~~or penalties.~~
355

- 356 b. If the arbitrator finds that “notice that no further employment will
357 be offered” was not given consistent with the notice provisions of
358 the Nonreappointment Article, and that the notice was given so late
359 that (a) the faculty member was deprived of reasonable opportunity
360 to seek other employment, or (b) the faculty member actually
361 rejected a written offer of comparable employment which the

362 faculty member otherwise would have accepted had notice been
363 timely given, and the arbitrator finds that no other remedy is
364 adequate, the arbitrator may in that instance direct the University
365 Administration to renew the appointment for an additional year.
366

367 c. An arbitrator's decision awarding employment beyond the sixth
368 (6th) year shall not entitle the faculty member to tenure. In cases in
369 which the arbitrator finds procedural error, finds that the decision
370 was not based on the specified criteria, or finds that the decision was
371 based on an unreasonable application of those criteria, the grievant's
372 appointment shall be renewed and the grievant shall be allowed to
373 reapply for tenure under the same conditions and with the same
374 protections under this Agreement that would apply to any other
375 faculty member. The arbitrator shall retain jurisdiction to ensure
376 that the grievant's rights are not violated during the reapplication
377 process. In no instance may an arbitrator award tenure or promotion.
378

379 (e) **Hearing and Decision.**

380
381 (1) The hearing shall commence within thirty (30) days of the arbitrator's
382 acceptance of selection, or as soon thereafter as is practicable.
383

384 (2) Except as modified by the provisions of this Agreement, the arbitration
385 proceeding shall be conducted in accordance with the rules and procedures
386 of the American Arbitration Association.
387

388 (3) The arbitrator shall issue the decision within thirty (30) days of the close of
389 the hearing or the submission of briefs, whichever is later, unless additional
390 time is agreed to by the University Administration and the UFF or grievant
391 (if the grievant is representing himself or herself). The decision shall be in
392 writing and shall set forth findings of fact, reasoning, and conclusions on
393 the issues submitted.
394

395 (f) **Effect of Decision.** The decision or award of the arbitrator shall be final and
396 binding upon the Board, the University Administration, the UFF, and the grievant,
397 provided that either party may appeal to an appropriate court of law, pursuant to
398 Chapter 682, Florida Statutes, any decision that was rendered by the arbitrator
399 acting outside or beyond the arbitrator's jurisdiction.
400

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

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- (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.