

## ARTICLE 11 GRIEVANCE AND ARBITRATION PROCEDURE

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

11.2 Definitions and Forms. As used in this Article:

(a) The term "grievance" shall mean a dispute filed on a form referenced in Section 11.2(d) concerning the interpretation or application of a specific term or provision of this Agreement, subject to those exclusions appearing in other Articles of this Agreement. The grievance must explicitly specify the term of this Agreement that has **allegedly** been violated, or that is in question, and **propose a remedy** how this affects the Grievant. For an item to be grievable, the grievance must allege a procedural violation of this Agreement. Decisions made by the University which followed appropriate processes are not grievable.

(b) The term "grievant" shall mean an employee or group of employees who has/have filed a grievance in a dispute over a provision of this Agreement which confers rights upon the employee(s). In accordance with state law, the UFF may file a chapter grievance on behalf of a person, a group of people, or the chapter itself. In order to process a chapter grievance submitted on behalf of a group of employees, the grievance must identify the group with sufficient specificity to allow the University to identify the individual members. A chapter grievance shall identify the specific remedy sought for the members.

(c) A chapter grievance or a grievance of a decision made by the President or Provost may be initiated at Step 2. The parties may agree to consolidate grievances of a similar nature to expedite the review process.

(d) Grievance Forms. Each grievance, request for review, and notice of arbitration must be submitted in writing on the appropriate form attached to this Agreement as Appendix X, and shall be signed by the grievant. All grievance forms shall be dated and assigned an identifying number by the General Counsel's office when the grievance is received. If there

is difficulty in meeting any time limit, the UFF representative may sign such documents for the grievant; however, grievant's signature shall be provided prior to the Step 1 meeting or Step 2 review if filed directly at Step 2. All subsequent grievance forms shall be filed by email, to the University's Office of the General Counsel , and will contain the identifying grievance number once assigned.

~~11.3 Burden of Proof. The burden of proof in all grievances shall be on the employee.~~

11.4 Representation. UFF shall have the exclusive right to represent any employee in a grievance unless an employee elects self-representation or to be represented by legal counsel. If an employee elects not to be represented by UFF, the University shall promptly inform UFF in writing of the grievance. The resolution of any individually processed grievance shall not be inconsistent with the terms of this Agreement and for this purpose UFF shall have the right to have an observer present at all meetings called to discuss such grievance and shall be sent copies of all decisions at the same time as they are sent to the other parties.

11.5 Grievance Representatives. UFF shall annually furnish to the University a list of all persons authorized to act as grievance representatives and shall update the list as needed. The UFF grievance representative shall have the responsibility to meet all classes, office hours, and other duties and responsibilities incidental to the assigned workload. Such representative shall have the right during times outside of those hours scheduled for these activities to investigate, consult, and prepare grievance presentations and attend grievance hearings and meetings. Should any hearings or meetings with the Vice Provost of Assessment and Instruction, Provost, or their designees necessitate rescheduling of assigned duties, the representative may, with the approval of the appropriate administrator, arrange for the rescheduling of such duties or their coverage by colleagues. Such approval shall not be unreasonably withheld.

11.6 Appearances.

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

(b) Prior to participation in any such proceedings, conferences, or meetings, the employee shall make arrangements acceptable to the appropriate supervisor for the performance of the employee's duties. Approval of such arrangements shall not be unreasonably withheld.

Time spent in such activities outside regular working hours shall not be counted as time worked.

#### 11.7 Formal Grievance Procedure.

##### (a) Filing.

(1) A grievance shall be filed (Appendix "X") with the General Counsel's office, with a copy to the Provost's office, or his/her representative at Step 1. In all cases, a grievance must be filed within twenty (20) calendar days following the act or omission being grieved, or the date on which the employee knew or reasonably should have known of such act or omission if that date is later. Twenty (20) calendar days shall be determined by a receipt executed by the office receiving the grievance, or if mailed, by the date of mailing as determined by the postmark.

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

##### (c) Postponement.

The grievant may, in the timely-filed written grievance at Step 1, request the postponement of any action in processing the grievance formally for a period of up to twenty (20) calendar days, during which period efforts to resolve the grievance informally shall be made. The initial such request shall be granted. Upon the grievant's written request, additional extensions may be granted by the University, unless to do so would impede resolution of the grievance. Upon request, the Provost or his/her designee shall, during the postponement period(s), arrange an informal meeting between the appropriate administrator and the grievant. The grievant shall have the right to representation by the UFF during attempts at informal resolution of the grievance. The grievant may, at any time, terminate the postponement period by giving written notice to the Provost or his/her designee that the grievant wishes to proceed with the Step 1 meeting. If the postponement period, or any mutually agreed to extension thereof, expires without such written notice, the grievance shall be deemed informally resolved to the grievant's satisfaction and need not be processed further.

(d) Step 1.

- (1) Meeting. The Vice Provost of Assessment and Instruction or his/her representative and the grievant and the grievant's representative shall meet within ten (10) days following (a) receipt of the grievance if no postponement is requested, or (b) receipt of written notice that the grievant wishes to proceed with a Step 1 meeting. At the Step 1 meeting, the grievant shall have the right to present any evidence in support of the grievance, and the grievant and/or the UFF representative or the grievant's legal counsel (if selected pursuant to Section 11.4), and the Vice Provost of Assessment and Instruction or his/her representative, shall discuss the grievance.
- (2) Decision. The Vice Provost of Assessment and Instruction or his/her representative shall issue a written decision, stating the reasons therefore, to grievant's Step 1 representative within seven (7) days following the conclusion of the meeting. Seven days shall be determined by a receipt executed by the office receiving the grievance, if hand-delivered, or by the date of mailing as determined by the postmark or email, if mailed or emailed. In the absence of an agreement to extend the period for issuing the Step 1 decision, the grievant may proceed to Step 2 if the grievant's Step 1 representative has not received the written decision by the end of the 10th day following the conclusion of the Step 1 meeting. A copy of the decision shall be sent to the grievant and, if the grievant elected self-representation or representation by legal counsel, to the UFF grievance representative.
- (3) Documents. All documents referred to in the decision and any additional documents presented by the grievant shall be attached to the decision, together with a list of these documents.

(e) Step 2.

- (1) Review. If the grievance is not satisfactorily resolved at Step 1, the grievant may file a written request for review (Appendix "\_\_") with the Provost or designee within ten (10) calendar days following receipt of the Step 1 decision by grievant's Step 1 representative. Ten (10) calendar days shall be determined by a receipt executed by the office receiving the grievance if hand-delivered, or by the date of mailing as determined by the postmark or email, if mailed or emailed.
- (2) Meeting. The Provost or designee and the grievant and the grievant's representative shall meet no later than seven (7) calendar days following receipt of written notice of request for a Step 2 review. At the Step 2 meeting, the grievant shall have the

right to present any evidence in support of the grievance, and the grievant and/or the UFF representative or the grievant's legal counsel (if selected pursuant to section 11.4), and the Provost or designee shall discuss the grievance.

- (3) Decision. The Provost or designee shall issue a written decision, stating the reasons for the decision to grievant's Step 2 representative within five (5) calendar days following the conclusion of the review meeting. Five days shall be determined by a receipt executed by the office receiving the grievance by hand-delivery, or by the date of mailing as determined by the postmark or email, if mailed or emailed. In the absence of an agreement to extend the period for issuing the Step 2 decision, UFF may proceed to Step 3 if the grievant's Step 2 representative has not received the written decision by the end of the 10th calendar day following the conclusion of the Step 2 meeting. Step 2 decisions in grievances not involving alleged procedural violations are final and binding. A copy of the decision shall be sent to the grievant and to UFF if the grievant elected self-representation or representation by legal counsel.

(f) Step 3 Arbitration.

- (1) Filing. If a grievance alleging a procedural violation has not been satisfactorily resolved at Step 2, UFF may, upon the request of the grievant, proceed to arbitration by filing a written notice of the intent to do so (Appendix "X"). Notice of intent to proceed to arbitration must be filed at the Provost's office within ten (10) calendar days after receipt of the Step 2 decision by grievant's Step 2 representative, and must be signed by the grievant and a UFF representative. Ten (10) days shall be determined by a receipt executed by the Provost's office, or by the date of mailing as determined by the postmark or email. The grievance may be withdrawn at any time by the grievant or by the UFF President at any point during Step 3. The parties shall stipulate to the issue(s) prior to the arbitration. In the event a stipulation is not reached, the parties shall proceed to a hearing on arbitrability pursuant to Section 11.7(f)(4).

(2) Selection of Arbitrator.

- a. Representatives of the Board and UFF shall mutually agree upon the arbitrator charged with hearing any grievance within ten (10) days of filing a notice of intent to proceed to arbitration. In the event the parties cannot mutually agree upon an arbitrator, ~~the UFF shall request a panel from the American Arbitration Association~~ each party will submit 4 names then from which the parties shall alternatively strike arbitrators until a selection is made.

(3) Authority of the Arbitrator.

- a. The arbitrator shall neither add to, subtract from, modify, nor alter the terms or provisions of this Agreement. Arbitrations shall be confined solely to the application of this Agreement and the ~~precise procedural~~ issue(s) submitted for arbitration. The arbitrator shall refrain from issuing any statements of opinion or conclusions not essential to the determination of the issues submitted.
- ~~b. The arbitrator shall not substitute the arbitrator's or another's judgment for that of the University in any matter.~~
- ~~c. If the arbitrator determines that the Agreement has been violated, the arbitrator shall direct the University to take appropriate action. ~~correct any procedural violations and reapply the applicable procedures.~~~~

(4) Arbitrability. Issues of arbitrability shall be separated 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, an arbitrator shall then be selected to hear the substantive issue(s) in accordance with the provisions of Section 11.7(f)(2).

(5) Conduct of Hearing. The arbitrator shall hold the hearing at the University, unless otherwise agreed by the parties. The hearing shall commence within twenty-five (25) days of the arbitrator's acceptance of selection, or as soon thereafter as is practicable, and the arbitrator shall issue the decision within forty-five (45) calendar days of the close of the hearing or the submission of briefs, whichever is later, unless additional time is agreed to by the parties. The decision shall be in writing and shall set forth findings of fact, reasoning, and conclusions on the issues submitted. Except as modified by the provisions of this Agreement, arbitration proceedings shall be conducted in accordance with the current Labor Arbitration Rules of the American Arbitration Association.

(6) Effect of Decision. The arbitrator's decision shall be final and binding upon the Board, the University, the UFF, and the grievant, provided that either party may appeal to an appropriate court of law a decision that was rendered by the arbitrator

acting outside of or beyond the arbitrator's jurisdiction, pursuant to this Agreement and the Florida Arbitration Code as defined by law.

- (7) Fees and Expenses. The parties shall equally divide all arbitration fees and expenses. Fees and expenses charged by an arbitrator for cancellation after withdrawal is the responsibility of the withdrawing party. Each party shall bear the cost of preparing and presenting its own case including payment of expenses and compensation for its own representatives, attorneys, and witnesses. The party desiring a transcript of the arbitration proceedings shall provide notice to the other party of its intention to have a transcript of the arbitration made prior to the arbitration. The party desiring such transcript shall be responsible for scheduling a stenotype reporter to record the proceedings. The party originally requesting a transcript of the proceedings shall pay for any appearance fee of the court reporter.

11.8 Filings and Notification. All documents, except the initial filing, required or permitted to be issued or filed pursuant to this Article may be transmitted by email, fax, United States mail, or any other recognized delivery service. If any action falls due on a Saturday, Sunday, or University recognized holiday, the action will be considered timely if it is accomplished by 5:00 P.M. on the following business day.

11.9 Precedent. No complaint informally resolved, or grievance resolved at either Step 1 or 2, shall constitute a precedent for any purpose unless agreed to in writing by the Board of Trustees or representatives and the UFF acting through its President or representative.

11.10 Reprisal. No reprisal of any kind will be made by the Board, the University, or the UFF against any grievant, any witness, any UFF representative, or any other participant in the grievance procedure for such participation.

11.11 Records. All written materials pertinent to a grievance shall be maintained separately from the evaluation file of the grievant or witnesses, except decisions resulting from arbitration or settlement.

11.12 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 forty-five (45) calendar days shall be deemed withdrawn and resolved in accordance with the decision issued at the prior Step.