

Article 20

Grievance Procedure and Arbitration

20.1 Purpose. The parties encourage the informal resolution of grievances whenever possible. The purpose of this procedure is to promote prompt and efficient resolution of grievances. This procedure shall be the sole and exclusive method for resolving grievances.

20.2 Definitions. As used herein:

A. "Grievance" shall mean a dispute filed on the appropriate grievance form (attached to this procedure) concerning the interpretation or application of a specific term or provision of the Collective Bargaining Agreement, subject to those exclusions appearing in other articles of the agreement. The parties agree that counsels do not constitute disciplinary action. Further, since the parties do not intend that this grievance procedure be a device for appellate review, the University's response to a recommendation of a hearing officer or other individual or group having appropriate jurisdiction in any other procedure shall not be an act or omission giving rise to a grievance under this procedure.

B. "Grievant" shall mean UFF, a member of the bargaining unit, or group of members of the bargaining unit who has/have filed a grievance in a dispute over a provision of the Collective Bargaining Agreement. The UFF may file a grievance in a dispute over a provision of this Agreement which confers rights upon the UFF. Where several employees have essentially the same grievance, the parties may agree to consolidate the grievances. Where the parties agree to consolidation one grievance form may be attached bearing the signature of the grievants. A separate mutual agreement must be obtained to maintain the grievances as consolidated at each step of the grievance and arbitration process.

C. Grievance Form Requirements. Each grievance, request for review and notice of arbitration must be submitted in writing on the appropriate grievance form (attached to this procedure) and shall be signed by the grievant. 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 2 meeting. All grievance forms shall be dated when the grievance is received by the University. The grievance forms may be filed by facsimile, United States mail, or any other recognized means of delivery, excluding electronic mail.

20.3 Resort to Other Procedures. It is the intent of the parties to first provide a reasonable opportunity for resolution of a dispute through the grievance procedure and arbitration process. If prior to seeking resolution of a dispute by filing a grievance hereunder, or while the grievance proceeding is in progress, the grievant requests, in writing, resolution of the matter in any other forum, whether administrative or judicial, the University shall have no obligation to entertain or proceed further with the grievance under this grievance procedure. As an exception to this provision, a grievant may file a federal EEOC charge while the grievance is

in progress when such filing becomes necessary to meet federal filing deadlines pursuant to 42 U.S.C. section 2000e et seq.

20.4 Burden of Proof. In all grievances except disciplinary grievances, the burden of proof shall be on the employee. In disciplinary grievances, the burden of proof shall be on the University.

20.5 Representation. The UFF shall have the exclusive right to represent any employee in a grievance filed hereunder, unless an employee elects self-representation or to be represented by legal counsel. If an employee elects not to be represented by the UFF, the University shall promptly inform the UFF in writing of the grievance. No resolution of any individually processed grievance shall be inconsistent with the terms of this Agreement and for this purpose the UFF shall have the right to have an observer present at all meetings 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 other parties.

20.6 Identification of Grievance Representatives. UFF shall annually provide to the University a list of all persons authorized to act as UFF grievance representatives and shall update the list as needed.

20.7 Duties of Grievance Representatives and Grievant.

A. The UFF grievance representative shall have the responsibility to meet all classes, office hours, and other duties and responsibilities incidental to the assigned workload. Some of these activities are scheduled to be performed at particular times. 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 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.

B. Prior to participation in any grievance proceedings, conferences, or meetings, the grievant shall make arrangements acceptable to the appropriate supervisor for the performance of the grievant'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.

C. When an employee participates during working hours in an arbitration proceeding or in 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.

20.8 Formal Grievance Procedure.

A. Filing.

(1). A grievance shall be filed with the designated university representative at Step 1 within thirty (30) days following the act or omission giving rise thereto, or the date on which the grievant knew or reasonably should have known of such act or omission if that date is later. The expiration of the thirty-day period shall be evidenced by a receipt executed by the office receiving the grievance, or by the date of mailing as determined by the postmark. The grievance may be amended one time, prior to the Step 2 meeting.

(2). The filing of a grievance constitutes a waiver of any rights to judicial review of agency action pursuant to Chapter 120, Florida Statutes, or to the review of such actions under university procedures which may otherwise be available to address such matters. This grievance procedure shall be the sole review mechanism for resolving disputes regarding rights or benefits provided exclusively by the Collective Bargaining Agreement. Only those acts or omissions and sections of the Collective Bargaining Agreement identified at the initial filing or as amended in one (1) above may be considered at subsequent steps.

(3). The grievant may seek redress of alleged salary discrimination by filing a grievance under the provisions of this article. An act or omission giving rise to such a grievance may be the employee's receipt (including the posting of an employee's salary warrant or pay 'stub' to the GEMS website for those employees who receive their pay by direct deposit) of the employee's salary warrant for the first full-pay period in which the annual salary increases referenced in the article concerning salary are reflected.

B. Time Limits. All time limits may be extended by mutual agreement of the parties. Upon failure of the University to provide a decision within the time limits provided in this Article, 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, the grievance shall be deemed to have been resolved by the decision at the prior step.

C. Step 1. All grievances shall be placed in informal resolution status for thirty (30) days unless both the University and UFF agree otherwise. During the informal resolution period efforts to resolve the grievance informally shall be made. Additional extensions may be granted upon mutual agreement. Upon request of the grievant or grievant's representative, the university representative shall, during the informal resolution 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. If the grievance is not satisfactorily resolved during the initial informal resolution period, the grievant may give written notice requesting Step 2 review within seven (7) days from the expiration of the initial Step 1 period. If the grievant does not request a Step 2 review within seven (7) days from the expiration of the initial informal resolution period or if any extension of that period expires without the grievant filing a request for Step 2 review, the grievance shall

be deemed informally resolved to the grievant's satisfaction and need not be processed further. The expiration of the seven (7) day period shall be evidenced by a receipt executed by the office receiving the request for Step 2 review, or by the date of mailing as determined by the postmark.

D. Step 2.

(1). Meeting. The designated university representative and the grievant and/or the grievant's representative shall agree to meet within fifteen (15) days following receipt of the written notice requesting 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 grievant's representative or the grievant's legal counsel (if selected pursuant to 20.5. Representation) and the designated university representative shall discuss the grievance.

(2). Decision. The designated university representative shall issue a written decision, stating the reasons therefore, to grievant's Step 2 representative within thirty (30) days following the conclusion of the meeting. The expiration of the thirty-day period shall be evidenced by a receipt executed by the office receiving the grievance, or by the date of mailing as determined by the postmark. A copy of the decision shall be sent to the grievant, to the grievant's representative and to UFF if grievant elected self-representation or representation by legal counsel.

(3). Documents. All documents referred to in the Step 2 decision and any additional documents presented by the grievant shall be attached to the decision, together with a list of these documents. In advance of the Step 2 meeting, the grievant shall have the right, upon written request, to a copy of any identifiable documents relevant to the grievance.

E. Step 3 Arbitration.

(1). Filing. If the grievance 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. Notice of intent to proceed to arbitration must be filed with the designated university representative within thirty (30) days after receipt of the Step 2 decision by grievant's Step 2 representative and shall be signed by the grievant and the UFF President or representative. The expiration of the thirty-day period shall be evidenced by a receipt executed by the office receiving the grievance, or by the date of mailing as determined by the postmark. The grievance may be withdrawn at any time by the grievant or by the UFF President or representative at any point prior to issuance of the arbitrator's decision. The parties shall stipulate to the issue(s) prior to the arbitration. In the event a stipulation is not reached, the parties shall provide their recommended issues to the arbitrator, who shall decide the issue(s) to be arbitrated based upon the submitted evidence. proceed to a hearing on arbitrability as described in Article 20.8(E)(4) below.

(2). Selection of Arbitrator. Representatives of the University and the UFF shall meet within ninety (90) days after the execution of this Agreement for the

~~purpose of selecting an Arbitration Panel of seven (7) members. Once a grievance is escalated to Arbitration, the parties may confer to mutually agree on an arbitrator. Otherwise, the moving party shall file a request with American Arbitration Association (AAA) for a Panel of arbitrators.~~ Within fourteen (14) days after receipt of the Panel ~~a notice of intent to arbitrate~~, representatives of the University and UFF shall meet for the purpose of selecting an arbitrator from the Panel. Selection shall be by mutual agreement or by alternately striking names from the Arbitration Panel list until one name remains. The right of the first choice to strike from the list shall be determined by the flip of a coin. ~~If the parties are unable to agree to a panel of arbitrators, they shall follow the normal American Arbitration Association procedure for the selection of an arbitrator. The parties may mutually select as the arbitrator an individual who is not a member of the Arbitration Panel.~~ The arbitration shall be held within sixty (60) days following the selection of the arbitrator.

(3). Authority of the Arbitrator.

a. The arbitrator shall neither add to, subtract from, modify, or alter the terms or provisions of the Collective Bargaining Agreement. The arbitrator's decision shall be confined solely to the application and/or interpretation of the Collective Bargaining Agreement and the precise 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. Where an administrator has made a judgment involving the exercise of discretion, such as decisions regarding 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 Collective Bargaining Agreement. If the arbitrator determines that the Collective Bargaining Agreement has been violated, the arbitrator shall direct the University to take appropriate action. An arbitrator may award back salary where the arbitrator determines that the employee is not receiving the appropriate salary from the University, but the arbitrator may not award other monetary damages or penalties. If notice that further employment will not be offered is not given on time, the arbitrator may direct the University to renew the appointment only upon a finding that no other remedy is adequate, and that the notice was given so late that (a) the employee was deprived of reasonable opportunity to seek other employment, or (b) the employee actually rejected an offer of comparable employment which the employee otherwise would have accepted.

c. An arbitrator's decision awarding employment beyond the sixth year shall not entitle the employee to tenure. In such cases the employee shall serve during the seventh year without further right to notice that the employee will not be offered employment thereafter. If an employee is reappointed at the direction of an arbitrator, the President or representative may reassign the employee during such reappointment.

~~(4) 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, an arbitrator shall then be selected to hear the substantive issue(s).~~

~~(5).~~ 4. Conduct of Hearing. The arbitrator shall hold the hearing in Tampa, Florida, 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) 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 expressly specified in this procedure, the provisions of the Florida Arbitration Code, Chapter 682, Florida Statutes, shall not apply. Except as modified by the provisions of the Collective Bargaining Agreement, arbitration proceedings shall be conducted in accordance with the rules and procedures of the American Arbitration Association.

~~(6).~~ 5. Effect of Decision. The decision or award of the arbitrator shall be final and binding upon 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 Section 682.13, Florida Statutes.

~~(7).~~ 6. Venue. For purposes of venue in any judicial review of an arbitrator's decision issued under this agreement, the parties agree that such an appeal shall be filed in the courts in Hillsborough County, Florida, unless both parties specifically agree otherwise in a particular instance.

~~(8).~~ 7. 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 and presenting its own case. The party desiring a transcript of the arbitration proceedings shall provide written notice to the other party of its intention to have a transcript of the arbitration made at least one week prior to the date of the arbitration. The party desiring such transcript shall be responsible for scheduling a court reporter to record the proceedings and shall be solely responsible for the appearance fees of the court reporter and the cost of any transcripts of the proceedings which that party may order. The requesting party shall, at its expense, photocopy the copy of the transcript received from the reporter and deliver the photocopy to the other party within five days after receiving the copy of the transcript from the reporter.

~~(9).~~ 8. 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 thirty (30) days prior to the date the grievance was initially filed.

20.9 Filings and Notification. All other documents required or permitted to be issued or filed may be transmitted by facsimile, United States mail, or any other recognized delivery service, excluding electronic mail. Grievance decisions shall be transmitted to the grievant's representative(s) by personal delivery with written documentation of receipt or by certified mail, return receipt requested. In the event that any action falls due on a Saturday, Sunday, or holiday (as defined in this Agreement), the action will be considered timely if it is accomplished by 5:00 P.M. on the following business day.

20.10 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 President of the University and the UFF acting through its President or representative.

20.11 Processing.

A. The filing or pendency of any grievance or arbitration proceedings under this procedure shall not operate to impede, preclude, or delay the University from taking the action complained of. Reasonable efforts, including the shortening of time limits when practical, shall be made to conclude the processing of a grievance prior to the expiration of the grievant's employment, whether by termination or nonreappointment. An employee with a pending grievance will not continue to be compensated beyond the last date of employment.

B. The University may refuse consideration of a grievance not filed or processed in accordance with this procedure.

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

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

20.14 Inactive Grievances. A grievance which has been filed at Step 3 and on which no action has been taken by the grievant or UFF for ninety (90) days shall be deemed withdrawn and resolved in accordance with the decision issued at the prior Step.

~~20.15 Mediation. Both USF and UFF recognize that an effective mediation program would provide an alternative for the parties to amicably resolve grievances. Following ratification of the USF/UFF Collective Bargaining Agreement, the parties shall work together to jointly plan and develop a mediation program that could become part of the grievance process described within this Agreement. Joint planning activities would include exploration and evaluation of alternative mediation models, formulation of a model for testing at USF and field testing of the model(s) developed with the goal of developing mutually acceptable language for inclusion in the Agreement to implement a mediation program. To that end both parties agree to reopen on this article during the next collective bargaining period following ratification if this Agreement.~~

Non-Binding Mediation. (a) At any point during the grievance process, the parties may elect, by mutual written agreement, to participate in non-binding mediation concerning the grievance. The parties may utilize the Federal Mediation and Conciliation Services (hereafter "FMCS"), but it is not required. If the parties choose to participate in non-binding mediation through a mutual written agreement, then the grievance timelines contained herein shall be suspended, pending the outcome of mediation, from the date of the signed written agreement of the parties to pursue non-binding mediation. Should mediation successfully resolve the grievance, where confirmed by both parties in writing, the grievance shall be deemed closed. Should mediation not successfully resolve the grievance, which shall be documented in writing by both parties, the suspension of the timelines of the grievance shall be dissolved and the grievance process shall proceed as detailed herein.