

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 would have given rise to a grievance had the faculty member remained 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 Academic Affairs 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 department bylaws 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 filed a grievance.

b. the UFF where it has filed a grievance in a dispute over a provision of this Agreement which confers rights upon the UFF.

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. However, this shall not be construed to permit UFF to file a grievance regarding the rights of any faculty member where that faculty member accepts the Administration action.

(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", 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". All pertinent information submitted with the Appendix "C" form, as well as the Grievance Hearing decision, shall be included as an attachment to the Appendix "D" form.

(3) The grievance forms, including the Appendix "H" form, may be filed by means of 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 Academic Affairs if the grievance is hand delivered; by the date recorded on the fax if the grievance is filed by fax; or by the date of mailing as confirmed by the postmark if the grievance is mailed by United States mail.

### 31.3 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. 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, nonreprisal 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 nonreprisal reason for its action, the burden shifts back to the grievant to show that the proffered reason is merely a pretext for reprisal.

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

31.4 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" form and

any accompanying materials are available for pick-up at the Office of Academic Affairs. 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.

### 31.5 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.

31.6 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 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 Section 31.7 are observed. However, if the informal resolution process has not been timely requested, as provided below, the later filed 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 Academic Affairs 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 President's designee in Academic Affairs and the UFF 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 Academic Affairs shall notify the UFF that informal resolution of the dispute is not possible.

(c) Any resolution of the dispute shall be reduced to writing, with copies provided to the grievant, the UFF, and the Office of Academic Affairs.

### 31.7 Filing of a Grievance.

(a) A grievance must be filed with the Office of Academic Affairs on the form shown in Appendix "C" no later than fifteen (15) days following the date of the Office of Academic Affairs' notification to the grievant and the UFF that informal resolution was not possible. Compliance with the fifteen day (15) period shall be evidenced by the recorded date on which the grievance was received by the Office of Academic Affairs.

(b) The grievant may amend the Appendix "C" 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 those acts or omissions identified in the initial or amended Appendix "C" 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, or to the review of such actions under other University procedures that may otherwise be available to address such matters.

(d) Time Limits.

(1) All time limits contained in this Article may be extended by mutual agreement of the University Administration and the UFF.

(2) Upon failure of the University Administration to provide a decision within the time limits provided in this Article, the UFF may appeal to arbitration. Upon the failure of the UFF to file a request for arbitration within the time limits provided, the grievance shall be deemed to have been resolved by the University Administration's decision.

(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.

(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 Academic Affairs 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.

(e) Postponement. The grievant (or UFF) may request the postponement for a period of up to fifteen (15) days of any action in the formal processing of the grievance. The initial such request shall be granted. Additional extensions should be granted unless to do so would impede resolution of the grievance. The grievant may, at any time, terminate the postponement period by giving written notice that the grievant wishes to proceed with the formal grievance hearing.

### 31.8 Grievance Hearing and University Administration's Decision.

(a) The Grievance Hearing.

(1) Selection of 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 Academic Affairs 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 as the hearing officer 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 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.

### 31.9 Arbitration.

(a) Filing. If the grievance has not been satisfactorily resolved after the grievance hearing or through the written decision, and the UFF determines that the case should be arbitrated, the UFF may, upon the request of the grievant, proceed to arbitration by filing a written notice of the intent to do so on the form shown in Appendix "D". The notice of intent to proceed to arbitration must be filed with the Office of Academic Affairs, with a copy to the President, within sixty (60) 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) Creation of the Arbitration Panel.

(1) Designees of the University Administration and the UFF shall meet within sixty (60) days after the ratification of this Agreement for the purpose of selecting an arbitration

panel of no less than seven (7) members.

(2) This panel shall be operative until a successor Agreement is implemented.

(3) If the University Administration and the UFF are unable to agree on a panel of seven (7) arbitrators, the following procedure shall apply. Within seven (7) days following the University Administration's receipt of the UFF's request for arbitration, the University Administration and the UFF shall jointly submit a written request to the Director of the Federal Mediation and Conciliation Service for a list of at least seven (7) professional arbitrators from the Southeast United States with experience in addressing terms and conditions of employment of faculty in higher education. Upon receipt of the list, the University Administration and the UFF shall meet or confer within seven (7) days and, beginning with the UFF, each shall alternately strike, one at a time, names from the list. The last remaining name on the list shall be the arbitrator. The parties shall jointly notify the arbitrator of his/her selection. Either party may object to all names on the list, provided that the objection is made prior to the commencement of the striking process. If this happens, a second joint request for a list shall be made.

(d) Selection of an Arbitrator From the Arbitration Panel.

(1) Designees of the University Administration and the UFF shall meet within seven (7) days after receipt of a notice of intent to arbitrate, for the purpose of selecting an arbitrator from the Arbitration Panel list.

(2) Selection shall be made by drawing the name of an arbitrator from an opaque container. The parties may mutually select as the arbitrator an individual who is not a member of the Arbitration Panel.

(e) 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 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 an offer of comparable employment which the 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.

(f) 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. The decision shall be in writing and shall set forth findings of fact, reasoning, and conclusions on the issues submitted.

(g) 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.

(h) 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.

(i) 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.

31.10 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 or the UFF acting through its President or designee.

31.11 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.

31.12 Inactive Grievances. If a grievance or arbitration request has been filed and has had no required formal action taken by the grievant or the UFF for sixty (60) days, the University Administration or designee shall notify the grievant, the grievant's representative, the UFF/UNF President or designee, and UFF Executive Director that the grievance shall be deemed withdrawn and resolved by the University Administration's decision, unless the required action is taken within the next thirty (30) days following such notice. Such notice shall be transmitted to the

grievant, the UFF/UNF President, and the UFF Executive Director by certified mail, return receipt requested.

### 31.13 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 thirty (30) days after receipt of the President or designee's written decision, using Appendix "D".

(c) An arbitrator shall be selected by the parties not later than seven (7) days following receipt of the Appendix "D" 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 Sections 31.9(e) and (f).

(e) All other provisions of this article shall apply to a grievance filed under this subsection, except as noted above.