

## **ARTICLE 28**

### **GRIEVANCE PROCEDURE AND ARBITRATION**

**28.1 Policy.** The purpose of the Article is to provide for the consideration and resolution of grievances.

(a) The procedures in this Article shall be the sole and exclusive method for resolving the grievances of faculty members except where explicitly specified elsewhere in this Agreement. A grievance may have three (3) stages:

- (1) Step 1. Hearing by the dean or designee;
- (2) Step 2. Review by the Provost or designee; and
- (3) Step 3. Arbitration.

(b) The University and UFF agree that problems should be resolved, whenever possible, before the filing of a grievance but within the time limits for filing grievances. Participants are encouraged to informally resolve problems at each step in the grievance process.

(c) **Effect of Reclassifications.** A faculty member who is reclassified to an out-of-unit classification shall, until the end of the Fall, Spring, or Summer semester following the semester in which the reclassification becomes effective, 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 the bargaining unit.

(d) No resolution of any grievance shall be inconsistent with the terms of this Agreement, unless agreed to in writing by the University and UFF.

**28.2 Definitions.**

(a) The term "grievance" shall mean a dispute concerning the interpretation or application of a specific term or provision of this Agreement, subject to specific exclusions appearing in other articles of this Agreement.

(b) The term "grievant" shall mean a faculty member, a group of faculty members, or UFF, who file a grievance.

(c) A grievance filed by UFF shall be initiated at Step 2.

(d) The parties may agree to consolidate grievances of a similar nature to expedite the review process.

**28.3 Representation.**

(a) UFF shall have the right to represent any faculty member in a grievance filed under this Article unless a faculty member elects self-representation or to be represented by legal counsel.

(b) UFF grievance Representatives. UFF shall annually furnish to the Office of the Provost a list of all persons authorized to act as grievance Representatives and shall update the list as needed.

(c) If a faculty member elects not to be represented by UFF, the University shall inform the UFF Grievance Chair or designee in writing and attach a copy of the filed grievance materials.

(1) UFF shall have the right to have an observer present at all meetings called for the purpose of discussing such grievance or pre-grievance dispute with the grievant. The UFF Grievance Chair shall be notified in writing at the same time as the other parties of the date, time, and location of all meetings called for the purpose of discussing a grievance dispute.

(2) UFF shall be sent copies of all decisions at the same time as they are sent to the other parties.—

#### 28.4 Appearances.

(a) The grievant must attend the Grievance Hearing. If the grievant does not attend and has no legitimate excuse for his/her absence, the grievance shall be deemed to be withdrawn.

(b) If participating in any meetings pursuant to a grievance or arbitration necessitates rescheduling of the faculty member's assigned scheduled duties, as defined pursuant to the Assignment article, the faculty member shall make, with the concurrence of the chair or supervisor, reasonable arrangements for the performance of such duties.

#### 28.5 Burden of Proof.

(a) In all grievances except grievances involving disciplinary action brought pursuant to Article 27 the burden of proof shall be on the faculty member.

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

28.6 Filing a Grievance. Except as explicitly specified elsewhere in the Agreement, this grievance procedure shall be the sole review mechanism for resolving disputes regarding rights or benefits that are provided exclusively by this Agreement. The filing of a grievance constitutes a waiver of any rights to review pursuant to Chapter 120, Florida Statutes, or to the review of such actions under University procedures that may otherwise be available to address such matters.

(a) In cases involving disciplinary action, a grievance must be received by the Vice President for Human Resource Services on the form shown in Appendix "C" within fifteen (15) days following receipt of the Notice of Discipline. In all other cases, a grievance must be received no later than forty-five (45) days following the act or omission giving rise to the grievance, 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 faculty member will lose all rights to a review of the dispute-unless the faculty member files a grievance within the time specified. Upon receipt of the grievance, the

University shall advise UFF of the dean or designee who will serve as the University representative and hearing officer at Step 1. In the case of discipline involving termination or suspension, any challenge to the university's decision shall be initiated at the arbitration level. The University or UFF may request an assessment meeting in an effort to find a resolution without arbitration. If such assessment meeting is requested, the parties shall participate in the meeting in a good faith effort to resolve the matter. An assessment meeting must be scheduled to occur within ten (10) days of the University's final decision to impose discipline and shall not extend the deadline to request arbitration. The occurrence or non-occurrence of an assessment meeting does not prohibit the parties from making informal attempts to resolve the matter.

(b) Forms.

(1) Grievance Form. Each grievance must be submitted in writing on the form shown in Appendix "C", citing which provisions of the Agreement have been violated and identifying any designee. The Appendix "C" grievance form shall be signed by the grievant.

(2) Arbitration Form. Each notice of arbitration shall be submitted in writing on the form shown in Appendix "D".

(3) The grievance forms may be filed by means of fax, United States Postal Service, e-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 receipt if the grievance is hand delivered; by the date recorded on the fax if it the grievance is filed by fax; by the date of e-mail, or postmark if the grievance is mailed by United States Postal Service.

(4) Amendment of the Appendix "C" Grievance Form. The grievant may amend the Appendix "C" form one time prior to the Grievance Hearing.

(5) Only those acts or omissions identified at the initial filing, or added as amendments pursuant to 28.6(b)(4) above, may be considered at arbitration.

(c) Deadlines.

(1) If any action falls due on a Saturday, Sunday, or Holiday, the action shall be considered timely if it accomplished by 5:00 p.m. on the following business day.

(2) If, after the filing of a grievance, a required action on the grievance falls during a time period when the faculty member is on approved leaves pursuant to the provisions of Article 21.6, 21.7, 21.8, 21.10(a)(1), 21.10(a)(3) or 21.10(c), the deadline for such action shall be extended until fifteen (15) days after the faculty member returns from the leave.

(3) Upon failure of the University to provide a grievance decision within the time limits provided in this Article, the grievant or UFF, where appropriate, may file an appeal at the next step.

(4) Upon the failure of the grievant or UFF, where appropriate, to file an appeal within the time limits, the grievance shall be deemed to have been resolved by the decision at the prior step.

(5) All time limits contained in this Article may be extended by mutual agreement of the parties in writing.

(d) Postponements.

(1) Except for any grievances alleging in whole or part a violation of Article 27, the grievant may submit a written request to the hearing officer at the appropriate step for the postponement of any action in processing the grievance formally for a period of up to fifteen (15) days. The initial such request shall be granted.

(2) Additional extensions may be granted by the hearing officer at the appropriate step.

(3) The grievant shall have the right to representation by UFF during attempts at informal resolution of a dispute or grievance.

(4) The grievant may, at any time, terminate the postponement period by giving written notice to the hearing officer at the appropriate step.

28.7 Step 1 Grievance Hearing. The dean or designee shall be the hearing officer at Step 1. The dean or designee shall schedule a Grievance Hearing, which shall take place no later than fifteen (15) days following receipt of the grievance.

(a) The dean or designee shall provide the grievant and UFF with any additional documents on which the action was based no later than three (3) days prior to the Grievance Hearing, whenever possible. If additional documents become available after the Grievance Hearing, the dean or designee shall offer the grievant and designated UFF representative the opportunity to review and respond to these documents in a continuation of the Grievance Hearing.

(b) The grievant shall have the right to present any evidence in support of the grievance at the Grievance Hearing.

(c) Decision. The dean or designee shall render a written decision, stating the reasons for the decision, to the grievant, the grievant's representative, the UFF Grievance Chair, and the Provost or designee within ten (10) days following the conclusion of the hearing.

(1) No documents shall be referred to in the decision that have not been provided to the grievant and the UFF representative or the grievant's legal counsel.

(2) Any new documents presented at the hearing shall be included in the University response.

28.8 Step 2 Grievance Review.

(a) Review. The Provost or designee shall be hearing officer at Step 2. The deadline for requesting a Step 2 grievance is twenty (20) days following the issuance of the Step 1 decision. The Provost or designee and the representative of the grievant shall meet for the purpose of reviewing the matter no later than ten (10) days following the receipt of the request.

(b) Decision. The Provost or designee shall issue a written decision, stating the reasons for the decision, to the grievant, the grievant's representative, and UFF Grievance Chair within ten (10) days following the conclusion of the review meeting.

(1) No documents shall be relied upon in the decision that the grievant and the UFF representative or the grievant's legal counsel have not had an opportunity to respond to.

(2) Any new documents presented at the hearing shall be included in the University response.

(c) In the absence of an agreement to extend the period for issuing the Step 2 decision, UFF may proceed to arbitration if the grievant's Step 2 representative has not received the written decision by the end of the 10th day following the conclusion of the Step 2 hearing.

## 28.9 Arbitration.

(a) 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 on the form shown in Appendix "D".

(1) Notice of intent to proceed to arbitration must be within forty-five (45) days after receipt of the Step 2 decision or, in the event of suspension or termination, forty-five (45) days from the University's act or omission giving rise to the arbitration. The request for arbitration shall be signed by the grievant and UFF President or designee.

(2) The grievance may be withdrawn at any time by the grievant or by UFF.

### (b) Stipulation to Issues and Arbitrability.

(1) The University and UFF shall stipulate to the issue(s) to be arbitrated prior to the arbitration. Only those acts or omissions identified at the initial grievance filing, or added as amendments pursuant to 28.6(b)(4) above, may be considered at arbitration. If 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.

(2) Arbitrability. Issues of arbitrability shall be bifurcated from the substantive issue(s) and determined by means of a hearing, which may be conducted by conference call. The arbitrator shall have fifteen (15) days from the hearing to render a decision on arbitrability.

### (c) Creation of the Arbitration Panel.

(1) Designees of the University and UFF shall meet within ninety (90) days after ratification of this Agreement for the purpose of selecting an arbitration panel of no less than six (6) members.

(2) The panel of six (6) arbitrators shall be determined by the following process. The University and UFF shall each propose six (6) arbitrators. From this list of the twelve (12) names, the parties shall alternately strike names until a permanent panel of six (6) arbitrators has been selected. The right of the first choice to strike from the list shall be determined by a flip of a coin. Arbitrators shall be asked to serve on a rotational basis, the sequence to be determined by lot.

(3) If the number of arbitrators willing to serve on the panel falls below six (6), the University and UFF shall each submit an additional three (3) names for each vacancy. The striking procedure described above shall be used to bring the total in the panel to six (6), except

that the right of the first choice to strike from the list shall go to whichever party went second in the previous panel selection.

(4) The arbitration panel shall be operative until a successor Agreement is implemented.

(d) Authority of Arbitrator.

(1) The arbitrator shall neither add to, subtract from, modify, nor alter the terms or provisions of this Agreement.

(2) Arbitration shall be confined solely to the application and/or interpretation of this Agreement and the precise issue(s) submitted for arbitration.

(3) The arbitrator shall refrain from issuing any statements of opinion or conclusions not essential to the determination of the issues submitted. Where an administrator has made a reasonable judgment involving the exercise of permissible discretion, such as subjective evaluative 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 this Agreement.

(4) If the arbitrator determines that the Agreement has been violated, the arbitrator shall direct the University to take appropriate remedial action.

(5) An arbitrator may award back salary and related retirement contributions where the arbitrator determines that the faculty member is not receiving the appropriate salary from the University. The arbitrator may not award other monetary damages or penalties.

(6) An arbitrator's decision awarding employment beyond the tenure probationary period shall not entitle the faculty member to tenure. In tenure cases in which a substantive violation of this Agreement has been found, the remedy shall be for the grievant to be granted an additional year employment and reconsidered for tenure without prejudice at the earliest opportunity.

(7) 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 finding that no other remedy is adequate, and the notice was given so late that (a) the employee was deprived of reasonable opportunity to seek comparable employment, or (b) the employee actually rejected an offer of comparable employment which the employee otherwise would have accepted.

(e) Scheduling of Hearing.

(1) The arbitrator shall hold the hearing in Gainesville unless otherwise agreed to by the parties. The parties shall provide the arbitrator with the schedules of the grievant, the grievant's representative, the UFF grievance representative (if different from the grievant's representative), the University representatives, and the desired witnesses. The hearing shall commence no later than sixty (60) days after the arbitrator's acceptance of selection, or as soon thereafter as is practicable.

(2) The arbitrator shall notify all parties of the date, time, and place of the arbitration hearing as soon as possible but in no case later than thirty (30) days before the hearing date.

(f) Conduct of Hearing. Except as modified by the provisions of this Agreement, arbitration proceedings shall be conducted in accordance with the rules and procedures of the American Arbitration Association.

(g) 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 Alachua County, Florida, unless both parties specifically agree otherwise in a particular instance. In an action commenced in Alachua County, neither the University nor UFF will move for a change in venue based upon the defendant's residence in fact if other than Alachua County.

(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 one hundred and twenty (120) days prior to the date the grievance was initially filed.

(i) Fees and Expenses.

(1) 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.

(2) 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 (1) week prior to the date of the arbitration.

a. The party desiring such transcript shall be responsible for the scheduling a stenotype reporter to record the proceedings.

b. The parties shall share equally the appearance fee of the stenotype reporter and the cost of obtaining an original transcript and one (1) copy for the party originally requesting a transcript of the proceedings.

c. 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 (5) days after receiving the copy of the transcript from the reporter.

(j) 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 UFF acting through its President or designee.

28.10 Decision of the Arbitrator. 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 and UFF.

(a) The decision shall be in writing and shall set forth findings of fact, reasoning, and conclusions on the issues submitted. The decision shall not refer to any documents other than those presented at the arbitration hearing.

(b) The arbitrator shall ensure that copies of the decision are sent to the grievant's representative, the UFF Grievance Chair, and the University's representative.

(c) Effect of Decision. The decision or award of the arbitrator shall be final and binding upon the University, UFF, and 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 the Florida Arbitration Code, Chapter 682, Florida Statutes.

28.11 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.

28.12 Implementation. Upon resolution of the grievance, the parties shall implement the remedy within seven (7) days, unless otherwise provided by the award of the arbitrator or by mutual agreement of the parties.