

ARTICLE 11
GRIEVANCE & ~~ARBITRATION~~ PROCEDURE

11.1 Policy.

(a) 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 be the sole and exclusive method for resolving the grievances of employees as defined in this Article. Pursuant to section 1001.741, Florida Statutes, personnel actions or decisions regarding faculty are not subject to arbitration. Arbitration may only be used to resolve a grievance when required by federal law as determined in the University’s sole discretion. In the event Florida law is revised to allow arbitration, the process in Appendix DX will be followed. If the process in Appendix DX conflicts with the revised law, the parties will renegotiate the arbitration process.

(a)(b) 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, any University representative, or any other participant in the grievance procedure for such participation.

11.2 Definitions and Forms. As used in this Article:

(a) Definitions.

(1) The term “grievance” means:

a. A dispute filed on a form referenced in Section 11.2(b) 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.

b. The grievance must specify:

1. the act that allegedly violates this Agreement, including the name(s) of any individual(s) who committed the act;

2. the term(s) of this Agreement that has allegedly been violated;

3. how the act violates the term(s) of the Agreement, and;

- 39 **4.** propose an appropriate and specific remedy.
- 40 **(2)** The term “grievant” means:
- 41 **a.** An employee or group of employees who has/have filed a grievance
- 42 in a dispute over a provision of this Agreement which confers rights
- 43 upon the employee(s).
- 44 **b.** The UFF chapter may file a grievance on behalf of a person, a group
- 45 of people, or the chapter itself, in a dispute over a provision of this
- 46 Agreement which confers rights upon the employee(s).
- 47 **1.** In order to process a chapter grievance submitted on behalf
- 48 of a group of employees, the grievance must identify the
- 49 group with sufficient specificity to allow the University to
- 50 identify the individual members that are affected by the
- 51 chapter grievance.
- 52 **2.** A chapter grievance shall identify the specific remedy
- 53 sought for the members.
- 54 **c.** A chapter grievance or a grievance of a decision made by the
- 55 President or Provost may be initiated at Step 2.
- 56 **(3)** The parties may agree in writing to consolidate grievances of a similar
- 57 nature to expedite the review process. However, the parties are not
- 58 obligated to any such consolidation.
- 59 **(b)** Forms.
- 60 **(1)** Grievance Form. Each grievance must be typed and submitted in writing on
- 61 the form attached to this Agreement as Appendix “C”, with all pertinent
- 62 information explaining the disagreement or controversy, identifying the
- 63 provision(s) at issue. The grievant’s signature, confirming the grievant’s
- 64 intent to proceed with the grievance, shall be provided prior to the grievance
- 65 hearing.
- 66 ~~**(2)** Arbitration Form. Each notice of arbitration must be submitted in writing~~
- 67 ~~on the form shown in Appendix “#” (Notice of Arbitration). All pertinent~~
- 68 ~~information submitted with the Grievance Form, as well as the Grievance~~
- 69 ~~Hearing decision, must be included as an attachment to the Notice of~~
- 70 ~~Arbitration form. The Notice of Arbitration form must be signed by the~~
- 71 ~~grievant and a UFF representative.~~
- 72 **~~(3)~~(2)** All grievance forms must be electronically filed via email with the Office
- 73 of the General Counsel (ogc@floridapoly.edu).
- 74 **a.** All grievance forms will be dated and assigned a case number when
- 75 the form is received by the Office of the General Counsel.

115 office hours, and other duties and responsibilities incidental to the
116 assigned workload.

117 **b.** Such representative has the right during times outside of those hours
118 scheduled for these activities to investigate, consult, and prepare
119 grievance presentations and attend grievance hearings and meetings.

120 **c.** Should any hearings or meetings with the Vice Provost of Academic
121 Affairs, Provost, or their designees necessitate rescheduling of
122 assigned duties, the representative may, with the approval of the
123 appropriate administrator, arrange for the rescheduling of such
124 duties or their coverage by colleagues. Such approval will not be
125 unreasonably withheld.

126 **(2)** If an employee elects not to be represented by UFF, the University will
127 promptly inform UFF in writing of the grievance, and when the grievance
128 progresses from Step 1 to Step 2 ~~and Step 2 to Step 3.~~

129 **a.** No resolution of any individually processed grievance will be
130 inconsistent with the terms of this Agreement

131 **b.** The UFF will have the right to have an observer present at all
132 meetings called to discuss such grievance and will be sent copies of
133 all decisions at the same time as they are sent to the other parties.

134 ~~**(3)** —When the UFF determines that a grievance lacks merit, UFF may terminate
135 an arbitration arising from that grievance.~~

136 **11.5** Informal Resolution (IR) Procedure (Step 1). The University Administration and the UFF-
137 FPU Chapter agree that problems should be resolved, whenever possible, before the filing
138 of a grievance. Therefore, except as provided under Section 11.2(a)(2)c, no grievance may
139 be filed until the UFF or faculty member has timely requested an informal resolution. The
140 faculty member will have the right to representation by the UFF-FPU Chapter during
141 attempts at informal resolution. If the faculty member is not represented by UFF-FPU at
142 this point, the University will provide prompt notification to the chapter with a copy of the
143 request for IR.

144 **(a)** Faculty are encouraged to request informal resolution as early as practicable.
145 Faculty who wish to preserve their rights to file a grievance must file a request for
146 IR within twenty (20) days of the act or omission giving rise to the dispute, or the
147 date on which the faculty member knew or reasonably should have known of such
148 an act or omission if that date is later.

149 **(b)** If the informal resolution process has been timely requested, as provided below, the
150 later filed grievance will be considered to be timely filed, as long as the other
151 deadlines specified in Article are observed. If the informal resolution process has
152 not been timely requested, as provided below, the right to file a formal grievance
153 will be waived as time-barred.

- 154 (c) All requests for informal resolution must be in writing and submitted to Human
155 Resources (hr@floridapoly.edu) and the Office of the General Counsel
156 (ogc@floridapoly.edu) via email. The request must contain a brief, general
157 description of the dispute, identify the relevant provisions of this Agreement which
158 are at issue, and include dates, times, and locations of the action(s) giving rise to
159 the dispute.
- 160 (d) Upon receipt of a timely-filed request for informal resolution, the parties will have
161 thirty (30) days to attempt to informally resolve the dispute.
 - 162 (1) The thirty (30) day period may be extended upon mutual agreement of the
163 parties.
 - 164 (2) The faculty member may file a formal grievance prior to the expiration of
165 the thirty (30) day period, when:
 - 166 a. Good faith attempts have been made by the grievant to achieve an
167 informal resolution;
 - 168 b. The dispute is time-sensitive, or;
 - 169 c. The parties mutually agree that informal resolution of the dispute is
170 not possible.
- 171 (e) All informal resolutions will be reduced to writing, but will be without precedent
172 or prejudice to the parties.

173 **11.6** Formal Grievance Procedure (Step 2).

- 174 (a) Step 2 Filing.
 - 175 (1) Within fifteen (15) days after the expiration of the thirty (30) day IR period,
176 the grievant or UFF may file a Step 2 grievance consistent with the
177 requirements described in Section 11.2.
 - 178 a. The fifteen (15) days will be calculated from the date on which the
179 grievance is emailed to, and confirmed as received by, the Office of
180 the General Counsel.
 - 181 b. The filing of a formal grievance at Step 2 constitutes a waiver of any
182 rights to judicial review of agency action pursuant to Chapter 120,
183 Florida Statutes, and to the review of such actions under other
184 University procedures that may otherwise be available to address
185 such matters.
 - 186 (2) The grievance may be withdrawn at any time by the grievant or by the UFF
187 President.
- 188 (b) Amended Step 2 Filing.
 - 189 (1) The grievant may amend the Step 2 grievance one (1) time prior to the Step
190 2 meeting, no later than three (3) business days prior to the Step 2 meeting,

191 so long as the factual basis of the complaint is not materially altered.
192 (2) Only those acts or omissions and sections of the Agreement specifically
193 identified in writing at the initial Step 2 filing, or as amended prior to the
194 Step 2 meeting, may be considered at Step 2 ~~or Step 3.~~

195 (c) Request for Documents.

- 196 (1) Upon written request, the grievant and the grievant’s representative will be
197 provided access to all documents relevant to the grievance, except as
198 described in subsection (3).
- 199 (2) If the request is reasonable in scope and relevant to the grievance, these
200 documents will be provided no less than three (3) business days prior to the
201 Step 2 meeting.
- 202 (3) Written Authorization is required for the release of any Limited-Access
203 Records to the UFF representative or the grievant’s legal counsel (if selected
204 pursuant to Section 11.4), as defined under Florida Polytechnic University
205 Rule 6C13-6.008.

206 (d) Step 2 Meeting.

- 207 (1) Timing. The Provost or University Representative and the grievant and the
208 grievant’s representative shall meet no later than fifteen (15) days following
209 the receipt of the Step 2 grievance.
- 210 (2) Procedure. During the Step 2 meeting, the grievant shall have the right to
211 present any evidence in support of the grievance, and the grievant and/or
212 the UFF representative or the grievant’s legal counsel (if selected pursuant
213 to Section 11.4), and the Provost or University Representative will discuss
214 the grievance.
- 215 (3) Decision.

216 a. The Provost or University Representative will issue a written
217 decision, stating the reasons for the decision, ~~including any~~
218 ~~objections to the procedural or substantive arbitrability of the~~
219 ~~grievance,~~ to the grievant and the grievant’s Step 2 representative
220 within thirty (30) days following the conclusion of the Step 2
221 meeting. Thirty (30) days shall be calculated as defined in Section
222 24.5.

223 ~~b. In the absence of an agreement to extend the period for issuing the~~
224 ~~Step 2 decision, UFF may proceed to Step 3 if the grievant’s Step 2~~
225 ~~representative has not received the written decision by the end of the~~
226 ~~35th day following the conclusion of the Step 2 meeting.~~

227 ~~e.b. Step 2 decisions in grievances not involving alleged procedural~~
228 ~~violations are final and binding.~~

229 ~~d.c.~~ A copy of the decision shall be sent to the grievant and to UFF if the
230 grievant elected self-representation or representation by legal
231 counsel.

232 ~~11.7 Formal Grievance Arbitration Procedure (Step 3).~~

233 ~~(a) Step 3 Filing. If a grievance alleging a procedural violation has not been~~
234 ~~satisfactorily resolved at Step 2, the UFF may proceed to arbitration by filing a~~
235 ~~written notice of the intent to do so (Appendix D).~~

236 ~~(1) Within fifteen (15) days after the date of the Step 2 decision, the notice of~~
237 ~~intent to proceed to arbitration must be submitted to the Office of the~~
238 ~~General Counsel (ogc@floridapoly.edu) consistent with the procedures~~
239 ~~defined in Section 11.2(b). The fifteen (15) days will be calculated as~~
240 ~~defined in Section 24.5.~~

241 ~~(2) Only those acts or omissions and sections of the Agreement identified at the~~
242 ~~initial Step 2 filing, or as amended prior to the Step 2 meeting, may be~~
243 ~~considered by the Arbitrator.~~

244 ~~(3) The parties shall stipulate to the issue(s) prior to the arbitration. In the event~~
245 ~~a stipulation is not reached, the parties shall proceed to a hearing on~~
246 ~~arbitrability pursuant to Section 11.7(d).~~

247 ~~(b) Selection of Arbitrator.~~

248 ~~(1) Arbitration Panel. Representatives of the University and UFF notice shall~~
249 ~~meet within ninety (90) days after the execution of this Agreement for the~~
250 ~~purpose of selecting an Panel of seven (7) members.~~

251 ~~a. Each party shall submit six (6) arbitrators to create a selection list,~~
252 ~~from which parties may mutually agree to, or alternatively strike~~
253 ~~names until they select the Arbitration Panel.~~

254 ~~b. The right of the first choice to strike shall be determined by a~~
255 ~~coinflip.~~

256 ~~c. The Arbitration Panel shall be operative until a successor~~
257 ~~Agreement is ratified, or if two (2) or more arbitrators on the~~
258 ~~selection list are no longer active, the parties may agree in writing~~
259 ~~to replace the inactive arbitrators or select a new panel following the~~
260 ~~same process.~~

261 ~~(2) Step 3 Arbitrator. The parties shall either mutually agree upon the arbitrator~~
262 ~~charged with hearing any grievance, or select, the arbitrator from the~~
263 ~~Arbitration Panel as set forth in this subsection.~~

264 ~~a. A mutually agreed upon arbitrator does not need to be a member of~~
265 ~~the Arbitration Panel.~~

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~~b. — In the event the parties cannot mutually agree upon an arbitrator, and no later than fourteen (14) days after receipt of a notice of intent to arbitrate, the parties shall confer for the purpose of selecting an arbitrator from the panel.~~

~~c. — The parties shall alternatively strike names from the list until one name remains.~~

~~d. — The right of the first choice to strike shall be determined by a coinflip.~~

~~(e) — Authority of the Arbitrator.~~

~~(1) — 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 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.~~

~~(2) — The arbitrator shall not substitute the arbitrator’s or another’s judgment for that of the University in any matter involving the exercise of managerial discretion.~~

~~(d) — 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.~~

~~(1) — The arbitrator shall have ten (10) days from the hearing to render a decision on arbitrability.~~

~~(2) — 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(b)(1)a.~~

~~(e) — Conduct of Step 3 Hearing.~~

~~(1) — The hearing shall commence within sixty (60) days of the arbitrator’s acceptance of selection, or as soon thereafter as is practicable.~~

~~(2) — The arbitrator shall conduct the hearing at the University, unless otherwise agreed by the parties.~~

~~(3) — 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.~~

~~(4) — The decision shall be in writing and shall set forth findings of fact, reasoning, and conclusions on the issues submitted.~~

~~(5) — 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.~~

~~(f) — 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.~~

~~(g) Fees and Expenses.~~

~~(1) The parties shall equally divide all arbitration fees and expenses unless the arbitrator rules that the claim or defense was frivolous, in which case the nonprevailing party shall bear the cost of all fees and expenses associated with the arbitration, including, if awarded, attorney’s fees.~~

~~(2) Fees and expenses charged by an arbitrator for cancellation after the arbitrator’s deadline shall be borne by the party requesting the cancellation. However, if a grievance is resolved, and the cancellation of the arbitration results in any arbitration fees or expenses, such costs shall be divided equally between the parties.~~

~~(3) 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.~~

~~(4) 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.~~

11.811.7 Implementation of Remedy. Any formal remedy resulting from a decision at Step 2 ~~or Step 3~~ will be implemented within fourteen (14) days, unless otherwise provided in the arbitrator’s decision or by mutual agreement of the parties.

11.911.8 Precedent. The resolution of a grievance, either informally or by decision rendered at Step 2, shall not constitute a precedent for any purpose unless agreed to in writing by the Board of Trustees or their representatives and the UFF acting through its president or representative.

11.1011.9 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. Unless otherwise exempt under Florida law, grievance-related documents are subject to disclosure as a public record.

11.1111.10 Processing.

(a) The filing or pendency of any grievance or ~~arbitration proceedings~~ under this Article will not operate to impede, preclude, or delay the University from taking

344 the action complained of.

345 (b) Reasonable efforts, including the shortening of time limits when practical, will be
346 made to conclude the processing of a grievance prior to the expiration of the
347 grievant's employment, whether by termination or failure to reappoint. An
348 employee with a pending grievance will not continue to be compensated beyond
349 the last date of employment.

350 (c) The University may refuse consideration of a grievance not filed or processed in
351 accordance with this Article.

352 ~~11.12~~11.11 Inactive Grievances. A grievance which has been filed at Step 2 ~~or Step 3~~ and on
353 which no action has been taken by the grievant or the UFF for sixty (60) days shall be
354 deemed withdrawn and/or dismissed in accordance with the decision issued at the prior
355 Step. ~~This provision does not apply to procedural or scheduling delays in Step 3 which are~~
356 ~~beyond the control of the grievant or UFF.~~

For the University

For the UFF

David Fugett
Chief Negotiator

Wylie Lentz
Chief Negotiator

Date _____

Date _____