

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.

~~(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 will 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.~~

~~(e)~~(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.

For the University

For the UFF

Alexander Landback
Chief Negotiator

Myles Kim
Chief Negotiator

Date

Date

- 1 b. The grievance must specify:
 - 2 (1) the act that allegedly violates this Agreement, including the
 - 3 name(s) of any individual(s) who committed the act;
 - 4 (2) the term(s) of this Agreement that has allegedly been
 - 5 violated;
 - 6 (3) how the act violates the term(s) of the Agreement, and;
 - 7 (4) propose an appropriate and specific remedy.

8 2. The term “grievant” means:

- 9 a. An employee or group of employees who has/have filed a grievance
- 10 in a dispute over a provision of this Agreement which confers rights
- 11 upon the employee(s).

- 12 b. The UFF chapter, ~~where it is entitled by law to~~ may file a grievance
- 13 on behalf of a person, a group of people, or the chapter itself, in a
- 14 dispute over a provision of this Agreement which confers rights
- 15 upon the employee(s).

- 16 (1) In order to process a chapter grievance submitted on behalf
- 17 of a group of employees, the grievance must identify the
- 18 group with sufficient specificity to allow the University to
- 19 identify the individual members that are affected by the
- 20 chapter grievance.

- 21 (2) A chapter grievance shall identify the specific remedy sought
- 22 for the members.

- 23 c. A chapter grievance or a grievance of a decision made by the
- 24 President or Provost may be initiated at Step 2.

25 3. The parties may agree to consolidate grievances of a similar nature to

26 expedite the review process. However, the parties are not obligated to any

27 such consolidation. Where multiple grievances of a similar nature are

28 processed to arbitration, the arbitrator may order consolidation of the

29 grievances upon request of a party unless there is a finding that

30 consolidation would prejudice the opposing party.

31 (b) Forms.

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Date	Date

- 1 1. Grievance Form. Each grievance must be typed and submitted in writing on
2 the form attached to this Agreement as Appendix “C”, with all pertinent
3 information explaining the disagreement or controversy, identifying the
4 provision(s) at issue. The grievant’s signature, confirming the grievant’s
5 intent to proceed with the grievance, shall be provided prior to the grievance
6 hearing.
- 7 2. Arbitration Form. Each notice of arbitration must be submitted in writing
8 on the form shown in Appendix “D” (Notice of Arbitration). All pertinent
9 information submitted with the Grievance Form, as well as the Grievance
10 Hearing decision, must be included as an attachment to the Notice of
11 Arbitration form. The Notice of Arbitration form must be signed by the
12 grievant and a UFF representative^[PL.1].
- 13 3. All grievance forms must be electronically filed via email with the Office
14 of the General Counsel (ogc@floridapoly.edu).
- 15 a. All grievance forms will be dated and assigned a case number when
16 the form is received by the Office of the General Counsel.
- 17 b. The date of receipt will be determined by the date in which the
18 grievance is received by the Office of the General Counsel and
19 assigned an identifying case number.
- 20 4. If there is difficulty in meeting any time limit, the UFF representative may
21 sign such documents for the grievant; however, the grievant’s signature
22 must be provided prior to the Grievance Hearing or the selection of an
23 Arbitrator under Section 11.7(b).
- 24 5. Time Limits. All time limits contained in this Article may be extended by
25 agreement of the parties, except that the time limits for the initial filing of a
26 grievance may be extended only by the University. Upon failure of the
27 University to provide a decision within the time limits provided in this
28 Article or as extended by agreement, the grievant or the UFF, where
29 appropriate, may proceed to the next step.
- 30 6. Upon the failure of the grievant or the UFF to advance a grievance within
31 the time limits provided in this Article or as extended by agreement, the
32 grievance will be administratively closed pursuant to the decision at the
33 prior step or deemed withdrawn with prejudice.

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Date

1 11.3 Burden of Proof. In all grievances, except those challenging disciplinary actions, the grievant
2 has the burden of proof.

3 11.4 Appearances.

4 (a) Grievant.

5 ~~1. The grievant must attend the Grievance Hearing. If the grievant does not~~
6 ~~attend and has no legitimate excuse for such absence, the grievance will be~~
7 ~~deemed to be withdrawn.~~

8 2.1. When an employee participates during working hours in an arbitration
9 proceeding as the grievant, or in an official capacity during a grievance
10 meeting between the grievant or representative and the University, that
11 employee’s compensation will neither be reduced nor increased for time
12 spent in those activities.

13 ~~3.2.~~ Prior to participation in any such proceedings, conferences, or meetings, the
14 employee will make arrangements acceptable to the appropriate supervisor
15 for the performance of the employee’s duties. Approval of such
16 arrangements will not be unreasonably withheld. Time spent in such
17 activities outside regular working hours will not be counted as time worked.

18 (b) Grievance Representatives.

19 1. UFF possesses the exclusive right to represent any in-unit employee in a
20 grievance unless an employee elects self-representation or to be represented
21 by legal counsel.

22 a. UFF must annually furnish to the University a list of all persons
23 authorized to act as grievance representatives and will update the list
24 as needed. The UFF grievance representative has the responsibility
25 to meet all classes, office hours, and other duties and responsibilities
26 incidental to the assigned workload.

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

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Date

Date

1 c. Should any hearings or meetings with the Vice Provost of Academic
2 Affairs, Provost, or their designees necessitate rescheduling of
3 assigned duties, the representative may, with the approval of the
4 appropriate administrator, arrange for the rescheduling of such
5 duties or their coverage by colleagues. Such approval will not be
6 unreasonably withheld.

7 2. If an employee elects not to be represented by UFF, the University will
8 promptly inform UFF in writing of the grievance. No resolution of any
9 individually processed grievance will be inconsistent with the terms of this
10 Agreement, and for this purpose, UFF will have the right to have an
11 observer present at all meetings called to discuss such grievance and will be
12 sent copies of all decisions at the same time as they are sent to the other
13 parties.

14 3. Where UFF determines that a grievance lacks merit, the University shall not
15 process said grievance to arbitration unless authorized by UFF.

16 11.5 Informal Resolution (IR) Procedure- (Step 1). The University Administration and the UFF-
17 FPU Chapter agree that problems should be resolved, whenever possible, before the filing of
18 a grievance. Therefore, except as provided under Section ~~11.2(a)2.c~~~~11.2(a)(2)e~~, no grievance
19 may be filed until the UFF or faculty member has timely requested an informal resolution.
20 The faculty member will have the right to representation by the UFF-FPU Chapter during
21 attempts at informal resolution. If the faculty member is not represented by UFF-FPU at this
22 point, the University will provide prompt notification to the chapter with a copy of the
23 request for IR.

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

29 (b) If the informal resolution process has been timely requested, as provided below, the
30 later filed grievance will be considered to be timely filed, as long as the other
31 deadlines specified in Article are observed. If the informal resolution process has
32 not been timely requested, as provided below, the right to file a formal grievance
33 will be waived as time-barred.

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- 1 (c) All requests for informal resolution must be in writing and submitted to the Office
2 of the General Counsel via email (ogc@floridapoly.edu). [FPU2] The request must
3 contain a brief, general description of the dispute, identify the relevant provisions
4 of this Agreement which are at issue, and include dates, times, and locations of the
5 action(s) giving rise to the dispute.
- 6 (d) Upon receipt of a timely-filed request for informal resolution, the parties will have
7 thirty (30) days to attempt to informally resolve the dispute.
 - 8 1. The thirty (30) day period may be extended upon mutual agreement of the
9 parties.
 - 10 2. The faculty member may file a formal grievance prior to the expiration of
11 the thirty (30) day period, when:
 - 12 a. Good faith attempts have been made by the grievant to achieve an
13 informal resolution;
 - 14 b. The dispute is time-sensitive, or;
 - 15 c. The parties mutually agree that informal resolution of the dispute is
16 not possible.
- 17 (e) All informal resolutions will be reduced to writing, but will be without precedent
18 or prejudice to the parties.

19 11.6 Formal Grievance Procedure (Step 2).

20 (a) Step 2 Filing.

- 21 1. Within fifteen (15) days after the expiration of the thirty (30) day IR period,
22 the grievant or UFF may file a Step 2 grievance consistent with the
23 requirements described in Section 11.2.
- 24 The fifteen (15) days will be calculated from the date on which the
25 grievance is emailed to, and confirmed as received by, the Office of the
26 General Counsel.

~~The filing of a grievance constitutes a waiver of any rights to judicial review of agency action pursuant to Chapter 120, Florida Statutes, and to the review of such actions under other University procedures that may otherwise be available to address such matters.~~

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1 ~~2.1.~~ The grievance may be withdrawn at any time by the grievant or by the UFF
2 President.

3 (b) Amended Step 2 Filing.

- 4 1. The grievant may amend the Step 2 grievance one (1) time prior to the Step
- 5 2 meeting, no later than three (3) business days prior to the Step 2 meeting,
- 6 so long as the factual basis of the complaint is not materially altered.
- 7 2. Only those acts or omissions and sections of the Agreement specifically
- 8 identified in writing at the initial Step 2 filing, or as amended prior to the
- 9 Step 2 meeting, may be considered at Step 2 or Step 3.

10 (c) Request for Documents.

- 11 1. Upon written request, the grievant and the grievant’s representative will be
- 12 provided access to all documents relevant to the grievance, except as
- 13 described in subsection ~~3(3)~~.
- 14 2. If the request is reasonable in scope and relevant to the grievance, these
- 15 documents will be provided no less than three (3) business days prior to the
- 16 Step 2 meeting.
- 17 3. Written Authorization is required for the release of any Limited-Access
- 18 Records to the UFF representative or the grievant’s legal counsel (if selected
- 19 pursuant to Section 11.4), as defined under Florida Polytechnic University
- 20 Rule 6C13-6.008.

21 (d) Step 2 Meeting.

- 22 1. Timing. The Provost or University Representative and the grievant and the
- 23 grievant’s representative shall meet no later than fifteen (15) days following
- 24 the receipt of the Step 2 grievance.
- 25 2. Procedure. During the Step 2 meeting, the grievant shall have the right to
- 26 present any evidence in support of the grievance, and the grievant and/or
- 27 the UFF representative or the grievant’s legal counsel (if selected pursuant
- 28 to Section 11.4), and the Provost or University Representative will discuss
- 29 the grievance.
- 30 3. Decision.

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- 1 a. The Provost or University Representative will issue a written
- 2 decision, stating the reasons for the decision, including any
- 3 objections to the procedural or substantive arbitrability of the
- 4 grievance, to the grievant and the grievant’s Step 2 representative
- 5 within thirty (30) days following the conclusion of the Step 2
- 6 meeting. Thirty (30) days shall be calculated as defined in Section
- 7 24.5^[FPU3].
- 8 b. In the absence of an agreement to extend the period for issuing the
- 9 Step 2 decision, UFF may proceed to Step 3 if the grievant’s Step 2
- 10 representative has not received the written decision by the end of the
- 11 35th day following the conclusion of the Step 2 meeting.
- 12 c. Step 2 decisions in grievances not involving alleged procedural
- 13 violations are final and binding.
- 14 d. A copy of the decision shall be sent to the grievant and to UFF if the
- 15 grievant elected self-representation or representation by legal
- 16 counsel.

17 11.7 Formal Grievance Arbitration Procedure (Step 3).

- 18 (a) Step 3 Filing. If a grievance alleging a procedural violation has not been
- 19 satisfactorily resolved at Step 2, the UFF may, ~~upon the request of the grievant,~~
- 20 proceed to arbitration by filing a written notice of the intent to do so (Appendix D).
- 21 1. Within fifteen (15) days after the date of the Step 2 decision, the notice of
- 22 intent to proceed to arbitration must be submitted to the Office of the
- 23 General Counsel consistent with the procedures defined in Section 11.2(b).
- 24 The fifteen (15) days will be calculated as defined in Section 24.5^[FPU4].
- 25 2. Only those acts or omissions and sections of the Agreement identified at the
- 26 initial Step 2 filing, or as amended prior to the Step 2 meeting, may be
- 27 considered by the Arbitrator.
- 28 ~~3. The parties shall stipulate to the issue(s) prior to the arbitration. In the event~~
- 29 ~~a stipulation is not reached, the parties shall proceed to a hearing on~~
- 30 ~~arbitrability pursuant to Section 11.7(d).~~

- 31 (b) Selection of Arbitrator.

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1. ~~Following submission of the notice of intent to proceed to arbitration, the Union shall request a panel of arbitrators from the American Arbitration Panel. Representatives of the University and UFF shall meet within ninety (90) days after the execution of this Agreement for the purpose of selecting an Association (AAA). The arbitrator shall be selected according to the current Labor Arbitration Panel Rules of seven (7) members.~~

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

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

c. ~~The Arbitration Panel shall be operative until a successor Agreement is ratified.~~

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

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

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.~~

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

(c) 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.

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1 2. The arbitrator shall not substitute the arbitrator’s or another’s judgment for
2 that of the University in any matter involving the exercise of managerial
3 discretion, except where the exercise of such judgment is deemed arbitrary,
4 capricious, or discriminatory.

5 (d) Arbitrability. Issues of arbitrability ~~shall be separated from~~ may, by mutual
6 agreement of the substantive issue(s) and, whenever possible, parties, be determined
7 by means of a hearing conducted by conference call.

8 1. ~~The~~ In this case, the arbitrator shall have ten (10) days from the hearing to
9 render a decision on arbitrability.

10 2. If the issue is judged to be arbitrable, ~~an~~ the arbitrator shall ~~then be selected~~
11 ~~to~~ hear the substantive issue(s) in accordance with the provisions of Section
12 11.7(b)(2).

13 (e) Conduct of Step 3 Hearing.

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

16 2. The arbitrator shall conduct the hearing at the University, unless otherwise
17 agreed by the parties.

18 3. The arbitrator shall issue the decision within forty-five (45) days of the close
19 of the hearing or the submission of briefs, whichever is later, unless
20 additional time is agreed to by the parties.

21 4. The decision shall be in writing and shall set forth findings of fact,
22 reasoning, and conclusions on the issues submitted.

23 5. Except as modified by the provisions of this Agreement, arbitration
24 proceedings shall be conducted in accordance with the current Labor
25 Arbitration Rules of the American Arbitration Association.

26 (f) Effect of Decision. The arbitrator’s decision shall be final and binding upon the
27 Board, the University, the UFF, and the grievant, provided that either party may
28 appeal to an appropriate court of law a decision that was rendered by the arbitrator
29 acting outside of or beyond the arbitrator’s jurisdiction, pursuant to this Agreement
30 and the Florida Arbitration Code as defined by law.

31 (g) Fees and Expenses.

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

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

8 11.12 ~~Inactive Grievances. A grievance which has been filed at Step 2 or Step 3 and on which no~~
9 ~~action has been taken by the grievant or the UFF for forty five (45) days shall be deemed~~
10 ~~withdrawn and/or dismissed in accordance with the decision issued at the prior Step.~~

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