

ARTICLE 16

GRIEVANCE and ARBITRATION

Section 16.1 – Grievances

The parties agree that prompt and just settlement of grievances is of mutual concern and interest and encourage the informal resolution of grievances whenever possible. The purpose of this procedure is to promote prompt and efficient resolution of grievances at the point of origin. In order to achieve this, the Union and the Administration shall make available to one another all known relevant facts so as to enable the parties to resolve grievances and maintain harmony within the College environment. This procedure shall be the sole and exclusive method for resolving grievances.

A. Definitions as Used Herein:

1. A “grievance” shall mean a dispute filed on the appropriate grievance form (Appendix **xx**) 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. Oral complaints are not grievances; however, any claim by an employee, group of employees, or the UFF/BCC that there has been a violation, misinterpretation, or misapplication of some specific provision of this agreement, policy, procedure, or handbook incorporated which has been incorporated into this agreement by reference, may bring oral complaints or suggestions relating to such provision to the attention of the College for discussion on an informational basis.
2. “Grievant” shall mean a member of the bargaining unit, or group of members of the bargaining unit, or the UFF Chapter itself, who has/have filed a grievance in a dispute over a provision of the Collective Bargaining Agreement, policy, procedure, or handbook incorporated into this agreement by reference.
3. “Representative” or “Grievance Representative” shall mean an individual designated in writing by the grievant to represent, and act for and/or on behalf of, the grievant throughout the grievance procedure.
 - a. The representative shall have the authority to file the grievance, submit documents, speak for the grievant, and communicate with the administration on behalf of the grievant.
 - b. The grievant may change the designated representative upon written notice to the administration and to the UFF-BCC.

B. UFF-BCC shall have the right to file and pursue grievances on behalf of individual employees who personally sign the grievance document or who provide written authorization for UFF-BCC to represent them in such proceedings. UFF-BCC shall also have the right to file and pursue grievances on behalf of itself as grievant.. In the case of UFF-BCC grievances on behalf of itself, Steps I and II in section G of this article shall be combined into a single step and the

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grievance document shall be initially filed at Step 2 within the prescribed time limit (21 college business days). All other requirements of this article shall be in force. There shall be no combining of UFF-BCC grievances and employee grievances in a single grievance document.

C. Where several employees have essentially the same grievance, the parties may consolidate the grievances. When consolidated one grievance form shall be presented bearing the signatures of each of the individual grievants. Such a grievance shall otherwise be processed as any individual grievance would with the exception that there are multiple grievants.

D. Where a group of employees may be defined by common interests, duties, or responsibilities, the union may file one grievance on behalf of the entire class. The union shall be considered the grievant in such a “class action” grievance.

1. A class action grievance will:

- a. Identify the class uniquely and with particularity,
- b. Identify the specific nature of the grievance of the class,
- c. Contain a complete statement of the grievance and facts upon which it is based,
- d. Contain a specific statement regarding the remedy or correction requested, and
- e. Identify the section or sections of the Agreement alleged to have been violated,
- f. Contain two or more names of the aggrieved employees.

2. Where a “class action” grievance alleges violations outside one department or unit, the grievance may be filed directly at Step II.

E. The right of the individual employee to present and pursue grievances under this article, without representation by the UFF-BCC, is preserved inviolate, subject only to such limitations as may be contained in Florida Statutes. UFF-BCC has the right to observe, but not to participate in, such proceedings. However, nothing in this section shall prevent the UFF-BCC from providing input into the process as necessary to assure that the provisions of this agreement are followed. The UFF-BCC will be notified in advance of such occurrences with notification given to the UFF-BCC president and grievance chair, if any, within twenty-four (24) hours of the filing of such a grievance.

F. The time limits set forth in this article are of the essence and must be strictly complied with unless extended by mutual agreement of the parties. A grievant's failure to comply shall mean that the grievance stands abandoned. The College's failure to answer a grievance within the time provided shall mean that the grievance is denied. In order to be eligible for processing, a grievance must be timely filed and contain the following:

1. The name of the grievant, whether employee or UFF-BCC.
2. The date on which the event giving rise to the grievance occurred, or the omission giving rise to the grievance occurred.
3. A detailed statement of the facts as to the claimed event or omission.
4. Citation of the particular sections of this Agreement (not articles alone) that the grievant relies on. General citations will not satisfy this requirement and the grievant shall not add new citations after the grievance is filed.
5. A statement of the precise relief sought, which will stand as the outer limit or maximum as to possible relief that can be sought.

G. Grievances, properly and timely filed, shall be processed in accordance with the following procedure. Time limitations specified herein may be extended by agreement of both parties. A grievance filed on behalf of the Union shall be filed within the twenty-one (21) business days as above, but may be filed directly at the Step II level.

1. Step I: Request for Informal Resolution. The parties shall first attempt an informal resolution of grievances.
 - a. An eligible grievant shall notify his or her immediate supervisor in writing, which may be by e-mail, of their grievance and request for an informal resolution. Such notification shall occur within twenty-one (21) college business days as set out in the College Calendar of the occurrence of the event or omission giving rise to the grievance, or within twenty-one (21) college business days as set out in the College Calendar of the date when the grievant knew or, in the exercise of reasonable diligence, should have become aware of such event or omission, whichever is later.
 - b. Within ten (10) college business days as set out in the College Calendar of the receipt of the grievance, the immediate administrative supervisor shall meet with the grievant in an effort to resolve the problem.
 - c. The immediate supervisor will be allowed ten (10) college business days as set out in the College Calendar following the meeting to respond to the grievance in writing. This written answer will consist of a notation on the grievance document and/or a formal statement..
2. Step II: Formal Grievance. If the attempt at an informal resolution does not result in a resolution acceptable to the grievant, the grievant may file the formal grievance document with the appropriate Campus Provost or Vice President, as applicable, at Step II. .

a. The document must be filed within ten (10) college business days as set out in the College Calendar of the receipt of the written answer from the immediate supervisor or within ten (10) college business days as set out in the College Calendar after the expiration of the ten (10) day period specified in Step I.

b. Once any grievance document has been properly filed with the Campus Provost or the Vice President, the Campus Provost or the Vice President shall have fifteen (15) College business days as set out in the College Calendar in which to provide a written response to the grievant. The written response may consist of a notation on the grievance document and/or a formal letter of notification.

c. Either the Campus Provost or the Vice President, as applicable, or the grievant, may request a meeting to discuss the grievance. If the grievant desires a meeting, he/she should request it when the grievance document is filed. If such a meeting is held, it should be held within the fifteen (15) day period.

3. Step III. If the disposition of the grievance is unacceptable to the grievant at Step II, the grievant may appeal the Step II decision the grievance document with the President or an individual designated by him to hear grievances at Step III.

a. The decision must be appealed within ten (10) college business days as set out in the College Calendar after the receipt of the written answer from the Campus Provost or the Vice President, or within ten (10) college business days as set out in the College Calendar after the expiration of the fifteen (15) day period applicable to Step II.

b. The grievant may also request a meeting with the President or his designee to discuss the grievance. Such a meeting will be scheduled within fifteen (15) college business days from the receipt of the grievance at Step III.

c. The President or his designee will be allowed fifteen (15) college business days after the receipt of the grievance at Step III to provide a written disposition of the grievance.

Section 16.2 – Arbitration

A. Only those grievances that have been processed through the grievance procedure in strict compliance with all of its requirements may be taken to arbitration. If the grievant is not satisfied with the disposition of the grievance at Step III or within the fifteen (15) college business day period applicable to Step III, the grievance may be submitted to arbitration. The arbitration process shall be initiated by filing a written request for arbitration with the Executive Director of Human Resources within twenty (20) college business days as set out in the College Calendar after receipt of written disposition at Step III or within twenty (20) college business days as set out in the College Calendar after the expiration of the Step III fifteen (15) day period. A copy of the grievance document must be attached to the request.

1. After a written request for arbitration is properly and timely filed, the grievant and the College, by any representative it may choose, will meet at a mutually convenient time or confer by telephone in an effort to mutually agree on an arbitrator.
2. If an arbitrator cannot be agreed upon, the Federal Mediation and Conciliation Service will be asked to supply a list of seven (7) names from which the parties will alternately strike names until only one remains. The one remaining shall be the arbitrator.
3. Each party shall have the right to reject one list of arbitrators in its entirety, and any subsequent list containing any of the same names.
4. No arbitrator shall have at any time before him more than one grievance involving this Agreement without the mutual consent of the College and the Union.
5. 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). By mutual consent of the College and the Union, the same arbitrator may preside over both the issue of arbitrability and the substantive issue(s).
6. The identified arbitrator will be notified by FMCS. The arbitration will then proceed in accordance with the reasonable orders and requests of the arbitrator, but subject to the following conditions:
 - a. Venue. The arbitrator shall hold the hearing in Brevard County, Florida, unless otherwise agreed to by the parties. The hearing shall be scheduled as soon as is practicable.
 - b. Authority of the Arbitrator. The arbitrator shall not have the power to add to, subtract from, modify, or alter the terms of this agreement. Decisions must be explained upon the request of either party. The arbitrator's decision shall be confined solely to the application and/or interpretation of this Collective Bargaining Agreement and its referenced documents 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.
 - c. The parties shall have a right to a reasonable time for briefing the case, upon request, and a decision shall be due within thirty (30) days after the date set for filing briefs.
 - d. 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

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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 College to take appropriate action.

e. 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. Costs of reports and transcripts (which shall be made available at the request of either party) shall be borne by the requesting party. Cost of meeting rooms, etc., shall be divided equally between the parties.

f. Effect of Decision. The decision or award of the arbitrator shall be final and binding upon the College, 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..

g. The arbitrator shall be empowered to make reasonable orders so that the matter can be expeditiously resolved, but shall accommodate the parties within reason as to hearing dates and continuances where need is shown.

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

7. If a continuing contract faculty member is suspended, returned to annual contract, or terminated, the faculty member may choose to proceed to arbitration or to appeal the decision under the State Board of Education Rules. The election of that procedure will be deemed an election of remedies and a permanent waiver of the right to appeal the suspension, return to annual contract or termination under this Article. If the continuing contract faculty member chooses to process the issue of suspension, return to annual contract or termination under Step 5 of this Article, the continuing contract faculty member's choice will be considered an election of remedies and an appeal cannot be processed under the Florida Administrative Code and Florida Statute Section 120.

Tentative Agreement Date: June 4, 2009
For BCC-BOT:

For UFF-BCC:

Date

Date