

From: Everham III, Dr Edwin
Sent: Tuesday, November 27, 2018 8:35 AM
To: United Faculty of Florida <uff@fgcu.edu>
Subject: UFF-FGCU Advisors Legal action update I

Dear UFF-FGCU Member:

The following is an update regarding the Unfair Labor Practice filed with Public Employees Relations Commission (PERC) relating to reassignment of our Academic Advisors and our Chapter Grievance. The situation is evolving. We felt it was time for an update. We understand how important it is to keep membership informed with accurate information on important matters such as this so rumors do not spread. Most of the information below was presented at Executive Committee meetings or in the UFF report at Senate meetings, but is more completely summarized here.

As always, feel free to reach out to members of the UFF Executive Committee anytime should you have questions or concerns. In addition, we are rolling out the UFF-FGCU Building Stewards initiative so you will have even more points of contact to communicate with your union.

Filing of Unfair Labor Practice (ULP) with the Florida Public Employee Relations Commission (PERC):

Following the announcement of the President's intent to go forward with the reclassification of Advisors on August 1, we initiated representation by the state UFF in the PERC review. This action authorizes the use of state UFF monies for legal fees, but also gives the state UFF office decision-making power regarding how to go forward with the case. The lawyer hired by the state UFF collected affidavits and filed a charge of Unfair Labor Practice (ULP) on November 8, 2018. The judge ruled on November 19 that there is "sufficiency" to move forward with the charge. This means FGCU has 20 days (from the date of issuance of the notice by the court) to file a response, and a hearing will be scheduled within 45 days of the date of the issuance of the notice.

Filing of a Step 2 Chapter Grievance with FGCU:

On August 31, 2018, UFF-FGCU filed a Step 2 Chapter Grievance against FGCU administration claiming they had changed terms and conditions of employment for academic advisors without bargaining. Although the University's response was that the grievance was invalid and time-barred, this is not the case according to Article 20 of the CBA. In response to the University's claims, UFF-FGCU filed a Step 3 Request for Arbitration on September 18, 2018, in which the arbitrator would rule on the validity of the grievance. However, because of the filing of the Unfair Labor Practice by the UFF state office, we have been advised by state UFF not to proceed with the Step 3 Request for Arbitration at this time. It's important to note that although we are not moving forward with the grievance at this time, this decision has nothing to do with the University's claims regarding the validity or timeliness of the grievance. Basically, we claim the critical action took place on August 20, when Advisors were offered new contracts, they argue otherwise. This is the nature of legal action. We have worked with the state UFF office and followed their guidance throughout this process. The rationale for filing the grievance when we

did was to preserve our timeline and ability to pursue the grievance process if we could not pursue the Unfair Labor Practice with PERC.

A more detailed explanation of the Chapter Grievance was prepared by our Grievance Chair and is attached below.

That brings you all up to date. As these legal actions proceed, we will attempt to provide prompt updates.

Win Everham

FGCU UFF President 2018-2019

Carolynne's more complete review

Timeline relevant to Step 2 Chapter Grievance:

Following are the dates and details supporting the union's actions related to filing of the Chapter Grievance, and explanation as to why the grievance is valid and not time-barred.

It's important to note that although we are not moving forward with the grievance at this time, this decision has nothing to do with the University's claims regarding the validity or timeliness of the grievance. We have worked with the state UFF office and followed their guidance throughout this process. The rationale for filing the grievance when we did was to preserve our timeline and ability to pursue the grievance process if somehow we could not pursue the Unfair Labor Practice with PERC. As it turns out, the PERC process is proceeding according to expectations so there is no need to continue to pursue the grievance at this time.

- August 1 – President Martin emailed announcement to all university confirming reclassification of advisors.
- August 20 – Advisors received new contracts in which they were reclassified as out of the bargaining unit.
- August 31 – UFF-FGCU filed Step 2 Chapter Grievance alleging FGCU administration changed the terms and conditions of employment for academic advisors without bargaining those changes.
- September 4 – The University's response to the grievance:

“In response to the above-referenced grievance, and consistent with Article 2 (should have been Article 20), “No grievance shall be filed until the UFF-FGCU...has timely requested an informal resolution.” Notwithstanding, not only has the UFF failed to timely and properly file a grievance consistent with the Collective Bargaining Agreement (CBA), it has failed to accurately articulate the facts relevant to this grievance violation of the CBA. The University followed Article 27.6 of the Collective Bargaining Agreement. Consequently, the aforementioned grievance is time-barred”.

- The University's response is inaccurate as the CBA states in Article 20.6.A.(2) that:

"If the alleged violation occurred outside the college/unit level (University Level) the grievance shall be filed at Step 2 instead of Step 1."

Since the violation spanned across the University, the Step 1 Request for Informal Resolution is not required and the grievant should begin with a Step 2 Grievance, which is what we did.

- Also, we contend the grievance is not "time-barred" as the action resulting in the grievance occurred on August 20, and the grievance was filed on August 31, well within the 30-day timeline as required by the CBA in Article 20.

It's important to note that although President Martin confirmed his intent to remove advisors from unit in his email dated August 1, we cannot grieve "intent." We can only grieve action, and the first relevant action took place on August 20 with issuance of the new academic advisor contracts, putting our August 31 filing of the grievance well within the 30-day timeline.

In addition, even if the arbitrator were to rule that the 30-day clock began on August 1 with President Martin's email confirming his intention to move forward with reassigning academic advisors (which is an unlikely ruling), we would still have been within the 30-day timeline as the grievance was filed on August 31. As a final note on the timeline, the Monday following was a holiday (Labor Day) which would have extended the 30-day timeline to Tuesday, September 4, putting us well within the 30-day timeline. This is all immaterial as the first University action took place on August 20, but is included here to show how far from accurate the University claim is that the grievance is time-barred.

- September 18 – UFF-FGCU filed a Step 3 Request for Arbitration. This request called for an arbitrator to rule on the University's claim that the grievance was time-barred and ineligible as we began the grievance process at Step 2 instead of Step 1.